# ADA R2 1NC vs Kentucky

## Off-Case

### T Subsets

#### “Private sector” means all non-governmental persons or entities, including non-profits

Senate Report 95, (Senate Report, 1995, 104-1, “UNFUNDED MANDATE REFORM ACT OF 1995,” <https://www.congress.gov/congressional-report/104th-congress/senate-report/1>)

"Private sector" is defined to cover all persons or entities in the United States except for State, local or tribal governments. It includes individuals, partnerships, associations, corporations, and educational and nonprofit institutions.

#### That includes any universally applied standard, like CWS (Consumer Welfare Standard)

Phillips 18, commissioner on the Federal Trade Commission (Noah J. Phillips, 11-1-2018, “Before the Federal Trade Commission, “Competition and Consumer Protection in the 21st Century,” <https://www.ftc.gov/system/files/documents/public_events/1415284/ftc_hearings_session_5_transcript_11-1-18_0.pdf>)

Our second topic today is the consumer welfare standard. And I think most folks even out in the public know, this is the standard that we use across the board, mergers and conduct in courts and at agencies, to judge anticompetitive conduct. It is not only a standard that we in the U.S. apply, it is a standard that is used by competition agencies around the world. It is an economically-grounded standard, and it requires that there be harm to consumers for conduct to be condemned. Mere harm to competitors is considered insufficient. So let me repeat that again. There has to be harm to consumers, not just competitors. The reason that is so, the reason harm to competitors is considered insufficient is because sometimes a less-efficient firm losing sales or market share to a cheaper, more innovative or efficient rival, can be and often is consistent with vibrant competition and with outcomes that benefit consumers. Courts and agencies have embraced this standard for decades. Today, there are two very important discussions going on about the consumer welfare standard, and they are happening simultaneously. And I think it is important that we understand that there are two conversations going on. One is a continuing discussion about how we apply the standard, regarding whether enforcement is at the appropriate level, whether it is properly targeted. This is an introspective question on some level, in which scholars, economists, practitioners, and enforcers all ask ourselves, are we bringing the right kinds of cases? Are we using the right kinds of evidence? Should we be doing more or less in certain places? The antitrust bar, the business community, and others benefit from this ongoing and active analysis. The second discussion happening now, and the one on which today’s consumer welfare standard panels will focus, is whether the standard is itself the right metric we ought to use in antitrust enforcement and in antitrust law; some argue that enforcement under the consumer welfare standard has failed because of the law, and accordingly, that we should reform the law.

#### Vote neg---potential subsets is infinite---only economy-wide affs have link uniqueness by forcing the aff to structurally change antitrust

### T Scope

#### ‘Scope’ is the extent of the area dealt with or relevant to the core laws

Oxford Languages ND, “scope,” shorturl.at/wCDY3

scope

the extent of the area or subject matter that something deals with or to which it is relevant.

"we widened the scope of our investigation"

#### It’s bounded by exemptions and immunities

Kruse et al. 19, Layne E. Kruse, Co-Chair; Melissa H. Maxman, Co-Chair; Vittorio Cottafavi, Vice Chair; Stephen M. Medlock, Vice Chair; David Shaw, Vice Chair; Travis Wheeler, Vice Chair; Lisa Peterson, Young Lawyer Representative; all on the Exemptions and Immunities Committee of the ABA Antitrust Section, “Long Range Plan, 2018-19,” American Bar Association, 3/18/19, https://www.americanbar.org/content/dam/aba/administrative/antitrust\_law/lrps/2019/exemptions-immunities.pdf

D. Top 3 Accomplishments Since Last Long Range Plan in 2015

(1) Publications. In addition to our Annual ALD Updates, we are set to publish an update to the Noerr-Pennington Handbook, which should be out in 2019. We also published a new version of the State Action Handbook in 2016. The Handbook on the Scope of the Antitrust Laws was published in 2015.

(2) Commentary on Legislative and Regulatory Proposals. The Committee has been very active in supporting Section commentary on proposed legislation, regulations, and other policy issues.

For instance, in March 2018, the E&I Committee assisted former E&I Chair John Roberti in composing his article, “The Role and Relevance of Exemptions and Immunities in U.S. Antitrust Law”, presented to the DOJ Antitrust Division Roundtable on behalf of the ABA Antitrust Section.

In January 2018, in response to a request from the Section Chair, we submitted Section comments along with the Legislative and State AG Committees, addressing the proposed Restoring Board Immunity Act legislation that would impact the post-NC Dental exemptions and immunity climate. Previously, we commented on the Professional Responsibility Act.

(3) Spring Meeting Programs. We have sponsored or co-sponsored a program at every Spring Meeting since our last long range plan. In 2019 we will chair Sham Litigation after FTC v. AbbVie The FTC v. AbbVie decision – calling for the disgorgement of $448 million on the basis of sham patent litigation. In addition, we will co-sponsor in 2019 with the Trade, Sports & Professional Associations Committee, a program on “Antitrust Law's Anomalous Treatment of Sports,” addressing how US courts have shown broad deference to the "rules of the game," including near-immunity status for concepts such as "amateurism."

II. Major Competition/Consumer Protection Policy or Substantive Issues Within Committee’s Jurisdiction Anticipated to Arise Over Next Three Years

A. Issue #1: Will Certain Exemptions Be Eliminated or Expanded?

A goal of the current DOJ Antitrust Division is to streamline antitrust laws, and in particular, take a hard look at exemptions and immunities. This is in the wheelhouse of our Committee’s fundamental policy issue: How much of the economy has opted out of our antitrust system? Is that a problem or are ad hoc exemptions acceptable ways to fine tune the application of the antitrust laws?

We anticipate, therefore, that efforts to enact or to repeal existing statutory exemptions and immunities will continue. In recent years, there have been efforts to repeal the exemptions for railroads and (at least in part) the McCarran-Ferguson insurance exemption. The Section and the Committee has generally supported efforts to repeal statutory exemptions. Given that repeal issues are very political it is unlikely that we will see many exemptions actually repealed.

On the other hand, proposals for new exemptions and immunities will continue to be introduced in Congress. The Committee will improve on a template for use in assisting the Section in drafting comments to Congress on newly proposed exemptions and immunities.

One development that may continue in the health care area are issues over a "COPA" or "Certificate of Public Advantage" at the state level. A COPA is a state statutory mechanism that provides certain collaborations in the health care community with immunity from private or government actions under the antitrust laws by invoking the state action doctrine. The FTC has generally opposed such efforts at the state level, but several states have used them to immunize health care mergers. This is a major development that should be monitored.

Through programs, newsletters, and Connect entries, the Committee intends to educate its members about Congressional and other efforts to repeal, or introduce new, exemptions and immunities, as well as the application of existing statutory exemptions and immunities in the courts. The Committee’s Handbook on the Scope of Antitrust Law, published in 2015, addresses developments in the statutory immunities area. It built on the prior publication, Federal Statutory Exemptions from Antitrust Law Handbook in 2007. Our Scope book will need to be updated within the next three years.

B. Issue #2: Will There Be Legislative Solutions to State Action Issues at State and Federal Levels?

The FTC’s case against the North Carolina Board of Dental Examiners put the "active supervision" prong of the state action test front and center. North Carolina State Board of Dental Examiners v. Federal Trade Commission, 135 S.Ct. 1101 (2015). The Court agreed with the FTC’s position that state occupational licensing boards comprised of market participants must satisfy the active supervision requirement. This spurred additional suits against other types of state boards involving regulated professionals. Moreover, every State had to reassess its boards to determine if there is "active supervision." Courts and state legislatures are addressing those issues. We also expect the proper framing of the clear articulation prong of the state action doctrine will be addressed. The Supreme Court spoke to the clear articulation test in FTC v. Phoebe Putney Health System, Inc., 133 S.Ct. 1003 (2013), narrowing the foreseeability test to cover only situations in which the anticompetitive conduct is the “inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature.” How this test has played out in the lower courts will be of particular interest to the Committee and its membership. The COPA issues, at the state level, as previously mentioned, will impact this area.

The Committee expects to address these issues through updates to Connect, newsletters, Spring Meeting programs, committee programs, its contributions to the Annual Review of Antitrust Law Developments. The State Action Practice Manual addresses these issues, as well as the Committee’s Handbook on the Scope of Antitrust Law.

C. Issue #3: Will Noerr Be Restricted or Expanded?

The Noerr-Pennington doctrine is an exemption issue that is frequently litigated. In particular, the most likely area of further development is in the pharma industry. Alleged misrepresentations to government agencies has caught the attention of some courts. In addition, there may be more development on the pattern exception, which raises the issue of whether each act of petitioning in a pattern must satisfy the objectively and subjectively baseless requirements for sham petitioning. The Committee’s new Handbook on Noerr (forthcoming) and its earlier Handbook on the Scope of Antitrust Law addresses developments in the Noerr law.

III. Specific Long Term Plans to Strengthen Committee

The Committee provides important services to the membership of the Section through publications, drafting ABA Antitrust Section comments to proposed regulation and international competition proposed immunities, and programming. The goals of the Committee include: (1) to provide policy comments on key questions about the scope of the antitrust laws for legislation and policy-making; (2) produce a mix of publications and programming that provides relevant and useful information to our members; (3) to ensure that the Committee remains valuable to our members’ practices; and (4) to make the most productive use of electronic communications to deliver the Committee’s work product.

A. Potential Modifications to Charter: What is the Role of this Committee?

The Committee’s current charter accurately characterizes its purview—that is, addressing the scope of the antitrust laws. That scope, of course, is defined primarily in terms of exemptions and immunities (both statutory and non-statutory). The Committee, however, has dealt with other doctrines, such as preemption and primary jurisdiction. These areas may not necessarily be viewed as traditional exemptions or immunities, but they nonetheless directly affect the application and extent of the antitrust laws. In addition, the Committee expends significant efforts to address international issues, including statutory exclusions from the U.S. antitrust laws, including the FTAIA; the related doctrines of act of state, sovereign immunity, and foreign sovereign compulsion; and industry-specific exemptions and exclusions from non-U.S. antitrust laws, including blocking exemptions.

#### ‘Expand’ must make more expansive---NOT merely clarify existing principles

Terry J. Hatter, Jr. 90, Judge, US District Court, California Central, “In re Eastport Assoc.,” 114 B.R. 686, Lexis

[\*\*10] Second, Eastport asserts that the presumption against retroactivity does not apply because the amendment was intended only as a clarification of existing law. HN7 Where an amendment to a statute is remedial in nature and merely serves to clarify existing law, no question of retroactivity is involved and the law will be applied to pending cases. City of Redlands v. Sorensen, 176 Cal. App. 3d 202, 211, 221 Cal. Rptr. 728, 732 (1985). The evidence in this case, however, does not support the conclusion that the amendment to section 66452.6(f) was simply a clarification of preexisting law. The Legislative Counsel's Digest specifically states that "the bill would expand the definition of development moratorium." Senate Bill 186, Stats. 1988, ch. 1330, at 3375 (emphasis added). Since the Legislative Counsel is a state official required by law to analyze pending legislation, it is reasonable to presume that the Legislature amended the statute with the intent and meaning expressed in the Counsel's digest. People v. Martinez, 194 Cal. App. 3d 15, 22, 239 Cal. Rptr. 272, 276 (1987). By its ordinary meaning, the term "expand" indicates a change in the law, rather than a restatement of existing [\*\*11] law. In light of the Counsel's comment, Eastport's argument is unpersuasive.

#### The AFF just intensifies the application of antitrust to already covered activities---it does NOT curtail an exemption or immunity.

#### Vote NEG---eliminating exemptions and immunities provides a limited AND predictable basis for prep, and focuses debates on the balance between antitrust and regulation, ensuring conceptual unity.

### TTC CP

#### The United States federal government should enter into prior, binding consultation with the European Union through the Trade and Technology Council on bilaterally increasing prohibitions on anticompetitive practices by nucleus participants at the root layer of blockchains.

#### The US and EU will use the TTC forum before passing antitrust reforms now. The plan undermines the TTC, which collapses relations. Counterplan solves the AFF best.

Rachael Stelly and Christian Borggreen 21, Policy Counsel at the Computer & Communications Industry Association. “The EU-U.S. Trade and Technology Council is an opportunity to discuss platform regulation” July 8. <https://www.project-disco.org/21st-century-trade/070821-the-eu-u-s-trade-and-technology-council-is-an-opportunity-to-discuss-platform-regulation/>

The thawing of relations between the EU and U.S. in the wake of President Biden’s successful visit to the EU last month has given new momentum to transatlantic cooperation, including on technology and data governance. The new EU-U.S. Trade and Technology Council (TTC) presents a key opportunity to drive transatlantic technological leadership while addressing diverging approaches to tech regulation, such as the EU’s Digital Markets Act proposal which has triggered U.S. concerns.

There are many trends pulling countries apart on digital policy issues right now, threatening to fragment the development of new technologies and divide democracies at precisely the time when a common approach and shared values are needed. Fortunately, President Biden and President von der Leyen have recently agreed to launch a EU-U.S. Trade and Technology Council (“TTC”). The TTC is an exciting development that has the potential to bring the U.S. and EU together to drive the global technological landscape in a much more positive direction.

The TTC will be led by heavy hitters on both sides. On the EU side the TTC will be co-chaired by the EU Trade Commissioner Valdis Dombrovskis and Commissioner Margrethe Vestager. On the U.S. side, the TTC is co-chaired by the Secretary of Commerce Gina Raimondo, Secretary of State Antony Blinken, and U.S. Trade Representative Katherine Tai.

The purpose of the TTC is to “coordinate approaches to key global trade, economic, and technology issues and to deepen transatlantic trade and economic relations based on shared democratic values.” The TTC sets out ten working groups covering a broad range of technology-related issues, including efforts to find common ground on data governance, platforms, supply chains, trade issues, climate, and technology standards.

This comes at a time when regulatory proposals such as the Digital Markets Act threaten to drive a wedge into improved U.S.-EU technological cooperation. U.S. and EU policymakers have a key opportunity to use the TTC to steer towards shared values like due process, regulatory dialogue, and the rule of law, and away from discriminatory outcomes that risk depriving businesses and users of basic privacy, security, and intellectual property protections.

Separate from the new TTC, there is a long-standing dialogue between the U.S. antitrust enforcers, the Federal Trade Commission and Department of Justice, and their European counterparts in the competition department of the European Commission. This dialogue has helped competition enforcement authorities engage productively on information gathering as well as specific elements of antitrust enforcement such as evidentiary requirements and the assessment of economic data. The EU-U.S. Summit declaration suggested that this dialogue on competition enforcement would continue with a greater degree of formality under the umbrella of a Joint Technology Competition Policy Dialogue, likely focused on cooperation on active enforcement actions.

Continued dialogue between antitrust enforcers is important for the future of competition policy and its aspiration for transatlantic convergence. However, there are more fundamental directional challenges currently being discussed with the EU’s Digital Markets Act that would shift the landscape far beyond antitrust reform and enforcement. It is therefore critical that these novel regulatory approaches to platform governance are discussed among those drafting the new laws, not just those enforcing them.

The TTC provides an ideal forum for elevating these new and complex challenges and ensuring thoughtful political and legislative consideration of the different interests and values underlying these regulations. A lack of high-level transatlantic coordination – and the absence of regulatory dialogue – will inevitably lead to lopsided rules, and potentially contradictory regulatory systems that no level of enforcement cooperation will be able to resolve. What one jurisdiction may find an acceptable infringement of the rights to intellectual property, security and privacy protections, or the freedom to contract, may go beyond what another would countenance, particularly when foreign companies are targeted. A conflict of laws will also negatively impact relations between the EU and U.S. in the long term, directly undermining the shared ambition under the TTC “to deepen transatlantic trade and economic relations.”

The TTC is an opportunity for a frank dialogue on transatlantic and global tech challenges as well as an opportunity to drive EU-U.S. leadership on the future of the digital economy in the face of increasing global threats. Political leaders across both jurisdictions will need to be clear-eyed about opportunities for shared technological leadership as well as the risks of inadvertently empowering authoritarian countries through blunt or untested regulatory approaches. Building a strong forum to collaborate on tech standards and address diverging approaches to platform regulation would be a timely and appropriate place to start.

#### US-EU relations solve multiple existential risks

Bruce Stokes 20, fellow at the German Marshall Fund, a former international economics correspondent for the National Journal, a former senior transatlantic fellow at the German Marshall Fund and a former senior fellow at the Council on Foreign Relations. "Together or Alone? Choices and Strategies for Transatlantic Relations for 2021 and Beyond". October. <https://www.gmfus.org/sites/default/files/Task%2520Force%25202020_Oct_5_Final%2520%2528With%2520Footnotes%2529.pdf>

In 2021, the United States and the nations of Europe will face challenges that threaten their way of life: a catastrophic pandemic, a deep economic recession, accelerating climate change, a rising China, growing technological competition, and emerging security threats.

These challenges test our ability to deliver on our promise to safeguard and enhance the lives of our people. They confront the transatlantic community at a time when many citizens on both sides of the Atlantic continue to question whether their governments are able to deliver for them. These are issues that transcend national borders. They cannot be successfully dealt with alone. They can only be resolved through concerted, cooperative international action.

This Transatlantic Task Force report recommends concrete policy initiatives the United States and Europe can take together to manage our pressing shared problems. We make these recommendations, not because they will be easy to implement, but because they represent practical options to help address the key challenges we face.

Political change is underway on both sides of the Atlantic. In 2021, the United States may have a new president. The United Kingdom will formally leave the European single market, complicating transatlantic relations. And Germany will hold a national election and have new leadership by the fall.

But the ability of Europe and the United States to work together in the face of shared challenges faces an even more daunting test: public disenchantment with each other. Many Europeans, disillusioned with the United States and its leadership, desire greater economic, technological, and military autonomy. In the United States, supporters of President Donald Trump share his view that the United States has long been taken advantage of by its European allies.

The transatlantic relationship has weathered storms in the past. For more than seven decades, Europe and the United States have stood side by side in the face of threats to their wellbeing: during the Cold War, following 9/11, and once more in the aftermath of the 2009-2010 financial crisis. Our successful cooperation has been based on common interests and a shared set of democratic values that have led to greater security and prosperity for our people. But past performance is no assurance of future success.

In the face of existential challenges, such as climate change, pandemics, and competition from China, neither the United States nor its European partners can effectively act alone. Rather, these problems offer us an opportunity to find new ways to work together to build a better future for our people and the world. Our publics support such cooperative effort. Roughly six-in-ten Americans and Europeans believe that when dealing with major international issues their nation should take into account other countries’ interests, even if it means making compromises. In so doing, we can set an example for the world, laying the foundation for much broader cooperation among like-minded democracies that ultimately will be necessary to cope with what today are truly global challenges. In the process, we can transform the transatlantic relationship, assert U.S.-European leadership, affirm our citizens’ faith in our democratic values and each other, and demonstrate the ability of our democratic institutions to solve their people’s problems.

We understand that some of the initiatives we propose lack bipartisan support in the United States and may not be embraced by the next administration. Nor will they appeal to all Europeans. But several of them build on ideas and efforts already proposed by U.S. President Donald Trump, former U.S. Vice President Joe Biden and some European leaders. None of them are a one-year exercise. Meeting these new challenges will take an effort on the scale and duration of past alliance solidarity. The problems are clear, and their shared nature is self-evident. Now is not the time for more reflection and muddling through. Both sides of the Atlantic are facing very real threats to our way of life and concrete action is required to deal with these issues and preserve the democratic order that Americans and Europeans built together over the past seven decades.

The following recommendations reflect the deliberations of the co-chairs and the 14 American and European task force members, supplemented by interviews by the executive director with more than 150 European and American experts from diverse fields and countries. They are the sole responsibility of the executive director and the co-chairs; individual recommendations do not necessarily reflect the views of all task force members nor those who were interviewed, who are listed in the appendix.

### Regs CP

The United States federal government should:

* utilize sector-specific regulation for developing procompetitive blockchain policies;
* require open blockchain standards and mandate that dominant blockchain networks offer open and non-discriminatory access to users who meet reasonable and fair membership criteria; and
* cooperate with the EU and other willing countries to set an international standard for the use of, and trade in spyware.

#### Regulation solves and contains spillover.

Dr. Howard Shelanski 18, Ph.D. in Economics from University of California, Berkeley, Professor of Law at Georgetown University and Partner at Davis Polk & Wardwell LLP, JD from the UC Berkeley School of Law, BA from Haverford College, Former Clerk for Judge Stephen F. Williams of the U.S. Court of Appeals for the D.C. Circuit and Justice Antonin Scalia of the United States Supreme Court, Former Administrator of the White House Office of Information and Regulatory Affairs and Director of the Bureau of Economics at the Federal Trade Commission, Former Chief Economist of the Federal Communications Commission and Senior Economist for the President’s Council of Economic Advisers at the White House, “Antitrust and Deregulation”, The Yale Law Journal, Volume 127, Issue 7, 127 Yale L.J., May 2018, https://digitalcommons.law.yale.edu/ylj/vol127/iss7/5/

A. Antitrust and Regulation as Policy Alternatives

A variety of institutions can govern economic competition. Decentralized, capitalist economies generally rely on markets themselves to provide the incentives and discipline necessary to keep prices low, output high, and innovation moving forward. 8 But sometimes market forces alone cannot ensure efficiency and economic welfare--for example, when the market structure has changed due to mergers or the rise of a dominant firm, or when the market is an oligopoly susceptible to parallel conduct or collusion. In such cases, governance of competition by a nonmarket institution might be warranted. Because concentrated markets or even monopolies can arise for good reasons related to efficiency, innovation, and consumer preference, the governance of competition more often involves vigilance than liability or injunctions. Then-Judge Stephen Breyer, long [\*1926] a leading scholar of antitrust and regulation, described the best situation as being an unregulated, competitive market in which "antitrust may help maintain competition." 9

Antitrust law aims to prevent the improper creation and exploitation of market power on a case-by-case basis while avoiding the punishment of commercial success justly earned through "skill, foresight and industry." 10 Thus, competition authorities like the FTC and the DOJ's Antitrust Division review mergers, investigate single-firm conduct, and prosecute collusion. 11 Private plaintiffs can pursue civil antitrust liability through suits in the federal courts. 12 To win their claims, enforcement agencies and private plaintiffs bear the burden of showing that the effect of a firm's activity is "substantially to lessen competition, or to tend to create a monopoly," 13 or to constitute a "contract, combination, . . . or conspiracy" in restraint of trade, 14 or to "monopolize, or attempt to monopolize" any line of business. 15

Antitrust is not, however, the only institution through which government addresses competition concerns and market failures. Congress can give regulatory agencies authority to intervene where they see the need to address competition and market structure--and Congress has often done so. With such statutory authority, "[i]n effect, the agency becomes a limited-jurisdiction enforcer of antitrust principles." 16 For example, the Department of Transportation (DOT) has jurisdiction to approve transfers of routes between airlines carriers, giving it a role in reviewing airline mergers. 17 The 1992 Cable Act gave the FCC authority [\*1927] to limit the share of the national cable market that a single operator could serve, thereby giving the agency some control over the industry's market structure. 18 The FCC has long regulated market entry and, through its control over license transfers, reviewed mergers and acquisitions in several sectors of the telecommunications industry. More recently, the FCC issued, 19 and then repealed, 20 "network neutrality" regulations intended to preserve ease of entry and a level playing field for digital services. The Food and Drug Administration (FDA), Securities and Exchange Commission (SEC), Department of Energy, and numerous other federal agencies have various powers that directly affect competition. 21 State regulation can be important as well in governing competition, particularly in the insurance and healthcare industries. 22

In contrast to the case-by-case approach of antitrust, regulation typically imposes ex ante prohibitions or requirements on business conduct. The Telecommunications Act of 1996, for example, required incumbent local telephone companies to grant new competitors access to parts of their networks and prohibited incumbents from refusing to interconnect calls from their customers to customers of competing networks. 23 With the rule in place, the FCC bore no burden of proving that a specific instance of network access was necessary for competition, or that a specific denial of interconnection would harm competition. In contrast [\*1928] to antitrust, where the burden of proving liability is on the agency, under a regulatory regime the burden of seeking a waiver from regulation or challenging an agency's enforcement decision is usually on the regulated party.

Antitrust and regulation therefore present alternative approaches to governing competition and addressing market failures. 24 The government can review individual mergers under the antitrust laws, as it does in most markets, or it can set rules that impose clear, ex ante limits on the extent of concentration, as the FCC did for media ownership under the Communications Act. 25 Government can investigate under the antitrust laws whether a firm has monopoly power that it has "willful[ly]" acquired or maintained other than "as a consequence of a superior product, business acumen, or historic accident." 26 Alternatively, with authority from Congress an agency can regulate how much of a market a single firm can serve, as the FCC tried to do with cable companies, 27 or require firms to dispose of key assets in order to promote competition in a relevant market, as the DOT has done with airline slots. 28

### States

#### The fifty states and all relevant entities through the National Association of Attorneys General Antitrust Task Force should prohibit anticompetitive practices by nucleus participants at the root layer of blockchains.

#### States solve

Arteaga 21 [Juan and Jordan Ludwig; January 28; former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, J.D. from Columbia Law School; partner in the Antitrust and Competition Group at Crowell and Moring firm, J.D. from Loyola Law School; Global Competition Review, “The Role of US State Antitrust Enforcement,” <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement>]

In the United States, competition laws have been implemented and enforced through a dual system where the state and federal governments play distinct, yet complementary, roles in regulating the competitive process. While the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) are widely viewed as the stewards of US antitrust laws, state attorneys general have long played an important, albeit varying, role within the United States’ antitrust enforcement regime. This has been especially true during the past 30 years because state attorneys general have become much more effective at coordinating their antitrust enforcement efforts to ensure that they have a meaningful seat at the table in any actions brought jointly with their federal counterparts or are able to bring their own actions when the DOJ and FTC decide not to do so.

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)

### BBB DA

#### Climate legislation passes now

Sargent 3-3 [Greg Sargent and Paul Waldman, journalists, “Progressives Say They’re Open to Manchin’s New Framework. So What’s the Holdup?” WASHINGTON POST, 3—3—22, <https://www.washingtonpost.com/opinions/2022/03/03/jayapal-manchin-new-build-back-better-framework/>, accessed 3-3-22]

This week, Sen. Joe Manchin III indicated that he’s prepared to restart negotiations over a climate and social policy bill that could pass the Senate with only Democrats. So is there any hope of progress?

For that to happen, you need two things: First, the West Virginia Democrat must take a firm position. Second, other Democrats, including progressives in the House, have to agree to what he wants.

In a sign of movement, progressives are now signaling a new openness to Manchin’s overture, which suggests there’s a way forward.

In an interview, Rep. Pramila Jayapal (D-Wash.), chair of the Congressional Progressive Caucus, said progressives are ready to talk to Manchin about his framework, and signaled a deal is possible, with caveats.

“We’re open to that approach,” Jayapal told us.

Jayapal opened the door to a way this could work. A good starting place, she said, would be to agree to specifics on what revenue generators can get Manchin’s support — and can get 50 votes in the Senate — and then talk about what to fund with them.

“Let’s come up with the revenue-producing measures,” Jayapal said, and then “look at it from there.”

Manchin told reporters he’s open to a package that includes some corporate tax reforms and higher taxes on top earners that were in the Build Back Better package (which he killed). He’s also open to raising money by allowing the government some ability to negotiate drug prices.

But Manchin also said a chunk of those revenues must be plowed back into deficit reduction, and the remainder put toward something like BBB’s proposals for combating climate change — tax incentives and other measures to encourage manufacture and consumption of alternate energy sources. Manchin insists those programs must be permanent.

Jayapal said progressives would be open to this general framework.

“We’re open to putting some of it toward deficit reduction, and then climate,” Jayapal said, adding that this framework could also include whatever other provisions Manchin might be willing to support with whatever is left over to spend.

As tax and health-care experts told us Wednesday, such an approach could raise at least $1.5 trillion in revenue, and perhaps more depending on what other taxes Manchin is open to. If that were divided by putting some into deficit reduction and about $500 billion into climate, as BBB did, you might have a few hundred billion extra for other expenditures.

Importantly, Jayapal said this could work for progressives. Under such a framework, you might be able to put those extra revenues into expanding health-care subsidies, or into subsidies for child care.

Such an outcome would be scaled way down from the original BBB. But Jayapal suggested it would nonetheless be a major achievement that would be worthwhile for progressives to support.

