# Open Source vs Liberty D7 R2

## Off-Case

### Off

#### Prohibitions are exclusively injunctions

James S. Liebman 90, Associate Professor of Law. Columbia University School of Law, “Desegregating Politics: "All-Out" School Desegregation Explained,” 90 Colum. L. Rev. 1463, Lexis

4. The Prohibition Theory. -- The Prohibition theory is a theory of right with almost no theory of remedy. Accepting the Correctivists' view of official racial discrimination as a prohibited deviation from interpersonal norms, the Prohibition theory limits the remedial object when courts confront the wrong to henceforth prohibiting its recurrence. Taking to heart the Correction theory's private-law understanding of the violation and its antipathy to redistribution, the Prohibition theory deploys the remedy exclusively against those harms that are redressable without cost or benefit to anyone besides identifiable wrongdoers and the identifiably wronged. Then, taking to heart the difficulties of individually identifying the wrongdoers and especially the wronged and of directing an affirmative injunction at those persons but no others, the theory concludes that the best the courts can do is to issue a negative injunction forbidding the identified wrongdoers to err again in the future. 288

[\*1525] Prohibitory theory can be reached by a different route: The theory tracks the outdated equitable principle that a violation of a right will be prohibited via negative injunction, but that restoration of the status quo ante generally will not be ordered via mandatory injunction. 289

#### 1AC Kirwood says the aff imposes remedies and damages. Solvency evidence defines the plan, so they’re stuck with it.

#### Voting issue---it’s extra-T, gives them huge solvency boosters and remedies should be neg ground vs injunctions affs.

### Off

#### ‘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 intensifies application of antitrust for already covered activities by establishing a new mechanism for enforcement — it does not curtail an immunity or exemption

#### Vote neg — eliminating exemptions and immunities is the most predictable limit on the topic, allows for unique innovation and focuses debates on the balance between antitrust and regulation

### Off

#### “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.

#### The aff only applies to conduct in a specific segment

#### Vote neg---potential subsets is infinite---only economy-wide affs have link uniqueness by forcing the aff to structurally change antitrust. ASPEC is a voter---makes mechanism debates impossible, allows aff reclarification, and skews negative strategy

### Off

#### The fifty states and all relevant entities through the National Association of Attorneys General Antitrust Task Force should substantially increase all necessary prohibitions on anticompetitive unilateral conduct by dominant digital platforms

#### 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)

### Off

The United States federal government should

* not expand the scope of antitrust;
* establish a national innovation policy targeted around AI, 5G, cyber and fintech innovation to oversee procurement reform, incentives for research and development, and workforce training;

#### increase funding for the FTC and make that funding specifically tailored for protecting data privacy and fighting fraud.

#### It kickstarts innovation.

Sadat ’20 [Mir; November 22; former Policy Director leading interagency coordination on defense and space policy issues, including at the Department of Defense and National Security Council, Ph.D. from Claremont Graduate University; The Hill, “Why innovation is so important to America's global leadership,” https://thehill.com/opinion/technology/526535-why-innovation-is-so-important-to-americas-global-leadership]

The U.S. government must mitigate the harm to America’s innovation base. So far, the government has yet to craft a national innovation policy and stand up a true national innovation council to modernize government; coordinate between the government, industry and academia; transform monopolistic or oligopolistic markets into competitive sectors; and ensure that America regains global economic leadership through foreign partnerships. Reform of American innovation is necessary for several reasons.

First, to harness the untapped potential of exponential technologies, the government must democratize its requirements processes that have advantaged legacy systems and traditional technology providers. The government must evolve its industrial age procurement policies, practices and beneficiaries to the digital age by placing innovation at the core of its activities. The innovation base needs public and private investment capital, scaled to the risk and importance of the invention, to level the playing field for startups and scale-ups, and to increase competitiveness. In short, the government must increase funding and incentives for Apollo-scale research and development (R&D) programs.

Second, to create exponential technologies in an era of unprecedented disruption, America’s workforce requires continuous training and education. The “lone innovator” is a myth because every American invention is a mix of persistence, genius, teamwork, business model and resource management. The government must establish whole-of-nation policies that stimulate world-class innovators in the areas of science, technology, engineering and mathematics (STEM); support nationwide STEM access and diversity; promote R&D and economic growth in technologically underserved areas using economic opportunity zones; and improve mentorship programs for underrepresented persons.

Third, individual innovators and their teams are challenged to achieve successful outcomes because of the high costs and risks, the uncertainty and gaps in funding, and the vicissitudes of the market’s readiness. America’s innovators are strewn across the federal enterprise, the national security establishment, state and local governments, startups and established corporations, universities and research institutions, and other consortiums. Innovators must collaborate by leveraging innovation multipliers such as diversity of effort, thought and demographics.

Fourth, if rules-based, free-market innovation is to compete economically and demonstrate American leadership, then the government must create and enhance opportunities for innovators to compete in international markets and garner global funding. Innovation is the global competition that transcends borders. We must be the first to disrupt our markets, rather than others who could render particular industries potentially obsolete.

#### That solves privacy and fraud.

Access Now et al. 21 (November 15th, “Coalition Letter to Congress in Support of Build Back Better Act FTC Provisions,” https://epic.org/documents/coalition-letter-to-congress-in-support-of-build-back-better-act-ftc-provisions/)

The Act’s increased funding for the FTC is pivotal. The Commission is badly understaffed and under-resourced, which limits its ability to address an ever-deepening crisis of exploitative data practices.[1] Allocating $1 billion for data protection and antitrust work and establishing a bureau in the FTC to address privacy, civil rights, and data security matters will go far in addressing these problems. This is particularly critical in light of numerous security breaches that lead to identity fraud, which cost consumers an estimated $13 billion in 2020 alone.[2] A better funded and organized Commission will be better equipped to prevent unfair and deceptive data practices, which disproportionately harm people of color and low-income communities. For example, as the FTC noted in its recent report Serving Communities of Color, people of color are disproportionately affected by fraud.[3]

### Off

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

#### maintain the scope of antitrust laws at status quo levels

#### cease and/or settle current FAANG\* antitrust lawsuits

#### issue a memorandum to the fifty state attorney generals to enter deferred prosecution and settlement agreements on current FAANG antitrust lawsuits

\*FAANG = Facebook/Meta, Apple, Amazon, Netflix, Google/Alphabet.

#### Tech stocks are up big

Wang 2/2/22 (Lu, “Faang Stocks Blindside Traders With $870 Billion Out-of-Nowhere Surge”, https://www.msn.com/en-us/money/markets/faang-stocks-blindside-traders-with-870-billion-out-of-nowhere-surge/ar-AATptxz?ocid=FinanceShimLayer)

(Bloomberg) -- Retail traders sold the ETF dip, hedge funds bailed at the fastest rate in five months, and institutions cut allocations to lows unseen since the financial crisis. Then the tech megacaps staged an $870 billion comeback.

It’s something few investors saw coming, after a hawkish Federal Reserve sparked a violent new-year rotation out of growth companies like software and into cheap, economically sensitive shares.

Yet as Google’s parent Alphabet Inc. joins Microsoft Corp. and Apple Inc. in reporting robust results, both day traders and Wall Street pros risk getting blindsided by the rebound in the famous tech cohort known as Faang.

“Growth and tech have seen a major reversal off the lows,” said Chris Harvey, head of equity strategy at Wells Fargo Securities. “The quick turnaround is likely causing pain not only for investors that have shunned Tech but also some near-term pain for short sellers.”

It’s a lesson for anyone betting that the heydays are likely over for the Faang grouping, which also includes Amazon.com Inc. and Facebook parent Meta Platforms Inc. While the pandemic-era safety trade in large-cap equities is on the wane, this earnings season is showing yet again the dangers for anyone shunning these reliable profit generators.

#### The plan unleashes worries of a legal assault against tech giants—causes a stock sell-off

Delavigne 21 (Lawrence, Writer for Reuters, “U.S. big tech dominates stock market after monster rally, leaving investors on edge”, 8/28/21 https://www.reuters.com/article/us-usa-markets-faangs-analysis/u-s-big-tech-dominates-stock-market-after-monster-rally-leaving-investors-on-edge-idUSKBN25O0FV)

BOSTON, MA.(Reuters) - U.S. technology giants are increasingly dominating the stock market in the midst of the coronavirus pandemic, even as they draw accusations of unfair business practices, and some investors fear the pump is primed for a tech-fueled sell-off.

The combined value of the S&P 500's five biggest companies - Apple Inc AAPL.O, Amazon.com Inc AMZN.O, Microsoft Corp MSFT.O, Facebook Inc FB.O and Google parent Alphabet Inc GOOGL.O - now stands at more than $7 trillion, accounting for almost 25% of the index's market capitalization. That compares with less than 20% pre-pandemic.

The quintet’s burgeoning share prices reflect a transition to an increasingly technology-driven economy that has been accelerated by the coronavirus outbreak, as doorways fill with Amazon packages, homebound families stream movies and friends commiserate on Facebook.

Yet the companies are drawing opposition. U.S. lawmakers are accusing them of stifling competition, a charge also leveled in recent days against Apple by Epic Games, creator of the popular game Fortnite.

Some investors worry the companies powering this year’s equity rally could become the market’s Achilles’ heel if a legal assault, a shift to undervalued names or a move higher in bond yields dries up appetite for technology stocks.

“People see these companies as winners and investors are willing to pay any price to own them,” said Michael O’Rourke, chief market strategist at JonesTrading. “That’s always a risk.”

LEGAL THREAT

One potential threat comes from an array of investigations and legal actions.

The latest came Monday, when a federal judge temporarily blocked Apple from cutting off all the developer accounts of Epic Games, pending a full hearing on the issue. It was a partial win for Epic, which had called Apple’s rules an anticompetitive abuse of power.

The standoff centers on Apple’s App Store, which forms the centerpiece of a $46.3 billion-per-year services business that has helped buoy the company’s share price.

The decision “is just a first battle of many on the horizon,” said Dan Ives, an analyst at Wedbush Securities. “From a valuation perspective, there’s clearly an overhang around antitrust.”

Wedbush nevertheless raised its target price for Apple on Wednesday to $700 a share in a “bull case” scenario, citing a “once in a decade” opportunity to take advantage of as many as 950 million potential iPhone upgrades worldwide.

Apple shares on Thursday closed at $500.04.

Still, this week’s Apple court decision may be a taste of things to come for technology giants, whose influence has been one of the few issues capable of galvanizing bipartisan interest among lawmakers.

Alphabet, Facebook, Amazon and Apple face a series of federal government probes into allegations that they unfairly defend their market share, with litigation against Alphabet possible later this year.

“These few behemoths dominate their industry and can set the rules of the global economy,” said U.S. Senator Richard Blumenthal, a Democrat who has been outspoken about antitrust issues. “This kind of concentrated power is always dangerous.”

The opposition is a worry for investors hoping the companies will continue delivering robust growth that justifies their valuations.

Amazon said it operates in a “fiercely competitive” market, citing U.S. Census Bureau data that only about 10% of U.S. retail sales occur online.

Apple declined comment. The company previously said it competes vigorously against Samsung Electronics Co Ltd 005930.KS and other Android device makers in the smart phone markets.

Alphabet declined comment. It previously said it competes with Amazon, Microsoft, Comcast Corp CMCSA.O, AT&T Inc T.N and many others.

Facebook and Microsoft had no immediate comment.

INVESTMENT DILEMMA

For some investors, the companies embody a dilemma that has dogged them at various times during the last decade. Many have found that cutting exposure to tech-related shares has limited portfolio performance over the long term.

The Big Five have seen their shares jump 22% or more to record highs this year, with Amazon soaring 86%. By comparison, the median stock performance across the S&P 500 year-to-date is a 4% drop.

The companies’ “increased market share ... provides potentially huge opportunities supporting growth prospects over many years,” said David Polak, equity investment director at $1.7 trillion Capital Group, which owns shares of big technology companies.

Still, some worry that a bad patch in the companies’ widely owned shares could trigger violent swings in broader markets.

Goldman Sachs analysts said in a recent report that the S&P 500 “has never been more dependent on the continued strength of its largest constituents.”

Another risk is a broad-based economic rebound boosting earnings of companies that have underperformed during the pandemic, potentially making their shares more competitive with tech stocks, said Edwin Jager, head of fundamental equities at hedge fund firm DE Shaw & Co, which oversees more than $50 billion.

In addition, a sustained rise in bond yields could make growth stocks less attractive, Jager said. Longer-term Treasury yields hit multi-month highs on Thursday after the Federal Reserve announced a shift in monetary strategy.

A change of sentiment toward big tech could take a comparatively heavier toll on the shares of less profitable technology companies that have rallied alongside the market’s giants.

#### High tech stock valuation now is key to Chinese rebound after Evergrande

Spilka 10/27/21 (Dmytro Spilka is a finance writer based in London. Founder of Solvid and Pridicto. His work has been published in Nasdaq, Kiplinger, Financial Express, and The Diplomat. “With Tech-Driven Rebound, Asian Markets Turn Corner on Evergrande Crisis”, https://thediplomat.com/2021/10/with-tech-driven-rebound-asian-markets-turn-corner-on-evergrande-crisis/)

Asian stocks, alongside many of their global counterparts, have recently undergone a healthy rebound upward as the embattled Chinese property giant Evergrande reportedly made its bond interest payments – a feat some onlookers feared wouldn’t happen.

Leading technology names across Asia have contributed to the market recovery also. Tech stocks have been at the forefront of the markets as they seek to accelerate away from September’s Evergrande crisis. Notably, the Hang Seng TECH (HSTECH) sub index has helped to drive some growth at the beginning of the fourth quarter, along with the general Hong Kong benchmark Hang Seng Index (HSI).