“We’d have to see all the details, but progressives are absolutely committed to trying to deliver as much as we can,” Jayapal told us, saying that even the items on this more limited list “are all big progressive priorities.”

We want to try and get major things done," Jayapal continued.

Still, Jayapal cautioned that progressives would like to see legislative text that Manchin says he can support, and then “let’s have a conversation."

This shouldn’t actually come as that much of a surprise. Progressives are still eager to vote for any part of the original BBB they can get. They might grumble a bit, but if a bill embodying Manchin’s desires came up for a vote, and it included some combination like the ones outlined above, odds are approximately 100 percent that progressives would support it.

Indeed, there is no reason that a specific version of Manchin’s own framework — one that he himself writes, or at least blesses — should not form the basis of such talks. In a way, a silver lining here is that Manchin has offered up a framework that would leave far fewer things to negotiate.

#### Antitrust reform requires PC and trades off

Peter C. Carstensen 21, the Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, February 2021, “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST,” https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities. 15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate! 16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Solves climate targets

Joselow 3—1 [Maxine Joselow, journalist, “In State of the Union, Biden Plans to Tout His Climate Agenda Despite Challenges in Congress and the Courts,” WASHINGON POST, 3—1—22, <https://www.washingtonpost.com/politics/2022/03/01/state-union-biden-plans-tout-his-climate-agenda-despite-challenges-congress-courts/>, accessed 3-2-22]

However, talks over Build Back Better have evaporated since Sen. Joe Manchin III (D-W.Va.) came out against the measure in late December. And Biden aides briefing reporters on the speech yesterday would not say whether Biden would mention his onetime signature legislation by name. “It’s not about the name of the bill. It’s about the ideas,” said one top Biden aide.

Regardless of the name, a study released Monday found that the spending bill would reduce U.S. greenhouse gas emissions by 5.2 billion tons, putting the United States within easy reach of Biden's 2030 climate goals. By contrast, the infrastructure law alone would leave the nation's emissions 1.3 billion tons short of Biden's 2030 target, according to the modeling by the REPEAT Project at Princeton University.

#### Extinction

Fuchs 18—(Senior Fellow @ The Center For American Progress, A Former Deputy Assistant Secretary Of State For East Asian and Pacific Affairs And A Guardian Us Contributing Opinion Writer). Michael H Fuchs. 11/29/2018. The Guardian. "The ticking bomb of climate change is America's biggest threat". https://www.theguardian.com/commentisfree/2018/nov/29/ticking-bomb-climate-change-america-threat.

Imagine that US leaders were told that hundreds of nuclear weapons were set on a timer to detonate across the planet, progressively and in increasing numbers, over the coming years and decades. The lives of millions would be upended, if not made nearly impossible to survive, by transformed weather patterns and resource scarcity. Tens of millions would become migrants as regions became uninhabitable. Millions would die, more and more as time went on. If this science fiction were reality, US leaders would lead an international effort to immediately disarm and dismantle the weapons.

But this isn’t science fiction. Climate change is a ticking time bomb, literally threatening to end human life on earth over the coming centuries. As climate journalist Peter Brannen describes it, Earth faced a similar crisis hundreds of millions of years ago during the “Great Dying” when volcanoes spewed so much carbon dioxide into the air – including magma that blanketed an area as large as the lower 48 US states, 1km deep – that it almost killed all life. Today, Brannen says, “we’re shooting carbon dioxide up into the atmosphere 10 times faster than the ancient volcanoes”.

Even in the shorter term, climate change will make the world far more dangerous. A World Bank Group report estimates that climate change could drive 140 million people to move within their countries’ borders by 2050. A report by the Trump administration finds climate change could reduce the size of the US economy by 10% – more than twice as bad as the worst part of the Great Recession – by 2100. Growing resource scarcity could cause more wars. Deadly and destructive extreme weather events such as Hurricanes Harvey and Maria and California’s Camp fire are mild symptoms of the plague to come.

There is no greater national security threat than climate change. Even the specter of nuclear war between great powers – the only thing that could remotely mimic the effects of climate change over time – is a much lower risk than climate change, which is already happening.

Every year we fail to act the problem grows, and the solution becomes more difficult. As America dithers, climate change is sparking a slow-motion nuclear-scale holocaust. If the world fails to urgently mitigate climate change, no other challenge – not the rise of China, Russian aggression, terrorism, nor some other future geopolitical peril – will matter because humans won’t survive to be the cause of these threats or suffer from them.

America’s failure is not for lack of capacity to safeguard against future threats – the US invests hundreds of billions of dollars every year in defense to deter adversaries such as Russia and China, and tens of billions more in intelligence capabilities to monitor threats. Instead, America is paralyzed by a lack of political will. Donald Trump and his allies in Congress – many of whom deny the existence of climate change – are making the problem worse. The president announced his intent to withdraw the US from the Paris climate agreement and is rolling back regulations that would have cut emissions.

Despite this dark reality, there is reason for hope. In 2015, the world came together to negotiate the Paris agreement, which set the goal of limiting global temperature increases to well below 2C. Despite a hostile Trump administration, many US governors, mayors, businesses and private citizens are already leading the way. So are other countries as they seize the economic and public health opportunity that comes with a clean energy future.

The path ahead, to say the least, is daunting. Even if the US were not to leave the Paris climate agreement, the action required to realize its potential is enormous. US policymakers will need to use every policy tool in their toolbox to drive unprecedented deployment of clean energy and build out zero-carbon transportation infrastructure. When the US leads by example, domestic emissions will fall, and new diplomatic doors to more ambitious climate action will open.

### Biz Con DA

#### The plan spills over, decimating business confidence and overall economic recovery

Trace Mitchell 21, Policy Counsel at NetChoice, JD from the George Mason University, Antonin Scalia Law School, Former Research Associate at the Mercatus Center at George Mason University, BA in Political Science and Government from Florida Gulf Coast University, “Weaponizing Antitrust to Attack Big Tech Is a Bad Idea”, Morning Consult, 3/3/2021, https://morningconsult.com/opinions/weaponizing-antitrust-to-attack-big-tech-is-a-bad-idea/

From the House Judiciary report calling for dramatic antitrust reform to federal antitrust regulators and state attorneys general initiating lawsuits against Facebook and Google, government officials are once again calling for more aggressive antitrust enforcement to go after America’s tech businesses.

And while critics from all sides are reaching for any and all tools to go after “Big Tech,” weaponizing antitrust will only end up harming American consumers and the American economy at a time when we’re still trying to keep our heads above water.

Using antitrust to go after American tech won’t stop at Silicon Valley. Every sector of our economy will be at risk of politically motivated antitrust enforcement. And that won’t just hurt consumers searching for information on Google or shopping for products on Amazon — America’s economy could lose its global competitiveness amid a global pandemic.

In fact, the recent cases against Google from the Department of Justice and state attorneys general are a great example of just how this misuse of antitrust could harm Americans across the country and halt innovation in its tracks.

These suits conveniently forget how consumers benefit from Google’s suite of products in attempts to claim that Google unfairly monopolized the search and search advertising markets. Even worse, by claiming consumer harm, the government fails to truly grasp what consumers actually want.

You see, under the consumer welfare standard, antitrust enforcement is built to focus on what consumers want and whether consumers benefit. When the government argues Google is harming Americans because its products are preinstalled and even the default search engine on Apple, the government forgets that American consumers don’t think this is a problem.

The vast majority of search users prefer Google to its competitors. And through preinstallation, we get free-to-use products, quick searches and near-limitless information in an integrated system with the click of a mouse. It isn’t a problem; it’s a time saver. Further, because Google can reinvest in developing more user-friendly tech in a preinstalled ecosystem, we get interoperable apps that make our experience that much more convenient and intuitive. And even if consumers do want a different app, they can fix this problem with no heavy leg work or travel — just the swipe of a finger.

But if the government gets its way, the message could be disastrous for innovation: Even if your business benefits Americans and improves the user experience, the government can still put a target on your back. Not to mention, the government would be more likely to put a target on your back if you’re large and politically disfavored. Consumers across the internet and the American economy would be hurt and left without more accessible and more affordable technology as options.

We should be working to reward, not punish, innovation. Otherwise, the next Google may just decide it isn’t worth the time and effort.

Similarly, the Federal Trade Commission’s recent case against Facebook also puts the wants of policymakers above the actual interests of consumers.

Here, the government claims that Facebook harms consumers by acquiring and then integrating services like Instagram and WhatsApp. So harmful, the Federal Trade Commission says, that Facebook must divest from these services, even if that would harm American consumers, innovation and entrepreneurship for decades to come.

But this is not a case of consumer harm or bad behavior — Facebook’s acquisition of Instagram and WhatsApp helped ensure that consumers’ desires were prioritized. Through millions of investment dollars into research and development, Facebook turned good services into great services that consumers actively keep coming back to.

Through relentless product improvement, WhatsApp became a free-to-use platform and Instagram became one of the most successful photo-sharing social media apps in the world. In both cases, consumers benefited from convenient and state-of-the-art advancements. No longer do we have to pay to use messaging or search through multiple results to shop our influencer feed.

As it stands, the Federal Trade Commission case could splinter one successful tech company into multiple, less efficient organizations, setting a precedent that could affect every American industry. Consumers would not only lose Facebook’s free-to-use services but also potentially the next big clothing brand or the next hit microbrewed beer.

By impeding mergers, the sheer fear of potential antitrust enforcement would shutter the doors on small businesses from all sectors of the economy. So much investment in innovation is built on the possibility of being acquired by a larger player. Entrepreneurs and innovators from manufacturing, automotive and tech alike would be left with an unfortunate takeaway — succeed and benefit consumers, but not too much.

And with an economy still struggling to recover, the absolute last thing we need is to leave consumers without innovative and affordable choices, small businesses without key investment opportunities and our economy without a competitive edge globally.

But by weaponizing antitrust, we’ll get neither thoughtful intervention nor consumer benefits. Instead, the United States will lose ground to foreign competitors and American consumers will ultimately pay the price.

#### Decline cascades---nuclear war

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

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

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

INTRODUCTION

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

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

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

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

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

METHODOLOGY

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

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

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

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

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

ECONOMY

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

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

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

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

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

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

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

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

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

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

ENVIRONMENTAL

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

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

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

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

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

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

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

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

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

GEOPOLITICAL

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

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

## Blockchain Adv

### 1NC – Solvency

#### Jurisdiction, tech, and court incompetence all prevent enforcement – it’s functionally impossible

Kapanazde 21 [Lika, Master of Laws, Comparative Private and International Law at New Vision University. "The Challenges of Blockchain Technology to Antitrust Law." https://openscience.ge/handle/1/2670]

Anonymity of the parties creates another challenge as well - business transactions on the blockchain are encrypted and location of the transacting users (and thus, legal entities behind the users) is completely unknown, making it impossible to determine the relevant jurisdiction.101 In contradiction with blockchains, determining the jurisdiction on the internet is simple and it is based on internationally recognized jurisdiction principles (territorial jurisdiction, effective jurisdiction, personal jurisdiction, passive personal jurisdiction, protective jurisdiction, and universal jurisdiction), namely, each internet user is subject to national legal regime, where they decide to create content and enable it online.102 In technical terms, every computer or device that goes on the internet needs its own IP address and the main central authority, the Internet Corporation for Assigned Names and Numbers, manages and controls assigning and distributing such IP addresses and domain registrations in the regions and continents, making it easy to detect parties ’locations on the basis of the registrations of IP Addresses.103 In case of blockchain, the data storage is virtually everywhere making it impossible to determine jurisdiction on the blockchain and its transactions.104

In traditional law, and in absence of any agreement stating otherwise, blockchain disputes would be normally settled by state courts, but in this digital economy not only it is impossible to determine the jurisdiction, but also there is no technical necessity for the stakeholders to be attached to any jurisdiction at all.105 For that reason, self-regulation of the market participants may play an important role, one part of which could be dispute settlement by an arbitral tribunal, and other part of which could be compliance of blockchains with a potentially unwieldy number of legal and regulatory regimes and settle disputes in courts.106 The success of the former approach solely depends on the enforcement. The states retain certain control over private arbitration with recognition and enforcement procedures, and as jurisdiction on the blockchain is not recognized by any state jurisdiction, it would be difficult to have the awards enforced.107 The latter approach is also unclear, as the transactions may occur simultaneously in a few different places, which again makes it nearly impossible to determine the competent jurisdiction and even if jurisdiction were to be determined, state courts would not be able to decide any dispute fast enough compared to the rapidly proceeding blockchain applications without having any technological expertise to sufficiently understand the mechanism of blockchains.

#### Court circumvention---they ignore intent and plain meaning, reject literature bias towards optimism in judges who probably don’t even know what blockchain is!

Crane ‘21 [Daniel A Crane. Frederick Paul Furth, Sr. Professor of Law, University of Michigan. I am very grateful for many helpful comments from Tom Arthur, Jonathan Baker, Steve Calkins, Dale Collins, Eleanor Fox, Rebecca Haw, Hiba Hafiz, Jack Kirkwood, Bob Lande, Christopher Leslie, Alan Meese, Steve Ross, Danny Sokol, and other participants at the University of Florida Summer Antitrust Workshop. "ANTITRUST ANTITEXTUALISM." https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr]

This view is so widely entrenched in the legal profession’s understanding of the antitrust laws—including, it must be admitted, this author’s—that it seems presumptuous to claim that the conventional wisdom is wrong, or at least significantly overstated. But it is. While the antitrust statutes may be lacking in some important particulars, they present a readily discernable meaning on many others. As Daniel Farber and Brett McDonnell have argued, “For the conscientious textualist, the statutory texts [of the antitrust laws] have considerably more specific meaning than the conventional wisdom would suggest.”5 And it is not simply the case that the meaning of the statutory texts could be rendered through ordinary methods of statutory interpretation but the courts have failed to see it. Rather, the courts frequently acknowledge that the statutory texts have a plain meaning, and then refuse to follow it.

But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in one consistent direction—toward reading down the antitrust statutes in favor of big business. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and continues to this day. In brief: within their first decade of antitrust jurisprudence, the courts read an atextual rule of reason into section 1 of the Sherman Act to transform an absolute prohibition on agreements restraining trade into a flexible standard often invoked to bless large business combinations; after Congress passed two reform statutes in 1914, the courts incrementally read much of the textual distinctiveness out of the statutes to lessen their anticorporate bite; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that not one of the principal substantive antitrust statutes has been consistently interpreted by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has bent always in favor of capital.

### 1NC – Blockchain Sustainability

#### No broad blockchain impact

Jesse Frederik 20, economics correspondent for The Correspondent, 8/21/20, “Blockchain, the amazing solution for almost nothing,” https://thecorrespondent.com/655/blockchain-the-amazing-solution-for-almost-nothing

And then the Dutch state secretary for the Interior, Raymond Knops arrived, decked out in tech couture: a black hoodie. He’s here as a “super accelerator” (whatever that means). “Everyone senses that blockchain is going to change government drastically,” the state secretary said.

I’ve been hearing a lot about blockchain in the last few years. I mean, who hasn’t? It’s everywhere.

I’m sure I wasn’t the only one who thought: but what is it then, for God’s sake, this whole blockchain thing? And what’s so terribly revolutionary about it? What problem does it solve?

That’s why I wrote this article. I can tell you upfront, it’s a bizarre journey to nowhere. I’ve never seen so much incomprehensible jargon to describe so little. I’ve never seen so much bloated bombast fall so flat on closer inspection. And I’ve never seen so many people searching so hard for a problem to go with their solution.

‘Agents of change’ in a small Dutch town

They knew nothing about the blockchain yet in Zuidhorn, a town with just under 8,000 people in the north-east of the Netherlands.

“What we did know is that it’s coming for us and that it’s disruptive,” a civil servant from the town told a Dutch weekly news magazine. “We could sit back and wait, or choose to move forwards.”

In Zuidhorn they decided to move forwards. A municipal poverty aid package for children would “be put on the blockchain”. Maarten Velthuijs, a student and blockchain enthusiast, was given an internship with the municipality.

His first job was to explain what blockchain is. When I asked him, he said it is “a kind of system that can’t be stopped”, that it’s “actually a force of nature”, or rather, “a decentralised consensus algorithm”. OK, it’s hard to explain, he conceded eventually. “I said to Zuidhorn: ‘I’ll just build you an app, then you’ll understand’.”

So he did.

The children’s aid package gives families living in poverty the right to a bicycle, trips to the theatre and the cinema, and so on. In the past, that was a nightmare of bureaucracy, receipts and documentation. But thanks to Velthuijs’s app it became simple: you scan your code in the shop, you get your bike, and the shopkeeper gets their money.

Suddenly, the tiny town was proclaimed “one of the international forerunners in blockchain technology”. There was national media attention and even awards: they won a prize for pioneers in municipal work and received nominations for an IT project award and a civil service award.

Local administrators became more and more enthusiastic. Velthuijs and his team of “students” were the ones who shaped this new world. But that term didn’t show enough respect. In Zuidhorn some people already preferred to call them “agents of change”.

How does it work?

OK, OK, agents of change, revolution, nothing can stay the same. But what is blockchain?

At its core, blockchain is a glorified spreadsheet (think: Excel with one table). In other words, a new way to store data. In traditional databases there’s usually one person who’s in charge, who decides who can access and input data, who can edit and remove it. That’s different in a blockchain. Nobody’s in charge, and you can’t change or delete anything, only view and input data.

The first, best-known – and practically only – use of blockchain technology is bitcoin, the digital currency that allows you to transfer money from A to B without the involvement of a bank.

How does this work? Imagine that money needs to be transferred from Jesse to James. Banks know how to do this. I ask the bank to send money to James. The bank carries out the necessary checks – Is there enough money in the account? Does the account number exist? – and taps into its own database: send money from Jesse to James.

This is slightly trickier with bitcoin. You announce the payment request in a kind of giant chat: one bitcoin from Jesse to James! Then there are users (so-called miners) who collect various transactions in little blocks.

In order to add these blocks of transactions to the public blockchain ledger, the miners have to crack a complicated puzzle (actually, they have to guess a very large number from a very, very long list of numbers). Solving that puzzle takes about 10 minutes – and if it’s solved more quickly, for instance because people use more hardware to solve the puzzle, it automatically becomes more difficult.

Once it’s been solved, the miners add the transactions to the latest version of the blockchain ledger, in the version they have saved locally. They post an announcement in the chat: we solved it, see! Everyone can verify that the solution is correct, and everyone updates their own blockchain ledger. Voila! Transaction complete. As a reward for their work, the miners receive a handful of bitcoin.

What’s with the puzzle?

Why is there a puzzle? If everyone behaved honourably, you wouldn’t need it. But imagine someone wanted to spend the same money twice. I tell both James and John: I’m giving you this bitcoin. Someone needs to check if that’s possible. And miners do the work that a bank usually does: they decide which transactions can be carried out.

Of course, a miner could try to scam the system by being in cahoots with me. But other people can see straight away if I spend the same money twice, and they can refuse to update the blockchain. So a malicious miner who’s done his best to solve the puzzle gets nothing. Because it’s so hard to guess the number, it pays to stick to the rules.

This is pretty inefficient. And it would be a lot less complicated if you trusted someone to manage your data (a bank, for instance). But that’s not what Satoshi Nakamoto did, which is what the inventor of bitcoin calls himself. He thought banks were bad news. They can make money disappear from your account. So he invented bitcoin.

And bitcoin works, it exists, and according to the latest count, there are nearly 1,855 other bitcoin-like currencies out there.

And yet, bitcoin isn’t an unqualified success. There are very few shops that accept the digital currency – and rightly so. It’s very slow (sometimes a transaction takes nine minutes, sometimes nine days!), a lot of hassle (try it for yourself – cutting open hard plastic packaging with scissors is more user friendly), and very unstable (its price rose to €17,000 euros; dropped to €3,000; rose again to now €10,000).

Not only that, but the decentralised utopia that Nakamoto dreamed about, namely avoiding trusted third parties, is still far out of reach. Ironically, there are now three mining pools – a type of company that builds rooms full of servers in Alaska and other locations way up above the Arctic circle – which are responsible for more than half of all the new bitcoin (and also for checking payment requests).

For the time being, bitcoin has been especially successful for speculation. Someone who happened to buy 20 or 20 euros’ worth of the cryptocurrency in its early days now has enough money for several round-the-world trips.

Which brings us to the blockchain. Because impenetrable technology that brings sudden wealth is a tried and tested formula for hype. Councillors, managers and consultants read about a mysterious currency in the papers that turns people into millionaires. We need to get in on that, they think. But you can’t do much with bitcoin. But blockchain, on the other hand: it’s the technology behind bitcoin, which makes it cool.

Blockchain generalises the bitcoin pitch: let’s not just get rid of banks, but also the land registry, voting machines, insurance companies, Facebook, Uber, Amazon, the Lung Foundation, the porn industry and government and businesses in general. They are superfluous, thanks to the blockchain. Power to the users!

A €600m industry

Meanwhile, Bloomberg estimates the worldwide blockchain industry at around $700m (over €600m). Large companies like IBM, Microsoft and Accenture have entire divisions dedicated to this revolutionary technology. In the Netherlands there are all sorts of subsidies available for blockchain innovation.

The only thing is that there’s a huge gap between promise and reality. It seems that blockchain sounds best in a PowerPoint slide. Most blockchain projects don’t make it past a press release, an inventory by Bloomberg showed. The Honduran land registry was going to use blockchain. That plan has been shelved. The Nasdaq was also going to do something with blockchain. Not happening. The Dutch Central Bank then? Nope. Out of over 86,000 blockchain projects that had been launched, 92% had been abandoned by the end of 2017, according to consultancy firm Deloitte.

Why are they deciding to stop? Enlightened – and thus former – blockchain developer Mark van Cuijk explained: “You could also use a forklift to put a six-pack of beer on your kitchen counter. But it’s just not very efficient.”

I’ll list a few of the problems. Firstly: the technology is at loggerheads with European privacy legislation, specifically the right to be forgotten. Once something is in the blockchain, it cannot be removed. For instance, hundreds of links to child abuse material and revenge porn were placed in the bitcoin blockchain by malicious users. It’s impossible to remove those.

Also, in a blockchain you aren’t anonymous, but “pseudonymous”: your identity is linked to a number, and if someone can link your name to that number, you’re screwed. Everything you got up to on that blockchain is visible to everyone.

The presumed hackers of Hillary Clinton’s email were caught, for instance, because their identity could be linked to bitcoin transactions. A number of researchers from Qatar University were able to ascertain the identities of tens of thousands of bitcoin users fairly easily through social networking sites. Other researchers showed how you can de-anonymise many more people through trackers on shopping websites.

The fact that no one is in charge and nothing can be modified also means that mistakes cannot be corrected. A bank can reverse a payment request. This is impossible for bitcoin and other cryptocurrencies. So anything that has been stolen will stay stolen. There is a continuous stream of hackers targeting bitcoin exchanges and users, and fraudsters launching investment vehicles that are in fact pyramid schemes. According to estimates, nearly 15% of all bitcoin has been stolen at some point.

And it isn’t even 10 years old yet.

Bitcoin and Ethereum use the same amount of energy as the whole of Austria

And then there’s the environmental problem. The environmental problem? Aren’t we talking about digital coins? Yes, which makes it even stranger. Solving all those complex puzzles requires a huge amount of energy. So much energy that the two biggest blockchains in the world – bitcoin and Ethereum – are now using up the same amount of electricity as the whole of Austria. Carrying out a payment with Visa requires about 0.002 kilowatt-hours; the same payment with bitcoin uses up 906 kilowatt-hours, more than half a million times as much, and enough to power a two-person household for about three months.

And the environmental problem is only going to grow. As miners put more effort into solving the puzzles (ie, building more of those dark server caves in Alaska), the puzzles will automatically become more difficult, requiring more calculation power. It’s an endless, pointless arms race in order to facilitate the same number of transactions with more and more energy.

And for what? This is actually the most important question: what problem does blockchain actually solve? OK, so with bitcoin, banks can’t just remove money from your account at their own discretion. But does this really happen? I have never heard of a bank simply taking money from someone’s account. If a bank did something like that, they would be hauled into court in no time and lose their license. Technically it’s possible; legally, it’s a death sentence.

Of course scammers are active everywhere. People lie and cheat. But the biggest problem is scams by data suppliers (for instance: someone secretly registers a hunk of horse meat as beef), not by data administrators (for instance: a bank makes money disappear).

Some people have suggested putting the Land Registry on the blockchain. That would solve all kinds of problems in countries with corrupt administrations. Take Greece, for example, where one in five buildings is not registered. Why are these buildings not registered? Because the Greeks just start building and then there’s suddenly a house that’s not in the Land Registry.

Except a blockchain can’t do anything about that. A blockchain is a database – it’s not a self-regulating system that checks all data for correctness, let alone one that calls a halt to unauthorised building works. The same rules apply for blockchain as for any database: if people put garbage into it, what comes out is also garbage.

#### The energy sector is resilient to shocks.

Larson ‘18 Selena Larson, Cyber threat intelligence analyst at Dragos, Inc. [Threats to Electric Grid are Real; Widespread Blackouts are Not, 8-6-2018, https://dragos.com/blog/industry-news/threats-to-electric-grid-are-real-widespread-blackouts-are-not/]

The US electric grid is not about to go down. Though it’s understandable if someone believed that. Over the last few weeks, numerous media reports suggest state-backed hackers have infiltrated the US electric grid and are capable of manipulating the flow of electricity on a grand scale and cause chaos. Threats against industrial sectors including electric utilities, oil and gas, and manufacturing are growing, and it’s reasonable for people to be concerned. But to say hackers have invaded the US electric grid and are prepared to cause blackouts is false. The initial reporting stemmed from a public Department of Homeland Security (DHS) presentation in July on Russian hacking activity targeting US electric utilities. This presentation contained previously-reported information on a group known as Dragonfly by Symantec and which Dragos associates to activity labeled DYMALLOY and ALLANITE. These groups focus on information gathering from industrial control system (ICS) networks and have not demonstrated disruptive or damaging capabilities. While some news reports cite 2015 and 2016 blackouts in Ukraine as evidence of hackers’ disruptive capabilities, DYMALLOY nor ALLANITE were involved in those incidents and it is inaccurate to suggest the DHS’s public presentation and those destructive behaviors are linked. Adversaries have not placed “cyber implants” into the electric grid to cause blackouts; but they are infiltrating business networks – and in some cases, ICS networks – in an effort to steal information and intelligence to potentially gain access to operational systems. Overall, the activity is concerning and represents the prerequisites towards a potential future disruptive event – but evidence to date does not support the claim that such an attack is imminent. The US electric grid is resilient and segmented, and although it makes an interesting plot to an action movie, one or two strains of malware targeting operational networks would not cause widespread blackouts. A destructive incident at one site would require highly-tailored tools and operations and would not effectively scale. Essentially, localized impacts are possible, and asset owners and operators should work to defend their networks from intrusions such as those described by DHS. But scaling up from isolated events to widespread impacts is highly unlikely.

#### Crypto will never be widely adopted. It’s existed for over 12 years.

Paul Krugman 21. Distinguished professor in the Graduate Center Economics Ph.D. program, distinguished scholar at the Luxembourg Income Study Center at the City University of New York, and professor emeritus at the Princeton School of Public and International Affairs. "Technobabble, Libertarian Derp and Bitcoin." New York Times, May 20, 2021. https://www.nytimes.com/2021/05/20/opinion/cryptocurrency-bitcoin.html

A number of readers have asked me to weigh in on Bitcoin and other cryptocurrencies, whose fluctuations have dominated a lot of market news. Would I please comment on what it’s all about, and what’s going on? Well, I can tell you what it’s about. What’s going on is harder to explain. The story so far: Bitcoin, the first and biggest cryptocurrency, was introduced in 2009. It uses an encryption key, similar to those used in hard-to-break codes — hence the “crypto” — to establish chains of ownership in tokens that entitle their current holders to … well, ownership of those tokens. And nowadays we use Bitcoin to buy houses and cars, pay our bills, make business investments, and more. Oh, wait. We don’t do any of those things. Twelve years on, cryptocurrencies play almost no role in normal economic activity. Almost the only time we hear about them being used as a means of payment — as opposed to speculative trading — is in association with illegal activity, like money laundering or the Bitcoin ransom Colonial Pipeline paid to hackers who shut it down. Twelve years is an eon in information technology time. Venmo, which I can use to share restaurant bills, buy fresh fruit at sidewalk kiosks, and much more, was also introduced in 2009. Apple unveiled its first-generation iPad in 2010. Zoom came into use in 2012. By the time a technology gets as old as cryptocurrency, we expect it either to have become part of the fabric of everyday life or to have been given up as a nonstarter. If normal, law-abiding people don’t use cryptocurrency, it’s not for lack of effort on the part of crypto boosters. Many highly paid person-hours have been spent trying to find the killer app, the thing that will finally get the masses using Bitcoin, Ethereum or some other brand daily. But I’ve been in numerous meetings with enthusiasts for cryptocurrency and/or blockchain, the concept that underlies it. In such meetings I and others always ask, as politely as we can: “What problem does this technology solve? What does it do that other, much cheaper and easier-to-use technologies can’t do just as well or better?” I still haven’t heard a clear answer. Yet investors continue to pay huge sums for digital tokens. The values of major cryptocurrencies fluctuate wildly — Bitcoin fell 30 percent Wednesday morning, then made up most of the losses that afternoon. Their collective value has, however, at times exceeded $2 trillion, more than half the value of all the intellectual property owned by U.S. business. Why are people willing to pay large sums for assets that don’t seem to do anything? The answer, obviously, is that the prices of these assets keep going up, so that early investors made a lot of money, and their success keeps drawing in new investors.

### 1NC---Turn

#### Blockchain skyrockets emissions

Nathan Reiff 21. He has been writing expert articles and news about financial topics such as investing and trading, cryptocurrency, ETFs, and alternative investments on Investopedia since 2016. "What's the Environmental Impact of Cryptocurrency?." Investopedia. 9-8-2021. https://www.investopedia.com/tech/whats-environmental-impact-cryptocurrency/

Fossil Fuels and Digital Currencies

All of this has combined to link cryptocurrencies with fossil fuels in a way that many investors have yet to acknowledge. According to researchers at the University of Cambridge, around 65% of bitcoin mining takes place in China, a country that gets most of its electricity by burning coal.

Coal and other fossil fuels are currently a major source of electricity worldwide, both for cryptocurrency mining operations and other industries. However, burning coal is a significant contributor to climate change as a result of the carbon dioxide that the process produces. According to a report by CNBC, bitcoin mining accounts for about 35.95 million tons of carbon dioxide emissions each year—about the same amount as New Zealand.

### 1NC – A2: IoT/Bees

#### Tech challenges to IOT makes implementation hard

Alur et. al 15 (All members of the Computing Community Consortium, Rajeev Alur, Emery Berger, Ann W. Drobnis, Limor Fix, Kevin Fu, Gregory D. Hager, Daniel Lopresti, Klara Nahrstedt, Elizabeth Mynatt, Shwetak Patel, Jennifer Rexford, John A. Stankovic, and Benjamin Zorn, “Systems Computing Challenges in the Internet of Things”, https://arxiv.org/ftp/arxiv/papers/1604/1604.02980.pdf)

Cross-cutting Technical Challenges

While IoT systems will be deployed in different vertical domains, fundamental research challenges will cut across many of the application domains. Here we consider specifically challenges in networking, security, software development, distributed systems, and cyber-physical systems. Our intent with this overview is not to present a comprehensive list of all challenges, but to highlight a few key problems in each core area.

Networking Challenges

Today’s networking technology was not designed to support a huge number of low-power, possibly mobile, devices that interact with the physical world, human users, and the cloud in sophisticated ways. These new requirements raise several important research challenges in the area of networked systems:

Scalability: Computer networking researchers often grapple with questions of scale. For example, today's Internet routing system interconnects more than 3 billion people, more than a half million IP address blocks, and more than 50 thousand separately administered networks. The networking community responded to the rapid growth of the Internet by designing routing protocols, router architectures, and operational practices to manage this kind of scale. But, today's network protocols were designed for a world of largely stationary devices with reasonable computational and memory resources. IoT systems will require us to go much further, to handle orders of magnitude more devices, many of which are mobile, intermittently connected, and low power. A truly seamless Internet of Things requires future network protocols and network architectures that can rise to these scalability challenges.

Multitenancy: IoT would benefit from ways to let multiple applications (and sets of associated IoT devices) control their own fate over a shared network infrastructure. For example, a medical equipment company may have many devices (from patients' pacemakers to MRI machines) that rely on the hospital's computer network for communication. If the hospital IT staff misconfigures the network, these medical devices effectively don't work. Similar issues arise in the smart grid, where energy companies may rely on the customers' broadband network to communicate with smart meters and smart devices (e.g., air conditioners). We need effective ways to offer virtual network infrastructure -- much like today's cloud providers give each tenant its own abstract view of the data center -- to different apps, devices, and services. Each virtual network should have its own configuration, and guaranteed share of resources, but be mapped underneath to a shared physical infrastructure.

Network security: IoT raises a wide range of security challenges, as discussed in the Security Challenges section below. The unique properties of IoT devices have the potential make the underlying network an even more important part of any viable defense. IoT devices may not defend themselves appropriately, due to limited computing and power resources as well as a lack of security expertise among device manufacturers and end users. The network is the common infrastructure connecting these devices to each other, and to the rest of the Internet and the cloud that stores and analyzes data. The centrality of the network creates an opportunity for new research on anomaly detection, intrusion detection/prevention systems, and access control, so that the network can block unwanted traffic or detect suspicious behavior. While these are old topics in network security, IoT creates new opportunities because many IoT devices have a narrow purpose (e.g., a picture frame that displays photos stored by a particular cloud provider) that lead to distinctive traffic patterns, perhaps enabling different approaches to detecting anomalies.

Open network interfaces: Today's IoT landscape is already awash in proprietary technologies and competing standards. The history of computer networking has shown the importance of open interfaces to innovation. Where we have open interfaces and programmability, we have innovation. A case in point is end-host computers, where the open standards for Ethernet, IP, TCP, and even applications (e.g., HTTP) have led to tremendous innovation. However, innovation inside the Internet has been [devastated] ~~crippled~~ by closed, proprietary software, until the recent efforts in Software Defined Networks (SDNs) (e.g., the OpenFlow standard for interacting with the packet-forwarding logic in network switches). The networking research community can, and should, play a lead role in designing and experimenting with open APIs and protocols for the networks that interconnect IoT devices and connect IoT devices to the Internet and the cloud. Otherwise, the natural business incentives of IoT vendors could lead to (multiple) closed environments that stifle innovation and limit interoperability.

Low-power communication: Many IoT devices are small and do not have access to a continuous power source. Battery size, lifetime, and cost impose significant constraints on how these devices compute and communicate. Novel wireless networking solutions can address these challenges. For example, recent work shows how to avoid using power-hungry transmitters by leveraging the backscatter of radio noise from TV stations and cell towers as both an energy source and a communication medium. Going further, many IoT devices serve a single, limited purpose, suggesting that these devices could have customized network interfaces, operating systems, and programming models that make the most effective use of limited computation, network, and energy resources. Research in these areas involves interdisciplinary collaboration in signal processing and wireless communication, as well as computer architecture and operating systems.

#### Pollinator collapse does not cause extinction

Dr. Toby Ord 20, Senior Research Fellow in Philosophy at Oxford University, DPhil in Philosophy from the University of Oxford, The Precipice: Existential Risk and the Future of Humanity, Hachette Books, Kindle Edition, p. 118

And while extinction is a useful measure of biodiversity loss, it is not the whole story. It doesn’t capture population reductions or species disappearing locally or regionally. While “only” 1 percent of species have gone extinct on our watch, the toll on biodiversity within each region may be much higher, and this may be what matters most. From the perspective of existential risk, what matters most about biodiversity loss is the loss of ecosystem services. These are services—such as purifying water and air, providing energy and resources, or improving our soil—that plants and animals currently provide for us, but we may find costly or impossible to do ourselves.

A prominent example is the crop pollination performed by honeybees. This is often raised as an existential risk, citing a quotation attributed Einstein that “If the bee disappeared off the surface of the globe then man would only have four years of life left.” This has been thoroughly debunked: it is not true and Einstein didn’t say it.109 In fact, a recent review found that even if honeybees were completely lost—and all other pollinators too—this would only create a 3 to 8 percent reduction in global crop production.110 It would be a great environmental tragedy and a crisis for humanity, but there is no reason to think it is an existential risk.

### 1NC – A2: Arms Control/Miscalc

#### Arms control paradox – either it's not necessary or gets circumvented.

Pant ’18 [Harsh V.; 10-25-2018; International Relations Professor at King’s College London; “Why arms control is doomed to failure,” https://www.livemint.com/Opinion/gdup4GkuqWHozxfXXvj6hM/Opinion--Why-arms-control-is-doomed-to-failure.html]

The global nuclear arms control architecture is crumbling today as it is no longer able to respond to the underlying shift in global power realities. But is the failure of arms control something that should be surprising? Or is it that all arms control must fail?

If arms control is needed in a strategic relationship because the states in question might go to war, it will be impractical for that very reason of need—whereas, if arms control should prove to be available, it will likely be irrelevant. This has been called the arms control paradox. The record of the Cold War shows that both the so-called status quo and revisionist powers, the US and the Soviet Union respectively, were more or less equally responsible for reneging on their arms control promises.

Not only did both of them attempt to gain nuclear superiority during the Cold War despite a plethora of arms control agreements, but they were also equally responsible for encouraging proliferation. As the great powers try to maximize their share of world power, their interests inevitably come into conflict with arms control agreements, making such agreements unravel.

While one can give some credit to arms control for maintaining strategic stability and creating norms of behaviour, the fact remains that even one of the most in-depth agreements in terms of details of provisions, verification measures, and leading to regime strengthening, the Comprehensive Test Ban Treaty, was rejected by the US even when it faced no great power as a rival in the near term. This is significant because if even one of the strongest arms control measures is not deemed worthy of acceptance, then there is some problem with the very idea of arms control rather than its specific provisions.

Indeed, disenchantment with arms control has been growing since the 1980s. After a brief period of détente in the 1970s, the two superpowers again started treating each other as antagonists. This affected all the arms control measures agreed to during détente. The signing of a plethora of arms control agreements during détente was seen as a success of arms control rather than a reflection of the relaxation of tensions during détente. And so, when after détente, the superpowers gave arms control short shrift, there was a lot of disappointment.

Major powers have always viewed arms control measures as a by-product of underlying political realities. There is enough evidence to suggest that while great power attempts at arms control have at best been quite useless, they have deftly used various arms control provisions to constrain the strategic autonomy of other states in the international system.

## FTC Adv

### 1NC---Turn

#### The plan derails FTC credibility

Alison Jones & William E. Kovacic 20, Jones is a professor at King’s College London; Kovacic is Global Competition Professor of Law and Policy, The George Washington University Law School, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, vol. 65, no. 2, SAGE Publications Inc, 06/01/2020, pp. 227–255

D. Political Backlash

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125

The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

### 1NC---Turn

#### Any move away from the status quo magnifies inflation-centered political backlash

Ankush Khardori 12-14-2021, an attorney and former federal prosecutor, is a Politico Magazine contributing editor (Ankush, “It Took Forever to Get Confirmed. Now All He Has to Do is Fix All of Antitrust Law: The newly confirmed head of the DOJ’s antitrust division faces some serious obstacles in the coming year,” https://www.politico.com/news/magazine/2021/12/14/antitrust-enforcement-obstacles-kanter-justice-department-524187

Kanter’s confirmation completes the installation of a much-vaunted trio of officials — including Lina Khan at the Federal Trade Commission and Tim Wu at the White House’s National Economic Council — who are supposed to usher in an era of antitrust reform across the federal government that has been urged by Democratic politicians, progressive think tanks and anti-corporate activists. The idea, put briefly, is to shift antitrust policy and enforcement away from the intellectual framework that has dominated the law for the last 40 years — which focuses largely on the prices that consumers pay — to a broader and more flexible approach that accounts for changes to larger market dynamics, including effects on labor and wages. This would be a daunting enough undertaking on its own, but now that Kanter is firmly at the helm of the Antitrust Division, the enthusiasm for his selection will confront several serious headwinds: organizational, legal and economic. Organizationally speaking, Kanter is coming into the DOJ without the support of a clear and built-in constituency. His selection came after the longest delay for a nominee to lead the office in modern history, and after a strange series of events that suggested the possibility that he was not the person that Attorney General Merrick Garland wanted to see in the role. That saga began with a story in late January from the American Prospect and the Intercept that reported that Garland was “hoping to install” Susan Davies, a former aide of his who had in a civil lawsuit a decade ago represented Facebook — a mortal sin among the progressive antitrust and anti-corporate set. (At his confirmation hearing the following month, Garland got visibly frustrated when asked about this, calling the report “completely incorrect,” but the American Prospect repeatedly doubled down on its reporting.) But even if Kanter’s new boss didn’t want him for the job originally, there are more significant concerns about Kanter’s ability to marshal the support and enthusiasm of the line attorneys and staff who work in the division. Kanter has never actually worked in the DOJ before and has no experience managing a large organization that resembles anything like the Antitrust Division and its 700 government employees. His government experience comprises a couple of years working at the Federal Trade Commission in the late 1990s straight out of law school. He spent the last 20 years working at a variety of private law firms in Washington, D.C., where he litigated against Google and represented companies that included Microsoft, Uber, Yelp, and News Corp. — work that is seemingly tolerated by the same people who opposed Davies on the theory that these sorts of companies have been the victims of Big Tech’s sharp-elbowed (and at times arguably illegal) business practices. As a relative outsider thrust atop a large government organization, Kanter is not that different from Khan, who now oversees more than 1,000 employees at the FTC after a very sparse government career of her own. For months, stories from POLITICO and other major outlets have reported that Khan has struggled to gain the confidence and support of the career staff who actually run the agency. It is not easy to take the helm of a large organization whose career staffers may view you with suspicion (and possibly even disdain), as Khan seems to be learning the hard way and as Kanter may soon learn as well. Legally speaking, Kanter will also need to deal with outsized expectations from progressives who may be overly optimistic about what can be achieved through more aggressive enforcement in an area of the law that is deeply conservative — ideologically, economically and jurisprudentially. A major issue will center on the department’s approach to one of antitrust law’s most fundamental concepts: the so-called consumer welfare standard — under which regulators and courts try to determine whether a proposed merger or challenged transaction will harm consumers in the form of higher prices, reduced output or diminished quality — and, more broadly, what the goals of antitrust law should be. In recent years, self-styled antitrust reformers have argued that the current framework, which is generally traced to former Solicitor General Robert Bork, is far too narrow. Khan, for instance, once argued that antitrust law should “protect consumers from anticompetitive overcharges and small producers from anticompetitive underpayments, preserve open markets, and disperse economic and political power.” In July, Biden signed an executive order on competition spearheaded by Wu that took a similarly expansive view — arguing that “excessive market concentration threatens basic economic liberties, democratic accountability, and the welfare of workers, farmers, small businesses, startups, and consumers.” Despite the generally appealing nature of this sort of language, the effort is in fact deeply controversial among many antitrust legal professionals, who question its coherence and administrability. Exactly where Kanter stands on these big questions is directionally apparent, but he has so far managed to avoid getting into some crucial specifics. In an FTC roundtable in 2018, he made clear that he was sympathetic to the reformers’ view, but during the confirmation process, he provided written responses to questions from Sen. Chuck Grassley (R-Iowa) on the topic that were far shakier on particulars. In them, Kanter wrote that he had previously “voiced concerns that the application of the consumer welfare standard has been inconsistent, vague, and insufficient to keep pace with market realities” and that “effective antitrust enforcement requires a deep understanding of market realities and facts to determine whether the conduct at issue harms competition and the competitive process.” He proceeded to effectively ignore Grassley’s questions about whether antitrust law should be used either to promote wage equality or to strengthen labor rights. Kanter would not have been nominated if the administration and his backers were not confident that he shares their goals, but implementing them is another thing entirely. There are very real questions about how to administer a policymaking and enforcement regime using an amorphous combination of economic objectives and political values. What exactly does it mean to “disperse economic and political power” in the context of a hypothetical merger? When looking at a potential transaction, how do you balance the supposed effects of lower prices against wage inequality? These are not questions that will be as easy to dodge in court filings and courtrooms as they are in roundtables and law journals. Lastly, there is another challenge for Kanter and the putative reformers that they could not have foreseen years ago when they began to formulate and spread their ideas — namely, that they would come to power at an economically awkward moment. Despite the White House’s best efforts, Americans appear to be highly concerned at the moment with inflation, worried about the prices of the actual things that they buy. Depending on how long this period lasts, an antitrust enforcement program that tries to upend the consumer welfare standard and its focus on lowering costs could prove even harder than it would otherwise already be.

### 1NC – A2: Spyware

#### No spyware impact, but no chance of deepening global agreement on norms either

Wolfgang Kleinwächter 21, International Communication Policy and Regulation in the Department for Media and Information Studies at the University of Aarhus, 1/8/21, “Internet Governance Outlook 2021: Digital Cacaphony in a Splintering Cyberspace,” https://circleid.com/posts/20210108-internet-governance-outlook-2021-digital-cacaphony/

One thing is for sure: 2021 will probably see little global consensus. The digital cacophony will become louder. Driven by local needs, governments tend to prioritize the development of national policies. Although all sides recognize that national solutions need a functioning global information infrastructure in an interconnected world, the appetite to intensify mutual beneficial global cooperation, compromise, and find consensus is very low.

On the other hand, there is a more or less a silent agreement that the protection of the public core of the Internet—that is, the functioning of the global mechanisms for the management of root servers, domain names and IP addresses—is in the interest of all sides. It seems that some Internet Governance battles of the past are over. ICANN is not anymore in the line of geo-political fire. Its technical service is needed by everybody.

What ICANN is doing is called now by ICANNs CEO & President Göran Marby “Technical Internet Governance” (TIG). ICANN is afraid to get pulled into a new round of political arm-twisting. Marby’s more neutral “TIG language” goes back to the Internet Governance definition and the consensus of the WSIS Tunis Agenda from 2005, which differentiated between the “development” and the “use” of the Internet. The political Internet Governance problems, which emerged in the last 15 years, are more related to the “use” of the Internet, less to its “development.” And the pandemic has shown that regardless of the different national Corona approaches, the seamless and silent functioning of the Internet was a great gift for everybody to reduce the damage that came with Covid-19.

Insofar, we can see an interesting contradiction: On the lower layer—the “development” or “TIG”-Layer—the Internet remains unfragmented. On the upper layer—the “use” or “IG”-Layer—a special variant of Internet fragmentation, now labeled as “Internet Bifurcation,” is growing. Nevertheless, there are interlinkages between the two layers. Technical issues do have political implications and political problems have a technical component. It will be interesting to watch how the interplay between technology and policy will evolve in the years to come. In any case, 2021 will be a year where the digital cards on the cybertable will be reshuffled.

#### No cyber impact – attribution, restraint, and capabilities.

Lewis ’20 [James Andrew; 8/17/20; senior vice president and director of the Strategic Technologies Program at the Center for Strategic and International Studies; "Dismissing Cyber Catastrophe," https://www.csis.org/analysis/dismissing-cyber-catastrophe]

More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are:

Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals.

There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.)

No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare.

State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war.

This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation.

The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability.

### 1NC – AI

#### No impact to superintelligence, nano, or grey goo

Edward Moore Geist 15, MacArthur Nuclear Security Fellow at Stanford University’s Center for International Security and Cooperation, 8/9/15, “Is artificial intelligence really an existential threat to humanity?,” <http://thebulletin.org/artificial-intelligence-really-existential-threat-humanity8577>

Superintelligence: Paths, Dangers, Strategies is an astonishing book with an alarming thesis: Intelligent machines are “quite possibly the most important and most daunting challenge humanity has ever faced.” In it, Oxford University philosopher Nick **Bostrom**, who has built his reputation on the study of “existential risk,” argues forcefully that **a**rtificial **i**ntelligence might be the most apocalyptic technology of all. With intellectual powers beyond human comprehension, he prognosticates, self-improving **a**rtificial **i**ntelligences could effortlessly enslave or destroy Homo sapiens if they so wished. While he expresses skepticism that such machines can be controlled, Bostrom claims that if we program the right “human-friendly” values into them, they will continue to uphold these virtues, no matter how powerful the machines become. These views have found an eager audience. In August 2014, PayPal cofounder and electric car magnate Elon Musk tweeted “Worth reading Superintelligence by **Bostrom**. We need to be super careful with AI. Potentially more dangerous than nukes.” Bill Gates declared, “I agree with Elon Musk and some others on this and don’t understand why some people are not concerned.” More ominously, legendary astrophysicist Stephen Hawking concurred: “I think the development of full artificial intelligence could spell the end of the human race.” Proving his concern went beyond mere rhetoric, Musk donated $10 million to the Future of Life Institute “to support research aimed at keeping AI beneficial for humanity.” Superintelligence is propounding a **solution that will not work** to a **problem that** probably **does not exist**, but Bostrom and Musk are right that now is the time to take the ethical and policy implications of artificial intelligence seriously. The extraordinary claim that machines can become so intelligent as to gain demonic powers requires **extraordinary evidence**, particularly since artificial intelligence (AI) researchers have struggled to create machines that show much evidence of intelligence at all. While these investigators’ ultimate goals have varied since the emergence of the discipline in the mid-1950s, the fundamental aim of AI has always been to create machines that demonstrate intelligent behavior, whether to better understand human cognition or to solve practical problems. Some AI researchers even tried to create the self-improving reasoning machines Bostrom fears. Through decades of bitter experience, however, they learned not only that creating intelligence is more difficult than they initially expected, but also that it grows increasingly harder the smarter one tries to become. Bostrom’s concept of “superintelligence,” which he defines as “any intellect that greatly exceeds the cognitive performance of humans in virtually all domains of interest,” builds upon similar **discredited assumptions about the nature of thought** that the pioneers of AI held decades ago. A summary of Bostrom’s arguments, contextualized in the history of artificial intelligence, demonstrates how this is so. In the 1950s, the founders of the field of artificial intelligence assumed that the discovery of a few fundamental insights would make machines smarter than people within a few decades. By the 1980s, however, they discovered fundamental limitations that show that there will always be diminishing returns to additional processing power and data. Although these technical hurdles pose no barrier to the creation of human-level AI, they will likely **forestall the sudden emergence of an unstoppable “superintelligence**.” The risks of self-improving intelligent machines are **grossly exaggerated** and ought not serve as a **distraction from the existential risks we already face**, especially given that the limited AI technology we already have is poised to make threats like those posed by nuclear weapons even more pressing than they currently are. Disturbingly, little or no technical progress beyond that demonstrated by self-driving cars is necessary for artificial intelligence to have potentially devastating, cascading economic, strategic, and political effects. While policymakers ought not lose sleep over the technically implausible menace of “superintelligence,” they have every reason to be worried about emerging AI applications such as the Defense Advanced Research Projects Agency’s submarine-hunting drones, which threaten to upend longstanding geostrategic assumptions in the near future. Unfortunately, Superintelligence offers little insight into how to confront these pressing challenges.

# 2NC/1NR

## TTC CP

### Overview---2NC

#### TTC rebuilds US-EU relations and solves WTO reform, Chinese state subsidies, tech standards, and broader global stability.

Jennifer Hillman & Alex Tippett 21, Senior Fellow for Trade and International Political Economy. "Biden’s Trade Policy for the Middle Class Takes Shape—And it Begins in Europe" June 18. <https://www.cfr.org/blog/bidens-trade-policy-middle-class-takes-shape-and-it-begins-europe>

The push to resolve trade issues has come alongside other gestures, like the decision to waive sanctions related to the Nord Stream 2 pipeline and the establishment of a new EU-U.S. Trade and Technology Council intended to develop joint technology standards and potentially rework sensitive supply chains. Both the U.S. and EU, as well as other members of the Group of Seven (G7), have also come together to develop an alternative to China’s Belt and Road Initiative and insist that China address questions around forced labor in Xinjiang. Taken as a whole, these efforts represent an important rekindling of the transatlantic relationship.

While resolving tariff fights is a positive outcome in and of itself, rapprochement with Europe also serves a larger purpose. The Biden team has correctly calculated that European support will be essential to addressing some of its most important foreign policy goals. Addressing overcapacity exacerbated by Chinese state subsidies or reforming the World Trade Organization (WTO) will require European cooperation. Action on climate demands a united front from the United States and Europe. Without transatlantic cooperation, there is little hope of building a coalition capable of pushing laggards to comply with the emissions targets set out in the Paris Agreement or to push for open transparent technology standards. Going forward, transatlantic coordination on technology and infrastructure, as discussed by members of G7, will be critical to mitigating China’s growing advantages in these areas.

The outcome of President Biden’s strategic gambit, however, is far from assured. Europe has strong economic ties with China which have been enhanced by investments made along the Belt and Road. Those economic ties have helped make some European leaders like German Chancellor Angela Merkel more skeptical of EU-U.S. coordination intended to hem in China. Depending on how it is pursued, the EU’s desire for “strategic autonomy” may also create complications for an Atlantic partnership. Attempts to support European technology firms through regulatory action and industrial policy in order to secure “digital autonomy,” for instance, may ruffle the feathers of U.S. incumbents if not handled delicately. Similarly, the apparent lack of alignment between the United States and Europe on the issue of a carbon border adjustment may lead to clashes or undermine upcoming climate negotiations in Glasgow.

By resolving or smoothing over longstanding disputes, however, the multilateral approach adopted by the Biden administration is already bearing fruit. Hopefully, the comity and relationships built during this process will enable the Biden administration to successfully address the key threats to U.S. and global prosperity.

### A2: PDB---2NC

#### 2---It signals unilateralism and pushes Europe towards strategic autonomy.

Frances Burwell 9/24/21, distinguished fellow at the Atlantic Council and a senior director at McLarty Associates. "The US-EU Trade and Technology Council: Seven steps toward success" <https://www.atlanticcouncil.org/blogs/new-atlanticist/the-us-eu-trade-and-technology-council-seven-steps-toward-success/>

As the first formal meeting of the US-EU Trade and Technology Council (TTC) gets underway on September 29, the key question should be: What will it take for the TTC to succeed? How can the TTC avoid the fate of so many official transatlantic councils and forums—from the Transatlantic Economic Council to the much-maligned Transatlantic Trade and Investment Partnership—that faded into irrelevance?

The reasons for those failures vary, from lack of interest by leaders to truly complex regulatory issues, such as pharmaceutical testing or the definition of subsidies. In most cases, these dialogues ended not with a bang, but with a whimper—no dramatic walkouts or explosive one-sided statements, but rather a simple failure to reconvene.

If the TTC is to avoid suffering the same form of negligent homicide, it must lay the groundwork for future success at Pittsburgh. The leaders will leave this first TTC either wondering why they bothered to attend, or enthusiastic about the work to be done and looking forward to their next encounter.

Announced at June’s US-EU summit, the TTC was a symbol of the restored commitment of the United States and the EU to their partnership. But it was also intended to demonstrate the interconnectedness of the two largest market economies in the world, as well as to serve as a forum for building greater cooperation across the Atlantic on regulatory and market issues.

Making the TTC a success story will not be easy. US President Joe Biden arrived in office determined to repair the transatlantic partnership, with a specific emphasis on building better relations with the European Union, but there have been few successes to date. The administration has not lifted Trump-era tariffs on steel and aluminum, nor have the United States and the EU resolved a dispute over data transfers. Moreover, the US failure to consult allies on its withdrawal from Afghanistan has left many European policymakers concerned that Biden’s “foreign policy for the middle class” is really just a rehash of former President Donald Trump’s “America First.”

As a result, Europe remains skeptical of the United States as a benevolent and predictable ally, and key European leaders talk openly about the need for strategic autonomy. In the final week before Pittsburgh, the AUKUS announcement caused a serious rift with France, leading European Internal Market Commissioner Thierry Breton to hint at doubts as to whether the TTC should go forward, as he believes US-EU relations might need a “pause and reset.”