Analysts have found that a recent Wall Street rally, which helped to cause growth among Apple (APPL), Facebook (FB), and Microsoft (MSFT) stocks, has also helped to restore confidence in Asian tech, soothing concerns surrounding Evergrande. In China, shares have also been rising in what’s reportedly been the country’s weakest period of economic growth in a year.

So have the dark clouds dispersed from Asia’s markets? And can investor interest in big tech help to steer a stock market recovery in what’s been a challenging year for the continent?

The plight of Evergrande has been one of the biggest stories in finance in 2021. Although plans to rescue the Chinese developer are in place, progress has been slow. This led the firm to the brink of default, risking a collapse that would shock China’s real estate industry, house prices, and economy on a domestic and international scale.

With total debts amounting to $305 billion, Evergrande’s floundering stocks have hindered China’s recovery from the financial impact of the COVID-19 pandemic.

However, the recent news that Evergrande has met its deadline to deliver a bond interest payment of $83.5 million has delivered a wave of optimism across Asian markets.

Sadly, the interest payment is unlikely to appease the long-term fears of investors, and although the $83.5 million payment has helped the company to avoid an official default, it’s widely recognized as only a short-term fix at this stage.

Evergrande will need to repeat the process all over again in the coming days with a second offshore bond payment worth $47.5 million. Given that the company’s total liabilities amount to around 2 percent of China’s GDP, the growing debts of Evergrande could lead to a significant economic collapse that’s felt heavily across Asia and the rest of the world alike.

“Evergrande making its interest payment is a positive surprise,” said Paul Lukaszewski, head of corporate debt at Abrdn. “Importantly other developers also confirmed making interest payments – for a market which has fully capitulated, the fact the world did not end overnight could itself be a positive catalyst.”

“Multiple financing channels are effectively closed to developers in response to the policies implemented by the government. For those channels to reopen, investors have to believe these companies can remain going concerns. This means they need to have sufficient access to their own cash flows and to refinancing options to address their debt as it becomes due,” Lukaszewski added.

Although all eyes will remain firmly on Evergrande as the firm seeks to navigate away from its deep crisis, optimism appears to be seeping back into Asian markets, and growth in tech stocks appears to be playing a key role in aiding an economic recovery.

Nasdaq has reported that Asian markets have been trading mostly higher in the wake of the Evergrande crisis, owing to Wall Street support from crude oil prices and technology stocks that have mirrored their peers on Nasdaq.

Big tech firms have played a key role in aiding global markets, and their respective impact on the market was shown as the NYSE FANG+ Index climbed to its fifth consecutive positive session recently – its longest streak since June. In all, the index has climbed some 11 percent from an early October low.

The index is comprised of 10 companies with U.S. and Asia representation included – and shares in the China-based companies Alibaba and Baidu have helped to push more growth. Alibaba and Baidu experienced 4.1 percent and 2.2 percent price rises, respectively, amidst the rally.

The growth of big tech may be bolstered by upcoming developments in emerging technology markets, which could help to mitigate the impact of Evergrande across Asian finance.

Maxim Manturov, head of investment research at Freedom Finance Europe, believes that developments in fintech can carry a positive impact on markets as major financial institutions seek to grow their digital services globally.

With the further growth of financial technology services intending to aid millions of customers, it’s fair to anticipate that the growing fintech market will play a key role in bringing optimism back to Asian markets.

Although there are many hurdles ahead, and investors are rightly looking out for news on the embattled Evergrande, big tech performance has helped to return some optimism back to Asian markets. Provided there are no high-profile defaults on the horizon, tech looks set to help Asia turn the corner on a difficult third quarter and to look with more enthusiasm to a brighter fourth quarter.

#### China’s economy driven by tech growth prevents great power war

Beckley & Brands 9/24/21 (MICHAEL BECKLEY is Associate Professor of Political Science at Tufts University and Jeane Kirkpatrick Visiting Fellow at the American Enterprise Institute. HAL BRANDS is Henry A. Kissinger Distinguished Professor of Global Affairs at the Johns Hopkins University School of Advanced International Studies and a Senior Fellow at the American Enterprise Institute. China Is a Declining Power—and That’s the Problem, https://foreignpolicy.com/2021/09/24/china-great-power-united-states/)

All of this is happening, moreover, as China confronts an increasingly hostile external environment. The combination of COVID-19, persistent human rights abuses, and aggressive policies have caused negative views of China to reach levels not seen since the Tiananmen Square massacre in 1989. Countries worried about Chinese competition have slapped thousands of new trade barriers on its goods since 2008. More than a dozen countries have dropped out of Xi’s Belt and Road Initiative while the United States wages a global campaign against key Chinese tech companies—notably, Huawei—and rich democracies across multiple continents throw up barriers to Beijing’s digital influence. The world is becoming less conducive to easy Chinese growth, and Xi’s regime increasingly faces the sort of strategic encirclement that once drove German and Japanese leaders to desperation.Case in point is U.S. policy. Over the past five years, two U.S. presidential administrations have committed the United States to a policy of “competition”—really, neo-containment—vis-à-vis China. U.S. defense strategy is now focused squarely on defeating Chinese aggression in the Western Pacific; Washington is using an array of trade and technological sanctions to check Beijing’s influence and limit its prospects for economic primacy. “Once imperial America considers you as their ‘enemy,’ you’re in big trouble,” one senior People’s Liberation Army officer warned. Indeed, the United States has also committed to orchestrating greater global resistance to Chinese power, a campaign that is starting to show results as more and more countries respond to the threat from Beijing. In maritime Asia, resistance to Chinese power is stiffening. Taiwan is boosting military spending and laying plans to turn itself into a strategic porcupine in the Western Pacific. Japan is carrying out its biggest military buildup since the end of the Cold War and has agreed to back the United States if China attacks Taiwan. The countries around the South China Sea, particularly Vietnam and Indonesia, are beefing up their air, naval, and coast guard forces to contest China’s expansive claims. Other countries are pushing back against Beijing’s assertiveness as well. Australia is expanding northern bases to accommodate U.S. ships and aircraft and building long-range conventional missiles and nuclear-powered attack submarines. India is massing forces on its border with China while sending warships through the South China Sea. The European Union has labeled Beijing a “systemic rival,” and Europe’s three greatest powers—France, Germany, and the United Kingdom—have dispatched naval task forces to the South China Sea and Indian Ocean. A variety of multilateral anti-China initiatives—the Quadrilateral Security Dialogue; supply chain alliances; the new so-called AUKUS alliance with Washington, London, and Canberra; and others—are in the works. The United States’ “multilateral club strategy,” hawkish and well-connected scholar Yan Xuetong acknowledged in July, is “isolating China” and hurting its development. No doubt, counter-China cooperation has remained imperfect. But the overall trend is clear: An array of actors is gradually joining forces to check Beijing’s power and put it in a strategic box. China, in other words, is not a forever-ascendant country. It is an already-strong, enormously ambitious, and deeply troubled power whose window of opportunity won’t stay open for long. In some ways, all of this is welcome news for Washington: A China that is slowing economically and facing growing global resistance will find it exceedingly difficult to displace the United States as the world’s leading power—so long as the United States doesn’t tear itself apart or otherwise give the game away. In other ways, however, the news is more troubling. History warns the world should expect a peaking China to act more boldly, even erratically, over the coming decade—to lunge for long-sought strategic prizes before its fortunes fade. What might this look like? We can make educated guesses based on what China is presently doing. Beijing is already redoubling its efforts to establish a 21st century sphere of economic influence by dominating critical technologies—such as artificial intelligence, quantum computing, and 5G telecommunications—and using the resulting leverage to bend states to its will. It will also race to perfect a “digital authoritarianism” that can protect an insecure Chinese Communist Party’s rule at home while bolstering Beijing’s diplomatic position by exporting that model to autocratic allies around the world. In military terms, the Chinese Communist Party may well become increasingly heavy-handed in securing long, vulnerable supply lines and protecting infrastructure projects in Central and Southwest Asia, Africa, and other regions, a role some hawks in the People’s Liberation Army are already eager to assume. Beijing could also become more assertive vis-à-vis Japan, the Philippines, and other countries that stand in the way of its claims to the South and East China Seas. Most troubling of all, China will be sorely tempted to use force to resolve the Taiwan question on its terms in the next decade before Washington and Taipei can finish retooling their militaries to offer a stronger defense. The People’s Liberation Army is already stepping up its military exercises’ intensity in the Taiwan Strait. Xi has repeatedly declared Beijing cannot wait forever for its “renegade province” to return to the fold. When the military balance temporarily shifts further toward China’s favor in the late 2020s and as the Pentagon is forced to retire aging ships and aircraft, China may never have a better chance of seizing Taiwan and dealing Washington a humiliating defeat. To be clear, China probably won’t undertake an all-out military rampage across Asia, as Japan did in the 1930s and early 1940s. But it will run greater risks and accept greater tensions as it tries to lock in key gains. Welcome to geopolitics in the age of a peaking China: a country that already has the ability to violently challenge the existing order and one that will probably run faster and push harder as it loses confidence that time is on its side. The United States, then, will face not one but two tasks in dealing with China in the 2020s. It will have to continue mobilizing for long-term competition while also moving quickly to deter aggression and blunt some of the more aggressive, near-term moves Beijing may make. In other words, buckle up. The United States has been rousing itself to deal with a rising China. It’s about to discover that a declining China may be even more dangerous.

### Off

#### **Antitrust ensures a Democrat win.**

Teachout ’20 [Zephyr; December 18; Associate Professor of Law at Fordham University School of Law; The New Republic, “A Blueprint for a Trust-Busting Biden Presidency,” <https://newrepublic.com/article/160646/biden-antitrust-blueprint-monopoly-busting>]

Just as important, given the precarious political footing of the incoming Biden administration, is the potent electoral appeal of such an agenda—something that FDR also well understood as he instituted federal income supports as the basis for a Democratic governing coalition that spanned generations. Antitrust is one of the few policy arenas in which aggressive action will win Biden the devoted support from the activist left wing of the Democratic Party, while splitting apart and exposing the always unsustainable economic arguments mounted against crony capitalism by self-styled populists on the right. For starters, this realignment of the Democratic Party’s vision of the American political economy would go a long way to help Democrats win the Senate in 2022—a cycle that boasts an unusual number of vulnerable GOP incumbents, weighed down with the dismal Trump-McConnell legacy on Covid relief.

The opportunity that Biden and the Democrats need to seize here stems from the basic fact that antitrust politics is not like other politics. Traditional left and right loyalties simply do not hold within its orbit. The economic populists of the right hate corporate monopolies as much as working-class progressives and immigrant small-business owners do. It’s not for nothing that Ted Cruz keeps yelling about monopolies—or that Trump, when he first campaigned in 2016, and when he was clearly losing in 2020, turned to attacking corporate monopolies. Trump of course reneged on his trust-busting promises, but he understood the rhetorical power of saying that “big media, big money, and big tech” were all against him. On the front lines of Democratic policymaking, meanwhile, a generation’s worth of neoliberal giveaways to these sectors is finally yielding to a new social democratic consensus. In antitrust politics, Amy Klobuchar, Elizabeth Warren, and Bernie Sanders share their anger with Andrew Yang and Scott Galloway—a beloved tech business guru who rooted for Bloomberg.

Within the electorate proper, the depth of the emerging new antitrust consensus is even more striking. One recent poll by Data for Progress showed that 74 percent of Republicans and 80 percent of Democrats are “very concerned” or “somewhat concerned” about monopolies in the U.S. economy. The same survey showed the number of people who support breaking up big tech companies outnumbers those who oppose it by a two-to-one margin, again with no significant Democratic-Republican divide on the question. Indeed, some surveys now show that Republicans are more likely to see tech companies as having too much political power. A Harvard CAPS/Harris survey found similar numbers in 2019, with nearly 70 percent of voters saying that big tech should be subject to antitrust review, and had used market power to gain enormous profits. Almost two-thirds of Americans also told Data for Progress they wanted actions against big tech.

And while big tech soaks up a great deal of attention as the most recent monopoly player on the block, the same trend holds through most major sectors of the U.S. economy—voters see a plague of bigness, and are increasingly clamoring for the federal government to intervene. A 2020 poll by RuralOrganizing.org found that among rural voters, fighting corporate power is a top priority. Sixty-nine percent of the respondents in the survey believed that “a handful of corporate monopolies now run our entire economy.” Almost half said they’d be more likely to support a political leader combating this pattern of top-down concentration and endorsed “a moratorium on factory farms and corporate food and agriculture monopolies.” Opposition to the 2018 Bayer-Monsanto merger reached as high as 93 percent in one poll, with critics citing very sophisticated economic arguments for their opposition. More than 90 percent of respondents, for example, were concerned that the newly merged ag-and-medical giant would “use its dominance in one product to push sales of other products.”

These aren’t the voices of diehard Democrats with a few Republican crossovers, or vice versa. Within traditional political and policy disputes, you don’t see anything close to such openings for trans-partisan accord. In one representative 2020 Hill-HarrisX survey, for instance, 88 percent of Democrats supported Medicare for All, while 46 percent of Republicans did. Antitrust, by contrast, is foundationally bipartisan, interdenominational, cross-cutting—everything Biden said he wanted to be during his general election campaign and in his victory speech. Unlike other well-flogged economic or culture-war issues, antitrust affords an inviting path out of the bitter cul-de-sacs of prevailing political debate. In an age of trench-warfare–style base mobilizations, the antitrust agenda promises something else: a vision of widening opportunities for ordinary citizens, the basic American civic ethos of giving people a fair shot, and a governing plan that could actually unite Republican and Democratic support.