Despite these challenges, the TTC presents the best opportunity to show that the United States and European Union can take concrete steps toward real cooperation on tech and trade and demonstrate that their relationship is based on meaningful partnership. Here are seven steps the TTC must take to achieve success:

Commit to further engagement. Above all, the TTC must earn the commitment of the US and EU leadership to its future. The continuing engagement of the five co-chairs—European Commission Executive Vice-President Margrethe Vestager, European Commission Executive Vice-President Valdis Dombrovskis, US Secretary of State Antony Blinken, US Secretary of Commerce Gina Raimondo, and US Trade Representative Katherine Tai—will be essential if this is to be more than just a one-off meeting. One of the most important announcements in Pittsburgh could simply be the date and place of the next meeting. Hopefully, the incoming French presidency of the EU will step up to host the next session in the first half of 2022, despite the charged environment before Pittsburgh. Using the rotating presidency may even increase the commitment of EU member states to the TTC.

Develop a shared vision of the TTC. US and EU leaders must leave Pittsburgh with confidence that they have developed a consistent and shared vision of what the TTC should be, and of its objectives and priorities. For the United States, this will mean giving up on the idea that the TTC is primarily a venue for rallying allies against China. For the Europeans, this will mean accepting that external views have some relevance for their current digital agenda. The EU has every right to regulate tech as it sees fit, but if there is nothing remaining to discuss, the US side will not find the TTC very useful. Similarly, if the United States simply wants to use the TTC against China, EU officials are unlikely to be eager for a return engagement.

Identify the objectives of the TTC (hint: not dispute resolution). Is the TTC intended to resolve long-standing disputes, or to build cooperation in new areas? In recent months, the United States and EU have moved challenging disputes—Airbus-Boeing, data transfers, and steel and aluminum tariffs—to separate tracks where they can be the focus of expert negotiations. The leaders at the TTC can play a role in pushing negotiators to reach a deal and then blessing the results. But the leaders cannot dedicate sufficient time or focus to resolve disputes, especially those that have festered for some time. Instead, the strength of the TTC lies in its role as a vessel for US-EU cooperation. For that reason, the goal of the Pittsburgh meeting should be to build and demonstrate that cooperation.

Launch serious efforts to develop shared standards and processes. This first TTC meeting should aim to launch a few specific efforts designed to build concrete collaboration. Early reports indicate that the Pittsburgh TTC will seek agreements on supply chains (especially semiconductors), investment screening, and export controls. Given that discussions about these topics only really began in the summer, this first TTC is likely to reach only very modest agreements even on these relatively uncontroversial topics. The leaders might promise to share more information on foreign-investment cases. They will undoubtedly make broad pledges to cooperate on building resilient supply chains and consult more on export controls. But to move beyond such vague promises, the TTC should launch a few efforts designed to develop joint approaches towards standards and processes; for example, joint cybersecurity standards, a shared approach to facial-recognition technology, or a shared methodology for evaluating mergers affecting the digital economy. As a first step, the United States and EU must first compare perspectives and policy approaches before trying to forge specific agreements. This is especially important given the significant mismatch in current EU and US policy positions: While the EU has spent the past year launching legislative proposals on a series of digital issues, the Biden administration is still struggling to get officials into their positions and develop a comprehensive approach.

Establish a clear process linking the leaders to the TTC working groups. Reaching any of these objectives will take time and expertise. But the TTC is not just the leaders; the TTC working groups provide an invaluable setting for addressing detailed technical issues. The leaders should task the working groups with realistic but concrete goals, due before the next meeting. Too often, ministerial-level meetings lead only to vague pronouncements or to assignments that are neglected because officials assume the next meeting is a full year away (or even uncertain). By setting a schedule of at least twice-yearly meetings and assigning the working groups with developing concrete plans for collaboration, the TTC can begin to move the US-EU trade and technology agenda forward.

#### 3---Prior and genuine consultation is key to participation.

Frances Burwell 9/24/21, distinguished fellow at the Atlantic Council and a senior director at McLarty Associates. "The US-EU Trade and Technology Council: Seven steps toward success" <https://www.atlanticcouncil.org/blogs/new-atlanticist/the-us-eu-trade-and-technology-council-seven-steps-toward-success/>

Build effective stakeholder outreach, including with the US Congress and European Parliament. The TTC will only truly succeed if it develops a mechanism for effective stakeholder outreach. The European Parliament and US Congress must be consulted as legislators who can either support or impede the results of the TTC, especially those results requiring changes in laws and regulations. The European Commission and US executive branch are often unenthusiastic about including Parliament and Congress, but the TTC—in its second meeting, if not in Pittsburgh—should provide a platform for legislators to communicate their views to the leaders.

Reach out to business and nongovernmental-organization (NGO) stakeholders. The TTC stakeholder process should reach beyond legislators to business and NGO representatives—critical components in any policy and regulatory process. Leaders must do more than simply report to the stakeholders after meeting; businesses and relevant NGOs should have some method of engaging with the working group process, especially since that is where many of the key technical choices will be made. There should also be a formal component to the leaders’ meeting that presents the views of business stakeholders and NGOs. The TTC should encourage stakeholders to reach across the Atlantic to develop initiatives that can be jointly proposed to the leaders.

The TTC is intended to address complex issues that affect economies and regulatory regimes on both sides of the Atlantic. Building cooperation on such issues will not be easy, even between allies and friends. This first meeting will inevitably face criticism for being more talk than action. But in Pittsburgh, the TTC has the chance to prove its critics wrong.

#### That overcomes anti-TTC mobilization that makes cooperation possible---results in negotiations that solves DMA overstretch.

Tyson Barker 9/30, Head, Technology and Foreign Policy Program, German Council on Foreign Relations. "TTC Lift-off: The Euro-Atlantic Tech Alliance Takes Shape" <https://ip-quarterly.com/en/ttc-lift-euro-atlantic-tech-alliance-takes-shape>

Framing the TTC

The European Commission has made great pains to define the four corners of negotiation within the TTC—what it is and what it’s not, best described in the four “nos.” First, the TTC is not a zombie TTIP. The transatlantic free trade agreement talks brought up major points of contention on issues like agriculture, investment dispute settlement, and procurement that neither side is eager to revisit, especially in this moment of de-globalization. Second, the TTC is not an anti-China tech alliance. The EU—most importantly Germany— has important equities in China. Rather than force the China issue, Brussels and Washington want to define the kind of open, democratic, human-rights-based tech governance they want to forge. Third, the TTC is not the vehicle for negotiations of a data protection agreement—a so-called Privacy Shield 2.0—between the EU and US. Following the June 2020 European Court of Justice ruling in Schrems II, the commission is dead set on a durable solution to the free flow of personal data to the US that meets GDPR standards and can withstand court scrutiny.

Finally, the TTC will not mess with live platform intra-European regulation negotiations—like the Digital Services Act, Data Governance Act, and the Digital Markets Act—which are currently under negotiation between EU member states and the European Parliament. The Digital Market Act, in particular, has been a thorn in the side of American Big Tech, which loathes what it sees as discriminatory treatment of US companies and limitations on data usage across integrated lines of service. Add to that the fact that the US is holding 232 tariffs on EU aluminum and steel in a separate track and there are the makings of a number of ostensible red lines.

Twin Dangers: The Buy-In Conundrum and the Sell-Out Conspiracy

In fact, the EU-US tech partnership faces two dangers, either of which could ultimately derail the nascent Euro-Atlantic tech alliance.

For one, there is a growing perception in Brussels that the US is attempting to build a hub-and-spoke system in its techno-alliance structure. The Quad—a cooperation between the United States, Japan, Australia, and India—is increasingly seen in Washington as the primary center of gravity for its geo-tech containment strategy of China. Not only did the Quad summit on September 24 establish principles on tech design governance and use. The Quad Draft on semiconductor supply chains, 5G equipment rhymes with the Pittsburgh agenda. In many ways, the Quad in the Pacific and TTC in the Atlantic are complementary democratic tech alliances. But there is a glistening romanticism to the Biden administration’s approach to the Quad absent from its engagement with Europe. If the US attempts to hoist Quad agreements onto the EU as a “second order” partnership, it could ultimately backfire severely.

Perhaps the feeling is mutual. Despite Brussels’ creative efforts to prepare TTC deliverables, there are lingering doubts about whether member states will buy in. What’s more, the US’ consultation missteps have strengthened the hand of the EU’s strategic autonomy crowd. France’s justifiable anger toward Australia’s abrupt cancellation of the €52 billion submarine deal after the announcement of the Australian-British-US AUKUS alliance led to its leadership grasping for consequences. Ultimately, French rage at the AUKUS deal ricocheted off the TTC as Paris tried frantically to postpone the Pittsburgh meeting. French European Commissioner Thierry Breton travelled to Washington proclaiming the need to “pause and reset” the transatlantic relationship, a clear signal that the TTC should be put on ice.

The bank shot off the commission’s diligent work to get a framework on digital technology largely drafted on European terms has left the nascent tech alliance somewhat bloodied. More worryingly, Berlin tacitly supported Paris in its efforts to derail the TTC. But that does not mean that France and Germany see eye-to-eye on tech foreign policy outcomes. Germany backs open RAN, investing €2 billion in R&D to democratize the telco network equipment market. The same cannot be said of France and the European Commission, who see the 5G choke point held by European champions Ericsson and Nokia as a strategic strength. A French hub for a Euro-Atlantic semiconductor ecosystem might awaken the jealousies of other member states, particularly Germany, which sees chip fabrication in “Silicon Saxony” as a potential future anchor for its national mobility and robotics production base. Other frictions lie beneath the surface as well.

Without the full backing and consensus of France and Germany—the undisputed architects of the EU’s quest for technological sovereignty—the commission cannot have standing to negotiate peer-to-peer with the United States on a future tech international order. This has not gone unnoticed in Washington.

And, of course, there is a second danger. American Big Tech is primarily interested in Privacy Shield negotiations and the EU’s live regulation drafts (especially the Digital Markets Act). It is asking what the point of this dialogue is if it is not able to solve the increasingly urgent issue of post-Schrems II transatlantic data flows. They point frustratedly at the increasing zeal of European data protection enforcement on US tech companies even as Chinese Big Tech—TikTok, AliExpress, and Tencent-owned Games—spread like ooze across the EU gaining users and market share.

But therein lies the trap. A hidden false narrative could arise that the TTC is the vehicle for untransparent negotiations taking place “behind closed doors” between the commission, the White House, and US Big Tech to water down European standards on data protection, competition, and platform regulation.

This narrative is patently baseless. But this type of conspiratorial thinking could fire the neurons of disparate groups of activists. Should such a narrative metastasize within certain European NGO communities and on social media, it could be a potent mobilizing force. 2015 TTIP protests in Germany brought 150,000 citizens on to the streets. Such a narrative could also be instrumentalized and supported by influence and disinformation operations from China, whose interests clearly lie with seeing the TTC fail. In fact, an anti-TTC campaign has the potential to be a very effective disinformation campaign for the Chinese. Without a great deal of outreach by negotiators to stakeholders—particularly the European Parliament, Congress, national parliaments, civil society, and the media—the threat of conspiracy mongering could be a real one.

The Way Forward

Ultimately, defining and meeting a discrete set of strategic—but tangible—deliverables would lend the TTC legitimacy. The waters ahead are choppy. Many open questions remain, including the true level of ambition and the role of legislative bodies like the European Parliament and Congress. Should NATO play a role, especially in information-sharing on export controls and investment screening? How can the two sides knit the TTC together with the Quad to create an open, interoperable, rights-based democratic space for emerging technology? Whether member state buy-in, particularly in France, materializes will be clear by the European TTC in spring 2022. The pieces are all there. But some assembly is still required.

### A2: PDCP---2NC

#### 1---The plan and CP are policy alternatives---we prohibit fewer practices under ‘its antitrust laws,’ instead relying on different legal authorities.

Chad David Damro 02, PhD, University of Pittsburgh. "Economic Internationalization and Competition Policy: International and Domestic Sources of Transatlantic Cooperation" Submitted to the Graduate Faculty of Arts and Sciences in partial fulfillment of the requirements for the degree of Doctor of Philosophy. https://core.ac.uk/download/pdf/12209578.pdf

Since the US issued its first antitrust law in 1890, competition policy has become an increasingly important regulatory tool for constructing and maintaining other domestic free market economies.4 By prohibiting monopolistic and other anticompetitive business activities, competition policies are intended to create a level playing field among competitors and, ultimately, to determine opportunities and incentives for producers and consumers. Not surprisingly, the two largest free market economies, the US and the EU, rely heavily on domestic competition policies to prevent anticompetitive business activities in their respective markets. However, as foreign direct investment grows and firms and markets internationalize, anticompetitive activity based in multiple jurisdictions challenges the ability of purely domestic competition policies to ensure the “public good” of fair competition in their respective domestic markets.

One way in which states can overcome the challenges of economic internationalization is to pursue anticompetitive activity that originates in foreign jurisdictions by exercising their domestic competition policies extraterritorially. However, the extraterritorial exercise of domestic competition policies threatens the sovereignty of other jurisdictions and frequently results in international political disputes. For example, bilateral competition relations between the US and Europe historically have been largely adversarial affairs, characterized by a reliance on extraterritoriality and unilateral retaliation with countermeasures designed to protect national interests.5

Alternatively, states can enter into legally-binding international treaties to manage disputes that may arise from jurisdictional overlaps in competition matters. Such cooperative agreements could prevent the international political disputes that arise from extraterritoriality and unilateral countermeasures. Despite their potential utility, the US and EU have declined to negotiate and sign any treaties governing transatlantic competition relations. Rather, they have responded to the challenges of economic internationalization by enforcing their domestic competition policies in a more active and internationally-oriented fashion. The resulting jurisdictional overlaps threaten the sovereign interests of both the US and the EU and increase significantly the likelihood of transatlantic political disputes that can destabilize the international political economy.

#### ‘ITS’---that means domestic law, NOT obligations under international agreements

WTO 5, World Trade Organization, Report of the Panel in MEXICO – TAX MEASURES ON SOFT DRINKS AND OTHER BEVERAGES, 10/7/5, https://www.wto.org/english/tratop\_e/dispu\_e/308r-0\_e.doc

4.493 Finally, no less than two pages from the end of its opening statement, Mexico tries to refute some of the points the United States offers, based on application of the rules of treaty interpretation, as to why the phrase "laws or regulations" means the domestic laws or regulations of the Member claiming the Article XX(d) exception. Mexico's arguments here, however, do not save its Article XX(d) defence. For example, the fact that Article XVI:4 of the Marrakesh Agreement includes the word "its" before "laws, regulations and administrative procedures" only re emphasizes the United States point that "laws or regulations" as used in the WTO Agreement is understood to mean the domestic laws or regulations of WTO Members, not obligations under international agreements or under general principles of international law. In the numerous instances where the WTO Agreement references "laws" or "regulations" some are proceeded by the word "its" or the word "their" (referring to a Member's, or Members' in the plural, laws and regulations); others are simply preceded by "the" or no article at all, as in Article XX(d). What is clear, however, is that when the WTO drafters meant to refer to international law, they did so expressly, as in Articles 3.2 of the DSU and 17.6 of the Anti-Dumping Agreement.

#### ‘CORE ANTITRUST LAWS’---that’s three federal statutes

Kendall Kuntz 21, J.D. Candidate at The University of Maryland Francis King Carey School of Law, “Can the Courts and New Antitrust Laws Break Up Big Tech?,” 2/23/21, https://www.law.umaryland.edu/Programs-and-Impact/Business-Law/JBTLOnline/Break-Up-Big-Tech/

There are three core antitrust laws in effect today: the Sherman Act, the Clayton Act, and the Federal Trade Commission Act. These three antitrust laws attempt to protect market competition for the benefit of consumers. The Sherman Act outlaws monopolies and contracts that unreasonably restrain trade. The Clayton Act prohibits mergers and acquisitions that substantially lessen competition or create a monopoly. Lastly, the Federal Trade Commission Act bans “unfair methods of competition” and “unfair or deceptive acts or practices.” Antitrust laws are not established to punish success, but are focused on preventing anticompetitive effects, exclusionary practices, reduced consumer choice, and hindered innovation.

#### ‘Laws’ means domestic

Taniguchi et al. 6, Taniguchi, Presiding Member; Janow, Member; Sacerdoti, Member, all at the WTO Appellate Body, “45 I.L.M. 870,” 3/6/6, Lexis

69. In order to answer this question, we consider it more helpful to begin our analysis with the terms "laws or regulations" in Article XX(d) (which we consider to be pivotal here) rather than to begin with the analysis of the terms "to secure compliance", as did the Panel. The terms "laws or regulations" are generally used to refer to domestic laws or regulations. As Mexico and the United States note, previous GATT and WTO disputes in which Article XX(d) has been invoked as a defence have involved domestic measures. n146 Neither disputes that the expression "laws or regulations" encompasses the rules adopted by a WTO Member's legislative or executive branches of government. We agree with the United States that one does not immediately think about international law when confronted with the term "laws" in the plural. n147 Domestic legislative or regulatory acts sometimes may be intended to implement an international agreement. In such situations, the origin of the rule is international, but the implementing instrument is a domestic law or regulation. n148 In our view, the terms "laws or regulations" refer to rules that form part of the domestic legal system of a WTO Member. n149 Thus, the "laws or regulations" with which the Member invoking Article XX(d) may seek to secure compliance do not include obligations of another WTO Member under an international agreement.

#### The CP’s distinct---it transitions away from unilateral enforcement.

Abbott B. Lipsky Jr. 9, Former Deputy Assistant Attorney General, specializing in antitrust. "MANAGING ANTITRUST COMPLIANCE THROUGH THE CONTINUING SURGE IN GLOBAL ENFORCEMENT" Antitrust Law Journal, Vol 75. <https://www.lw.com/thoughtLeadership/managing-antitrust-compliance-during-global-enforcement>

I have tried to describe the three waves of the continuing global antitrust surge in a way that conveys their power, scope, and potential for enterprise-threatening impact. I have also pointed out why it should be an easy decision for any business enterprise contemplating cross-border operations—and that category includes a large and increasing number of enterprises within the continuing evolution of the global economy— to adopt a global perspective on antitrust compliance. I conclude here with a few thoughts on the future of antitrust, given the reality of this massive and still-expanding global antitrust enforcement network.

This network is characterized by great diversity, extreme complexity, and by the potential for heavy legal consequences in many different jurisdictions around the world. Taking it as assumed that strong antitrust laws are desirable, the huge range of diversity in the approaches of different jurisdictions is not necessarily beneficial. The themes of convergence (“soft” and “hard”—meaning “somewhat aligned” versus “identical” or nearly so), harmonization, and the like have been much discussed in the extensive literature on international antitrust enforcement.69 There are pros and cons and the considerations are shifting and complex.

There are real questions about the viability of an antitrust enforcement environment in which (1) over 100 national (and supranational) jurisdictions enforce their own laws through their own procedures, (2) many of these jurisdictions allow private remedies in some form—perhaps in very powerful forms, such as treble-damage opt-out class actions, (3) many of these jurisdictions allow independent antitrust enforcement efforts to be undertaken by subordinate jurisdictions, such as the states of the United States, the EU Member States, the Spanish autonomous communities, and the Canadian provinces, (4) none of these jurisdictions will defer fully or even substantially to any other, except in relatively rare and limited circumstances, (5) there is no international body—and within national jurisdictions there is often no national body—with the capacity or authority to reconcile and coordinate these additive and sometimes conflicting demands. (Consider the United States—with the longest and strongest antitrust tradition—where federal antitrust law does not generally preempt the antitrust laws of the fifty states, and even at the federal level we have two agencies that waste time squabbling over their jurisdiction in some particular matters.)

The costs and complexities of this network system are enormous. We are just beginning to adopt the most rudimentary mechanisms for reducing them. The ICN has made some progress in the area of merger notification and procedures. The United States and the European Union work hard to anticipate overlaps and conflicts in the merger review process, with apparent success. But coordinating EU-U.S. approaches to the conduct of globally significant firms—viz., IBM and Microsoft—is visibly unsuccessful. The right blend of uniformity and diversity is still not clear and may never become clear as circumstances change. (What will happen—and what should happen—to U.S.-EU cooperation in merger review when notification regimes come on line in China and India?) Are the agencies in the smaller jurisdictions destined to become bystanders in the global antitrust game? That makes no sense if an important resource or industry or class of consumers is concentrated in that jurisdiction. There seems to be no general formula by which compliance overlaps and conflicts can be reconciled.

The implication seems clear: there must be a new model—a model not based on such a huge diversity of supranational, national, and subnational enforcement structures.70 The new model might involve a clearing out of this multiplicity of enforcement structures, but even the outlines of such a model have yet to emerge. Certainly, a higher degree of unity within specific jurisdictions (e.g., state-federal in the United States; national-provincial in Canada, EU-Member State-Member State subjurisdictions, etc.) might be a logical starting point. In the meantime, as I have argued previously, the costs and complexities of antitrust enforcement cannot be permitted to climb higher at their present rate forever. At some point—we may be well past that point—costs outweigh benefits. Global economic health depends on innovation and flexibility, which are stifled by a heavy regulatory hand. Are we already past the point where the “trimming and pruning” phase should have begun? Some like ICN are toiling to bring some degree of order and harmony to this antitrust garden—but this and similar efforts are still no match for the kudzu-like growth of the global antitrust network.

As former Council of Economic Advisers Chair Herb Stein used to say, “Unsustainable trends tend not to be sustained.” Can antitrust reform itself from “within,” building on the ICN and other cooperative organizations and relationships to rein in the complexities and overlaps of international antitrust? Or will the global antitrust enforcement network ultimately lead the world economy into an era of stagnation, inviting the type of sudden and profound reform characteristic of epochal shifts in norms and standards (comparable to U.S. antitrust reforms of the early Reagan years)—an “antitrust revolution”? This seems a close question to me. If the reform is to be internal, the existing institutions need to shake a leg—in seven years the ICN has roared to life as a governmentagency forum but the reforms achieved have been limited in comparison to the complexities to be overcome. ICN had a promising start, but performance tests need to continue ratcheting up.

What would external reform look like, perhaps following a global economic collapse or other major upheaval? A takeover of the international antitrust system by the WTO or absorption of antitrust into broader economic institutions like the IMF? A broad political movement in favor of a drastically different approach to antitrust—perhaps a broad rejection of antitrust or a sudden and profound cutback in its scope and power? It is difficult to picture the specifics.

Comedian Steven Wright—a bit of a surrealist, as comedians go—tells the joke about the photographer who drove himself crazy trying to get a close-up of the horizon. At its current rate of expansion, global antitrust will reach a point of crisis or collapse if the costs, burdens, and complexities cannot be reduced by at least one order of magnitude. With the overwhelming majority of world economic activity now subject to antitrust rules, with thousands of enforcers in hundreds of regional, national, and subnational jurisdictions, we can begin to glimpse the point on the horizon where that collapse occurs. Antitrust enforcers, economic policy makers, and leaders of government need to start planning how to avoid that crisis. To plan, we need to see more clearly what is happening out there on the horizon, where we are destined to reach the crisis point. We need to move in and get that close-up.

#### 2---The initial TTC recommendation is not a binding mandates---there’s no world in which the CP fiats implementation, so this is distinct from consult or conditions CP

SOC 92 [Supreme Court of Canada, Thomson v. Canada (Deputy Minister of Agriculture), 1992 CanLII 121 (SCC), [1992] 1 SCR 385, <https://www.canlii.org/en/ca/scc/doc/1992/1992canlii121/1992canlii121.html>, y2k]

The respondent first commenced an action in the Federal Court of Appeal, pursuant to s. 28 of the Federal Court Act, to have the Deputy Minister's decision to deny the security clearance set aside. The court held that, while the Deputy Minister was bound by the Review Committee's recommendation, the court did not have jurisdiction under s. 28 to review and set aside his decision. The respondent then sought certiorari to set aside the Deputy Minister's decision and mandamus to require the Deputy Minister to grant him security clearance. The judge denied the application. He concluded that "recommendations", according to the ordinary meaning of the word, was not binding. The Federal Court of Appeal reversed that decision, set aside the Deputy Minister's decision to deny security clearance and ordered him to grant it. At issue here is whether a Deputy Minister is bound to follow the "recommendations" of the Security Intelligence Review Committee, and more particularly, the meaning to be given the word "recommendations" in s. 52(2) of the Canadian Security Intelligence Service Act. Held (L'Heureux‑Dubé J. dissenting): The appeal should be allowed. Per La Forest, Sopinka, Gonthier, Cory, McLachlin and Stevenson JJ.: In order to interpret "recommendations" in s. 52(2), the Canadian Security and Intelligence Service Act must be read as a whole in order to ascertain its aim and object. When the words used in the statute are clear and unambiguous, no other step is needed to identify the Parliament's intention. The simple term "recommendations" should be given its ordinary meaning. "Recommendations" ordinarily means the offering of advice and should not be taken to mean a binding decision. There is nothing in either the section or the Act as a whole which indicates that the word "recommendations" should have anything other than its usual meaning.

#### “Resolved” means firm decision

AHD 6 American Heritage Dictionary, http://dictionary.reference.com/browse/resolved

Resolve TRANSITIVE VERB:1. To make a firm decision about. 2. To cause (a person) to reach a decision. See synonyms at decide. 3. To decide or express by formal vote.

#### Should” means “must” and requires immediate legal effect

Summers 94 (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

The legal question to be resolved by the court is whether the word "should"[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn13) in the May 18 order connotes futurity or may be deemed a ruling in praesenti.[14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn14) The answer to this query is not to be divined from rules of grammar;[15](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn15) it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.[16](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn16)

[CONTINUES – TO FOOTNOTE]

[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn13) "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation* *and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, [802 P.2d 813](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=802&box2=P.2D&box3=813) (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). [14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn14) In praesenti means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or immediately effective, as opposed to something that will or would become effective in the future [*in futurol*]. See Van Wyck v. Knevals, [106 U.S. 360](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=106&box2=U.S.&box3=360), 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

### No Blockchain Agreement

#### Europe says yes---partisan support means Europe will say yes, they’re just waiting for us to propose a concrete deliverable

Natasha Lomas 20, senior reporter for TechCrunch. "Europe will push to work with the US on tech governance, post-Trump" December 2 <https://techcrunch.com/2020/12/02/europe-will-push-to-work-with-the-us-on-tech-governance-post-trump/>

The European Union said today that it wants to work with US counterparts on a common approach to tech governance — including pushing to standardize rules for applications of technologies like AI and pushing big tech to be more responsible for what their platforms amplify.

EU lawmakers are anticipating rebooted transatlantic relations under the incoming administration of president-elect Joe Biden.

The Commission has published a new EU-US agenda with the aim of encouraging what it bills as “global cooperation — based on our common values, interests and global influence” in a number of areas, from tackling the coronavirus pandemic to addressing climate change and furthering a Western geopolitical agenda.

Trade and tech policy is another major priority for the hoped for reboot of transatlantic relations, starting with an EU-US Summit in the first half of 2021.

Relations have of course been strained during the Trump era as the sitting US president has threatened the bloc with trade tariffs, berated European nations for not spending enough on defence to fulfil their Nato commitments and heavily implied he’d be a lot happier if the EU didn’t exist at all (including loudly supporting brexit).

The Commission agenda conveys a clear message that the bloc’s lawmakers are hopeful of a lot more joint working — toward common goals and interests — once the Biden administration takes office early next year.

Global AI standards?

On the tech front the Commission’s push is for alignment on governance.

“The EU and the US need to join forces as tech-allies to shape technologies, their use and their regulatory environment,” the Commission writes in the agenda. “Using our combined influence, a transatlantic technology space should form the backbone of a wider coalition of like-minded democracies with a shared vision on tech governance and a shared commitment to defend it.”

Among the proposals it’s floating is a “Transatlantic AI Agreement” — which it envisages as setting “a blueprint for regional and global standards aligned with our values”.

While the EU is working on a pan-EU framework to set rules for the use of “high risk” AIs, some US cities and states have already moved to ban the use of specific applications of artificial intelligence — such as facial recognition. So there’s potential to align on some high level principles or standards.

(Or, as the EU puts it: “We need to start acting together on AI — based on our shared belief in a human-centric approach and dealing with issues such as facial recognition.”)

“Our shared values of human dignity, individual rights and democratic principles make us natural partners to harness rapid technological change and face the challenges of rival systems of digital governance. This gives us an unprecedented window of opportunity to set a joint EU-US tech agenda,” the Commission also writes, suggesting there’s a growing convergence of views on tech governance.

Talks on tackling big tech

Here it also sees opportunity for the EU and the US to align on tackling big tech — saying it wants to open discussions on setting rules to tackle the societal and market impacts of platform giants.

“There is a growing consensus on both sides of the Atlantic that online platforms and Big Tech raise issues which threaten our societies and democracies, notably through harmful market behaviours, illegal content or algorithm-fuelled propagation of hate speech and disinformation,” it writes.