#### Locks in appeasement.

Charles ‘21 [Robert B.; March 12; J.D. from Columbia University Law School, MA from Oxford University, BA from Dartmouth College, Former Professor of Law at Harvard University’s Extension School, Former Assistant Secretary of State; AMAC Magazine, “The Sun Also Rises: 2022 Elections,” http://digitaledition.qwinc.com/publication/?m=40499&i=699518&view=articleBrowser&article\_id=3972169&ver=html5]

But here is where the "storyline" (sorry, "narratives" are children's stories) changes. The year 2022 represents a chance for a sharp turn back to normalcy. Americans are sick of lockdowns, lost jobs, and canceled pipelines, drilling, and fracking. They are tired of elites not caring.

They are tired of leaders with constitutional immunity from defamation hammering their free speech. They are tired of left-leaning governors halting worship but allowing riots. They are tired of restrictions on assembly, travel, self-defense, and independence. To borrow from Barbara Stanwyck (friend of Ronald Reagan) in Christmas in Connecticut, "In short, they are tired."

They should be. That is why 2022 matters. America deserves better and can get it. Here is how. The House and Senate could be flipped in 2022, throwing brakes on a runaway power grab.

To date, we have seen more executive orders than in recent history. Efforts continue to curtail the legislative filibuster, permitting any random outrages on majority vote. We see bills like H.R. 1, hoping to unconstitutionally federalize state elections and blunt free speech.

So, what do we know? Midterm elections favor the party that does not hold the White House. This year, Republicans need 10 seats to regain the House, putting Nancy Pelosi in the past. As Biden's approval lags—from job cuts, lockdowns, higher taxes, expensive oil and gas, re-indulging China and Iran, defense cuts, "open borders," and attacks on rights—momentum builds.

Fear of Biden-Harris flipped 15 Democrat seats to Republican in 2020. As safety, security, health, and jobs roil people, a wholesale shift may be in the offing. If 2020 was "Year of the Republican Woman," with a record 26 GOP women in the House, 2022 could see more. Experts note that these women are conservative—and their voices are rising.

Other issues play into 2022, especially censorship. Already, 4.6 percent of 2020 Biden voters say they would NOT have voted Biden if they had known more about Hunter. Biden won by 4.4 percent.

Even when lockdowns lift, socialist Democrat priorities are on track to kill jobs, raise taxes and costs, and restrict rights. Reopening schools is a parental priority, yet Democrats are slowing openings to satisfy teacher unions—that is, their donors.

On the numbers, Republicans have a real shot at regaining control of both chambers, which means hope for core values, defense, free markets, constitutional rights, a family focus, safe streets, secure borders, less regulation, and a shot at returning to what most call normalcy.

In the US House, 15 pickups are discussed, including Reps. Carolyn Bourdeaux (D-Ga.), Andy Kim (D-N.J.), Cheri Bustos (D-lll.), Ron Kind (D- Wis.), Peter DeFazio (D-Ore.), Filemon Vela, Henry Cuellar, Vicente Gonzalez, Colin Allred (D-Texas), Sharice Davids (D-Kan.), Katie Porter (D- CA), Deborah Ross (D-N.C.), John Garamendi (D-Calif.), Stephanie Murphy (D-Fla.), and Carolyn Maloney (D-NY).

Beyond these, two vacancies exist for the late Ron Wright (TX) and Luke Letlow (LA). Biden aims to pull Reps. Marcia Fudge (D-OH) and Cedric Richmond (D-LA) into his administration, bringing possible gains to 19. Again, history cuts for Republicans.

In the US Senate, 34 of 100 seats are up in 2022. Of these, 14 are held by Democrats and 20 by Republicans. While this suggests a challenge, especially since four Republican incumbents are not seeking re-election, Democrat seats in Georgia and Arizona were won by slim margins, and trends put Democrats on defense, with Biden's woeful agenda to defend.

Another harbinger is redistricting. The GOP will control two-thirds of all House seats and the Democrats a tenth, the rest settled by divided states and state commissions. Likely, 117 congressional districts will be drawn by Republican-controlled states, 47 by Democrats, 132 by division or commission. Seven are "at large," covering an entire state.

Perhaps the biggest factor, beyond 75 million voters roiled by 2020 and Biden's stumbling start, is history. Looking back, in 19 of the last 21 midterm cycles, the president's party lost seats in one or both chambers. In 18 of those 19, the president lost seats in both chambers. Only John F. Kennedy and George W. Bush gained seats in their first midterm, the latter after 9/11.

Specifically, FDR lost 81 House seats and seven Senate in his first midterm, Truman lost 45 House and 20 Senate, Ike 18 House and one Senate, Johnson 47 House and four Senate, and Nixon 12 House (picking up two Senate). Ford lost 48 House and five Senate, Carter 15 House and three Senate, and Reagan 26 House (picking up one Senate). Bush 41 lost eight House and one Senate, Clinton 52 House and eight Senate, Obama 63 House and three Senate, and Trump 40 House (picking up two in Senate). So, you see which way the wind blows.

The party in the White House loses big in most midterms—and in both chambers, slowing the president's agenda. The only first-term gains were in the Senate, all four Republicans: Nixon, Reagan, Bush 43 (who gained in both chambers), and Trump.

The message is this: have hope and focus on 2022. Sudden turnabouts are not just for movies and not just for one side. The funny thing is that the sun also rises. Much that is wrong can be corrected.

#### Nuclear war.

Means ‘21 [Grady; August 30; Former Policy Assistant to Vice President Nelson Rockefeller, Retired American Business Executive, and MA in Economics and Engineering from Stanford University, Former Systems Engineer for Northrop Corporation, Former Economist in the Office of the Secretary of the U.S. Department of Health, Education, and Welfare, Founder of SAGE Consulting, Author of MetaCapitalism and Wisdom of the CEO; The Hill, “Biden Brings The World Closer To Nuclear War,” https://thehill.com/opinion/white-house/569732-biden-brings-the-world-closer-to-nuclear-war]

Over the past six months, the world has edged closer to nuclear war than it has been since the Cuban Missile Crisis. The Doomsday Clock is ticking toward midnight. The global power balance has been dramatically reshuffled, and the potential for disastrous miscalculation hasn't been so high in 80 years. The match and fuse for this is instability — an exaggerated sense of U.S. weakness and lack of capability and resolve — that could lead to huge, aggressive military miscalculations and mistakes by our enemies. The Biden administration has set the table for such a catastrophe.

The timing could not be more dangerous. China has changed strategic direction and has been building its nuclear stockpile and delivery systems. China also has continued to develop hypersonic weapons, including stand-off “carrier killers,” space weapons and cyber capabilities to blind opponents’ strategic and conventional systems. Russia has been advertising (mostly for domestic consumption, but nonetheless worrying) its “unstoppable” delivery systems, and has a very capable nuclear stockpile and military. Iran will continue to move forward with building nuclear weapons. Pakistan and India both have significant nuclear capability in an increasingly unstable part of the world. Nuclear-armed North Korea is again assuming a more belligerent posture. Israel has a full nuclear triad (land, air, subs) to respond to existential aggression. The U.K. and France have significant nuclear deterrents. The world is a powder keg.

In Hollywood terms, today’s capacity for nuclear holocaust is thousands of times greater than the era portrayed in the Armageddon films “On the Beach,” “Fail Safe,” or “Dr. Strangelove.” There would not be anything left for “Mad Max.” Climate disasters may be unfolding over the next hundred years. Nuclear disaster is unfolding now. COVID-19 has killed more Americans than the flu typically does. Nuclear war could kill us all. Our leaders must get their priorities straight.

The danger lies in the growing global perception of weakness and incompetence in the Biden administration, combined with claims of the politicized weakening of the FBI, CIA, State Department and Defense Department. This has crystallized in Secretary of State Antony Blinken’s unsure Anchorage meeting with the Chinese, Biden’s wooden Geneva summit with Russia’s Vladimir Putin, the colossal failure of the Afghan withdrawal, which may devolve into a humiliating hostage crisis for America, and the budget- and inflation-based defunding of Defense. In addition, the fully politicized Intelligence and Armed Services committees on Capitol Hill add to the danger. Our enemies may decide that now is the time to move.

## Competition Adv

### Turn---1NC

#### They’ve got it backwards. The *plan* squashes startups.

--- Making acquisitions more difficult deters investment because venture capitalists only profit when startups are able to exit through acquisitions

---Plan deters startups from happening because they need funding and won’t risk creating a new company without having certainty they can get acquired. Acquisitions are also key to innovation because start ups can take more risks with that backing.

---Most startups make small products that only work when acquired

---A2: No link, not our aff---Yes, it’s the aff. Our ev is about proposals that make it harder to acquire companies, which is the aff.

Feiner 7-24 [Lauren Feiner is citing Bhaskar Chakravorti, dean of global business at Tufts University’s Fletcher School; Michael Brown, a general partner at Battery Venture; Clate Mask, CEO of Keap; and Patricia Nakache, a general partner at Trinity Ventures. She herself is a journalist for CNBC, “Start-ups will suffer from antitrust bills meant to target Big Tech, VCs charge”, July 24, 2021, https://www.cnbc.com/2021/07/24/vcs-start-ups-will-suffer-from-antitrust-bills-targeting-big-tech.html] IanM

Many **lawmakers** are **eager** to rein in the power of the largest tech companies: [Amazon](https://www.cnbc.com/quotes/AMZN), Apple, [Facebook](https://www.cnbc.com/quotes/FB) and [Google](https://www.cnbc.com/quotes/GOOGL).

But some of **their proposals** could actually hurt the smaller companies they’re meant to protect, venture capitalists warned CNBC.

VCs are particularly **concerned** about [efforts](https://www.klobuchar.senate.gov/public/index.cfm/2021/2/senator-klobuchar-introduces-sweeping-bill-to-promote-competition-and-improve-antitrust-enforcement) in Congress to **restrict mergers** and **acquisitions** by **dominant platforms**. Some of those **proposals** would work by shifting the **burden of proof** onto **those firms** in merger cases to **show their deals** would **not harm** competition.

While proponents argue such bills would prevent so-called killer acquisitions where big companies scoop up potential rivals before they can grow — Facebook’s $1 billion acquisition of Instagram is a common example — **tech investors** say they’re **more concerned** with how the bills could squash the buying market for start-ups and discourage further innovation.

Of course, venture capitalists and the groups that represent them have an interest in maintaining a relatively easy route to exiting their investments. A trade group representing VCs, the National Venture Capital Association, counts venture arms of several Big Tech firms among its members. ([Comcast](https://www.cnbc.com/quotes/CMCSA), the owner of CNBC parent company NBCUniversal, is also a member.)

But their **concerns** highlight how changes to antitrust law will have an impact far beyond the largest companies and how smaller players may have to adjust if they’re passed.

Why start-ups get acquired

When venture capitalists **invest** in a **start-up**, their **goal** is to make a **large return** on their spend. While **most start-ups fail,** VCs bank on the **minority** having **large enough exits** to **justify** their rest of their **investments**.

An **exit** can **occur** through one of **two** **means**: through an **acquisition** or by **going public**. When either of these events occurs, **investors** are **able to recoup** at least some of their money, and in the best case scenario, reap major windfalls.

About ten times as many start-ups exit through acquisitions as through going public, according to the NVCA. Venture capitalists say that **number** **shows** just **how important** it is to keep the merger path clear.

The top five tech firms aren’t the only ones scooping up tech deals. **Amazon**, Apple, Facebook, Google and [Microsoft](https://www.cnbc.com/quotes/MSFT) have **accounted** for about 4.5% of the value of all tech deals in the U.S. since 2010, according to **public data** compiled by Dealogic.

Reform advocates have pointed to some acquisitions, like that of Instagram by Facebook, as examples of companies selling before they have the chance to become standalone rivals to larger firms. But VCs say that’s often not the case.

“They all think they could be public companies one day, but the realities are, it’s **not realistic** for most of these **companies** to **achieve the size** and **scale** to **survive** the **public markets** as of today,” said Michael Brown, general partner at Battery Ventures.

While **going public** is often the **goal**, VCs say it can be impractical for start-ups for various reasons.

**First**, some start-ups may simply **not have a product** or service that **works long-term** as a **standalone business**. That doesn’t mean their technology or talent isn’t valuable, but just means it could be most successful within a larger business.

Kate Mitchell, co-founder and partner at Scale Venture Partners, gave the example of a company called Pavilion Technologies that made predictive technology for manufacturers and agriculture, which sold to manufacturing company Rockwell Automation in 2007.

“That’s a company that just couldn’t get to escape velocity,” she said of Pavilion. “Because they were selling globally to large plants, we couldn’t figure out how to sell the technology cost effectively.”

It was still a useful technology, but needed the infrastructure of a larger business to accelerate further, she said. After Rockwell acquired it, it became incorporated into its offerings and several employees stayed for years.

**Sometimes**, she said, an acquisition is a last resort before bankruptcy, and at least **helps investors get** some of their **money back.**

“It is better that they’re sold for even 80 cents on the dollar than that they go bankrupt,” she said.

In addition, **going public can be difficult**. The IPO process is **expensive** and VCs said that small cap companies often **struggle** on the public market in part because of the **lack of analyst coverage** of such businesses.

Clate Mask, co-founder and CEO of venture-funded email marketing and sales platform Keap, said greater merger restrictions on the largest companies would likely “change the calculus” for start-ups. But the shift would not be between getting and acquired and going public. Instead, he said, it could make entrepreneurs think harder about whether to raise venture funding at all.

“When you have capital behind you, you can think and operate differently,” he said, adding that entrepreneurs can take more risks with that backing.

Loss of investment and innovation

**Several VCs** told CNBC they were **worried** about the trickle-down effect that **merger restrictions** on the **largest firms** would have on the entire entrepreneurial ecosystem.

Their fear is that **if companies** **no longer** have **enough viable exit paths,** **institutional investors** that **back VCs** — like **endowments** and **pension funds** — will shift their money elsewhere. In turn, VCs will have fewer funds to dole out to **entrepreneurs**, who may see less reason to take the risk of **starting a new company.**

The **ultimate concern** is for a loss of innovation, they say, which is exactly what lawmakers are hoping to fend off with merger restrictions on the largest buyers.

“If you restrict the potential to **generate exciting rewards** and **returns** from **investment**, entrepreneurs could find other things to do with their time,” said Patricia Nakache, general partner at Trinity Ventures.

### Turn---1NC

#### American tech dominance is high. Only antitrust threatens it.

Abbott ’21 [Alden Abbott, Paul Redmond Michel, Adam Mossoff, Kristen Jakobsen Osenga, and Brian O’Shaughnessy; March 10; the Federal Trade Commission’s General Counsel (2018-2021), adjunct professor at George Mason University, J.D. from Harvard Law School, M.A. in economics from Georgetown University; Retired Chief Judge and United States Circuit Judge of the United States Court of Appeals for the Federal Circuit; Law Professor at George Mason University; Law Professor at the University of Richmond; chair of Dinsmore’s IP Transactions and Licensing Group; the Regulatory Transparency Project, “Aligning Intellectual Property, Antitrust, and National Security Policy,” https://regproject.org/wp-content/uploads/Paper-Aligning-Intellectual-Property-Antitrust-and-National-Security-Policy.pdf]

The U.S. government has recognized that “5G is a critical strategic technology [such that] nations that master advanced communications technologies and ubiquitous connectivity will have a long-term economic and military advantage.”8 The U.S. has had a substantial technological edge over our military and intelligence rivals in foundational R&D for 5G and other next-generation technologies. U.S. companies have long been leaders in the development of previous generations of core mobile standards (2G, 3G, 4G, and LTE). This technological leadership has made it possible for U.S. companies to ensure the security and integrity of the hardware and software products that make up the backbone of the U.S. telecommunication systems. This leadership must continue for the U.S. government to more effectively anticipate potential security risks and take the necessary steps to protect national security.9

Despite this history of clear technological leadership, there are causes for concern. First, a very small number of U.S. companies have made the investments in the overwhelming majority of the R&D necessary to develop 5G.10 Historically, U.S. companies have heavily invested in R&D, which has propelled the U.S. into leadership positions in critical standard development organizations working on foundational next-generation technologies like 5G.11 U.S. companies like Qualcomm play a significant and important role in this process through innovation, patenting, and standard setting, but they are not alone in the global community of high-tech companies.12 Backed by their nations’ leadership, Chinese and Korean companies have also invested heavily in developing the core technologies for 5G.13

The willingness of U.S. companies to invest in R&D is threatened, however. The development of 5G is a bit like a race, with the companies who develop the best technology coming out ahead. While U.S. companies are savvy and talented competitors in this race, aggressive and unwarranted use of antitrust law by U.S. regulators, as well as by foreign antitrust authorities, threatens to put obstacles in these companies’ paths and hinder their ability to lead.

### A2: Kill Zones

#### Kill zones motivate innovation---aff limits it

Joe Kennedy 20 [Senior Fellow, Information Technology and Innovation Foundation, "Monopoly Myths: Is Big Tech Creating “Kill Zones”?," 11-9-2020, https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones, hec]

One argument made against large technology companies is that they limit innovation, either by acquiring start-ups in order to terminate the development of innovations that threaten their continued dominance (“killer acquisitions”) or by creating areas of the market in which they exert dominance to the extent others won’t invest in these areas (“kill zones”). Either way, large tech companies supposedly limit prospective challengers from being able to take root and grow, thereby limiting not only competition but overall U.S. innovation. In fact, acquisitions may be beneficial, at least to innovation, if they allow the larger firm to benefit from economies of scale or network effects, and enable the smaller firm to reach many more customers much more quickly with a higher quality product. Moreover, the prospect of being purchased by a larger company often motivates founders and venture capitalists to invest. Making it more difficult for them to sell might make it harder for promising firms to find funding. And rather than looking at so-called kill zones as an innovation deterrent, it is more accurate to view them as an innovation enabler, guiding entrepreneurial resources (talent and capital) to areas that have the best chance of success. Why invest in companies seeking to duplicate usually mature products offered by large firms that benefit from economies of scale or network effects? It is better for society if new companies concentrate instead on other markets they can break into. Indeed, that seems to be occurring as venture capital investment, especially in early-stage deals, has grown significantly over the last decade, indicating that there is no shortage of innovation opportunities. Although the areas of investment have shifted in response to market developments, this reflects the natural evolution of Internet platforms, rather than a pernicious attempt to stifle competition or innovation. In either case, regulators already have sufficient powers to protect competition. The current focus on consumer welfare adequately incorporates concerns about innovation. While antitrust authorities going forward probably should broaden their review of acquisitions by dominant companies, there is no need to significantly change antitrust statutes or embrace structural remedies such as structural separation or breakups, as these would likely slow innovation and harm consumers.

### Tech Lead Strong---1NC

#### U.S. tech innovation is high and globally dominant – big business is key.

Wolf ’21 [Martin; April 27; Chief Economics Commentator, M.A. in Economics from Oxford University; Financial Times, “China is wrong to think the US faces inevitable decline,” <https://www.ft.com/content/8336169e-d1a8-4be8-b143-308e5b52e355>]

The Chinese elite are convinced that the US is in irreversible decline. So reports Jude Blanchette of the Center for Strategic and International Studies, a respected Washington-based think-tank. What has been happening in the US in recent years, particularly in politics, supports this perspective. A stable liberal democracy would not elect Donald Trump — a man lacking all necessary qualities and abilities — to national leadership. Nevertheless, the notion of US decline is exaggerated. The US retains big assets, notably in economics.

For one and half centuries, the US has been the world’s most innovative economy. That has been the basis of its global power and influence. So how does its innovative power look today? The answer is: rather good, despite competition from China.

Stock markets are imperfect. But the value investors put on companies is at least a relatively impartial assessment of their prospects. At the end of last week, 7 of the 10 most valuable companies in the world and 14 of the top 20, were headquartered in the US.

If it were not for Saudi Arabian oil, the five most valuable companies in the world would be US technology giants: Apple, Microsoft, Amazon, Alphabet and Facebook. China has two valuable technology companies: Tencent (at seventh position) and Alibaba (at ninth). But those are China’s only companies in the top 20. The most valuable European company is LVMH at 17th. Yet LVMH is just a collection of established luxury brands. That ought to worry Europeans.

When we look only at technology companies, the US has 12 of the top 20; China (with Hong Kong but excluding Taiwan) has three; and there are two Dutch companies, one of which, ASML, is the largest manufacturer of machines that make integrated circuits. Taiwan has the Taiwan Semiconductor Manufacturing Company, the world’s biggest contract computer chipmaker, and South Korea has Samsung Electronics.

Life sciences are another crucial sector for future prosperity. Here there are seven European companies (with Switzerland and the UK included) in the top 20. But the US has seven of the top 10, and 11 of the top 20. There is also one Australian and one Japanese company, but no Chinese businesses.

In sum, US companies are globally dominant and nearly all the most valuable non-US firms are headquartered in allied countries.

## FTC Adv

### 1NC---UQ

#### FTC has sufficient resources now [particularly for scams]

Soto et al. 21, American attorney and Democratic politician from Kissimmee, Florida, who is the U.S. Representative for Florida's 9th district; Lina Khan is Chair at the FTC; Noah Joshua Phillips is Commissioner at the FTC; Rohit Chopra is Commissioner at the FTC; Christine S. Wilson is Commissioner at the FTC, (Darren, “Transforming the FTC: Legislation to Modernize Consumer Protection,” Committee on Energy and Commerce, 6/28/21, <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-transforming-the-ftc-legislation-to-modernize-consumer>)

Noah Joshua Phillips (5:06:17): Thank you, Congressman, I'd just start with the fact that when I began, our budget was about 309 million, I think, something like that, and the latest congressional budget justification has us at 389. So there's been a substantial increase in the ask, including some funding from Congress. So I think it's important to track how those resources are used. But I do think we can do more with more. That's, that's certainly a true thing. But I think it's important to take care in how we spend what we have. Darren Soto (5:06:46): Thank you. Commissioner Chopra. Rohit Chopra (5:06:48): Sir, I think - I know every agency says that they need more resources. But just looking at the data, we are stretched completely to capacity and the rubber band is snapping. And if we need to effectively enforce the law, we need the resources. There are so many laws that Congress has recently passed, whether it's relates to opioids or so many other topics, that the FTC has not brought a single law enforcement action on. That's not just resources. That's also Commissioner accountability. But resources will certainly help. Darren Soto (5:07:25): Commissioner Slaughter. Christine Williams (5:07:30): Commissioner Slaughter had to leave, but Commissioner Wilson is here. And I would say that our hard working staff have been even harder working during the last 18 months. They are teleworking but they are working incredibly hard to stay on top of the increase in mergers as well as the increase in COVID scams. And I agree with Commissioner Phillips, it's important to understand how we are spending additional appropriations. But I also know that there are many different areas of the economy where Congress has expressed interest in our being very active and aggressive. And it is difficult to do that unless we have the appropriate resources to do that.

### 1NC---Turn

#### The plan derails cred

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.

#### That wrecks FTC enforcement

Kovacic 20, Global Competition Professor of Law and Policy, et al (William, with Allison Jones, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” *The Antitrust Bulletin*, 65.2)

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### Terror/Scams---1NC

#### FTC doesn’t solve fraud

Chesney & Citron 19 --- Bobby Chesney and Danielle Citron, California Law Review, “Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security”, https://www.californialawreview.org/print/deep-fakes-a-looming-challenge-for-privacy-democracy-and-national-security/#clr-toc-heading-3

A review of current areas of FTC activity suggests limited possibilities. Most deep fakes will not take the form of advertising, but some will. That subset will implicate the FTC’s role in protecting consumers from fraudulent advertising relating to “food, drugs, devices, services, or cosmetics.”[247] Some deep fakes will be in the nature of satire or parody, without intent or even effect of misleading consumers into believing a particular person (a celebrity or some other public figure) is endorsing the product or service in question. That line will be crossed in some instances, however. If such a case involves a public figure who is aware of the fraud and both inclined to and capable of suing on their own behalf for misappropriation of likeness, there is no need for the FTC or a state agency to become involved. Those conditions will not always be met, though, especially when the deep-fake element involves a fraudulent depiction of something other than a specific person’s words or deeds; there would be no obvious private plaintiff. The FTC and state attorneys general (state AGs) can play an important role in that setting.

### A2: Nuclear Terrorism---1NC

#### No nuclear terror.

Mueller ’20 [John; Professor of Political Science and Senior Research Scientist with the Mershon Center for International Security Studies @ Ohio State University, Senior Fellow @ Cato Institute, PhD @ University of California, Los Angeles; “Nuclear Alarmism: Proliferation and Terrorism”; June 24th, 2020; https://www.cato.org/publications/publications/nuclear-alarmism-proliferation-terrorism]

Building a Bomb of One’s Own

Because they are unlikely to be able to buy or steal a usable bomb and because they are further unlikely to have one handed off to them by an established nuclear state, the most plausible route for terrorists would be to manufacture the device themselves from purloined materials. That is the course identified by a majority of leading experts as the one most likely to lead to nuclear terrorism.44

The simplest design is a “gun” type of device in which masses of highly enriched uranium are hurled at each other within a tube. Such a device would be, as Allison acknowledges, “large, cumbersome, unsafe, unreliable, unpredictable, and inefficient.“45

The process of making such a weapon is daunting even in this minimal case. In particular, the task requires that a considerable series of difficult hurdles be conquered and in sequence.

To begin with, now and likely for the foreseeable future, stateless groups are incapable of manufacturing the requisite weapons‐​grade uranium themselves because the process requires an effort on an industrial scale. Moreover, they are unlikely to be supplied with the material **by a state** for the same reasons a **state is unlikely** **to give them a workable bomb**.46 Thus, they would need to steal or illicitly purchase the crucial material.

A successful armed theft is exceedingly unlikely, not only because of the resistance of guards but also because chase would be immediate. A more plausible route would be to corrupt insiders to smuggle out the necessary fissile material. However, that approach requires the terrorists to pay off a host of greedy confederates, including brokers and money transmitters, any one of whom could turn on them or — either out of guile or incompetence — furnish them with stuff that is useless.47 Moreover, because of improved safeguards and accounting practices, it is decreasingly likely that the theft would remain undetected.48 That development is important because if any missing uranium is noticed, the authorities would investigate the few people who might have been able to assist the thieves, and one who seems suddenly to have become prosperous is likely to arrest their attention right from the start. Even one initially tempted by, seduced by, or sympathetic to, the blandishments of the smooth‐​talking foreign terrorists might soon develop sobering second thoughts and go to the authorities. Insiders tempted to assist terrorists might also come to ruminate over the fact that, once the heist was accomplished, the terrorists would, as analyst Brian Jenkins puts it none too delicately, “have every incentive to cover their trail, beginning with eliminating their confederates.“49

It is also relevant to note that over the years, known thefts of highly enriched uranium have totaled fewer than 16 pounds. That amount is far less than that required for an atomic explosion: for a crude bomb, more than 100 pounds are necessary to produce a likely yield of one kiloton. Moreover, none of those thieves was connected to al Qaeda, and, most arrestingly, none had buyers lined up — nearly all were caught while trying to peddle their wares. Indeed, concludes analyst Robin Frost, “There appears to be no true demand, except where the buyers were government agents running a sting.” Because there appears to be no commercial market for fissile material, each sale would be a one‐​time affair, not a continuing source of profit such as drugs, and there is no evidence of established underworld commercial trade in this illicit commodity.50

If terrorists were somehow successful in obtaining a sufficient mass of relevant material, they would then have to transport it out of the country over unfamiliar terrain, probably while being pursued by security forces. Then, they would need to set up a large and well‐​equipped machine shop to manufacture a bomb and populate it with a select team of highly skilled scientists, technicians, and machinists. The process would also require good managers and organizers. The group would have to be assembled and retained for the monumental task without generating consequential suspicions among friends, family, and police about their curious and sudden absence from normal pursuits back home. Pakistan, for example, maintains a strict watch on many of its nuclear scientists even after retirement.51

Some observers have insisted that it would be “easy” for terrorists to assemble a crude bomb if they could get enough fissile material.52 However, Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland’s Spiez Laboratory, conclude that the task “could hardly be accomplished by a subnational group.” They point out that precise blueprints are required, not just sketches and general ideas, and that even with a good blueprint, the terrorist group “would most certainly be forced to redesign.” They also stress that the work, far from being “easy,” is difficult, dangerous, and extremely exacting and that the technical requirements “in several fields verge on the unfeasible.“53

Los Alamos research director Younger makes a similar argument, expressing his amazement at “self‐​declared ‘nuclear weapons experts,’ many of whom have never seen a real nuclear weapon,” who “hold forth on how easy it is to make a functioning nuclear explosive.” Information is available for getting the general idea behind a rudimentary nuclear explosive, but none is detailed enough for “the confident assembly of a real nuclear explosive.” Younger concludes, “To think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is far‐​fetched at best.“54

Under the best of circumstances, the process could take months or even a year or more, and it would all, of course, have to be carried out in utter secret even while local and international security police are likely to be on the intense prowl. In addition, people, or criminal gangs, in the area may observe with increasing curiosity and puzzlement the constant comings and goings of technicians unlikely to be locals.