“The need for global cooperation on technology goes beyond the hardware or software. It is also about our values, our societies and our democracies,” the Commission adds. “In this spirit, the EU will propose a new transatlantic dialogue on the responsibility of online platforms, which would set the blueprint for other democracies facing the same challenges. We should also work closer together to further strengthen cooperation between competent authorities for antitrust enforcement in digital markets.”

The Commission is on the cusp of unveiling its own blueprint for regulating big tech — with a Digital Services Act and Digital Markets Act due to be presented later this month.

Commissioners have said the legislative packages will set clear conditions on digital players, such as for the handling and reporting of illegal content, as well as setting binding transparency and fairness requirements.

They will also introduce a new regime of ex ante rules for so-called gatekeeper platforms that wield significant market power (aka big tech) — with such players set to be subject to a list of dos and don’ts, which could include bans on certain types of self-preferencing and limits on their use of third party data, with the aim of ensuring a level playing field in the future.

The bloc has also been considering beefing up antitrust powers for intervening in digital markets.

Given how advanced EU lawmakers are on proposals to regulate big tech vs US counterparts there’s arguably only a small window of opportunity for the latter to influence the shape of EU rules on (mostly US) big tech.

But the Commission evidently takes the view that rebooted relations, post-Trump, present an opportunity for it to influence US policy — by encouraging European-style platform rules to cross the pond.

### A2: Perm Other Issues---2NC

#### The need for a specific case & controversy is key to educational judicial debate

CRS 7, Legislative Attorney at the Congressional Research Service, “Mootness: An Explanation of the Justiciability Doctrine,” 2/7/7, https://www.everycrsreport.com/files/20070207\_RS22599\_d3fbfe7c990de4bea756c24fdab658c2a1016dcf.pdf

Under Article III of the U.S. Constitution, the jurisdiction of federal courts is limited to actual, ongoing cases and controversies.1 From this constitutional requirement comes several “justiciability” doctrines that may be invoked in federal court actions that could prevent plaintiffs from maintaining a legal claim against defendants.2 The four justiciability doctrines are standing, ripeness, political question, and mootness. These doctrines will render a controversy “nonjusticiable” if a court decides that any one of them applies.

Standing addresses whether the plaintiff is the proper party to assert a claim in federal court.3 Ripeness considers whether a party has brought an action too early for adjudication.4 The political question doctrine makes nonjusticiable controversies that involve an issue constitutionally committed to the political branches of government.5

There are two types of mootness: Article III mootness and prudential mootness.6 As the name implies, the former is derived from the constitutional requirement that judicial power be exercised only in “cases” or “controversies.”7 The latter concerns a federal court’s discretion to withhold use of judicial power in suits that—while not actually moot—should be treated as moot for “prudential” reasons.

Article III Mootness

Usually, a case or controversy must exist throughout all stages of federal judicial proceedings, and not just when the lawsuit is filed or when review is granted by an appellate court.8 The dispute must concern “live” issues, and generally, the plaintiffs must have a personal interest in the outcome of the case.9 The Supreme Court has described mootness as follows:

The “personal stake” aspect of mootness doctrine ... serves primarily the purpose of assuring that federal courts are presented with disputes they are capable of resolving. One commentator has defined mootness as “the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).”10

### Solvency---2NC

#### Overall effectiveness is impossible without harmonization

-- conflicts, simultaneous enforcement, and unilateral extraterritorial application are inevitable without harmonization

-- causes unpredictability and high cost of compliance

-- system ‘efficiency’ is low: antitrust is but over- and under-enforced due to duplication and gaps

Michael Ristaniemi 20, PhD Candidate in Commercial Law at the University of Turku, Vice President for Sustainability at the Metsä Group, Participant in the Visiting Scholar Programme at the University of California, Berkeley, “International Antitrust: Toward Upgrading Coordination and Enforcement”, Doctoral Dissertation, October 2020, https://core.ac.uk/download/pdf/347180879.pdf

Despite the success of voluntary cooperation, the *status quo* is, however, not without problems. On the contrary, due to increasing international trade, there is more business taking place that simultaneously affects several jurisdictions. This trend is underscored by the significant global influence of digital platforms and the underlying digital economy that transcends national frontiers.74 Further, the prevalence of competition laws and authorities means that there are also ever more jurisdictions whose competition laws may simultaneously apply and whose laws may be enforced simultaneously, including extraterritorially.

The increase in jurisdictions with competition law and enforcers is – in itself – a positive development, but not unconditionally. International antitrust has traditionally been dominated by American and European voices. This traditional dichotomy is already becoming broader, with regimes such as Brazil and Canada making interesting and relevant contributions.75 However, along with this increase in regimes with active views on antitrust increases in the complexity and difficulty for the primary market actor, the firm, to operate. The *status quo* is thus one of both substantial and procedural inconsistency, which leads to unpredictability for businesses as well as economic inefficiency in general.

Examples of problematic gaps and overlaps are numerous and diverse. One could highlight definition issues, such as those concerning joint ventures. Some jurisdictions differentiate joint ventures with a more independent nature (also known as “full-function”)76 from other cooperation relationships, while other jurisdictions do not.77 Also, expected firm conduct varies, as is clear from the diverging views on how to enforce conduct in a very strong market position. Some jurisdictions impose significant obligations to avoid exploiting its stakeholders,78 while others do not.79 Further, most jurisdictions allow export cartels as well as grant state aid either without restriction or even with the express purpose of improving their firms’ foreign business.80 These last two points where competition law is effectively excluded represent major gaps. All of this – both collectively and individually – creates true harm to business, which in turn hinders the efficiency of the international trading system.

Extraterritorial application of national competition law is a crude way of unilaterally trying to patch the gap created by allowing export cartels. Such an approach creates collateral damage by creating problems of its own, exacerbated by the drastic increase in competition regimes, which oftentimes adopt similar approaches. The *status quo* represents a significant coordination problem and calls for an update on the systemic and international level.

The growing influence of China, in particular, is noteworthy. Quite the newcomer to competition law – and to market economy more generally – China has the potential to alter the traditional power balance of international antitrust cooperation. Particularly China’s insistence of retaining strong reservations for considering its industry policy is a point of divergence, compared to the other major economic powers: the EU and the US.81 Ng argues that an underlying reason for this lies in its markedly more state-centered approach in comparison with most competition regimes that are consumer-centered.82 Should it so desire, China could leverage its influence to improve the legitimacy for such reservations. This would likely see support in a number of developing countries, which could create a significant counterweight.83

Despite the shortcomings in the current state of affairs, there does not, however, seem to be much appetite for change. Convergence is taking place through information sharing and national competition authorities are gaining experience and capacity, but the developments and plans of major powers and the main international organizations going forward appear largely incremental and technical in nature.84 Nothing transformational is in sight.

#### Siloed national regimes make enforcement gaps inevitable

Thanh Phan 18, Sessional Instructor in International Law at the University of Victoria, PhD Candidate at the Law Faculty at the University of Victoria, Doctoral Fellow at the Centre for International Governance Innovation, Former Transnational Merger Investigator and FTAs Negotiator at the Vietnam Competition Authority, Vietnam, “Realism and International Cooperation in Competition Law”, Houston Journal of International Law, Volume 40, Issue 1, 40 Hous. J. Int'l L. 297, April 2018, https://tinyurl.com/3s7rwtkc

Fourth, by conducting overlapping investigations in a certain cross-border case without cooperation, each competition authority may have a portion of evidence, but none of them may have thorough facts about the violation. 148 An international cartel may operate in different countries. Each of these countries' competition authorities can obtain evidence only within their territory, while missing any piece of evidence may make it difficult for them to prove and remedy such a transnational violation. 149 According to the OECD, cooperation allows a competition authority to use material of the counterparts and therefore offers authorities the opportunity to have more effective investigations and to generate efficiencies. 150

### NB Links---2NC

#### 1---DMA opposition, the plan undermines it---no thumpers, new policy is key---they are not expecting new laws

Laurie Clarke 21, senior reporter at Tech Monitor. "Could the US and EU really work together to rein in Big Tech?" June 17. https://techmonitor.ai/policy/big-tech/could-us-and-eu-really-work-together-rein-in-big-tech

Technology dominated EU-US talks that took place in Brussels this week. The two launched the Trade and Technology Council (TTC) to lead a “values-based global digital transformation”. At the same time, the White House issued a warning to the bloc about its Digital Markets Act – blockbuster legislation that takes aim at US tech giants. When it comes to regulating Big Tech, do the US and the EU now agree on more than they disagree?

US EU big tech

The TTC is pitched as a forum for EU-US collaboration on trade, economic and technology issues. Key priorities include cooperating on tech policy, collaborating on international technical standards (something that has become geopolitically fraught), cooperation on regulatory policy and enforcement, and the promotion of innovation by EU and US firms.

The collaboration on tech and regulatory policy is particularly novel, given it is a long-time sticking point between the EU and the US. “It […] gives us tools to address threats such as unfair competition and the misuse of new technologies,” said EU trade commissioner Valdis Dombrovskis in a statement. “This is a top priority for the EU, and we warmly welcome the fact that it is now also at the top of the transatlantic trade agenda.”

But how exactly this could work in practice is still in question. The Financial Times reported that the National Security Council, an arm of the White House, wrote to the EU last week to warn against “protectionist” tech policies that target US companies. In particular, the NSC was concerned by the “tone” of comments by European Parliament rapporteur for the Digital Markets Act, Andreas Schwab, who said the DMA should target only the five biggest US firms (Google, Apple, Amazon, Facebook, Microsoft).

The Digital Markets Act is the EU’s wide-ranging tech legislation that targets “gate-keeper” companies (i.e. Big Tech). It has not passed into law yet, and is due to be debated in the European Parliament. But the NSC warned against passing the legislation in a form that focuses too much on US companies. “Such policies will […] hinder our ability to work together to harmonise our regulatory systems,” the NSC missive reportedly read.

“The DMA narrowly targets a core group of tech companies, mostly American and Chinese ones, that the EU believes have amassed too much market power,” said Daniel Castro, director of the Center for Data Innovation, a think tank that receives funding from Big Tech companies. “This is a significant departure from past practices of regulators addressing anti-competitive market behaviour and it is only targeted at the digital sector… The United States should work with the EU, but it should also be pushing back against unfair, anti-innovation, and anti-American policies.”

Will the US oppose the EU’s Digital Markets Act?

There are other signs that US opposition to the DMA may be weaker than expected. Biden has just appointed Big Tech critic Lina Khan to chair of the Federal Trade Commission (FTC), with strong bipartisan support. This is seen as a win for progressives who would like to see the tech giants’ monopoly power reined in.

“It isn’t clear to me that [the DMA] will create a wedge issue,” says Jay Jurata, a partner and leader of the Antitrust & Competition Group at international law firm, Orrick. “The Biden administration’s appointment of Lina Kahn to the FTC, and immediate ascension to the Chair position, suggests that the administration plans to take a hard stance on antitrust in general, and digital gatekeepers in particular.”

The Biden administration’s appointment of Lina Kahn to the FTC, and immediate ascension to the Chair position, suggests that the administration plans to take a hard stance on antitrust in general, and digital gatekeepers in particular.

Jay Jurata, Orrick

While there were early murmurings that Biden could revert to the unashamedly pro-tech stance of the Obama administration (with former Google chief executive Eric Schmidt reportedly mooted for a senior role), those have been quelled by more recent developments.

“The comments reported from the NSC are one voice in the debate, but there are many other voices,” says Alec Burnside, a partner with Brussels-based Dechert, who represents businesses negatively impacted by Big Tech “gatekeepers”. He says the tide has now turned on antitrust in the US. “Already there are waves of US litigation under existing antitrust rules, but new laws are also proposed, and these target the GAFA [Google, Amazon, Facebook, Apple] in the same way as some would have the new EU DMA target the GAFA.”

But although there are signs the US really does want to work proactively with the EU on tech regulation, it is not yet a done deal. While Khan will be able to investigate and sue companies over antitrust violations, she will not be able to create new policies, and currently there are no US plans for new tech regulation.

There are also plenty of members of Congress who believe the US should push back more forcefully on the EU’s plans, and those who, although they criticise Big Tech, ultimately believe that attempts at regulation could harm innovation.

#### 2---Unilateral antitrust---it generates conflicts that spillover to broader disagreement*---also turns the case because lack of cooperation decks enforcement*

Ivo Waisberg 19, Professor, Catholic University of Sao Paolo. "International Antitrust Approaches and Developing Countries."

The unilateral extraterritorial application of antitrust law is a huge source of conflicts. The extraterritorial approach, especially when combined with the US effect doctrine, can raise different types of problems:

• It necessarily implies that two or more States will assert jurisdiction over the same conduct;40

• It can cause conflicts between competition policy and trade or industrial policy;41

• It can create tension in the international system;

Concerning the US system, private enforcement is likely to increase the tension, because foreign governments will often refuse to give information or consideration to private lawsuits.42

As Monti noted in relation to the EC extraterritorial application of antitrust law, in what can be taken as a general criticism, this kind of measure causes conflicts or discrepancies with rulings of foreign agencies, gives rise to conflicts with foreign governments, suffers of logistical fact-finding problems and enforcement difficulties.43

Extraterritoriality was established to face international practices that harm competition internally, but that was not enough. Zanettin concluded about its weaknesses:

“The extraterritorial application of competition law is a necessary, but limited, step to tackle foreign anticompetitive practices affecting the domestic market. The shortcomings of the unilateral use of extraterritoriality are all too clear: it is a potential of jurisdictional and political conflicts; it is hampered by the difficulty of obtaining incriminating information located abroad and of asserting jurisdiction over foreign persons; and it is a totally inadequate tool to remedy foreign export foreclosing practices. Its limits are even more obvious now that an increasingly number of countries have recourse to this instrument: enforcing decisions or information requests abroad is an even trickier task for domestic competition agencies that do not have the means and influence of the DOJ, the FTC or the European Commission. Furthermore, the simultaneous application of different national laws to foreign restrictive practices creates an increasingly complex regulatory environment, especially in the area of merger control”.

Furthermore, the difficulties associated with investigating and enforcing national law abroad – because access to information is hard – have also propelled antitrust jurisdictional issues to take the way of cooperation.

#### 3---Lack of consultation---the TTC was specifically designed to prevent passing new regulations without prior, binding consultation

CEO 9/28, Corporate Europe Observatory, a research and campaign group working to expose and challenge the privileged access and influence enjoyed by corporations and their lobby groups in EU policy making. "Tech lobby eyes opportunities created by new EU-US Trade and Tech Council" <https://corporateeurope.org/en/2021/09/tech-lobby-eyes-opportunities-created-new-eu-us-trade-and-tech-council>

Tomorrow EU and US counterparts will sit down together for the first meeting of the EU-US Trade and Technology Council (TTC). This is a new transatlantic 'regulatory cooperation' effort with a special focus on the tech sector. Much is at stake in these discussions: from regulating tech giants to standards for artificial intelligence. Corporate lobbyists are keen to get a new industry-driven tool.

“The US should not enact new privacy or technology trade control regulations without consulting with the EU; the EU should pursue bilateral consultation to ensure technology initiatives like the Digital Markets Act reflect the EU-US values-based alliance.”

This appeal was made to President Joe Biden by Karan Bhatia, Google’s Vice’ President of Government Affairs & Public Policy, urging him to accept the EU’s proposal to set up an EU-US Trade and Technology Council (TTC).

The TTC is a new forum for regulatory dialogues between the EU and the US put forward by the Commission President Von Der Leyen in December 2020. This body is a new attempt to restart the trade relationship with the US Administration, after the rough patch during the Trump Presidency. Tomorrow it will meet for the first time.

The launch of the Council, with a particular focus on the tech sector, comes at a time when both blocs are looking at new ways to address the growing power of Big Tech firms and new technologies like Artificial Intelligence systems. Proposals at the EU level are particularly advanced as the EU institutions are currently discussing new rules to tackle the excessive market power of Big Tech and rules for handling illegal and harmful content (including disinformation); as well as high-risk artificial intelligence technology (including facial recognition and manipulative or discriminatory systems).

Von Der Leyen’s pitch to Biden included the need to work together on issues such as reducing trade barriers, agreeing “compatible standards and regulatory approaches for new technologies”,“deepening research collaboration and promoting innovation and fair competition”; but also foreign investment screening, intellectual property rights, forced transfers of technology, and export controls.

#### 4---Enforcers, they would apply the plan extraterritorially. That blows up US-EU trade relations.

Kava 19, J.D./M.B.A. Candidate, 2020, University of Maryland Francis King Carey School of Law and Johns Hopkins University Carey School of Business. (Samuel F., “The Extraterritorial Application of the Sherman Anti-Trust Act in the Age of Globalization: The Need to Amend the Foreign Trade Antitrust Improvements Act (FTAIA) & Vigorously Apply International Comity”, 15 J. Bus. & Tech. L. 135, pg. 157-159 Available at: <https://digitalcommons.law.umaryland.edu/jbtl/vol15/iss1/5>)

A. Adverse Political and Economic Effects

Before the FTAIA was enacted, in 1982, many of the United States’ closest allies were disgruntled by the U.S. courts’ expansive extraterritorial application of the Sherman Anti-Trust Act.152 These nations confided in the territorial principle, and believed it “axiomatic that in anti-trust matters the policy of one state may be to defend what it is the policy of another state to attack.”153 The United Kingdom, one of the most outspoken allies against the United States’ “attempt[] to impose [its] domestic laws on persons and corporations who are not U.S. nationals and who are acting outside the territory of the United States,” viewed the extraterritorial application of the Sherman Anti-Trust Act as ironic given the fact “the United States was founded by those who took exception to little matters of taxation being imposed extraterritorially.”154 Thus, in an attempt to “protect their nationals from criminal [and civil] proceedings in foreign courts where the claims to jurisdiction [were] excessive and constitute[d] an invasion of sovereignty,” foreign nations enacted blocking statutes to resist the extraterritorial application of the Sherman Act.155

The blocking statutes of each nation varied, but all served to “block the discovery of documents located in their countries and bar the enforcement of foreign judgements.”156 The United Kingdom achieved these goals with the Protection of Trading Interests Act, France with the French Blocking Law, Canada with the Foreign Extraterritorial Measures Act, and Australia with the Foreign Proceedings Act.157 The conflicting laws between the United States and its foreign counterparts created tremendous uncertainty regarding what nation’s laws would be applied in the event of a cross-border dispute. According to Nuno Limáo and Giovanni Maggi, economists from the University of Maryland and Yale University, “as the world becomes more integrated, the gains from decreasing trade-policy uncertainty should tend to become more important relative to the gains from reducing the levels of trade barriers.”158 should tend to become more important relative to the gains from reducing the levels of trade barriers.”158

Essentially, for trade to prosper, it is more important to provide producers and consumers with predictability and certainty (regarding the rule of law) rather than enacting laws that focus on free trade economics. Accordingly, it is in the best interest of governments to focus on unifying its laws before negotiating for the elimination of tariffs or quotas. This is not to say that eliminating trade barriers is not vital to the health of the economy—in fact, tariffs, quotas, and other trade barriers are proven to adversely affect all parties involved in the chain of distribution—however, it is more important to unify laws before focusing on the elimination of any trade barriers.159

As mentioned in Part I.C., the complaints of U.S. exporters and foreign governments were heard, and the United States Congress enacted the FTAIA “to address the concerns of foreign governments that the effects test established in the Alcoa case had not made clear the magnitude of the U.S. effects required to support a claim under the Sherman Act.”160 Thus, the FTAIA was implemented to bring certainty to consumers and producers by requiring that “conduct must have a ‘direct, substantial, and reasonably foreseeable effect’” for the Sherman Anti-Trust Act to apply extraterritorially.161 This language provided the foreign community with temporary relief, and gave producers and consumers the certainty and predictability needed to establish confidence in the markets and continue trading.

However, since the passage of the FTAIA in 1982, the world has witnessed a remarkable increase in globalization, such that most conduct that takes place today has a “direct, substantial, and reasonably foreseeable effect” 162 on the U.S. economy. Epitomizing the obscureness of the FTAIA, is the fact that U.S. enforcement agencies—i.e. the U.S. Department of Justice and the Federal Trade Commission—have taken an aggressive approach to pursuing international antitrust claims. In 2017, the U.S. Department of Justice (“DOJ”) and Federal Trade Commission (“FTC”) published the International Guidelines—a publication “explaining how the agencies intend to enforce U.S. antitrust laws against conduct occurring outside the United States.”163 The International Guidelines have taken the broadest approach in determining if conduct is “direct”—finding if there is a “reasonably proximate causal nexus between the conduct and the effect” conduct is “direct”—and the narrowest view that international comity bars enforcement of U.S. antitrust laws only when it is impossible for the actor to comply with both U.S. law and its foreign nation’s law.164 Thus, because the FTAIA has become ineffective and there is a risk of further expansion of the extraterritorial application of the Sherman Anti-Trust Act with Apple v. Pepper, foreign nations will almost certainly strive to adopt modern and effective blocking statutes. These blocking statutes will revitalize uncertainty in the markets, and the global economy will be adversely affected.

In addition, because our world is more integrated, compared to the time when the FTAIA was implemented, the adverse economic effects may be worse if foreign nations pursue modern blocking statutes. To hedge against judicial uncertainty, corporations will likely react by hiring more robust legal teams. By re-allocating money to legal costs, with the hopes of avoiding potential litigation and ensuring compliance with all nations’ laws, corporations would have foregone the opportunity to spend time and money on: (1) scaling its current line of products (which would decrease the price of goods for consumers), (2) enhancing the capabilities of its current line of products (which improve consumer capabilities and increase corporate profits), or (3) creating new and innovative products (which would benefit both consumers and producers). Thus, because corporations would be forced to spend more resources on avoiding litigation rather than research and development with the new blocking statutes, consumers, producers, distributors, and the economy as a whole will be adversely affected.

Overall, there is a significant risk that foreign nations will look towards blocking statutes to limit the extraterritorial application of the Act. The conflicting laws of the United States and international community will lead to judicial uncertainty, which will have an adverse impact on the global economy. Businesses will spend more time and money to avoid disputes; thus, undermining corporate profits, a customer’s ability to purchase low cost goods, and the overall health of the global economy. The only certainty is that trade will slow down as a result of trade policy uncertainty. To avoid these adverse economic effects, it would be advantageous for the United States Congress to amend the FTAIA in a way that limits the effects of the extraterritorial application of the Sherman Anti-Trust Act. Specifically, Congress should limit the effects of the extraterritorial application of the Sherman Anti-Trust Act by expressly providing courts with a robust international comity analysis.

#### That greenlights European antitrust unilateralism and makes the TTC ineffective

Meredith Broadbent 9/15, Senior Adviser (Non-resident), Scholl Chair in International Business. "Implications of the Digital Markets Act for Transatlantic Cooperation" September 15, 2021. <https://www.csis.org/analysis/implications-digital-markets-act-transatlantic-cooperation>

EU-U.S. Trade and Technology Council

The formation of the EU-U.S. Trade and Technology Council (TTC) announced at the U.S.-EU summit on June 15, 2021, for the purpose, according to a European Commission press release, of leading a “values-based digital transformation of [Europe]” should be a central venue for working through many of the issues raised in this paper. According to the bilateral summit statement, the major goals for the TTC include to “seek common ground and strengthen global cooperation on technology, digital issues and supply chains” and “to facilitate regulatory policy and enforcement cooperation and, where possible, convergence.” The TTC is co-chaired by EU Competition Commissioner Margrethe Vestager, EU Trade Commissioner Valdis Dombrovskis, U.S. Secretary of State Antony Blinken, U.S. Secretary of Commerce Gina Raimondo and U.S. Trade Representative Katherine Tai. One of the TTC’s main goals is to “facilitate cooperation on regulatory policy and enforcement and promote innovation and leadership by EU and U.S. firms.”

There will be 10 working groups led by the relevant departments, services, and agencies including: technology standards cooperation (AI and Internet of Things, among other emerging technologies); climate and green tech; data governance and technology platforms; the misuse of technology threatening security and human rights; investment screening; and promoting SME access to and use of digital technologies. In parallel, there will be a Joint Technology Competition Policy Dialogue that will “focus on approaches to competition policy and enforcement, and increased cooperation in the tech sector.”

Although the organization and subject matter to be addressed by the TTC working groups and the competition dialogue is still preliminary, the issue of online platforms will likely be woven into discussions in all the various working groups. It will be important for officials to discuss policy implications of platform regulations like the DMA in all the relevant working groups. For instance, the working group on promoting SME access to and use of digital technologies will likely involve discussion on the role of large platforms in supporting and inhibiting SME access to digital tools.

As Europe debates the DMA in Parliament, and amendments to antitrust statutes are being considered in Congress, at a time when the G7 has called for coordination on digital issues, it makes sense for U.S. and EU officials to engage in an organized dialogue that will consider concerns about the DMA raised in this paper. It will be important for discussions to proceed in the context of broader announced objectives for digital transformation in Europe and renewed transatlantic cooperation. Indeed, it would be highly ironic if organized bilateral consultations on the proposed DMA did not occur, given the professed objectives of each side and the language of the common summit statement.

An email, quoted in the Financial Times, from the U.S. National Security Council to the EU delegation in Washington just prior to the U.S.-EU summit lays out U.S. problems with the proposed DMA:

We are particularly concerned about recent comments by the European Parliament rapporteur for the Digital Markets Act, Andreas Schwab, who suggested the DMA should unquestionably target only the five biggest U.S. firms. . . . Comments and approaches such as this make regulatory cooperation between the U.S. and Europe extremely difficult and send a message that the [European] Commission is not interested in engaging with the United States in good faith to address these common challenges in a way that serves our shared interests. . . . Protectionist measures could disadvantage European citizens and hold back innovation in member-state economies. Such policies will also hinder our ability to work together to harmonize our regulatory systems.

Impact of Future R&D Investment in Europe

While not directly the subject of this paper, a few words should be said regarding R&D capabilities of U.S. online platforms going forward. Given that a principal goal of the TTC is to promote innovation and digital leadership by U.S. and EU firms, the DMA proposal and its potential impact on the strength of U.S. tech champions should be assessed in terms of future private sector support for national security-related R&D and dual-use R&D in Europe. It should be remembered that today U.S. business funds nearly three times as much R&D as the federal government. Technology needed to support national security objectives is reliant on increased collaboration and partnership with leading-edge technology companies that have not traditionally been part of the U.S. government’s innovation ecosystem.

According to the Congressional Research Service, “some defense experts and policymakers have recognized the shift in the global R&D landscape and the need for [the Department of Defense (DOD)] to rely increasingly on technologies developed by commercial companies for commercial markets.” Two of the U.S. companies targeted by the DMA, Alphabet/Google and Apple, together invested about €37 billion ($44 billion) in R&D in 2019. Taken in total, GAFAM companies invested roughly $70.5 billion in R&D in 2018. The top three European spenders on R&D were automobile companies: Volkswagen, Daimler, and BMW invested a total of €30.3 billion ($36 billion) in R&D in 2019.

In testimony before the Senate Armed Services Committee, then-defense secretary Mattis stated that DOD would “leverage commercial research and development to provide leading-edge capabilities to the Department while encouraging emerging nontraditional technology companies to focus on DOD-specific problems.” As listed, these include AI; autonomy; cyber capabilities; directed energy; fully networked command, control, and communications technology; microelectronics; quantum science; space; and 5G.50 army futures. As much as large U.S. digital platform companies targeted by the DMA generate outsized sales and profits and possess large cash reserves, it will be important for the TCC to explore partnerships with these firms that could increase innovation and digitization in Europe and contribute to transatlantic security objectives relating to some of the challenges listed by DOD. As the digital economy continues to evolve, it will be important for the United States and the European Union to explore new models of collaboration and partnerships with large online firms that could offer benefits for transatlantic economic security and defense challenges. A focus on promoting the environment for innovation and technology development in Europe will be key to these discussions, and unanticipated impacts of the DMA could negatively affect these efforts.

Urging the TTC leaders to push for specific objectives, a recent statement by Finnish trade minister Ville Skinnari was supportive of identifying methods for increasing R&D. The European Union and the United States should use the TTC to take “a more holistic view” of industrial policy, innovation, and R&D, he said. “In other words, of course we need investments.”