The process of fabricating a nuclear device requires, then, the effective recruitment of people who at once have great technical skills and will remain completely devoted to the cause. In addition, a host of corrupted coconspirators, many of them foreign, must remain utterly reliable; international and local security services must be kept perpetually in the dark; and no curious outsider must get wind of the project over the months, or even years, it takes to pull off.

The finished product could weigh a ton or more. Encased in lead shielding to mask radioactive emissions, it would then have to be transported to, as well as smuggled into, the relevant target country. Then, the enormous package would have to be received within the target country by a group of collaborators who are at once totally dedicated and technically proficient at handling, maintaining, and perhaps assembling the weapon. Then, they would have to detonate it somewhere under the fervent hope that the machine shop work has been proficient, that no significant shakeups occurred in the treacherous process of transportation, and that the thing — after all that effort — doesn’t prove to be a dud.

The financial costs of the extended operation in its cumulating entirety could become monumental. There would be expensive equipment to buy, smuggle, and set up, as well as people to pay — or pay off. Some operatives might work for free out of dedication, but the vast conspiracy also requires the subversion of an array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals who are competent and capable enough to be an effective ally in the project are likely to be both smart enough to see opportunities for extortion and psychologically equipped by their profession to be willing to exploit them.

### A2: Populism !---1NC

Populism is thumped by Brazil, Turkey, and the UK.

#### No impact.

Ferguson ’16 [Niall; autumn 2016; Senior Fellow at Stanford University’s Hoover Institution, Senior Fellow of the Center for European Studies at Harvard University, and Visiting Professor at Tsinghua University in Beijing, “Populism as a Backlash against Globalization - Historical Perspectives,” <https://www.cirsd.org/en/horizons/horizons-autumn-2016--issue-no-8/populism-as-a-backlash-against-globalization>]

Such comparisons between the United States today and Germany in the 1930s are becoming commonplace. As a professional historian, I would like to offer what seems to me a better analogy. Our Tranquil Times Journalists are fond of saying that we are living in a time of “unprecedented” instability. In reality, as numerous studies have shown, our time is a period of remarkable stability in terms of conflict. In fact, viewed globally, there has been a small uptick in organized lethal violence since the misnamed Arab Spring. But even allowing for the horrors of the Syrian civil war, the world is an order of magnitude less dangerous than it was in the 1970s and 1980s, and a haven of peace and tranquility compared with the period between 1914 and 1945. This point matters because the defining feature of interwar fascism was its militarism. Fascists wore uniforms. They marched in enormous and well-drilled parades and they planned wars. That is not what we see today. So why do so many commentators feel that we are living through “unprecedented instability?” The answer, aside from plain ignorance of history, is that political populism has become a global phenomenon, and established politicians and political parties are struggling even to understand it, much less resist it. Yet populism is not such a mysterious thing, if one only has some historical knowledge. The important point is not to make the mistake of confusing it with fascism, which it resembles in only a few respects. Rather like a television chef, I shall describe a recipe for populism, based on historical experience. It is a simple recipe, with just five ingredients. Five Ingredients for A Populist Backlash The first of these ingredients is a rise in immigration. In the past 45 years, the percentage of the population of the United States that is foreign-born has risen from below 5 percent in 1970 to over 13 percent in 2014—almost as high as the rates achieved between 1860 and 1910, which ranged between 13 percent and an all-time high of 14.7 percent in 1890. So when people say, as they often do, that “the United States is a land based on immigration,” they are indulging in selective recollection. There was a period, between 1910 and 1970, when immigration drastically declined. It is only in relatively recent times that we have seen immigration reach levels comparable with those of a century ago, in what has justly been called the first age of globalization. Ingredient number two is an increase in inequality. Drawing on the work done on income distribution by Thomas Piketty and Emmanuel Saez, we can see that we have recently regained the heights of inequality that were last seen in the pre-World War I period. The share of income going to the top one percent of earners is back up from below 8 percent of total income in 1970 to above 20 percent of total income. The peak before the financial crisis, in 2007, was almost exactly the same as the peak on the eve of the Great Depression in 1928. Ingredient number three is the perception of corruption. For populism to thrive, people have to start believing that the political establishment is no longer clean. Recent Gallup data on public approval of institutions in the United States show, among other things, notable drops in the standing of all institutions save the military and small businesses. Just 9 percent of Americans have “a great deal” or “quite a lot” of confidence in the U.S. Congress—a remarkable figure. It is striking to see which other institutions are down near the bottom of the league. Big business is second-lowest, with just 21 percent of the public expressing confidence in it. Newspapers, television news, and the criminal justice system fare only slightly better. What is even more remarkable is the list of institutions that have fallen furthest in recent times: the U.S. Supreme Court now has just a 36 percent approval rating, down from a historical average of 44 percent, while the Presidency has dropped from 43 percent to 36 percent approval. The financial crisis appears to have convinced many Americans—and not without good reason—that there is an unhealthy and likely corrupt relationship between political institutions, big business, and the media. The fourth ingredient necessary for a populist backlash is a major financial crisis. The three biggest financial crises in modern history—if one uses the U.S. equity market index as the measure—were the crises of 1873, 1929, and 2008. Each was followed by a prolonged period of depressed economic performance, though these varied in their depth and duration. In the most recent of these crises, the peak of the U.S. stock market was October 2007. With the onset of the financial crisis, we essentially replayed for about a year the events of 1929 and 1930. However, beginning in mid to late 2009, we bounced out of the crisis, thanks to a combination of monetary, fiscal, and Chinese stimulus, whereas the Great Depression was characterized by a deep and prolonged decline in stock prices, as well as much higher unemployment rates and lower growth. The first of these historical crises is the least known: the post-1873 “great depression,” as contemporaries called it. What happened after 1873 was nothing as dramatic as 1929; it was more of a slow burn. The United States and, indeed, the world economy went from a financial crisis—which was driven by excessively loose monetary policy and real estate speculation, amongst other things—into a protracted period of deflation. Economic activity was much less impaired than in the 1930s. Yet the sustained decline in prices inflicted considerable pain, especially on indebted farmers, who complained (in reference to the then prevailing gold standard) that they were being “crucified on a cross of gold.” We have come a long way since those days; gold is no longer a key component of the monetary base, and farmers are no longer a major part of the workforce. Nevertheless, in my view, the period after 1873 is much more like our own time, both economically and politically, than the period after 1929. There is still one missing ingredient to be added. If one were cooking, this would be the moment when flames would leap from the pan. The flammable ingredient is, of course, the demagogue, for populist demagogues react vituperatively and explosively against all of the aforementioned four ingredients. Kearney’s Cause Now, my argument is not intended to dismiss or downplay those elements of Donald Trump’s campaign for President of the United States that have been implicitly, if not explicitly, racist. Nor do I treat lightly the various signals he has given of indifference to, or at least ignorance of, the U.S. Constitution. My point is that these demerits do not by themselves qualify Trump for comparison with Mussolini, much less with Hitler. Rather, I want to argue that Trump has much more in common with the demagogues of the earlier, lesser depression of the late nineteenth century, and that it is to that period that we should look for historical analogies and insights. The best illustration of my case is the now forgotten figure of Denis Kearney, leader of the Workingmen’s Party of California and the author of the slogan “The Chinese Must Go!” Himself an Irish immigrant to the United States—as opposed to the son of a Scottish immigrant and grandson of a German, which is what Donald Trump is—Kearney was part of a movement of nativist parties and “Anti-Coolie” clubs that sought to end Chinese immigration into the United States. The report of the Joint Special Committee to Investigate Chinese Immigration in 1877 gives a flavor of the times. “The Pacific coast must in time become either Mongolian or American,” was the committee’s view. The report argued that the Chinese brought with them the habits of despotic government, a tendency to lie in court, a weakness for tax evasion and “insufficient brainspace […] to furnish [the] motive power for self-government.” Moreover, Chinese women were “bought and sold for prostitution and treated worse than dogs,” while the Chinese were “cruel and indifferent to their sick.” Giving such inferior beings citizenship, the committee’s report declared, “would practically destroy republican institutions on the Pacific coast.” The realities were, it scarcely needs to be said, very different. According to the “Six Companies” of Chinese in San Francisco—corporate bodies that represented the Chinese population of the city—there was compelling evidence that Chinese immigration was a boon to California. Not only did the Chinese provide labor for the state’s rapidly developing railroads and farms; they also tended to improve the neighborhoods in which they settled. Moreover, there was no evidence of a disproportionate Chinese role in gambling and prostitution. In fact, statistics showed that the Irish were more of a charge on the city’s hospital and almshouse than the Chinese. Nevertheless, a powerful coalition of “laboring men and artisans,” small businessmen and “grangers” (the term used to describe those who aimed to shift the burden of taxation onto big business and the rich) rallied to Kearney’s cause. As one shrewd contemporary observer noted, part of his appeal was that he was attacking not just the Chinese, but also the big steamship and railroad companies that profited from employing Chinese labor, not to mention the corrupt two-party establishment that ran San Francisco politics: Neither Democrats nor Republicans had done, nor seemed likely to do, anything to remove these evils or to improve the lot of the people. They were only seeking (so men thought) places or the chance of jobs for themselves, and could always be bought by a powerful corporation. Working men must help themselves; there must be new methods and a new departure […] The old parties, though both denouncing Chinese immigration in every convention they held, and professing to legislate against it, had failed to check it […] Everything, in short, was ripe for a demagogue. Fate was kind to the Californians in sending them a demagogue of a mean type, noisy and confident, but with neither political foresight nor constructive talent. Kearney may have lacked foresight and “constructive talent,” but there is no gainsaying what he and his ilk were able to achieve. Beginning with the Page Law (1875) prohibiting the immigration of Asian women for “lewd or immoral purposes,” American legislators scarcely rested until Chinese immigration to the United States had been stopped altogether. The Chinese Exclusion Act (1882) suspended immigration of Chinese for 10 years, introduced “certificates of registration” for departing laborers (effectively re-entry permits), required Chinese officials to vet travelers from Asia, and, for the first time in American history, created an offense of illegal immigration, with the possibility of deportation as a part of the penalty. The Foran Act (1885) banned all contract laborers from immigrating to America. Legislation passed in the Scott Act (1888) banned all Chinese from travel to the United States except “teachers, students, merchants, or travelers for pleasure.” In all, between 1875 and 1924, more than a dozen pieces of legislation served to restrict and finally end altogether Chinese immigration. No one should therefore underestimate the power of populism. For all his coarseness and bombast, Denis Kearney and his allies effectively sealed the American border along the Pacific coast of the United States; indeed, one cartoon of the time depicted them constructing a wall across the San Francisco harbor. In the 1850s and 1860s, as many as 40 percent of all Chinese emigrants had travelled beyond Asia, though the numbers arriving in the United States had in fact been relatively small (between 1870 and 1880, a total of 138,941 Chinese immigrants came, just 4.3 percent of the total, a share dwarfed by the vast European exodus across the Atlantic in the same period). What exclusion did ensure in the late nineteenth was that Chinese immigration would not grow, as it surely would have, but instead dwindled and then ceased. Ironies Populism, then, is not just a form of political entertainment. One sometimes hears it said of Donald Trump: “Ah, he says wild things on the campaign trail, but when he is president it will be fine.” History suggests otherwise. It suggests that men who threaten to restrict immigration—as well as to impose tariffs and to discourage capital export, as populists generally do—mean what they say. Indeed, populists are under a special compulsion to enact what they pledge in the campaign trail, for their followers are fickle to begin with. In the case of Trump, most have already defected from the Republican Party establishment. If he fails to deliver, they can defect from him, too. Of course, populists are bound eventually to disappoint their supporters. For populism is a toxic brew as well as an intoxicating one. Populists nearly always make life miserable for whichever minorities they chose to scapegoat, but they seldom make life much better for the people whose ire they whip up. Whatever the demagogues may promise—and they always promise “jam today”—populism tends to have significantly more economic costs than benefits. Restricting immigration, imposing tariffs on imported goods, penalizing firms for investing abroad: such measures, if adopted by an American government in 2017, would be almost certain to reduce growth and employment, rather than the reverse. That has certainly been the Latin American experience—and few regions of the world have run the populist experiment more often. The foreign dimension brings us to a final irony. Despite their habitual insistence on narrow national self-interest, populists are nearly always part of a global phenomenon. Globalization had been making enormous strides prior to 1873, with world trade, migration, and international capital flows growing at unprecedented rates. But the crisis of that year generated a populist backlash against globalization that was itself global in its scope. Then, just as now, the principal targets of the demagogues were immigration, free trade, and high finance. Just as the United States excluded immigrants and raised tariffs, so did European countries by adopting similar discriminatory measures. In Bismarck’s Germany, populism was often antisemitic—as it was in the France of the Dreyfus Affair—while in late Victorian Britain it was anti-Irish. Tariffs went up almost everywhere except in Britain. Populism today has a similarly global quality. In June, the British vote to leave the European Union was hailed by populists right across the European continent as well as by Donald Trump in the United States and, implicitly, by Vladimir Putin in Russia. Yielding to the Complicators Let me conclude with a note of qualified optimism. Because populism is not fascism, populist victories should not be construed as harbingers of war—if anything, the opposite is true. In the 1870s and 1880s, populists did achieve significant reductions in globalization: not only immigration restrictions, but also higher tariffs. But they did not form many national governments, and they did not subvert any constitutions. Nor were populists much interested in starting wars; if anything, they lent towards isolationism and viewed imperialism as just another big business racket. In most countries, the populist high tide was in the 1880s. What came next—in many ways as a reaction to populism, but also as an alternative set of policy solutions to the same public grievances—was Progressivism in the United States and socialism in Europe. Perhaps something similar will also happen in our time. Perhaps that is something to look forward to. Nevertheless, we would do well to remember that World War I broke out during the progressive not the populist era. The world today is, as I observed at the outset, in much less turmoil than one might infer from television news. Nevertheless, the economic and social consequences of globalization and the most recent financial crisis sowed the seeds for the populist backlash that we now see. Populists are not fascists. They prefer trade wars to actual wars; administrative border walls to more defensible fortifications. The maladies they seek to cure are not imaginary: uncontrolled rising immigration, widening inequality, free trade with “unfree” countries, and political cronyism are all things that a substantial section of the electorate have some reason to dislike. The problem with populism is that its remedies are wrong and, in fact, counterproductive. What we most have to fear—as was true of Brexit—is not therefore Armageddon, but something more prosaic: an attempt to reverse certain aspects of globalization, followed by disappointment when the snake oil does not really cure the patient’s ills, followed by the emergence of a new and ostensibly more progressive set of remedies for our current malaise. The “terrible simplifiers” may have their day then. But they will end up yielding power to well-intentioned complicators, those more congenial to educated elites, but probably every a bit as dangerous, if not more so.