The Future of the DMA: Next Steps in the European Union

The DMA is a matter of “ordinary legislative procedure” within the European Union and therefore must be jointly agreed to by the European Parliament and the European Council. The European Commission’s draft legislation was initially referred to the Internal Markets and Consumer Protection Committee in the Parliament. On June 1, 2021, German MEP and rapporteur Andreas Schwab released a draft report on the DMA proposal, which outlines several amendments to it. As previously mentioned, the Schwab report calls for adjusting the turnover threshold from €6.5 billion to €10 billion, a change that would more precisely limit the reach of the legislation to just U.S. platforms.

Another fundamental change recommended in the Schwab report is an expanded role for national authorities. Amendment 28 (to Recital 77a) states that “national courts will have an important role in applying this Regulation and should be allowed to ask the Commission to send them information or opinions on questions concerning the application of this Regulation.” The European Commission would still maintain ultimate authority over the DMA, but the report highlights the goal of increased interventions by national authorities.

In parallel to the European Parliament debates and vote by simple majority, the European Council will deliberate and agree to its negotiating position on the DMA. Then, trialogue negotiations will begin, which involve the Council, the European Parliament, and the European Commission. France, one of Europe’s staunchest proponents of interventionist digital regulation alongside Germany, will hold the Council of the EU presidency for six months beginning in January 2022, meaning the parliament will likely have a sympathetic Council for the expected home stretch of DMA negotiations in Brussels.

Depending on the length and intensity of the legislative review process and the number of amendments, the European Parliament is anticipated to adopt the legislation sometime in 2022, although the earliest implementation would likely occur in 2023. Under this expected timeline, the DMA could have a short implementation phase compared with the GDPR, underscoring the large appetite for swift adoption of digital platform reform rules.

Conclusion

At the U.S.-EU summit, the Biden administration embraced the EU goal of establishing the bilateral TTC, which has an ambitious set of objectives. The complexity of the ever-evolving transatlantic digital economy and Europe’s relatively poor performance in nurturing global tech champions so far makes concrete progress on transatlantic cooperation and partnership on digital economy issues urgent. In launching the TTC, the United States and the European Union pledged to coordinate on shared economic challenges, including China’s “coercive economic practices.” U.S. secretary of commerce Raimondo emphasized the importance of greater coordination on the DMA. Private sector meetings held in conjunction with the summit underscored the importance of commercial collaboration, including on data flows and competition policy.

The DMA proposal is one in a series of initiatives the European Union is implementing to cement its position as a first-mover of standards and agenda-setter for global technology regulation. It cannot be ignored that many in Europe see the DMA package as an integral part of the European Union’s ambitions for European “technological sovereignty,” with the overall goal of building independent, self-reliant systems across a wide range of fields, but particularly in the digital sector.

As French president Macron has characterized his intentions, “If we want technological sovereignty, we'll have to adapt our competition law, which has perhaps been too much focused solely on the consumer and not enough on defending European champions."

These are sentiments that could turn out to conflict with the more ambitious cooperative goals of the TTC. Much like the GDPR, which was concluded in 2016 and implemented in 2018, the DMA is a far-reaching proposal that stands to have profound effects on the digital economy in Europe and on U.S. national tech champions partnering with European innovators and serving European consumers.

As currently proposed, the DMA threatens to impose heavy-handed antitrust measures and to exclusively levy punitive fines on large U.S. firms, while leaving other countries’ tech firms—namely European, Chinese, and perhaps Russian companies supplying essentially the same services—untouched. Europe’s success in assuming the role of global standards-setter in the area of privacy under the GDPR has energized Brussels, as it seeks further control over the business practices of successful U.S. companies.

With competition policy—as it applies to digital platforms—under review on both sides of the Atlantic, there is a unique opportunity for real collaboration. It is timely to discuss industrial policy regulation, such as the Digital Markets Act, where EU and U.S. approaches are likely to differ. A key element of the TTC should be agreed improvements in the proposed DMA to ensure that basic, multilateral commitments for transparency, due process, national treatment, and nondiscrimination embodied in the WTO continue to be respected by European regulators in the digital space.

## Adv 1

### Solvency---2NC

#### Enforcement is impossible---clandestine techniques can’t be detected.

Treacy and Latham ’20 [Pat; Alex; 2020; Senior Partner, Bristows LLP; Trainee Solicitor, Bristows LLP; 602 European Competition Law Review; “Blockchain and competition law,” https://www.bristows.com/app/uploads/2021/01/2020.12-ECLR-Blockchain-and-competition-law.pdf]

Public open blockchains present a problem for law enforcement due to the evidentiary quality of the records held within them. In conventional record keeping, records have a physical signature and date and are placed in proximity to other records like them, this means that the perpetrator of an act is identified as soon as the practice is recognised. With blockchain determining the genuineness of the author, and therefore the legal entity to pursue, enforcement is challenging as there is no explicit and stable link between a transacting user and a real world legal entity. 48 There have been efforts to implement tracking services on large blockchains,49 however, asisthe case with the many digital technologies, clandestine techniques can often develop in concert or faster than the efforts to detect them.50 Furthermore, blockchain platforms cannot simply be closed or shut down as the decentralised nature of blockchain means that there is no central entity to target and therefore enforceable remedies are challenging.

#### Everyone is anonymous and you can’t turn it off – even if attribution is perfect, it solves nothing

Kapanazde 21 [Lika, Master of Laws, Comparative Private and International Law at New Vision University. "The Challenges of Blockchain Technology to Antitrust Law." https://openscience.ge/handle/1/2670]

Anticompetitive practices that violate antitrust laws are usually detected and then stopped and sanctioned by the public authorities. However, doing so in relation to the blockchain technology is tricky, as identities of the perpetrators are anonymous, it is impossible to determine the relevant jurisdiction and remedy the anticompetitive practices due to the immutability of the blockchain.

Antitrust authorities have no ability to detect anticompetitive practices as well as the identification of users who engage in those practices, due to the privacy and pseudonymity of the users.98 If new technologies develop, that enable tracking such practices and perpetrators by the public authorities, it would significantly affect the cornerstone “values” of the blockchain and change the nature of it. Therefore, it is highly unlikely, to implement such technologies on the blockchain. Besides, inherent nature of the blockchain creates a real barrier to antitrust enforcement authorities to remedy, delete or stop anticompetitive practices, since the network is distributed, and no one is in control, but at the same time everybody is, except for the authorities themselves.99 Even if authorities will have a power to track the practices and determine the identities of the perpetrators, they will not be able to stop such practices. Immutability of blockchain ensures, that platform will continue to function (as long as the people who interact with it pay the transaction fees charged by miners who support the blockchain) and there is no server to shut down the blockchain, even if authorities impose strict regulation or penalties on the original parties who developed or promoted such blockchain.100 In other words, if anticompetitive practices are implemented on a blockchain and public authorities detect them, authorities will not be able to stop it and blockchain will continue to perform the transactions.

#### Enforcement is literally impossible---colluders can eliminate all evidence.

---authorities have no way to get evidence from the blockchain that collusion even happened because the colluders can destroy the encryption keys and rewrite the ledger to make it seem like nothing happened

Catalini & Tucker 18. Christian Catalini: MIT Sloan School of Management, MIT Cryptoeconomics Lab and NBER; Catherine Tucker: MIT Sloan School of Management, MIT Cryptoeconomics Lab and NBER. “Antitrust and Costless Verification: An Optimistic and a Pessimistic View of the Implications of Blockchain Technology.” MIT Initiative on the Digital Economy, June 19, 2018. https://ide.mit.edu/sites/default/files/publications/SSRN-id3199453.pdf

We end by noting two more traditional ways that deviations from the premise of a permissionless blockchain could lead to more traditional market power concerns. Permissioned blockchains have much in common with traditional databases. The major difference is that, unlike in a database controlled by a single entity, a blockchain-based ledger may have accurate historical records of all changes made to a piece of information replicated across multiple entities. For example, a financial blockchain could span multiple banks or financial institutions operating in the same market. In theory, of course, better transaction record-keeping may make electronic discovery easier for antitrust (and other) authorities. However, the current state of the rules surrounding electronic discovery and the format in which such data is delivered in the legal system is one of disarray, often making it expensive to extract critical information in a cost effective manner. The effect of blockchain on ediscovery is therefore not clear and may involve transition costs (Miller and Tucker, 2012), and in the case of encrypted data could lead to situations where antitrust authorities have no way of recovering the original information, for example if the encryption keys have been destroyed. It is also important to highlight that permissioned blockchains are not necessarily immutable, and key participants could technically collude to rewrite the log of transactions before discovery takes place. Furthermore, under the guise of the need to protect confidential information or privacy, participants in a permissioned system could tightly control which participants receive access to different pieces of information, leading to entrenchment of market power. The risk of collusion is also present when industry-based consortia are formed to develop a shared blockchain solution. 40 consortia have been formed over the past six months9, the majority of which are focused on financial services. As ever, when competing firms work together, there is the potential that this repeated contact could facilitate collusion. This possibility was discussed in detail by Cong and He (2018), who argue that a potential solution is to regulate for separation of consensus record-keepers from users. Furthermore, a distributed ledger could be used in theory to allow for better monitoring of collusive price arrangements, as participants could design it in a way that allows them to deanonymize the transactions of competitors or at least observe aggregate transaction patterns. This could be enhanced by the use of smart contracts and artificial intelligence to automatically respond to changes in the marketplace or actions by participants, further obfuscating collusive actions and facilitating the implementation of price or quantity setting arrangements.

#### More warrants – geography, identification, and scope

Catalani & Tucker 18 [Christian Catalini: MIT Sloan School of Management, MIT Cryptoeconomics Lab and NBER (catalini@mit.edu). Catherine Tucker: MIT Sloan School of Management, MIT Cryptoeconomics Lab and NBER (cetucker@mit.edu). "Antitrust and Costless Verification: An Optimistic and a Pessimistic View of the Implications of Blockchain Technology." https://ide.mit.edu/sites/default/files/publications/SSRN-id3199453.pdf]

Given this optimism about the effects of blockchain technology on the need for antitrust enforcement, it may be surprising to think that blockchain may also pose huge difficulties for antitrust authorities should there ever need to be enforcement. In the same way the decentralized nature of blockchain technology allows for network effects to emerge without assigning market power to a platform operator, the absence of a central entity could constitute a challenge for antitrust. Intellectually and practically, antitrust enforcement is designed to tackle instances where market power has been centralized, and consequently has not been set up for cases where there are explicit rules designed to ensure decentralization.

Typically antitrust authorities try to stop entrenched firms from using their market power to harm consumer welfare; in parallel they also maintain guidelines for horizontal and vertical mergers, analyze proposed mergers and block actions that might allow merged firms to use their resulting market power to hurt consumer welfare. In both of these cases, there is a clear notion of a firm (or perhaps, in the case of a cartel, a consortium of firms) which can be the focus of an investigation, and which will be a target for potential fines and prosecution. Blockchain technology is different because it removes the need for a firm to manage the transactions that occur on a digital platform. Indeed, the entire premise of a permissionless blockchain-based platform is that it has merit because it is completely decentralized and does not need a single entity to sponsor it or any actual firm or third-party to support its operations. Whereas the market is nascent and currently no cryptocurrency or blockchain project has reached any meaningful market power, at scale some of the projects will have enough market share to influence prices and consumer welfare. If the suppliers of resources (e.g. miners in an ecosystem like Bitcoin, data storage providers in a decentralized storage network like Filecoin or Sia) use their control over key inputs to shape competition on a decentralized marketplace in their favor, it will be difficult for antitrust to intervene, as many of these suppliers could be small, hard to identify and geographically dispersed. Similar tensions have already materialized within the Bitcoin ecosystem between miners and the developers of consumer-facing applications (e.g. payments, digital wallets etc), since the two sides have conflicting incentives regarding how to scale the Bitcoin network to support more transactions per second.8

### A2: Arms Control

#### Blockchain’s only relevant for arms control if the chains are private and controlled by states – opposite what the plan promotes!

Michal Onderco 21, Associate Professor of International Relations in the Department of Public Administration and Sociology at Erasmus University Rotterdam; and Madeline Zutt, research associate at Erasmus University Rotterdam, 2021, “Emerging technology and nuclear security: What does the wisdom of the crowd tell us?,” Contemporary Security Policy, 42(3), pp. 286-311

Our third finding focuses on whether emerging technologies could enhance or impede nuclear disarmament efforts. Some work has already exposed how new technologies have the potential to strengthen nuclear disarmament and verification measures. A prototype “SLAFKA” was recently jointly developed by a nuclear regulator in Finland (STUK), the University of New South Wales in Australia, and the Stimson Center in the United States which tests whether a distributed ledger technology (DLT) can effectively safeguard nuclear material (Stimson Center, 2020). A DLT platform is “a system of electronic records that enables independent entities to establish consensus around a “ledger”—without relying on a central coordinator to provide the authoritative version of the records” (Rauchs et al., 2018, p. 23). Blockchain is the most well-known type of distributed ledger. Importantly, blockchain is structured in such a way that all who participate in the shared ledger must agree upon a set of records or data, and this data cannot be changed or tampered with by one actor alone (Rockwood et al., 2018). When it comes to accounting for nuclear materials, blockchain could be used by member states to confidentially and securely provide data to the IAEA (Vestergaard, 2018). By using a shared ledger system, the transmission of data by a member state would be visible to other member states, while maintaining the anonymity of participants (Rockwood et al., 2018).

In a recent report, Burford (2020) notes that the characteristic features of blockchain, namely its immutability and security as a data management tool, are uniquely suited to “help to build technical capacity among [non-nuclear weapons states] and habits of cooperation among NPT parties, while protecting proliferation-sensitive data” (p. 21). Finally, others have noted that advances in image-recognition software combined with the increased sophistication in and availability of satellite imagery could open up space for more actors to get involved in verification activities (Kaspersen & King, 2019). This would make verification more robust by allowing a greater number of states to participate in what has traditionally been the domain of states that are more technologically superior.

#### Adversaries ignore norms.

Payne ’15 [Keith; July 2015; PhD, Professor and Head of the Graduate Department of Defense and Strategic Studies at Missouri State University; “US Nuclear Weapons and Deterrence,” Air & Space Power Journal, https://www.airuniversity.af.mil/Portals/10/ASPJ/journals/Volume-29\_Issue-4/V-Payne.pdf]

Realists in this regard are from Missouri, the “show me” state, and ask utopians to explain how, why, and when a powerful new cooperative international norm with corresponding international institutions will become a reality. Realists point to the unhappy history of the unmet claims and dashed hopes of the 1928 Kellogg-Briand Pact (intended to prevent offensive war by global legal agreement), the League of Nations, and the United Nations. To be sure, the future does not have to be bound by the past, but before moving further toward nuclear disarmament, realists want to see some clear evidence of the emerging transformation of the global order—not just the claim that it can occur if all key leaders are so willing, faithful, and visionary and can “embrace a politics of impossibility.”12 As the old English proverb says, “If wishes were horses, then beggars would ride.”

But has not everything changed in the twenty-first century? Has not the end of the Cold War ushered in a new global commitment to cooperation, the rule of law globally, and benign conflict resolution? The unarguable answer is no. Russian military actions against Georgia in 2008 and Ukraine since 2014 (the latter in direct violation of the 1994 Budapest Memorandum signed by Russia, Great Britain, and the United States) are sufficient empirical evidence to demonstrate that Thucydides’ stark description of reality is alive and well. China’s expansionist claims and military pressure against its neighbors in the East and South China Seas teach the same lesson.

Why is this reality significant in the consideration of nuclear weapons? Because in the absence of reliably overturning the powerful norm of raison d’État and Thucydides’ explanation of international relations, states with the capability and felt need will continue to demand nuclear capabilities for their own protection and, in some cases, to provide cover for their expansionist plans. To wit, if Ukraine had retained nuclear weapons, would it now fear for its survival at the hands of Russian aggression? Former Ukrainian defense minister Valeriy Heletey and members of the Ukrainian parliament have made this point explicitly, lamenting Ukraine’s transfer of its nuclear forces to Russia in return for now-broken security promises of the Budapest Memorandum.13

This lesson cannot have been lost on other leaders considering the value of nuclear weapons. Nor is it a coincidence that US allies in Central Europe and Asia are becoming ever more explicit about their need for US nuclear assurances under the US extended nuclear deterrent (i.e., the nuclear umbrella). They see no new emerging, powerful global collective security regime or cooperative norms that will preserve their security; thus, they understandably seek the assurance of power, including nuclear power. The Polish Foreign Ministry observed in a recent press release that “the current situation reaffirms the importance of NATO’s nuclear deterrence policy.”14 This reality stands in stark contrast to utopian claims that powerful new global norms and international institutions will reorder the international system, overturn Thucydides, and allow individual states to dispense with nuclear weapons or the nuclear protection of a powerful ally. As the Socialist French president Francois Hollande has said, “The international context does not allow for any weakness. . . . The era of nuclear deterrence is therefore not over. . . . In a dangerous world—and it is dangerous—France does not want to let down its guard. . . . The possibility of future state conflicts concerning us directly or indirectly cannot be excluded.”15 There could be no clearer expression of Thucydides’ description of international relations and its contemporary implications for nuclear weapons.

Opponents of the administration’s plan to modernize the US triad now double down on the utopian narrative by insisting that the United States instead lead the way in establishing the new global norm by showing that Washington no longer relies on nuclear weapons and does not seek new ones. Washington cannot expect others to forgo nuclear weapons if it retains them, they say, and thus it must lead in creation of the new norm against nuclear weapons by providing an example to the world. For instance, “by unilaterally reducing its arsenal to a total of 1,000 warheads, the United States would encourage Russia to similarly reduce its nuclear forces without waiting for arms control negotiations.”16 A good US example supposedly can help “induce parallel” behavior in others.17 If, however, the United States attributes continuing value to nuclear weapons by maintaining its arsenal, “other countries will be more inclined to seek” them.18

Nuclear realists respond, however, that the United States already has reduced its nuclear forces deeply over the last 25 years. America cut its tactical nuclear weapons from a few thousand in 1991 to a “few hundred” today.19 Moreover, US-deployed strategic nuclear weapons have been cut from an estimated 9,000 in 1992 to roughly 1,600 accountable warheads today, with still more reductions planned under the New START Treaty.20 The United States has even decided to be highly revealing of its nuclear capabilities to encourage others to do so, with no apparent effect on Russia, China, or North Korea.21 America has adhered fully to the reductions and restrictions of the 1987 Intermediate-Range Nuclear Forces Treaty—the “centerpiece of arms control”—but the Russians now are in open violation. As former undersec- retary of state Robert Joseph stated recently, decades of deep US reductions “appear to have had no moderating effect on Russian, Chinese or North Korean nuclear programs. Neither have U.S. reductions led to any effective strengthening of international nonproliferation efforts.”22 Utopians want the United States to lead the world toward nuclear disarmament by its good example, but no one is following.

The basic reason, realists point out, is that foreign leaders make decisions about nuclear weaponry based largely on their countries’ strategic needs, raison d’État, not in deference to America’s penchant for nuclear disarmament or some sense of global fairness. A close review of India by S. Paul Kapur, for example, concluded that “Indian leaders do not seek to emulate US nuclear behavior; they formulate policy based primarily on their assessment of the security threats facing India.”23 The same self-interested calculation is true for other nuclear and aspiring nuclear states.

## Adv 2

### Defense

#### No spyware impact, but no chance of deepening global agreement on norms either

Wolfgang Kleinwächter 21, International Communication Policy and Regulation in the Department for Media and Information Studies at the University of Aarhus, 1/8/21, “Internet Governance Outlook 2021: Digital Cacaphony in a Splintering Cyberspace,” https://circleid.com/posts/20210108-internet-governance-outlook-2021-digital-cacaphony/

One thing is for sure: 2021 will probably see little global consensus. The digital cacophony will become louder. Driven by local needs, governments tend to prioritize the development of national policies. Although all sides recognize that national solutions need a functioning global information infrastructure in an interconnected world, the appetite to intensify mutual beneficial global cooperation, compromise, and find consensus is very low.

On the other hand, there is a more or less a silent agreement that the protection of the public core of the Internet—that is, the functioning of the global mechanisms for the management of root servers, domain names and IP addresses—is in the interest of all sides. It seems that some Internet Governance battles of the past are over. ICANN is not anymore in the line of geo-political fire. Its technical service is needed by everybody.

What ICANN is doing is called now by ICANNs CEO & President Göran Marby “Technical Internet Governance” (TIG). ICANN is afraid to get pulled into a new round of political arm-twisting. Marby’s more neutral “TIG language” goes back to the Internet Governance definition and the consensus of the WSIS Tunis Agenda from 2005, which differentiated between the “development” and the “use” of the Internet. The political Internet Governance problems, which emerged in the last 15 years, are more related to the “use” of the Internet, less to its “development.” And the pandemic has shown that regardless of the different national Corona approaches, the seamless and silent functioning of the Internet was a great gift for everybody to reduce the damage that came with Covid-19.

Insofar, we can see an interesting contradiction: On the lower layer—the “development” or “TIG”-Layer—the Internet remains unfragmented. On the upper layer—the “use” or “IG”-Layer—a special variant of Internet fragmentation, now labeled as “Internet Bifurcation,” is growing. Nevertheless, there are interlinkages between the two layers. Technical issues do have political implications and political problems have a technical component. It will be interesting to watch how the interplay between technology and policy will evolve in the years to come. In any case, 2021 will be a year where the digital cards on the cybertable will be reshuffled.

#### No cyber impact – entities lack resources, skills, and expertise to cause damage. Uncertainty ensures credible attribution, which deters large scale attacks. And at worst, low-level espionage occurs which isn’t catastrophic and is proven by 25 years of unregulated attacks---that’s Lewis

#### Prefer statistics.

Valeriano & Maness 18 – Brandon Valeriano, PhD, Chair of Armed Politics at the Marine Corps University, Cyber Security Senior Fellow at the Atlantic Council. Ryan Maness, an American cybersecurity expert, Defense Analysis Professor at Naval Postgraduate School. [How We Stopped Worrying about Cyber Doom and Started Collecting Data, Politics and Governance, 6(2), Cogitatio Press]

6. Expanding Cyber Security Data Our team has been coding cyber incident data since 2010 and serves as a unique example of how the process of collecting cyber security data and evidence can be done. Our first peer reviewed published work appeared in 2014 in Journal of Peace Research (Valeriano & Maness, 2014). In this article we note that cyber conflict is much more restrained than generally understood by popular discourse. Threat inflation is ripe in cyber security, and the real use of cyber tools seems to be to enhance the power of strong states.

The data that Valeriano and Maness (2014, 2015) have built challenges the cyber revolution perspective and does so with the tools of social science, and is a necessary turn given the general tone of the debate. We first determine that a viable data collection method in light of limited resources was to focus on states that are committed interstate rivals (Diehl & Goertz, 2001). This allows us to focus on those actors with an intense history of recent hostilities that should be the most likely users of cyber technology on the battlefield (Maness & Valeriano, 2018).

In our research (Maness & Valeriano, 2016; Maness, Valeriano, & Jensen, 2017; Valeriano & Maness, 2014, 2015), we have been able to marshal a massive amount of evidence that is useful in dissecting the actual trends on the cyber battlefield in a geopolitical context. We demonstrate that while cyber-attacks are increasing in frequency, they are limited in severity, are directly connected to traditional territorial disagreements, and mostly take the shape of espionage and low-level disruptive campaigns rather than outright warfare.

Given this data-based perspective, we question the dynamics of the cyber security debate and offer a countering theory where states are restrained from using more malicious cyber actions due to the limited nature of the weapons, the possibly of blowback, the connection between the digital world and civilian infrastructure, and the reality that any cyber weapon launched can be replicated and used right back against the attacker. Given all of these perspectives gleamed from the data, we must moderate our views about the transformation that is offered by cyber strategists who stress a more revolutionist tone (Lango, 2016).

Social science clearly matters for contemporary technological policy debates. Absent rigorous methods, much of what is in the field is basically guesswork. Our work really owes an intellectual debt to J. David Singer, who started the effort to quantify war at the University of Michigan with the Correlates of War (COW) project (Small & Singer, 1982). Our project builds on this methodology and uses many of the same coding strategies. We recognize that data is a work in progress and seek to build more and more knowledge through subsequent updates. By gathering the full picture, we can gain the perspective that really matters in these emerging policy debates regarding the cyber battlefield.

#### Norms don’t stop conflict.

Ferry 18 Jean Pisani-Ferry, Economics Professor with Sciences Po of Paris and the Hertie School of Governance of Berlin, former campaign director for Emmanuel Macron and Commissioner-General of France Stratégie, the Founding Director of the think tank Bruegel. [Should we give up on global governance? Policy Contribution 17, October 2018, https://bruegel.org/wp-content/uploads/2018/10/PC-17-2018.pdf (table 1 omitted)]

1. Obsolescence of global rules and institutions Although the previous argument primarily rests on the broad pattern of international trade and finance, the adverse effects of external liberalisation can be compounded by inadequate governance. As far as trade is concerned, two cases in point are, first, inertia in the categorisation of countries, especially the fact that emerging countries, including China, still enjoy developing country status in the WTO; and, second, failures to enforce the adequate protection of intellectual property (an issue on which the EU recently joined the US and filed a complaint at the WTO against Chinese practices; see European Union, 2018). These grievances, and others concerning subsidies or investment, are not new: they were clearly spelled out by policymakers from the Obama administration (see for example, Schwab, 2011, and Wu, 2016). The underlying concern is that the systemic convergence on a market economy template that was expected from participation in the WTO has failed to materialise. The rules and institutions of global trade have brought shallow convergence but not the deeper alignment of economic systems that was hoped for. More generally, existing rules and institutions were conceived for a different world. This is very apparent in the trade field: the GATT/WTO framework dates from what Baldwin (2016) has called the “first unbundling” of production and consumption. They were not designed for the “second unbundling” of knowledge and production that gave rise to the emergence of global value chains. For decades, the implicit assumption behind the structure of trade negotiations has been that nations have well-defined sectoral trade interests: they are either exporters or importers. But in a world of global value chains, they are both importers and exporters of similar products simultaneously. Even if the principles of multilateralism remain valid, important features of the rules and institutions in which they are embedded are increasingly outdated. In the same way, opening to capital movements was supposed to result in net financial flows from savings-rich to savings-poor countries. What has happened instead is a massive increase in gross flows resulting in the interpenetration of financial systems and the coexistence of sizeable external assets and liabilities. The consequence has been the emergence of a global financial cycle (see for example Rey, 2017) and of policy dilemmas that are quite different from those arising in a simple Mundell-Fleming framework, in which interdependence takes place through net inflows and outflows of capital. Developments in the climate field further illustrate the point. The 1997 Kyoto Protocol was negotiated under the assumption that the bulk of greenhouse gas emissions would continue to originate in the advanced countries. But by the time the Protocol was meant to enter into force, it was clear already that the hypothesis was deeply wrong. The exemption of developing countries from emissions reductions was one of the reasons why the US did not ratify the treaty. The failed Copenhagen agreement of 2009 was an attempt to replicate Kyoto on a global scale, but there was no consensus for such an approach. Rules can be reformed and institutions can adapt. But this is a long and demanding process, especially when it requires unanimity, when participating countries have diverging interests and when changes require ratification by parliaments where there is no majority to support them. Global rules therefore exhibit a strong inertia that often prevents necessary adaptations. Trade rules, amendments to which require unanimity, are a case in point. Institutions are nimbler and can adapt to changing priorities or perspectives on interdependence. The IMF for example has succeeded in adjusting to major changes in the international economic regime and major shifts in the intellectual consensus. But even institutions face limitations to their ability to keep up with underlying transformations. This is one of the reasons why solutions to emerging problems have often been looked for outside the existing multilateral, institution-based governance framework (Table 1). D. The imbalances of global governance A further reason for popular dissatisfaction with global governance is its unbalanced nature. The deeper international integration becomes, the broader the scope of policy its management should cover, and the more acute the tension between the technical requirements of global interdependence and the domestically-rooted legitimacy of public policies. This is most apparent in the field of taxation. International tax optimisation by multinationals has become an issue of significant relevance and it is estimated that 40 percent of their profit is being artificially shifted to low-tax countries – with major consequences for national budgets (Tørsløv et al, 2018). But the fact that taxation remains at the core of sovereign prerogatives limits the scope and ambition of initiatives conducted at international level. The result, which can be regarded as an illustration of Rodrik’s trilemma, is that global coordination in tax matters falls short of what equity-conscious citizens regard as desirable and, at the same time, exceeds what sovereignty-conscious citizens consider acceptable. The imbalances of global governance are by no means limited to the taxation field. The same can be found in a series of domains,
2. for example biodiversity and the preservation of nature. E. Increased complexity The final obstacle to multilateral solutions has to do with the sheer complexity of the challenges global governance has to tackle. In recent decades channels of international interdependence have both multiplied and diversified. They now link together countries with significantly differing levels of technical, economic or financial development. Because they have developed outside the scope of negotiated rules and established institutions, some of channels of interdependence also escape the reach of international agreements to an unprecedented degree. This is especially, but not only, the case of the internet and the multiple networks that rely on it. The world does not fit anymore the usual representation whereby individual nations trade goods, capital and technology. Even putting aside geopolitical consequences and assuming a shared commitment to openness and multilateral solutions, such complexity is bound to test the limits of existing international governance arrangements.