# 2NC/1NR

## Adv CP

### Solves Advantage 1---2NC

#### Funding startups lets them survive despite competition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Solves tech – Investment, immigration, and procurement reform solve.

Pollari ’17 [Ian; 2017; Head of KPMG’s Banking Sector in Australia and the Global Co-lead for KPMG’s Fintech practice; Frontiers in Finance, “Governments’ role in the evolution of fintech,” <https://assets.kpmg/content/dam/kpmg/xx/pdf/2017/06/governments-role-in-evolution-of-fintech.pdf>; KP]

Governments may also consider how they can experiment and affect changes to policy in a more accelerated time frame than traditionally the case, helping to test and learn themselves.

Outside of regulation, government actions designed to attract capital — such as attractive taxation policies and providing access to government grants — can also have a significant impact on fintech’s development. For example, Singapore recently announced a number of new incentives specifically designed to attract venture capital (VC) investment into their local technology ecosystem, including fintech VC support.

In addition, policies surrounding the mobility of talent and attracting skills through work visas can also help or hinder local entrepreneurial activity. As an example, passporting, visas and the availability of talent to support technology and financial services companies in the UK and the US have been areas of growing concern since Brexit in the UK and the new Trump administration came into office in the US.

Finally, governments themselves are large procurers of technology capabilities and there are opportunities for them to engage with fintech companies to help government in areas such as data and analytics, digital identity, payments and transactional banking. More progressive governments will be opening up data, in a safe and controlled manner, for startups to innovate and create new forms of value.

#### R&D boosts growth and fosters innovation

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

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

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

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

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

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

### Solves Advantage 2---2NC

#### Funds key to solve privacy, aff can’t solve without funding.

Hoofnagle et al. 19, Chris Jay Hoofnagle: Adjunct Professor of Information and Law - University of California, Berkeley. Woodrow Hartzog: Professor of Law and Computer Science - Northeastern University. Daniel J. Solove: John Marshall Harlan Research Professor of Law - George Washington University Law School (“The FTC can rise to the privacy challenge, but not without help from Congress,” <https://www.brookings.edu/blog/techtank/2019/08/08/the-ftc-can-rise-to-the-privacy-challenge-but-not-without-help-from-congress/>, Accessed 1-30-2022)

With greater resources, the FTC could handle many more cases. How many depends on the kinds of companies and the business areas. A horseshoe effect plagues FTC privacy enforcement: Some small companies may think themselves immune because they believe they are too inconsequential for FTC attention, while some of the largest companies have proven themselves willing to do almost anything to gain platform status.

Clearly, the number of cases the agency is doing now is not enough. On average, the FTC announces about 15-20 Section 5 enforcement settlements per year. It could start by doing on the order of 100 cases, and then study the deterrent effect among small and large companies. But it needs far more resources to scale up like this. Regardless of whether it adopts comprehensive privacy legislation that expands FTC enforcement authority, Congress should significantly expand the agency’s appropriations to enforce existing law.

#### Resources are the #1 question for fighting privacy.

Access Now 21 (“Advocates to U.S. Congress: Fund FTC to combat data abuse,” <https://www.accessnow.org/ftc-funding-combat-data-abuse/>, Accessed 1-30-2022)

Today, Access Now joined a coalition of civil society organizations to support the U.S. House Energy and Commerce committee’s proposal to increase the Federal Trade Commission’s (FTC) funding by $1 billion over 10 years. The funding would be used to create a new FTC bureau that will focus on policing privacy, security, and data abuse matters.

“Privacy and data protection issues have human rights and racial equity implications,” said Willmary Escoto, U.S. Policy Analyst at Access Now. “With such paltry funding and staffing, the FTC has been forced to ration its limited resources to focus on cases with the biggest impact, likely letting many violators off the hook. Increased funding will allow the Commission to hire more staff and take more cases that help reduce racial inequity.”

## States

## Adv 1

### Startups Turn---2NC

#### Aff makes the market less competitive AND decreases startup value.

---if startups can’t get acquired by a business that offers a particular service, they won’t compete with that business’ service because it’s not profitable and it gives them a back up plan---plan also causes start up value to tank

Feiner 7-24 [Lauren Feiner is citing Bhaskar Chakravorti, dean of global business at Tufts University’s Fletcher School; Michael Brown, a general partner at Battery Venture; Clate Mask, CEO of Keap; and Patricia Nakache, a general partner at Trinity Ventures. She herself is a journalist for CNBC, “Start-ups will suffer from antitrust bills meant to target Big Tech, VCs charge”, July 24, 2021, https://www.cnbc.com/2021/07/24/vcs-start-ups-will-suffer-from-antitrust-bills-targeting-big-tech.html] IanM

Nakache said **placing** **restrictions** on the **largest tech firms’ ability** to make **acquisitions** could actually discourage entrepreneurs from building companies that compete with their core businesses. That’s because **many entrepreneurs** like having a back-up plan **incorporating possible acquirers** if they can’t go public. **With greater** uncertainty about **whether** the **Big Tech** companies **could be potential buyers**, they may seek to build businesses outside of the largest players’ core offerings, she said.

VCs also warned that without the **biggest players** in the mix, sale prices for start-ups would drop significantly.

But outside the industry, some believe these concerns won’t be as bad as VCs fear.

“These sorts of laws, if they work as intended, you’re going to have a more competitive marketplace generally, so there’s going to be more potential buyers,” said Michael Kades, director of markets and competition policy at the non-profit Washington Center for Equitable Growth. “I get it if you’re at the VC today, what you’re concerned about is the next couple of years or what your company can get, but increasing the number of potential buyers for firms ... also means that there’s still a very thriving market for these sorts of acquisitions, just not by dominant firms.”

Bhaskar **Chakravorti**, dean of global business at Tufts University’s Fletcher School, said while venture capitalists are probably right that **acquisition prices** could slide under **new merger restrictions**, entrepreneurs will still have a drive to innovate.

### A2: 2AC 1 – Innovation Low Now

#### That’s just wrong:

#### Startups are gaining---the pandemic created fertile ground for innovation.

Greg Rosalsky 21, Reporter at NPR, M.A. in Economics and Public Policy from the Woodrow Wilson School at Princeton University, “What America's Startup Boom Could Mean For The Economy,” NPR, 06-29-2021, https://www.npr.org/sections/money/2021/06/29/1010229557/what-americas-startup-boom-could-mean-for-the-economy

Back in November, the Planet Money newsletter reported that — despite a deadly pandemic and an ugly recession — America was seeing a boom in the creation of new startups. We spoke with University of Maryland economist John Haltiwanger, one of the leading scholars of business formation. Now Haltiwanger has a new study out, and the trend is clear: "The surge continues," Haltiwanger says. "We're now convinced this wasn't just a blip."

Like so many other areas of the economy, applications for new businesses pulled back in the first half of 2020 but then snapped forward again like a slingshot. Not only was 2020 the best year on record for new business creation since the Census Bureau began tracking it in 2004, but applications for new businesses have continued to soar, through at least last month. In May, there were a half a million applications for new businesses; the second highest month on record, below only last July. In total, there have been more than six million filings for new businesses since the pandemic began. The boom can be seen in both businesses composed of only one self-employed person and businesses that the Census expects will employ multiple people.

Over the last year and half, we have been reshuffling how and where we work and shop; and that shift has created all sorts of opportunities for entrepreneurs. With the pandemic, it's like someone ripped out an irrigation pipe for brick-and-mortar commerce and plugged it into virtual commerce. It's brought a drought to face-to-face businesses, and a bounty to businesses you interact with on a digital screen. The retail sector alone, driven by e-commerce, accounts for about a third of all the new startup growth. In addition, trucking, warehousing, and delivery services are all seeing surges — which makes sense, as we've seen a massive shift of spending on in-person services to tangible goods that are bought online.

We've also seen the rise of remote work and a reshuffling of the population, from city centers to suburbs, and from traditional job centers to "Zoom Towns." Where people go, they bring their dollars. It may help explain why the food and accommodation sector is the greatest area of growth. We've also seen huge growth in the types of businesses that can provide remote services.

There are at least two potential theories for what's going on. First, while the boom is undeniably good news, there is a slightly negative take: we've seen a surge in new businesses mainly because the pandemic forced two painful restructurings to the economy. It began by ravaging the face-to-face economy and creating an awkward marketplace where we could only do stuff six feet apart. This suffocated many existing businesses while providing oxygen for others, such as online retailers, video conferencing apps, drive-thrus, delivery services, mask and sanitizer companies, and the like. Yet, many of these new opportunities for pandemic-friendly businesses may prove to be only temporary. Many of them could die as we head back to normal.

Now that most of us are vaccinated, we're releasing the pressure cooker of our pent-up demand for going out. It's leading to the second major restructuring: new businesses — restaurants, bars, salons and so on — are growing out of the ashes of the businesses scorched by the pandemic. This is great news! It's better than no new businesses. But it's possible that we're now just heading back to normal, as opposed to something new and better. Think of it like the economy doing a pendulum swing from a normal economy to a pandemic economy and back to a normal economy again.

It's hard to completely rule out this Negative Nancy take. We don't have many details about what exactly the new businesses created during the pandemic are doing, or how big they're gonna get. More importantly, we still don't have great data on how many and what kinds of businesses died over the last year, and whether these new businesses are merely just filling the massive hole created at the beginning of the pandemic. The data suggests the biggest surges occurred at the beginning and tail ends of the pandemic, which is consistent with the idea that this was a pendulum swing.

But Haltiwanger offers a second, more optimistic theory, which says this is about way more than just a pendulum swing: it's a rocket ship to a better economy. As painful as the pandemic has been, he believes it has forced the business world to drop outdated ways of doing things and embrace technology in a new way. "I don't think any of us had a clue that we could do so much business activity remotely," Haltiwanger says. "That sparks all kinds of new ideas."

#### The pandemic unleashed a massive amount of business dynamism, only in the U.S.---it’ll be durable

-- U.S. dynamism is up because of policy support given to small business that wasn’t present in other G7 economies

Simeon Djankov 21, Policy Director, Financial Markets Group, London School of Economics; and Eva (Yiwen) Zhang, Researcher, Peterson Institute for International Economics, 3/3/21, “US business dynamism rises,” <https://voxeu.org/article/us-business-dynamism-rises>

In 2020, the creation of US startups shot up by 24% relative to the previous year. This is the largest annual increase since business statistics started being collected in the US. Some of this boom in entrepreneurial activity is accounted for by the migration of businesses to online activity.

This business dynamism is unexpected. Vox columns written in early 2020 (e.g. Baker et al. 2020, Coibion et al. 2020, Sedláček and Sterk 2020, Calvino et al. 2020) recorded steep falls in entrepreneurial activity across G7 economies. In a recent paper (Djankov and Zhang 2021), we show that such falls were indeed the norm across advanced economies at the end of 2020. The US is an exception, fuelled by the government assistance provided to small businesses.

The focus on new entry is warranted, as research in the US shows that young firms tend to grow faster than incumbents (Haltiwanger et al. 2013). Haltiwanger et al. (2017) document that startups account for about 40% of aggregate growth in total factor productivity, 50% of aggregate output growth, and 60% of aggregate employment growth. Another important benefit of entrepreneurship is the ability of new firms to increase competition, thus reducing mark-ups (Djankov et al. 2002).