#### No emerging tech impact

Todd S. Sechser 19, the Pamela Feinour Edmonds and Franklin S. Edmonds, Jr. Discovery Professor of Politics and Public Policy at the University of Virginia and Senior Fellow at the Miller Center of Public Affairs, Neil Narang is an Associate Professor of Political Science at the University of California, Santa Barbara, Caitlin Talmadge is Associate Professor of Security Studies in the School of Foreign at Georgetown University, “Emerging technologies and strategic stability in peacetime, crisis, and war”, Journal of Strategic Studies, 42:6; pg. 728-729

Yet the history of technological revolutions counsels against alarmism. Extrapolating from current technological trends is problematic, both because technologies often do not live up to their promise, and because technologies often have countervailing or conditional effects that can temper their negative consequences. Thus, the fear that emerging technologies will necessarily cause sudden and spectacular changes to international politics should be treated with caution. There are at least two reasons to be circumspect.

First, very few technologies fundamentally reshape the dynamics of international conflict. Historically, most technological innovations have amounted to incremental advancements, and some have disappeared into irrelevance despite widespread hype about their promise. For example, the introduction of chemical weapons was widely expected to immediately change the nature of warfare and deterrence after the British army first used poison gas on the battlefield during World War I. Yet chemical weapons quickly turned out to be less practical, easier to counter, and less effective than conventional high-explosives in inflicting damage and disrupting enemy operations.6 Other technologies have become important only after advancements in other areas allowed them to reach their full potential: until armies developed tactics for effectively employing firearms, for instance, these weapons had little effect on the balance of power. And even when technologies do have significant strategic consequences, they often take decades to emerge, as the invention of airplanes and tanks illustrates. In short, it is easy to exaggerate the strategic effects of nascent technologies.7

Second, even if today’s emerging technologies are poised to drive important changes in the international system, they are likely to have variegated and even contradictory effects. Technologies may be destabilising under some conditions, but stabilising in others. Furthermore, other factors are likely to mediate the effects of new technologies on the international system, including geography, the distribution of material power, military strategy, domestic and organisational politics, and social and cultural variables, to name only a few.8 Consequently, the strategic effects of new technologies often defy simple classification. Indeed, more than 70 years after nuclear weapons emerged as a new technology, their consequences for stability continue to be debated.9

## Biz Con DA

### EXT---Impact---2NC

#### Failed recovery snowballs---causes cyber, China, and Russia war.

Engelke ’20 [Peter and Matthew Burrows; July 2020; Deputy Director and Senior Fellow within the Atlantic Council’s Scowcroft Center for Strategy and Security, Ph.D. in History from Georgetown University, M.A. from the Walsh School of Foreign Service; Director of the Atlantic Council’s Strategic Foresight Initiative, Ph.D. in European History from the University of Cambridge; Atlantic Council, “What World Post-COVID-19?” <https://www.atlanticcouncil.org/wp-content/uploads/2020/07/What-World-Post-COVID-19.pdf>]

The developing world is even more hard hit economically despite the fact that the worst forecasts of large-scale deaths in Africa and Latin America never come true. Death tolls resemble those in the West. The virus weakened as its moved south and the youthful populations—many of whom suffered minor symptoms— diminished the contagion. With the major economic powers hard hit, recovery is extremely difficult. Commodity prices remain low, hurting those developing countries that are dependent on the export of minerals, oil, etc. Chinese investments help, but CPC leaders are wary of providing much assistance largesse for fear the Chinese public is angered while conditions remain hard at home. Popular discontent against the CPC rises with China’s faltering domestic economy.

As during the Great Depression, there are many false starts, giving the illusion that the corner is about to be turned, justifying governments’ stubbornness in persevering with failing policies. Unlike in the 1930s, there is enough of a social safety net that discontent is contained despite slowly sinking standards of living in much of the world. The other is always to blame. Sino-American tensions escalate to an all-time high. The United States takes strong protectionist measures against China and Russia for their “disinformation,” deciding finally to erect a firewall against the two. Observers think the United States is preparing for a cyber war against China and Russia.

By the mid-2020s, deglobalization is speeding up, yielding slow economic growth everywhere. Poverty levels are rising in the developing world and there is the potential for open conflict between the United States and a China-Russia alliance.

### Turns Case---2NC

#### Decline turns the case---agencies will cease enforcement during the downturn

Anika Dandekar 21, Political Science at University of California, San Diego, “Politics of Antitrust Enforcement: The Influence of Ideology and Party Control on Regulatory Behavior”, Senior Thesis, 3/29/2021, https://polisci.ucsd.edu/undergrad/departmental-honors-and-pi-sigma-alpha/A.Dandekar\_Senior-Honors-Thesis.pdf

1.3.3 Bureaucratic Approach

Some scholars have tried to explain varying antitrust by changing makeup or preferences of regulatory agencies themselves.

Some suggest that the agencies respond to external factors. Amacher et al. (1985) examined FTC enforcement of the Robinson- Patman Act and found that it was influenced by economic conditions, decreasing during business contractions and increasing during periods of expansion. They suggested that this means "the FTC moves to cushion producer losses" during hard economic times, but transfers "wealth to consumers" during economic upswings. Lewis-Beck (1979) found that while small increases in the division's budget did not reduce anticompetitive behavior, a major increase in the division's budget might significantly stem merger activity because of a "threshold effect”.

#### War rolls back antitrust reform AND enforcement

Dr. Bruce A. Khula 3, Juris Doctor Candidate at Notre Dame Law School, Ph.D. and MA from The Ohio State University, Associate General Counsel at Progressive Insurance, “Antitrust at the Water's Edge: National Security and Antitrust Enforcement”, Notre Dame Law Review, Volume 78, Issue 2, 78 Notre Dame L. Rev. 629, January 2003, Lexis

A comprehensive historical analysis of the origins and development of antitrust law is clearly beyond the scope of the present work. [\*632] Besides, other scholars have already written quite excellent ones. Instead, this Note will address a specific and often under-appreciated element of antitrust politics: the intersection between antitrust law and national security. Underscoring the narrative that follows is the conviction that national security issues exert a powerful - indeed, in a great many cases, inexorable - influence on the enforcement of antitrust laws, often forcing aside domestic political considerations and efficiency goals alike. In the years since World War II, national security issues have become extremely pervasive and far-reaching, permeating many aspects of American politics and culture. The immediate concerns of national security include foreign relations, defense policy, and internal security, and this Note will limit itself to a consideration of these issues. It will demonstrate that the national security ethos acts as a political check of the highest level on antitrust law - and, in so doing, it will make plain that, like it or not, politics does indeed play a role in antitrust enforcement.

Part I of this Note briefly lays out the history and development of antitrust, placing particular emphasis on the political nature of the law. Part II considers the historical impact of foreign policy and national security concerns on antitrust law. Such an impact necessarily includes a brief assessment of the development of foreign antitrust traditions, as well as the obstacles to enforcement stemming from comity or the involvement of multinational enterprise. The narrative and descriptive heart of this Note lies in Part III. This Part contains a case study of the dynamics of national security upon antitrust law, focusing on litigation against the United Fruit Company during the 1950s. Finally, Part IV serves as an epilogue of sorts, providing an unfinished contemporary outline of the possible political effect of national security on the Microsoft litigation.

[\*633]

I. Antitrust Law: History and Development

A good starting point for examining the origins of antitrust law might fruitfully be found in the etymology of the word "antitrust" itself. The study of etymology is not history per se, of course, but it is the history of words. And such a history - even an amateurish history, like that which follows - may be useful if one is to consider how the concept of antitrust developed as a legal and political concept. Postmodernist concerns aside, one can still assume that what a group of people call a thing can provide insight into the nature of that thing. Proceeding on this assumption, it is instructive to dissect the word "antitrust" and attempt to place the word into the context of the late nineteenth century.

Thankfully, one does not have to be a practiced etymologist to pull content out of the word "antitrust," for it breaks down quite neatly into two distinct parts. The meaning of the first part, "anti," is obvious enough, and the Oxford English Dictionary (OED) describes it as a Greek derivative, meaning "opposed, in opposition, opponent, rival." The second half of the word "antitrust" is clearly the more significant of the two.

In the 1840s, the word "trust" was a "duty or office … entrusted to one" that was commonly thought to be "created for the benefit of the whole people, and not for the benefit of those who may fill them." Rudolph Peritz claims that by the 1880s and 1890s, in the minds of Americans, the word "trust" lost this former meaning and acquired a radically different one: "trust as a fearsome concentration of economic power that unjustly enriched a select few at the expense of the commonwealth." The OED affirms this claim, and cites a passage from late nineteenth century writer James Bryce as exemplary of the transformation of the meaning of "trust." Because of its descriptive nature, Bryce's passage is worth quoting in full:

Those anomalous giants called Trusts - groups of individuals and corporations concerned in one branch of trade or manufacture, which are placed under the irresponsible management of a small knot of persons, who, through their command of all the main producing or distributing agencies, intend and expect to dominate the market.

[\*634] Peritz's claims and Bryce's diction suggest that the public discourse regarding the so-called "trust" in the late nineteenth century went far beyond concern for mere economic efficiency. Judging from the tone and insistence of Bryce's writing alone, it seems clear that the motivating sense of fear, anguish over unjust enrichment, and concern for the well-being of democratic society did not emanate from a desire for economic efficiency or consumer choice. The object of such language was concentrated power, not efficiency. Hofstadter makes this same connection, seeing fear of concentrated power as the logical thread running from "pre-Revolutionary tracts through the Declaration of Independence and The Federalist to the writings of the states' rights advocates, and beyond the Civil War into the era of the antimonopoly writers and the Populists."

This observation removes us from etymology and brings us back to history itself. As a matter of history, nineteenth century public discourse over concentrated power and the transformation of the word "trust" was rooted specifically in the rise of big business. It is difficult to date the beginnings of big business in the United States, but a general historical consensus holds that large-scale enterprise began to rise in the aftermath of the Civil War and grew almost exponentially in the following decades. Facilitated by the advent and spread of the telegraph and railroad, big business germinated in the United States and gradually acquired the following traits or characteristics: capital-intensiveness, economy of scale, separation of ownership from management, enhanced geographic scope, vertical integration, complex managerial organization, and impersonal labor relations. Technical words such as these may provide a fairly accurate description of what big business was, but they utterly fail to capture the enormous social, political, and economic impact that such business had on Americans.

The establishment of big business "constituted a massive social change" and provided a "seedbed of a new social and economic order." [\*635] Richard Hofstadter notes that the "American tradition of democracy was formed on the farm and in small villages, and its central ideas were founded in rural sentiments and on rural metaphors." The very nature of big business explicitly challenged time-honored traditions, for it accelerated urbanization, encouraged mass immigration from Southern and Eastern Europe, established new classes of industrial laborers and middle-class managers, and ultimately jarred the nation's sensibilities by creating a mass society built around mass consumption. Though not all of these transformations happened at once, most all of them were underway by the late nineteenth century and were deeply felt by Americans at all levels of society. The most important political and social movements of the late nineteenth and early twentieth century - namely, the labor movement, agrarian Populism, and Progressivism - all originated in the dislocations brought by the rise of big business. By the 1880s and 1890s, Americans were therefore struggling to place their lives back in order and reestablish control over their nation's economic institutions, particularly the new and fearsome "trusts."

Exactly what blame, one might ask, did Americans affix to the "trusts"? Or more fruitfully, what social, political, or economic ill did Americans not blame on them? William Letwin sums up nicely the broad range of anger that Americans harbored for big business:

trusts, it was said, threatened liberty, because they corrupted civil servants and bribed legislators; they enjoyed privileges such as protection by tariffs; they drove out competitors by lowering prices, victimized consumers by raising prices, defrauded investors by [\*636] watering stocks, put laborers out of work by closing down plants, and somehow or other abused everyone.

Fair or not, a significant number of Americans blamed big business for the totality of woes stemming from modern society. And just as their accusations were loud and clear, so too was their preferred remedy: "a law to destroy the power of the trusts."

It was in such an environment that modern-day American antitrust law was born. It is necessary to add such qualifiers as "modern-day" and "American" because competition law developed long before the 1890s as an element of English common law. In its incipiency, competition law sought "to encourage competitive forces by its traditional emphasis on individual liberty and economic independence." As early as the 1500s, English common law attempted to fulfill this charge by curtailing practices such as "forestalling, engrossing, and regrating," which sought to manipulate prices at the wholesale stage of the distributive process. This doctrine evolved such that its eventual usage in American common law treated "combination" or "restraint of trade" as a tort, and suits based on this kind of tort theory were brought almost exclusively by private litigants, not by municipalities or states. As Hans Thorelli notes, neither in England nor the [\*637] United States did common law competition policy accomplish very much. Enforcement was scattershot, penalties were inadequate, litigation was driven only by private parties, and results fluctuated considerably. The rise of big business and the "trusts" made all too clear the inadequacy of the common law, even if the values of liberty and economic independence that animated the common law remained as strong as ever.

The first seeds of modern antitrust law grew at the state level. Before 1890, and particularly from 1888 through 1890, a total of twenty-one states and territories adopted provisions against restraints of trade. These sorts of laws attempted to deal with the trust problem by undercutting means of collusion, holding agreements and contracts in restraint of trade to be void and unenforceable. Thorelli attributes this rush of state legislative action to strongly felt "public agitation" and adds that the state-level effort "was not enough to satisfy popular opposition to 'trusts.'" Such dissatisfaction and continued anxiety about big business surely set the stage for the passage of the Sherman Act in 1890. The specific machinations that led Sen. John Sherman to introduce his antitrust resolution on July 10, 1888, and that culminated in its enactment as law two years later is a long story, interesting in its own right, yet not the province of this Note. It suffices to note that deeply felt public sentiment - drawing upon a venerable history of antimonopoly tradition steeped in a desire for liberty and a sense of commonweal - animated Congress and the President to ensure that a federal antitrust statute became law on July 2, 1890.

In the decades following passage of the Sherman Act, the development of antitrust was pulled thither and yon by various, explicitly [\*638] political currents. The "trusts" did not, of course, immediately recede into the darkness following passage of the Sherman Act, and neither did public agitation - ostensibly the "antitrust movement" of which Hofstadter writes - dissipate. Antitrust remained one of the highest priorities in the United States well into the Progressive Era, eclipsing other social welfare issues. Early on, the battle took the form of literalists (who sought enforcement of the Sherman Act without regard to the "reasonableness" of restraints) against restorationists (who wanted the common law distinction between reasonable and unreasonable restraints restored to the Sherman Act). In essence, literalists wanted the jurisprudence of United States v. Trans-Missouri Freight Ass'n to prevail, whereas the restorationists championed the Sixth Circuit's jurisprudence in United States v. Addyston Pipe & Steel Co. This debate, it must be emphasized, was by no means strictly - or even principally - judicial; rather, it was carried on with great vigor by political figures, businessmen, farmers, labor leaders, and scholars, in addition to jurists and lawyers. The restorationists ultimately won this battle in 1911, with the establishment of the "standard of reason" in Standard Oil Co. v. United States and the contemporaneous case, United States v. American Tobacco Co.

By the time antitrust law passed its third decade and entered the 1920s, the mood of the nation had changed. The "trust" issue had been thrust aside by the First World War, and an "ethic of cooperative competition," championed by Herbert Hoover and the Republican Party more generally, prevailed. Under Hoover's secretariat, the newly invigorated Department of Commerce took the lead in creating a closer and more cooperative relationship between big business and government, and the importance of the Sherman Act waned and became principally a means to rein in those businesses whose bigness was obtained with few benefits to society at large. Hooverian politics and "cooperative competition" managed to survive the early dark days [\*639] of the Great Depression and to a considerable degree manifested themselves in the codes of competition of the National Industrial Recovery Act of 1933 (NIRA).

In the years after the U.S. Supreme Court scuttled NIRA, however, the administration of Franklin Roosevelt began to take a very different approach to antitrust law. In April 1938, Roosevelt informed Congress that his administration was concerned that the persistence of depression was abetted by monopolistic practices, and he recommended suitable action. Congress responded by creating the Temporary National Economic Committee (TNEC), and for three years the TNEC worked hand-in-hand with the Assistant Attorney General for Antitrust, Thurman Arnold, to launch a "barrage of antimonopoly action." As with most New Deal policies, this "barrage" was calculated to win political support, and, in this respect it did not fail. But this born-again antitrust zeal would not survive the coming of yet another global war.

### EXT---UQ---2NC

#### Confidence is strong, powering a wave of mergers and innovation

Anirban Sen 12-20, and Pamela Barbaglia, Kane Wu, Economic Reporters at Reuters, “Global M&A Activity Smashes All-Time Records to Top $5 Trillion in 2021”, Reuters, 12/20/2021, https://www.reuters.com/markets/europe/global-ma-activity-smashes-all-time-records-top-5-trillion-2021-2021-12-20/

Global merger and acquisition (M&A) activity shattered all-time records in 2021, comfortably erasing the high-water mark that was set nearly 15 years ago, as an abundance of capital and sky-high valuations fuelled frenetic levels of dealmaking.

The value of M&A globally topped $5 trillion for the first time ever, with volumes rising 63% to $5.63 trillion by Dec. 16, according to Dealogic data, easily surpassing the pre-financial-crisis record of $4.42 trillion in 2007.

"Corporate balance sheets are incredibly healthy, sitting on $2 trillion of cash in the U.S. alone -- and access to capital remains widely-available at historically low costs," said Chris Roop who co-heads North America M&A at JPMorgan (JPM.N).

Technology and healthcare, which typically account for the biggest share of the M&A market, led the way again in 2021, driven partly by pent-up demand from last year when the pace of M&A activity fell to a three-year-low due to the global financial fallout from the COVID-19 pandemic.

Companies rushed to raise funds from stock or bond offerings, large corporates took advantage of booming equity markets to use their own stock as acquisition currency, while financial sponsors swooped on publicly listed companies.

Moreover, robust corporate earnings and an overall bright economic outlook gave chief executives the confidence to pursue large, transformative deals, despite potential headwinds such as inflationary pressures.

Report ad

"Strong equity markets are a key driver of M&A. When stock prices are high, that usually corresponds with a positive economic outlook and high CEO confidence," said Tom Miles, co-head of Americas M&A at Morgan Stanley (MS.N).

Overall deal volumes in the United States nearly doubled to $2.61 trillion in 2021, according to Dealogic. Dealmaking in Europe jumped 47% to $1.26 trillion, while Asia Pacific rose 37% to $1.27 trillion.

"While China cross-border activity has been modest, corporates from other Asian countries have stepped up to buy global assets. We expect to see this trend continue, especially for deals in Europe and the United States," said Raghav Maliah, Goldman Sachs' (GS.N) global vice chairman of investment banking.

#### \*This prices in all headwinds

Ernest “Doc” Werlin 12-27, Spent 35 Years in Fixed Income as a Trader and Corporate Bond Salesman, including Time as a Partner at MorganStanley in Charge of Corporate Bond Trading, “Doc’s Prescription: U.S. Economic Outlook for 2022”, Herald-Tribune, 12/27/2021, https://www.heraldtribune.com/story/business/2021/12/27/economists-expect-u-s-enjoy-solid-economic-growth-2022/9022524002/

There is a growing consensus that the United States will enjoy solid economic growth in 2022 despite concerns about inflation, supply chain disruptions, COVID-19 and Federal Reserve tightening. The Conference Board, a research group comprising more than 1,000 public and private corporations, forecasts that the U.S. economy will grow by 3.5% in 2022.

The main challenges to the United States and the global economy in the next decade come from a continued trend toward deglobalization and faster-than-expected inflation. The transition toward decarbonization of economies in response to climate change will create challenges and opportunities for global growth.

Despite the acceleration of new COVID-19 cases in December, largely associated with the delta and omicron variants, America enjoyed strong growth in Q4 2021.

COVID-19 remains a threat but its economic impact is fading. There remains uncertainty regarding the transmissibility, severity, and effectiveness of existing vaccines against omicron. World Health Organization officials, in recognition of the dangers inherent with COVID-19, are advocating more coordinated and decisive efforts to vaccinate the world’s population to prevent the emergence of new, more dangerous variants.

The Food and Drug Administration recently granted emergency authorization to Pfizer’s COVID treatment pill for patients 12 years and up with mild to moderate COVID symptoms who are most likely to end up hospitalized. The agency said it should be prescribed as soon as possible after diagnosis and within five days of symptom onset.

The United States is experiencing robust but an uneven rebound from the pandemic. Demand growth is outstripping supply growth because of unprecedented fiscal and monetary stimulus.

A consensus of economists forecast a decline in the unemployment rate from the current 4.2%. The Bureau of Labor Statistics wrote, “As the nation’s demographic shift continues, with the baby-boom generation moving into retirement, the labor force participation rate will continue to decline, moderating growth.”

The U.S. Census Bureau released a report that the U.S. population grew at a slower rate in 2021 than in any other year since the founding of our nation. This year was the first time since 1937 that the U.S. population grew by fewer than one million people.

In response to COVID-19, households have redirected their spending away from activities that are “locked-down” (food and entertainment) and toward durable goods. Governments have eased COVID restrictions because of vaccines and the ability to more precisely target and curtail certain types of activities.

On Wednesday, in a fresh sign of his growing concerns about inflation, Federal Reserve Chairman Jerome Powell said the Federal Reserve can't be sure that price increases will slow in the second half of next year. To stem inflation, we can expect the Fed to stop bond purchases and raise interest rates three times in 2022.

#### The US econ is strong now and will continue to be– our evidence assumes *all* their indicators

McGahey 3/3 [McGahey, Richard, economist studying cities and states and their importance in the economy, focusing on their policies, finances and budgets, 3/3/2022. "The American Economy And The ‘Biden Boom.’" *Forbes*, Accessed: 3/5/2022. <https://www.forbes.com/sites/richardmcgahey/2022/03/03/the-american-economy-and-the-biden-boom/?sh=4fc00c4f33e4>]

Reactions to President Biden’s State of the Union address focused on his call to action against Russian aggression in Ukraine. But the President also emphasized the economy, and while noting where we need to do more, he **emphasized the economy’s strength since he took office—what economist** Noah **Smith** has **called the “Biden boom**.” Biden told us “Our economy grew at a rate of 5.7% last year, the strongest growth in nearly 40 years.” Recent data show **applications to start new small businesses shot up** in 2021, not only rebounding from the pandemic but “up **about 30 percent compared to before the pandemic**” and well above the trend of the past decade. What about jobs and unemployment? The President told us “our economy created over 6.5. million new jobs just last year, more jobs created in one year than ever before in the history of America.” The unemployment rate hit 3.9% in December (ticking up to 4% in January), down from the pandemic high of 14.7% in April 2020. Smith said “If you told me in April 2020” that unemployment would be this low now, “I’d have laughed in your face.” Senator Sherrod Brown (D-OH), chair of the Senate Banking Committee, noted at a recent hearing that wages are going up “particularly for hourly workers who have been left behind in past economic recoveries.” And economic forecasters see continued growth, with the Federal Reserve Bank of Philadelphia’s surveypredicting real GDP growth of 3.7% this year and an unemployment rate of 3.4% by the start of 2023. Our overall strong economic performance shows up in many ways. CEPR (the Center for Economic and Policy Research) observes that “**the US is** the only G7 country **back to its pre-pandemic GDP**,” further underscoring the role of significant federal spending in bringing the economy back. The one bad stream of news is inflation. Prices have gone up at rates we haven’t seen since the 1980s, leading the Federal Reserve to signal interest rate increases to cool things off. The President recognized inflationary pressures, due to disruptions in supply chains and faster job creation than many anticipated. But it remains the biggest threat to the boom. The inflation we’re seeing is caused by in part by pandemic supply chain disruptions and also faster growth. **But economists learn** a lot **by disaggregating inflation**, and **when we do that, we see a picture that’s less troublesome than some fear**. We are coming out of a period of sustained low inflation. In such a period, a new paper by Claudio Bori of the Bank for International Settlements and his colleagues argues that “once inflation settles at a low level…measured inflation is largely the result of idiosyncratic (relative) price changes.” They underscore this is not “a generalized increase in prices,” but rather the impact of how monetary policy works through a “remarkably narrow set of prices.”

### A2: Thumpers---2NC

#### Any new antitrust will stall in the courts---only the plan’s success signals a sea change in the law.

Tara L. Reinhart 10-6, Partner for Antitrust/Competition at Skadden, Arps, Slate, Meagher & Flom LLP, J.D. from the Catholic University of America Columbus School of Law, B.A. from the University of North Carolina, et al., “FTC Chair Khan Highlights Key Policy Priorities Going Forward, but Aggressive Agenda Faces Uphill Climb”, JD Supra – Newstex Blogs, 10/6/2021, Lexis

Practical Limitations on Implementation of Chair Khan's Policy Priorities

Chair Khan describes the antitrust agenda outlined in her memorandum as 'robust,' and the memo communicates her intention to attempt to reshape antitrust policy and enforcement. However, a revolutionary shift in antitrust enforcement by the FTC will face substantial practical challenges.

Most significantly, the path to reshaping antitrust enforcement will be constrained by the substantial body of existing antitrust law and the need to convince a federal judge that the conduct in question is unlawful. Chair Khan's memo generally advocates for a new, more expansive and holistic approach to identifying antitrust harms beyond the traditional focus on consumer welfare and price effects. However, courts have — and will likely continue to — rely on existing standards developed in the case law over many decades. Those standards focus on consumer welfare and predominantly price effects. Absent legislative change, then, a practical gap will persist between Chair Khan's vision of refocused and more assertive antitrust enforcement, on the one hand, and the law that would apply to any FTC enforcement action, on the other.2[2]

Moreover, Chair Khan's plan to revise the merger guidelines and her desire to target 'facially illegal deals' will also face constraints based on current law. First, the antitrust guidelines typically incorporate existing legal standards, making radical change difficult to achieve. The 1982 Guidelines, which impactfully affected merger enforcement with the implementation of the hypothetical monopolist test, provide the last dramatic revision. Whether courts will accept major revisions at this stage will be an open question. Second, agency merger review is shaped by the existing review process enacted by the Hart-Scott-Rodino Act, regardless of whether the FTC believes a deal is facially illegal. Unlike regulators in other jurisdictions, the FTC must file a lawsuit and prevail in court if the agency wants to block a pending transaction.

Relatedly, Ms. Khan's ability to implement her ambitious agenda will be subject to the fact that changing these legal frameworks will depend on either Congressional action, which is far from certain, or litigation victories, which require the commitment of significant resources at a time when the FTC claims to already be stretching its capacity. Despite her recognition of the demands already imposed on FTC staff and plan for 'intentional' resource allocation, Chair Khan envisions the FTC undertaking increased vigilance and a more assertive agenda. If the existing resource constraints grow in response to Chair Khan's enhanced enforcement ambitions, the FTC could face difficulty balancing its investigatory agenda with the ability to litigate those cases, particularly considering the complex nature of antitrust matters, which often take years to resolve and require millions of dollars for experts and other related costs as well as a large team of attorneys and staff to manage. In addition, though Chair Khan referenced her hope for increased cross-bureau coordination in cases, it is unclear that such coordination would be efficient or create the capacity needed to fulfill the new agenda, especially when attorneys from other government divisions have already been recruited to help reduce burdens on matters of antitrust enforcement.

Finally, Chair Khan's desire to expand the agency's regional footprint and supplement the staff with various nonlawyer roles may further strain the budgetary resources needed to keep pace with the new agenda and present their own management challenges. Whether funding from Congress is imminent, whether it would be used to onboard lawyers or the other potential staff Ms. Khan desires, and how quickly hiring could reach the scale necessary to support the FTC's newly announced enforcement priorities are not yet clear.

Conclusion

Given the challenges to implementing the generalized policy goals set by Chair Khan, we do not expect an immediate fundamental sea change in antitrust enforcement. The practical obstacles described above mean that Chair Khan's FTC will be unable to contest every instance of what the agency might perceive to be unlawful conduct or unfair competition. We expect that the FTC will need to continue to be selective in the cases that it brings, which may mean that in the near-term, it will focus available resources on sectors of the economy perceived as involving 'the most significant actors,' such as large technology firms that Chair Khan has frequently referenced, particularly to the extent they engage in transactions that implicate the novel considerations under the proposed 'holistic' approach to identifying antitrust harms.3[3] We still expect to see some matters receive extensive investigations and proceed to litigation, and the outcomes of these matters will likely partially signal the success of the new agenda.

#### That generates uniqueness---court losses increase biz con and make the FTC look weak.

David McLaughlin 21, Economics and Antitrust Reporter for Bloomberg, “Antitrust Crusader Lina Khan Faces a Big Obstacle: The Courts”, Bloomberg News, 6/23/2021, https://www.bloomberg.com/news/articles/2021-06-23/tech-antitrust-lina-khan-faces-courts-as-challenge-to-ftc-s-progressive-agenda?sref=iKB6XOvf

Instead, hours after the Senate confirmed her, Biden put the 32-year-old Khan—one of the most prominent antagonists of big business—in charge of the agency, where she’ll be responsible for challenging mergers and taking on companies when they use their market muscle to snuff out competition.

Now comes the hard part: putting her agenda into action. The biggest hurdle, say antitrust experts, is a judiciary that has made it very difficult for competition watchdogs to win ambitious cases. And to make any change of consequence, whether breaking up a monopoly or stopping a takeover, enforcers must prevail in court.

“None of that is easy, and it’s particularly not easy when courts are very conservative, as they are today,” says Stephen Calkins, a law professor at Wayne State University and a former general counsel at the FTC. “She’s certainly talked about breaking up companies but, my golly, that’s incredibly hard to do.”

Khan made her mark in 2017, with a law review article she wrote while still a student at Yale Law School. Titled “Amazon’s Antitrust Paradox,” it traced how the online retailer came to control key infrastructure of the digital economy and how traditional antitrust analysis fails to consider the danger to competition the company poses. The paper was widely talked about in antitrust circles and was read by senior enforcement officials.

U.S. tech titans are at the center of the antitrust debate in Washington. They are ever more powerful, with Apple Inc., Amazon.com Inc., Alphabet Inc., and Facebook Inc. among the top 10 largest companies in the world, by market value. A House of Representatives investigation last year accused the companies of abusing their dominance to thwart competition, and lawmakers are considering a raft of bills to impose new rules on how the companies operate. Federal antitrust enforcers and state attorneys general have sued Google and Facebook for what authorities say are monopoly abuses.

Khan, who was counsel to the House antitrust committee during its probe, was one of the main authors of the House report. It recommended a series of reforms to antitrust laws that she and anti-monopoly activists have long championed, like restricting which markets the companies can operate in and requiring them to treat other businesses on their platforms fairly and without favoritism.

Khan’s work helped revolutionize competition-policy debates and shift support for a more forceful approach that abandoned the playbook inspired decades ago by Robert Bork, the conservative legal scholar and judge. That framework came to be known as the consumer welfare standard and relies on price effects as the measure of competitive harm. Khan argued in her paper for a new approach, focused on the competitive process and the structure of markets, that she said would more fully capture harms that the consumer welfare standard misses.

Once considered on the fringes of antitrust thinking, Khan and her acolytes—often dubbed the New Brandeis School, after Supreme Court Justice Louis Brandeis—are now firmly mainstream with Khan’s appointment as FTC chairwoman.

The FTC has suffered some stinging defeats recently. Last year, the agency lost a major monopoly case filed against chipmaker Qualcomm. In April, a unanimous Supreme Court eliminated a tool used by the FTC to recover money for defrauded consumers. Later this month, a federal judge in Washington is expected to rule on whether the agency’s monopoly lawsuit against Facebook can proceed.

Still, there’s widespread agreement that the status quo is no longer tenable. Over the last two decades, concentration has risen in industries across the economy. Some economists say dominant companies can use their market power to suppress wages, for example, exacerbating inequality. The worries are bipartisan. Republicans and Democrats alike are pushing for antitrust reforms to rein in the biggest tech platforms, and Khan was confirmed by the Senate with significant Republican support.

Big losses in the courts would eventually hurt Khan’s authority and demoralize her staff, says William Kovacic, a former FTC chairman who now teaches at George Washington University Law School. “You become like a sports team that is known to its opponents as unable to win,” he says. But defeats also could provide the foundation for the kind of sweeping antitrust legislation that Khan and her supporters want.

“If you want to change the world, at some point it goes to the courts or it goes to the legislature,” Kovacic says. “But you can’t do it by yourself.”

#### It's not law---changes to statute won’t happen.

Chris Matthews 12-27, Stocks Reporter at MarketWatch, “Look for Washington Regulators — Not Congress — To Try to Block More Mergers in 2022, Analysts Say”, MarketWatch, 12/27/2021, https://www.marketwatch.com/story/look-for-washington-regulators-not-congress-to-try-to-block-more-mergers-in-2022-analysts-say-11640110564

Antitrust reform was supposed to be one of the best chances for bipartisan compromise during the current Congress. But critics of monopoly power will likely have to rely on independent agencies for any federal government action against Big Tech next year, experts tell MarketWatch.

“There is still pervasive angst toward Big Tech, but we are no closer to a coordinated bipartisan response,” even after a year of hearings and scandals that has created the perception of a united political front against powerful tech platforms, Robert Kaminski, policy analyst at Capital Alpha Partners, said in an interview.

The chances for a bipartisan push to strengthen antitrust enforcement was likely highest in June, when Democratic Rep. David Cicilline of Rhode Island and Republican Rep. Ken Buck of Colorado led the passage of seven new antitrust bills through the House Judiciary Committee.

If the bills were to become law, they would make it more difficult for large tech platforms to acquire smaller companies, ban large tech firms from using their platforms to promote their own products at the expense of rivals, and force social media companies to make it easier for users to switch to a rival service.

The most sweeping bill of the six is the Ending Platform Monopolies Act, which would end “the ability for dominant platforms to leverage their control over multiple business lines to self-preference and disadvantage competitors,” and could potentially deal a serious blow to the business models of companies like Amazon.com Inc. AMZN, -1.14% and Google parent Alphabet GOOG, -0.91%.

That these were able to pass the House Judiciary Committee in a bipartisan fashion was seen at the time as evidence of broad support for these strict measures, but the unique composition of the panel means that those results cannot be extrapolated to Congress at large, according to a recent analysis of antitrust dynamics published by Beacon Policy Advisors.

“While this package of bills was voted out of committee in a relatively contentious markup, they have completely stalled on the House floor,” Beacon analysts wrote. “This is not too surprising given the resistance that they face from much of the House Republican caucus and lack of unified Democratic support.”

Sen. Amy Klobuchar, a Minnesota Democrat, has taken up the cause of these bills, putting forth bipartisan legislation in the Senate that scales back the Cicilline-Buck legislation in an effort to get broader support. While she has gotten support from high-profile Republicans like Sen. Chuck Grassley of Iowa, the lack of public support for these measures from Republican Sen. Mike Lee of Utah illustrates the difficulty any tough antitrust legislation will have getting 60 votes in the Senate and a majority in the House.

Lee, as the ranking Republican on the Senate antitrust subcommittee, is “one of the more influential members of the Republican caucus on antitrust policy,” the Beacon analysts argue, and GOP senators, most of whom are skeptical of government oversight of the private sector, will take his lead on the issue.

The Beacon analysis also points to the importance of the 42 Democrats representing California in the House after the state’s moderates — including Reps. Zoe Lofgren, Lou Correa, Ted Lieu and Eric Swalwell — voted against the measures in the judiciary committee, arguing that they went too far. “It should also be said that without the support from House Speaker Nancy Pelosi [also a California Democrat], these bills would be effectively dead on arrival,” they wrote.

#### No legislative antitrust---Senate blocks, midterms, AND other priorities make it impossible until 2025.

Lauren Feiner [News Associate @ CNBC, 12/31/2021, “2022 will be the ‘do or die’ moment for Congress to take action against Big Tech”, https://www.cnbc.com/2021/12/31/2022-will-be-the-do-or-die-moment-for-congress-to-take-action-against-big-tech.html] IanM

The **new year** could be a **pivotal** one for tech policy — if Congress can move to act before the 2022 midterm season kicks into high gear.

Proposals to update competition law, establish online privacy rights and protect kids from harm on the internet have broad bipartisan support. But persisting differences on the **best way** to **craft** those laws as well as the presence of **many other** pressing **legislative priorities** have so far kept many significant bills from advancing.

With dozens of bills drafted and renewed outrage from lawmakers over the potential harmful impacts of internet platforms such as [Meta’s Facebook](https://www.cnbc.com/quotes/FB) and [Google’s](https://www.cnbc.com/quotes/GOOGL) [YouTube](https://www.cnbc.com/quotes/GOOGL) ignited by a [former Facebook employee’s testimony and leaked documents](https://www.cnbc.com/2021/10/05/facebook-whistleblower-testifies-before-senate-committee.html), there could just be enough momentum to advance some of the proposals.

And in the meantime, government agencies are likely to forge ahead with renewed regulations.

Republican takeover of House could stall antitrust legislation

There’s a lot going on in antitrust that could come to a head in 2022. That spans legislation, as well as possible regulations and enforcement actions from the Federal Trade Commission and Department of Justice Antitrust Division.

“The likely Republican takeover next fall means 2022 is do or die for tech antitrust legislation,” said Paul Gallant, managing director of Cowen’s Washington Research Group. “That’s the biggest risk for the companies in Washington. If they can manage to ward that off, we probably won’t see it reemerge until 2025.”

A **package** of tech-focused **antitrust bills** has already crossed a major hurdle in the House, advancing with bipartisan votes out of the Judiciary committee. But even then, lawmakers expressed reservations **about** the **bills**, and **companion legislation** in the Senate must still clear that initial hurdle.

#### There’s no chance of legislative antitrust

Joseph Charles Folio 21 III, Lawyer at Morrison Forrester, and Lisa M. Phelan Co-chair Global Antitrust Law Practice Group at Morrison Forrester, Jeff Jaeckel, Co-chair Global Antitrust Law Practice Group at Morrison Forrester, and Alexander Paul Okuliar, Co-chair Global Antitrust Law Practice Group at Morrison Forrester, “Antitrust Update: Up and Down the Avenue”, 3/22/2021, https://www.mofo.com/resources/insights/210322-atr-update.html

Are the stars aligning for antitrust reform? President Biden is filling key positions in the White House (Timothy Wu, National Economic Council) and at the FTC (Lina Khan, nominee for commissioner) with lawyers who have advocated for increased antitrust enforcement, especially against “big tech.” In Congress, the House antitrust subcommittee concluded a year-long investigation in October 2020 and found bipartisan agreement on discrete areas for reform. With Democrats now in control of both houses of Congress, antitrust legislation seems close. But not so fast.

The House and Senate antitrust subcommittees have held four hearings since February 25, 2021, but it is crucial to view these recent developments in their proper context. Even when politicians and enforcers appear to agree on a goal, it can still be a long and winding road to actual policy reform.

Two to go

Although antitrust reform advocates cheered President Biden’s initial appointments, two of the most consequential antitrust positions—the assistant attorney general (AAG) for antitrust and the FTC chair—remain open. Both the AAG and FTC chair wield tremendous authority; they approve cases, guide investigations, and will decide how to proceed with ongoing litigation. It is unlikely that the Biden administration will make any significant decisions, or support any particular legislation, before its key personnel are firmly in place. And that can take time. Former AAG Makan Delrahim was nominated in March 2017 but not confirmed until September 2017.

Interestingly, the pressure to nominate like-minded antitrust reformers for these two positions is coming from multiple angles. One public interest group recently sent a letter to White House chief of staff Ron Klain and, after “highly commend[ing]” the nomination of Ms. Khan to be an FTC commissioner, warned against the influence of certain White House and DOJ officials over the AAG and FTC chair nominations because of their links to “big tech” companies.[1] Additionally, many in the press have been critical of the level of tech enforcement activity during the Obama administration and want to avoid a replay of those years.[2]

### EXT---Link---2NC

#### Even targeted antitrust sends a broad signal of aggressive overregulation

Raymond J. Keating 21, Chief Economist for the Small Business & Entrepreneurship Council and Adjunct Professor in the MBA Program at the Townsend School of Business at Dowling College, “Antitrust Fictions (and Actions) Will Have Real, Negative Economic Consequences”, SBE Council, 6/18/2021, https://sbecouncil.org/2021/06/18/antitrust-fictions-and-actions-will-have-real-negative-economic-consequences/

It needs to be understood that while supposedly targeting so-called “Big Tech,” these intrusive regulations and substantial costs would fall on competitors as well, thereby actually discouraging competition in technology markets. For good measure, moving ahead with his kind of hyper-antitrust regulation of tech firms lays the groundwork for doing so in other industries, such as in retail, energy, health and medical sectors, and so on. This is what Senate anti-trust crusaders hope to accomplish.

The message is clear: Beware entrepreneurs, businesses and investors if you become too successful or if you cross certain political constituencies. The government stands ready to punish you via intrusive and costly regulation.

#### Legally, antitrust is economy-wide, so there’s no way to limit the plan’s scope AND risk-averse firms and lawyers think it’ll be applied, chilling investment

Thomas Nachbar 19, Professor of Law at the University of Virginia School of Law, JD from the University of Chicago Law School, AB in History and Economics from the University of Illinois, “Book Review: Heroes and Villains of Antitrust”, The Antitrust Source, 18-6 Antitrust Src. 1, June 2019, Lexis

That regulatory skepticism had a particular salience for antitrust law, which itself is designed to maintain a particular balance between private and government action in markets. n53 Since Adam Smith, the argument of so-called free-market intellectuals has not been that markets are perfect but rather that they are comparatively better at solving problems than governments. Part of the argument is that, in most cases, market forces will drive a firm that has adopted an inefficient practice to shift to a more efficient one, lest it lose more business than it gains from the practice. But if antitrust law outlawed a practice, there is no potential for the market to correct--the practice once outlawed would remain outlawed. n54 And because antitrust law applies to all industries, a practice outlawed for one firm or industry would be outlawed for all firms in all industries, or be interpreted as such by risk-averse firms and their risk-averse lawyers--not to mention the treble damages that the liable antitrust defendant would have to pay.

[FOOTNOTE] n55 See Credit Suisse Sec. (USA) LLC v. Billing, 551 U.S. 264, 284 (2007) ("In sum, an antitrust action in this context is accompanied by a substantial risk of injury to the securities markets and by a diminished need for antitrust enforcement to address anticompetitive conduct."); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 546 (2007) ("It is one thing to be cautious before dismissing an antitrust complaint in advance of discovery, but quite another to forget that proceeding to antitrust discovery can be expensive.") Verizon Commc'ns, Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 414 (2004) ("Mistaken inferences and the resulting false condemnations 'are especially costly, because they chill the very conduct the antitrust laws are designed to protect.'") (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 594 (1986)). [END FOOTNOTE]

#### The plan’s abrupt expansion creates major uncertainty that disrupts business planning

Alden F. Abbott 21, Senior Research Fellow at the Mercatus Center of George Mason University, J.D. from Harvard Law School and M.A. in Economics from Georgetown University, “Competition Policy Challenges for a New U.S. Administration: Is The Past Prologue?”, Concurrences: Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

12. But recent suggestions put forth in an October 2020 House Judiciary Subcommittee on Antitrust majority report (HJSMR) [12] and in a November 2020 report by the Washington Center for Equitable Growth (WCEGR) [13] (coauthored by various prominent critics of Trump administration antitrust enforcement who served in the Obama administration) would go far beyond application of existing antitrust law to big digital platforms. In particular, the HJSMR proposes taking a highly regulatory approach to digital platforms, including imposing “[s]tructural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” [14] The WCEGR also endorses the use of rulemaking (and, in particular, FTC rulemaking) to tackle significant problems of competition. [15] Rushing into rulemakings on platforms (especially without a clear showing of market failure) poses major risks, however, including, in particular, the creation of disincentives to invest in platform-specific innovation; and the interference with potential efficiency-seeking transactions by platform operators and suppliers of complements (in light of inevitable government second-guessing of platform-related business decision-making). The JBA antitrust team may wish to keep such potential costs in mind in setting competition policy vis-à-vis digital platforms.

13. To address the perceived growth and abuse of market power that are said to afflict the American economy, the HJSMR and WCEGR have also proposed to amend and thereby “toughen” the core antitrust statutes, to alter burdens of proof in litigation, and to bestow a substantial increase in resources on federal antitrust enforcers. [16] The problem of scarce agency resources has long been highlighted by enforcement agency leadership, and certainly merits attention. The call for dramatic systemic change in antitrust enforcement norms, however, should be approached cautiously, with a jaundiced eye. In our common-law-based antitrust system, a major disruption to long-familiar statutory schemes would generate major uncertainty regarding antitrust enforcement principles and substantially disrupt business planning for an indeterminate amount of time. Many welfare-enhancing transactions could be sacrificed. The harm to consumer and producer welfare due to lost socially beneficial business initiatives would be hard (if not impossible) to measure, but nonetheless real. It is certainly possible that such losses would outweigh (perhaps substantially) whatever welfare gains might flow from statutory enforcement “reform.” In other words, it should not casually be assumed that “more and different” antitrust would be an unalloyed benefit. As in all other areas of law enforcement, likely costs as well as purported benefits should be central to the antitrust public policy calculus. (Costs would include, of course, the likelihood and magnitude of “false positives” under the new enforcement regime, not just the reduction in socially beneficial transactions.)

#### The plan introduces the prospect that antitrust law is volatile. Businesses will fear that it could change, so they won’t realize investments---that guts R&D.

Alexander P. Okuliar 20, J.D. from Vanderbilt University Law School, B.S. in Economics and B.A. in History from The Wharton School of the University of Pennsylvania, “Promoting Predictability and Transparency in Antitrust Enforcement and Standards Essential Patents”, 12/8/2020, https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-okuliar-delivers-remarks-telecommunications-industry

The Importance of Predictability and Transparency to Antitrust Enforcement

Good afternoon. It’s a pleasure to join you today, thank you for the invitation. I’d like to begin with some prepared remarks addressing the importance of predictability and transparency to antitrust enforcement, particularly as it relates to standards-essential patents, give an overview of the Division’s recent activity in this space, and then turn to some questions.

Antitrust law can be a very powerful tool to promote economic dynamism and innovation. It establishes important rules regarding how firms may operate in marketplaces across the economy. Firms, in turn, rely on these rules when making all sorts of strategic decisions, from day-to-day concerns to overall operating plans, from pricing or discounting strategies to long-term growth strategies.

For any economy to realize meaningful long-term growth, firms (and consumers) must have confidence in the underlying legal rules governing their existence and behavior. Starting and growing a company is often expensive and risky. Maintaining a business is also costly, and firms are constantly assessing their ongoing viability and potential for growth. Confidence in the basic legal system is, of course, critical. Confidence in specialized regulatory regimes is likewise important. Firms are more likely to engage in costly R&D, and in the kind of expensive, time-consuming experimentation that innovation tends to require, when they are confident they will be rewarded for these investments—that, for example, antitrust laws will not change in the interim between investment and return in a way that deprives the firm from being able to recoup and benefit from its investments.

This innovation and dynamic competition are critical to our modern economy. So the more that we, as enforcers, can do to ensure the basic competition law rules of the road are clear and predictable, the more we can help to preserve competition and to spur economic growth. Not only do firms benefit from this, but so, too, do consumers. They are the beneficiaries of the increased R&D and innovation that can thrive in a reliable regulatory and enforcement regime. Moreover, clear and foreseeable enforcement empowers consumers, who can then more readily understand when unlawful conduct may be occurring, and be better-positioned to identify violations and to protect themselves and others.

Predictability and transparency in antitrust enforcement are important across markets and industries, but are often particularly important at the intersection of antitrust and intellectual property. Both competition and IP laws seek to foster long-term innovation and dynamic competition—which, again, depend on firms continuing to engage in risky and costly efforts today in the hopes of achieving rewards tomorrow. This is true for owners of various IP rights, including standards-essential patent holders.

#### It’s all perception-based---the possibility that precedent could be applied crumbles confidence and spirals into global decline

Mohamed A. El-Erian 17, Chief Economic Adviser at Allianz, Chairman of US President Barack Obama’s Global Development Council, Former CEO of the Harvard Management Company and Deputy Director at the International Monetary Fund, “America’s Confidence Economy”, Project Syndicate, 3/20/2017, https://www.project-syndicate.org/commentary/trump-market-optimism-economic-growth-by-mohamed-a--el-erian-2017-03

The surge in business and consumer sentiment reflects an assumption that is deeply rooted in the American psyche: that deregulation and tax cuts always unleash transformative pro-growth entrepreneurship. (To some outside the US, it is an assumption that sometimes looks a lot like blind faith.)

Of course, sentiment can go in both directions. Just as a “pro-business” stance like Trump’s can boost confidence, perhaps even excessively, the perception that a leader is “anti-business” can cause confidence to fall. Because sentiment can influence actual behavior, these shifts can have far-reaching impacts.

In his groundbreaking General Theory of Employment, Interest, and Money, John Maynard Keynes referred to “animal spirits” as “the characteristic of human nature that a large proportion of our positive activities depend on spontaneous optimism, rather than mathematical expectations, whether moral or hedonistic or economic.” Jack Welch, who led General Electric for 20 years, is a case in point: he once stated that many of his own major business decisions had come “straight from the gut,” rather than from analytical models or detailed business forecasts.

But sentiment is not always an accurate gauge of actual economic developments and prospects. As the Nobel laureate Robert J. Shiller has shown, optimism can evolve into “irrational exuberance,” whereby investors take asset valuations to levels that are divorced from economic fundamentals. They may be able to keep those valuations inflated for quite a while, but there is only so far that sentiment can take companies and economies.

So far, the exuberant reaction of markets to Trump’s victory – all US stock indices have reached multiple record highs – has not been reflected in “hard data.” Moreover, economic forecasters have made only modest upward revisions to their growth projections.

It is not surprising that equity investors have responded to the surge in animal spirits by attempting to run ahead of a possible uptick in economic performance. After all, they are in the business of anticipating developments in the real economy and the corporate sector. In any case, they believe that they can quickly reverse their portfolio positions should their expectations change.

That is not the case for companies investing in new plants and equipment, which are less likely to change their behavior until announcements begin to be translated into real policies. But the longer they wait, the weaker the stimulus to economic activity and income, and the more consumers must rely on dissaving to translate their positive sentiment into actual purchases of goods and services.

It is in this context that the economy awaits a solid timeline for policy announcements to evolve into detailed design and durable implementation. While there is often some delay when political negotiations and trade-offs are involved, in this case, the sense of uncertainty may be heightened by policy-sequencing decisions. By deciding to begin with health-care reform – an inherently complicated and highly divisive issue in US politics – the Trump administration risks losing some of the political goodwill that could be needed to carry out the kinds of fiscal reform that markets are expecting.

Even if a bump in the economic data does arrive, it may not last, unless the Trump administration advances policies that enhance longer-term productivity, through, for example, education reform, apprenticeship programs, skills training, and labor retooling. The Trump administration would also have to refrain from pursuing protectionist trade measures that would disrupt the “spaghetti bowl” of cross-border value chains for both producers and consumers.

If improved confidence in the US economy does not translate into stronger hard data, unmet expectations for economic growth and corporate earnings could cause financial-market sentiment to slump, fueling market volatility and driving down asset prices. In such a scenario, the US engine could sputter, causing the entire global economy to suffer, especially if these economic challenges prompt the Trump administration to implement protectionist measures.

#### The risk of possible application is calculated into potential transactions---the weight of uncertainty devalues otherwise-profitable deals, shutting them down

Camilla Jain Holtse 20, Associate General Counsel in Maersk Line, LL.M in European Law from King’s College, Master’s Degree from University of Aarhus, “Navigating Through Uncertain Waters—The Importance of Legal Certainty, Predictability, and Transparency in Future Antitrust Enforcement”, Journal of European Competition Law & Practice, Volume 11, Issue 8, October 2020, p. 447

II. Why should we worry about uncertainty costs?

When considering the potential costs of new regulation, decision-makers often emphasise the legal spend, i.e., the cost of in-house lawyers, external advisers, document preservation systems, etc. But what is often overlooked is the far more expensive costs related to uncertainty in the process of risk-weighting potential investments. A simple example:

Company A seeks to enter into a transaction with Company B to achieve carbon output reduction. Company A’s executive management team, in conjunction with financial advisors, calculates a value for the transaction, which is typically a range of acceptable prices to achieve the desired goal. Company A’s CEO then engages her legal department to assess the potential for regulatory risk flowing from the venture. Given the potential for fines, divestitures, restrictions, or outright prohibitions on the project from a myriad of governmental authorities, the application of competition regulation has the potential to result in billions of dollars in business losses. On receiving legal advice on the probability of such losses, Company A’s CEO applies risk weighting to the value of the transaction, adjusting the value downward to account for the regulatory risk.

In some ways, legal ‘weight’ on a transaction, collaboration, or other business initiative is (socially and economically) desirable—if for example, a company employee proposed to engage in a price-fixing cartel, the legal department’s assessment of extreme risk serves a valuable societal goal. But in far too many cases, it is the mere lack of transparency and certainty in global competition regimes that lead to a determinative ‘risk weighting’ outcome in a deal. Competition counsel must conservatively advise of the uncertainty surrounding deal execution, and responsible CEOs must protect shareholders against business losses flowing from possible regulatory intervention including the reputational risk following compliance breaches. As in our example, regulatory uncertainty alone may prevent a pro-competitive, socially desirable transaction that has been devalued by the risk of regulatory intervention.

When designing business practices, engaging in collaboration with other companies, and in considering merger activities, legal certainty, transparency, and predictability routinely drive willingness to invest.

### Spills Over---2NC

#### It’s Pandora’s Box---once there’s scope, antitrust will inevitably be employed in new areas

Eric Cortellessa 21, Investigative Editor of the Washington Monthly, Graduate of Northwestern University’s Medill School of Journalism, “The Conservatives Out to Stop the New Bipartisan Antitrust Movement”, Washington Monthly, July / August 2021, https://washingtonmonthly.com/magazine/july-august-2021/the-conservatives-out-to-stop-the-new-bipartisan-antitrust-movement/

That’s when the Alliance on Antitrust sprang into action, putting out a series of statements in conservative media warning Republicans against the idea. One of the Alliance’s members, Josh Withrow, then of FreedomWorks, for example, told The Washington Times that expanding the scope of antitrust enforcement to take on Big Tech would open a “Pandora’s box that could have dire consequences throughout our economy.” The group also sent a letter to the House antitrust subcommittee making a similar point, arguing that the “economic consequences of many of the recent proposals,” such as creating more stringent merger prohibitions, would “make the American economy and consumers substantially worse off across a wide array of industries.”

As it happens, this professed concern—that cracking down on tech monopolies would punish other industries—aligns with the interests that fund the Alliance and its member organizations. Most of these groups receive financial support from Big Tech—including the Committee for Justice, which gets donations from Google, according to the tech company’s political engagement disclosures—but also from monopolistic corporations in other sectors such as oil and gas, Big Ag, telecom, banking, and pharmaceuticals. These corporations will themselves soon face antitrust enforcement—and potentially major reductions in profits—if something isn’t done now to stop Congress from creating new and stricter laws against companies amassing too much market power.

#### The overall regulatory environment will shift---that causes follow-on suits

NLR 21 – National Law Review, “The Antitrust Pendulum Swings to the Populist Pole”, 6/24/2021, https://www.natlawreview.com/article/antitrust-pendulum-swings-to-populist-pole

Implications

If legislation is enacted, it may encourage government challenges against mergers, acquisitions, and abuse of a company’s dominant position. This, in turn, may create a litigation environment where disgruntled or disadvantage competitors are more likely to challenge the dominant firm’s business practices.