Still, the positive impact of these entrants on long-term economic growth should be taken with a grain of salt, as research shows that firms born during recessions not only start smaller but also tend to stay smaller in future years, even when the economy recovers (Sedláček and Sterk 2017). Also, the crisis has reshaped the outlook for many sectors, more so than previous crises have. Firms and workers have invested in years’ worth of digital transformation in just a few months (Baldwin 2020). This transformation is likely to result in significant further churning among businesses in the months and years to come.

#### Waves of innovation are coming across all sectors---large firms are key.

Gourevitch ’21 [Antoine and Massimo Portincaso; March 11; Managing Director and Senior Partner at the Boston Consulting Group, M.B.A. from INSEAD, M.A. from Ecole Centrale in Paris; Boston Consulting Group, “Deep Tech and the Great Wave of Innovation,” <https://www.bcg.com/publications/2021/deep-tech-innovation>]

Despite the inherent risks of failure, businesses and investors have shown increasing interest in deep tech. According to our preliminary estimates, investment in deep tech (including private investments, minority stakes, mergers and acquisitions, and IPOs) more than quadrupled over a five-year period, from $15 billion in 2016 to more than $60 billion in 2020. The average disclosed amount per private investment event for startups and scale-ups rose from $13 million in 2016 to $44 million in 2020. For early-stage startups, the most recent survey by Hello Tomorrow found that the amount per investment event increased from $36,000 to $2 million between 2016 and 2019.

And funding sources are expanding. While information and communications technology (ICT) and biopharma companies continue to invest substantially in deep tech, more traditional large enterprises are becoming increasingly active. For example, Sumitomo Chemical has signed a multiyear partnership with Zymergen to bring new specialty materials to the electronics products market, and Eni has invested $50 million in Commonwealth Fusion Systems and joined its board of directors. Bayer has joined forces with Ginkgo Bioworks to reduce agriculture’s reliance on carbon-intensive nitrogen fertilizers. The resulting venture, Joyn Bio uses synthetic biology to engineer nitrogen-fixing microbes that enable cereal crops to extract nitrogen from the air in a usable form. Sovereign wealth funds are playing too. Singapore’s Temasek Holdings invested in JUST (plant-based egg alternatives), Commonwealth Fusion Systems (commercial fusion energy), and Memphis Meats (animal-cell-based meat).

More and more mainstream companies and institutions are recognizing that solutions to big problems—and the future of innovation—lie in deep tech.

The Fourth Wave of Innovation

The first wave of modern business innovation started in the nineteenth and early twentieth centuries with breakthroughs such as the Bessemer process for manufacturing steel and the Haber-Bosch process for making ammonia.

Following World War II, the second wave of modern business innovation—the information revolution—gave birth to large-company R&D, particularly in the ICT and pharma sectors. Bell Labs, IBM, and Xerox PARC became household names and Nobel Prize workshops. Merck alone launched seven major new drugs during the 1980s.

In the third wave, the digital revolution, two guys in a garage (or a Harvard dorm room) led the innovation charge, which resulted in the rise of Silicon Valley and, later, China’s Gold Coast as global centers of computing and communications technology and economic growth. At the same time, the new field of biotech, also driven by entrepreneurs, fueled much of the innovation in pharmaceuticals.

The wave now taking shape as older barriers to innovation crumble embraces a new model and promises to radically broaden and deepen innovation in every business sector. The increasing power and falling cost of computing and the rise of technology platforms are the most important contributors. Cloud computing is steadily improving performance and expanding breadth of use. Biofoundries are becoming for synthetic biology what cloud computing already is for computation. Similar platforms are emerging in advanced materials (Kebotix and VSPARTICLE are two examples).

Meanwhile, costs continue to fall, including those related to equipment, technology, and access to infrastructure. Increasing use of standards, toolkits, and an open approach to innovation, paired with the ever-increasing availability of information and data, plays an important role as well.

#### US tech sector is dominant---only antitrust crushes it

Moore 8-6-2021, MA, economics, syndicated columnist. (Stephen, "Moore: US tech sector keeps besting the world", *Boston Herald*, <https://www.bostonherald.com/2021/08/06/moore-us-tech-sector-keeps-besting-the-world/>)

Take a bow, America. It’s official and irrefutable: The U.S. is blowing out the rest of the world in tech leadership. No other country in the world comes anywhere close in tech innovation and the dominance of our made-in-America 21st-century companies. The Nasdaq index of once-small technology companies reached 15,000 last week. Only a few years ago, that index stood at 5,000. Yes, these companies have tripled in their market cap value — and that doesn’t include the dividends that have been paid out to large and mom-and-pop shareholders in America and across the planet. We are told constantly that China is catching up and achieving remarkable digital-age leaps forward in biotechnology, artificial intelligence, green energy, robotics, 5G technologies and microchips. The value of America’s 12 most valuable companies today in terms of stock valuation is well over $10 trillion. Those red, white and blue companies from Silicon Valley to the “Silicon Slopes” of Utah to Boston to northwest Arkansas are worth roughly as much as all of the Chinese publicly traded companies combined. Firms such as Google — many of which didn’t even exist 30 years ago — have made millionaires off your next-door neighbor. Ordinary people are getting rich beyond anyone’s imagination 50 years ago, thanks to American innovation and inventiveness. Risk-taking, old-fashioned can-doism is a hallmark of this unrivaled success story that has never been matched anywhere at any time in world history. Almost all of this is a tribute to American financial markets that allocate capital in hyperefficient ways. Capitalists doing a spectacular job of allocating capital efficiently is our secret sauce to financial and technological success. I am always mystified when highly successful Wall Street investors can’t explain how it is they add value and sometimes concede that they are just unnecessary middlemen. Even Warren Buffett, one of the greatest of all time, expresses guilt about his billions, as if he and other great financiers are economic parasites. No. Steering financial resources to winners like Google, not losers like Solyndra, makes everyone in America richer. Meanwhile, few politicians have any clue of how capital markets create wealth and jobs and shared prosperity in America. If they did, they would appreciate that without capitalists and capital, there is no enterprise — no material progress. They would instantly understand the economic ~~lunacy~~ of increasing taxes on capital gains and dividends, wealth taxes, and, worst of all, death taxes that threaten the future survival of family-owned businesses. Cutting, not raising, the U.S. capital gains tax would be far wiser if we want America to maintain and widen our competitive lead and keep winning globally. The arrogant fools in the administration of President Biden believe that to keep America No. 1 technologically, we need to have a multibillion-dollar government-run slush fund with the politicians picking winners and losers with other people’s money. China does this, and so does Japan, and it has never worked. One of the most famous stories of government-as-investment banker was when the Tokyo government’s brain trust recommended that Honda not get in the business of making cars. Here in the U.S., the political class has made a $150 billion bet on wind and solar power since the late 1970s, and in return, that has produced only a small sliver of our energy needs. Even more inexplicable is the movement in America coming from senators such as Democrat Elizabeth Warren on the left and Josh Hawley of Missouri on the right to break up our tech companies. Why? Because, evidently, they are too good at what they do. They make too much money. They have too many customers and too many advertisers. Put aside for a moment the rancid political persuasions of some of these leftist Silicon Valley CEOs. Somehow, the left and right agree that building a superior product and even crafting entire new industries is a punishable offense. God forbid. The rest of the world — the Chinese, Indians, Japanese and especially the technologically inferior Europeans — would love to hobble American titans and tax away their profits. The role of the U.S. government should be to repel the foreign attacks. Crazily, the Biden administration has given the green light to foreigners pillaging American companies. This doesn’t put America first. So, can America’s tech dominance continue to blow away the foreign competition for decades to come? Bet on it. That is, unless we are foolish enough to decapitate our own industries through regulation, antitrust policies and raising tax rates on success. The challenge for U.S. supremacy is coming from Washington, D.C., not China.

#### Venture capital, investment, and tech firms are thriving.

Jaffer 10-11-2021, \*Jamil N. Jaffer, former Chief Counsel and Senior Advisor to the U.S. Senate Foreign Relations Committee and currently serves as the Founder and Executive Director of the National Security Institute at George Mason University's Antonin Scalia Law School. \*\*Joshua D. Wright, former Commissioner of the Federal Trade Commission (FTC) and currently serves as the Executive Director of the Global Antitrust Institute and University Professor at George Mason University's Antonin Scalia Law School. ("We need to protect American innovation in the competition with China", *Newsweek*, <https://www.newsweek.com/we-need-protect-american-innovation-competition-china-opinion-1636706>)

The United States is home to companies that make up substantially more than half of the market value of the top 100 global public companies. Technology makes up more than a third of America's contribution to that market value, at nearly $8 trillion. According to the World Bank, the innovation-based digital economy grew more than twice as fast as the overall GDP between 2004 and 2019. In the U.S., the digital economy has grown more than three times as fast as the overall U.S. economy since 2005. This torrid growth increases domestic employment and labor productivity. All of this redounds directly to U.S. national security—economic security is national security.

America's economic future depends not on big manufacturing, but on technology and innovation. Where steel plants and manufacturing plants once stood, we now see software development and chip design labs, cloud computing nodes and supply distribution centers. All this has happened specifically in the United States precisely because the government allowed resources to flow to their most productive uses and at times helped prime the pump with basic research funding.

The U.S., unlike some European nations, has avoided creating a vast web of bureaucracy and heavy-handed government regulation. While there are some pockets of innovation in Europe, the regulatory environments in France, Germany and Spain make them much less attractive to cutting-edge companies. Venture capital investment in the U.S. is more than three times larger than in the EU. For all of its foibles, America remains a good bet for innovative companies.

Our relatively laissez-faire economic policy has also created a robust startup community. It supports strong venture capital funding, like Andreessen Horowitz' investments in the burgeoning crypto industry and social media app Clubhouse. It also has helped the U.S. become the world leader in startup acquisitions.

Current U.S. economic policy has also created long-term growth opportunities in the public markets. American tech companies, for example, make up four of the five most valuable public companies based on market capitalization. Larger technology companies like Illumina may very well be able to fund smaller ones like Grail. They can identify opportunities to leverage economies of scale, make important innovations, such as new ways to screen for cancer, and bring new technology like multi-cancer early detection tests to market. This is a good thing.

#### Big Tech drives innovation dominance now.

Pethokoukis 10-13-2021, Dewitt Wallace Fellow at the American Enterprise Institute, 2002 Jeopardy! champion, (James Pethokoukis, "So Big Tech massively investing in itself is worrisome now?", *American Enterprise Institute*, https://www.aei.org/economics/so-big-tech-massively-investing-in-itself-is-worrisome-now/)

Of course, the level of Big Tech spending on new investment and R&D is where my imaginary world and our real one part ways. Here’s Shira Ovide from the New York Times:

I have watched, mouth agape, as America’s five biggest tech superstars — Apple, Microsoft, Google, Amazon and Facebook — have splurged on big-ticket investments in their businesses. That includes specialized equipment to assemble iPhones, hulking computer hubs and undersea internet cables that zip YouTube videos to your phone, and the warehouses for Amazon workers to assemble and ship orders. What the companies spend on physical assets that last for years — capital expenditures, for you wonks — is one of the best glimpses at how Big Tech leverages success into even more success. The combined profits of these five companies climbed more than 25 percent in the most recent year, according to financial statements. The tech giants have the cash and the permission from their investors to spend almost whatever it takes to stay on top. It’s an advantage that few companies can match.

Wait, so if these super-valuable companies didn’t massively invest in their businesses, their critics would express alarm. But they do invest massively in their businesses — yet I guess that’s supposed to be alarming, too? One can’t help but be reminded of — and see the wisdom in — the philosophical underpinning of American competition law: Antitrust exists to protect competition, not competitors — even if those competitors are feisty upstarts or merely entrepreneurs with big dreams. As antitrust experts John W. Mayo and Mark Whitener explained in The Washington Post last year:

[Antitrust] recognizes that the potential for economic rewards is what incentivizes investment and risk-taking. The resulting competition for marketplace supremacy can be fierce, and weaker firms often fail along the way. Those left standing should not be punished for their success — even if only one survives. As the Supreme Court said more than 50 years ago, monopolies should be targets of antitrust enforcement only when there is “the willful acquisition or maintenance of [monopoly] power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.” Antitrust doesn’t condemn a firm for developing a universally popular search engine, ketchup or pharmaceutical drug, even if that success leads to market dominance. It’s how a monopoly is obtained or preserved that matters — not its mere existence.

And given the current hostility to Big Tech in Washington, it’s pretty obvious that the dominance is being maintained more by providing value to consumers rather than by exploiting America’s political system like a bunch of crony capitalists. Wall Street banks frequently release reports highlighting the very real antitrust and regulatory risks to Alphabet, Amazon, Apple, and Facebook. But I would note that those companies frequently occupy the top spots in lists of the most innovative firms in America and the world. (For example: here, here, and here.) Same with R&D spending. They seem to be staying on top by mostly doing things the right way. And if you have a problem with that, too, then you really have slipped into “big is bad because big is bad” territory.

### A2: 2AC 2 – Digital Innovation Failing (Rizzo)

#### Rizzo cites OECD who concludes neg, and Sitaraman is wrong, the plan destroys US tech influence.

---Sitaraman assumes less concentration equals more innovation, but that’s wrong. Independent studies and the OECD who they cite show that size has no correlation with innovation

---plan leads to small companies who can’t compete against massive global companies, which causes US influence to decrease.

Jamison '20 [Mark; 8/19/20; nonresident senior fellow at the American Enterprise Institute, director and Gunter Professor of the Public Utility Research Center at the University of Florida’s Warrington College of Business, Ph.D. in economics from the Warrington College of Business at the University of Florida; "Breaking up Big Tech will not help the US innovate or compete with China," <https://www.aei.org/technology-and-innovation/breaking-up-big-tech-will-not-help-the-us-innovate-or-compete-with-china/>]

Sitaraman assumes that less concentrated markets are more innovative. Decades of scholarly research have shown that this isn’t the case.

In the mid-20th century, some economists believed that monopoly markets would produce more innovations than competitive markets. The argument was that a monopoly could capture more profits from innovation than a firm in a competitive market could, so monopoly markets gave more innovation.

But in the 1960s, economists began testing the hypothesis. **Studies** examined whether an individual firm’s size or the relative sizes of firms in an industry affected research and development or innovation. The Organisation for Economic Co-operation and Development recently released a paper summarizing the research. The summary finds that the relationships vary over time and across industries, so the best conclusion is that firm size and market structure cannot be used to affect innovation.

Ideas and data

Wheeler believes that innovation comes from companies analyzing data and selling products. Actually, in the tech space, more and more innovations are coming from decentralized, small-scale innovators. This pattern was discovered in academic research about 20 years ago and still holds.

What is happening is that innovators develop ideas for products and demonstrate their potential value. In a few instances, such as in the case of Facebook, the innovator forms a business and succeeds. But more often than not, the innovators sell their company or at least their product to an enterprise that has a proven business model. This was probably the situation with Instagram, which had a great idea and a weak business model at best before selling to Facebook, which then turned the idea into a profitable business.

Wheeler also appears to believe that if a company is unable to uniquely profit from the data it captures, the company will capture extensive data anyway. I have heard many times the argument that profits don’t matter, such as in the net neutrality debates. But the arguments are always made by people who care very much about the profitability of their retirement savings. So I think they know they are wrong.

Market structure and geopolitical competitiveness

Sitaraman also believes that smaller firms would be less likely to want to enter the Chinese market and would thus avoid being compromised by China’s influence. This might be true, but if it is, then it is also true that the US firms would be less active in all global markets, which would decrease US influence. Since part of the rivalry between the US and China is likely to include global influence, retracting US companies from the global economy would certainly decrease US competitiveness.

### A2: 2AC 3 – No Link, Only Exclusionary Conduct

#### Applying antitrust to Big Tech weaponizes competition law, effectively ending global competitiveness, and rolling back years of innovation across all sectors.

Mitchell ’21 [Trace; March 3; Research Associate at the Mercatus Center at George Mason University, J.D. from George Mason University; Morning Consult, “Weaponizing Antitrust to Attack Big Tech Is a Bad Idea,” <https://morningconsult.com/opinions/weaponizing-antitrust-to-attack-big-tech-is-a-bad-idea/>]

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](https://www.justice.gov/opa/pr/justice-department-sues-monopolist-google-violating-antitrust-laws) 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](https://www.businessinsider.com/how-google-retains-more-than-90-of-market-share-2018-4) 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](https://www.ftc.gov/news-events/press-releases/2020/12/ftc-sues-facebook-illegal-monopolization) 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.

#### Antitrust collapses the only firms willing to work with the DoD, cedes market share to China, and enables espionage — turns Sitaraman

Bateman 19, Senior Fellow, Carnegie Endowment for International Peace. (Jon, 10-22-2019, “The Antitrust Threat to National Security”, *Wall Street Journal*, <https://www.wsj.com/articles/the-antitrust-threat-to-national-security-11571784197>

But there are dangers in restructuring any U.S. industry. One of the most serious remains largely unrecognized: national-security risk. Despite their faults, tech companies contribute directly to American military and intelligence operations. Their titanic scale can itself be an asset. Any responsible antitrust debate must address the national security risks of breaking up Big Tech—and the parallel risks of keeping these companies intact.

Consider cloud computing. The Defense Department is planning a massive global cloud called JEDI. Unlike corporate clouds, the “war cloud” must support life-or-death missions on austere battlefields despite virtual or physical onslaughts. The Pentagon found only two eligible bidders: Amazon and [Microsoft](https://quotes.wsj.com/MSFT). Three defense secretaries, a federal judge and the Government Accountability Office have upheld this bidding process.

It is no coincidence the two eligible bidders have a combined market value of $1.9 trillion. Vast resources were needed to fund global networks of hardened data centers linked by undersea cables. The U.S. military’s unique demands required companies of unique scale. Yet one JEDI bidder faces a concerted breakup campaign (Amazon), and the other was nearly dissolved in 2001 (Microsoft).

Scale also matters in intelligence collection. The Foreign Intelligence Surveillance Act compels U.S. companies to hand over data on suspected foreign agents. U.S. intelligence analysts increasingly rely on FISA to monitor terrorist communications or warn of cyberattacks. Tech giants have particular FISA value because their sheer popularity attracts users from around the world, including hostile actors. The largest tech companies provide some of the fastest-growing intelligence streams.

Splitting up Big Tech would reduce its intelligence value. First, smaller companies would lose global market share to foreign rivals such as Alibaba or Baidu, which can ignore FISA. Small U.S. sites can’t leverage the “network effect,” a gravitational force that helps large sites stay dominant. Intelligence collected from small sites would also be less useful. They see only narrow slices of online activity, whereas tech giants track users across sprawling internet ecosystems. Dismantling these ecosystems would put greater burden on intelligence agencies to “connect the dots” of potential threats.

#### Khan is wrong---the platform separation’s arbitrary and vague nature tubes innovation

A. Douglas Melamed & Nicolas Petit 19. Professor of the Practice of Law at Stanford Law School. \*\*Joint Chair in Competition Law at the European University Institute in the Department of Law and at the Robert Schuman Center for Advanced Studies. "The Misguided Assault on the Consumer Welfare Standard in the Age of Platform Markets." Review of Industrial Organization. 2-11-2019. https://link.springer.com/article/10.1007/s11151-019-09688-4#Sec13

5 Competitive Process, “No Fault” Antitrust, and Conduct‑Based Rules

Many of the critics of CW have in mind an alternative to the CW standard for antitrust policy: “protection of competition” or the “competitive process” (Khan 2017; Wu 2018). The words themselves to do not necessarily imply a departure from the CW standard because, as was explained above, both of the key elements of existing US antitrust law—anticompetitive conduct, and increased market power—are focused on harm to the competitive process. The courts have recognized this connection as well.

The critics are often unclear about the concrete elements of antitrust liability that would operationalize a “protection of competition” policy in relation to platformbased firms, but their remedy proposals enable us to draw inferences about their preferred antitrust doctrine. The core idea seems to be the removal of one of the three elements of a violation of antitrust law: bad conduct, market power, and a causal link between them. There are two variants to this idea:

Some CW critics want to decrease the importance of the “bad conduct” element, so as to migrate towards a more “no fault” antitrust intervention on the basis of a showing of a situation of “structural dominance” (Khan 2017). Others would retain the conduct requirement and dispense with the market power screen. Both proposals are unsound.

5.1 No‑Fault Antitrust for Platforms

Some critics of CW display sympathy for a “no fault” antitrust or something very close to this (Khan 2017; Woodcock 2017). In this alternative framework, the bad conduct requirement that is necessary to establish antitrust liability—in Section 1 cases, concerted action; in Section 2 cases, exclusionary conduct—is either removed or marginalized (for example, through greater reliance on incipiency theories in antitrust doctrine or the concept of “special responsibility” of dominant firms that is used in the EU). Instead, a market power screen of some sort would be used to identify a position of “structural dominance” that provides the basis for antitrust intervention. In effect, these critics seem to be saying, the law should give less deference to efficiency and should focus more on rivalry.

The normative idea is that society is better off when more than one platform, and/or related upstream and downstream businesses, operate in a market. When this condition is not met, the concentrated structure of the platform market creates anticompetitive conflicts of interests and perverse behavioral incentives, such as discrimination and leveraging (Khan 2017). The promotion of inter- and intra-platform rivalry would require the imposition of positive obligations—e.g., must-carry requirements, mandatory API sharing, data portability measures—on platformbased firms. It might also require heightened M&A restrictions and possible divestitures that are aimed at eliminating structural dominance.

A no-fault antitrust law would almost certainly inflict static welfare losses on society. To start, breaking up platforms horizontally would likely reduce productive efficiencies, require replication of fixed costs not fully utilized and thereby increase average total costs, and reduce the benefits of network effects on the various sides of the platform. Moreover, when improperly executed—which is a non-trivial possibility—a platform break-up might give rise to negative network externalities, transaction costs, and excessive platform fragmentation.

To capture this intuition, we invite readers to travel back to the world of Internet search before 2000, when users searched web pages through multiple platforms and then had to compare search results. The upshot was lost time for users and costly campaigns for advertisers.

Breaking up vertically integrated companies or those providing complements could also reduce static efficiency.

Productive efficiency could be harmed by diseconomies of scope and lost spillovers. And allocative inefficiency might result from the increased potential for double marginalization, which would lead to increased prices and reduced output. Similar but perhaps less substantial welfare losses would result from conduct restrictions that limited the ability of platforms to take full advantage of whatever efficiencies are created by their size and scope.

A no-fault antitrust law would also have dynamic costs: By reducing the rewards to “skill, foresight and industry”, as the court put it in Alcoa, the law would reduce the incentives for and thus the likely investment in such productive endeavors. And by offering the prospect of antitrust intervention to assist rivals and complementors, no-fault antitrust law could reduce their incentives to innovate and otherwise compete vigorously in order to flourish without such aid. Such a law would also require on-going industry monitoring. If, for example, there are strong network effects in a market, there are likely to be recurring monopolies as markets tip to one rival or another.

On the other hand, no-fault antitrust law could promote economic welfare by reducing the deadweight loss that results from enduring market power and by facilitating the entry of rivals and complementors and thus inducing investment in such rivals. Whether no-fault antitrust law would on balance increase or decrease welfare is an empirical question, and the answer might differ depending on the industry or even the specific company. In the platform world, for example, Amazon seems to have large fixed costs (for example, those related to its fulfillment infrastructure), while platforms such as Facebook and Google have relatively lower fixed costs and higher variable costs (for example, those that are related to labor-intensive content moderation); but the latter probably provide greater network efficiencies.

U.S. antitrust law takes a clear stand on this issue: No antitrust violation is found, and no antitrust remedy is warranted, unless the defendant has engaged in anticompetitive conduct: conduct that does not increase efficiency but does tend to increase market power by coordinating the conduct of competitors or weakening or excluding competitors. The stand seems to reflect both a normative judgment—if you play by the rules, you can enjoy the fruits of success—and a crude empirical judgment that the welfare costs of no-fault intervention exceed the benefits as a general matter and trying to carve out the exceptional case would be too difficult or costly.

The CW standard does not require antitrust law to be based on either that normative judgment or that empirical judgment. Certainly, those have not been the premises of EU competition law, at least until recently. Several leading EU cases declared that dominant firms are under a “special responsibility” that was often understood, for example, to imply access and nondiscrimination obligations. Even today, EU competition law guidelines make clear that stricter standards apply where inaction would leave only a single firm in the relevant market. The idea is that preserving access by outsiders, small firms, and less efficient upstarts, and ensuring that some competitors remain in the market, would promote welfare over the long run (Fox 2008a, b).

The EU seems to be moving away from this kind of no-fault competition law, not because the CW standard compels such a move but for other, more pragmatic reasons that arise from the difficulty of determining when and how to intervene in a nofault system. How should the law define threshold levels of platform monopoly that warrant antitrust intervention? How should it account for the welfare costs of intervention? Are some markets or firms too valuable or too innovative for government intervention, even if concentrated or powerful? Are some remedies too disruptive and costly? The CW critics that sympathize with a migration of antitrust towards a no-fault approach have not addressed these questions. Absent satisfactory answers to them, no-fault antitrust—or anything close to it—would likely be a recipe for arbitrary and welfare-reducing government regulation.

There is another problem with no-fault antitrust law that suggests that it would have—at best—an uneasy relationship with U.S. antitrust law, although the unease has little to do with the CW standard itself: U.S. antitrust law proscribes certain kinds of conduct and otherwise leaves parties free to compete in the marketplace. In effect, it punishes and seeks to deter what it regards as bad conduct. If one imagines a continuum with proscriptive law enforcement at one end and prescriptive regulation on the other, antitrust law is on the law enforcement side. The law enforcement approach reflects both a normative judgment about the limited role of the State and specific, antitrust judgments: that competition is better than regulation; that markets (policed by rules of fair play) know better than central planners; and that proscriptive rules promote business compliance, legal certainty, and economic activity. If antitrust intervention is based on market conditions rather than specific bad conduct, it becomes a kind of regulation and to that extent departs from a core premise of U.S. antitrust law.

#### The only robust, statistical study concludes neg---antitrust throttles innovation.

Day ’17 [Gregory; October 17; Ph.D., J.D., Professor at Oklahoma State University’s Spears School of Business; Colombia Law School’s Blue Sky Blog, “How Antitrust Affects Innovation,” <https://clsbluesky.law.columbia.edu/2017/10/17/how-antitrust-affects-innovation/>]

This development, however, is actually counterintuitive. Scholars and policymakers have long thought that concentrated market power and monopolies produce more innovation than competition. Consider that patent law—which is the primary body of law aimed at creating incentives for innovation—was traditionally thought to conflict with antitrust law. Known as the “the patent-antitrust paradox,” it was often said that antitrust is designed to prevent monopolies and other exclusionary practices while the patent system does the opposite, granting exclusionary rights and market power in the form of patents. Given this framework, it makes sense that scholars, courts, and government agencies have only recently considered antitrust and patent laws to be complementary policies for encouraging innovation.

Very little evidence, however, indicates that antitrust law affects the rate of innovation. There are three possibilities. Antitrust enforcement could strengthen incentives to innovate. It could, however, also diminish them: If firms believe that aggressive innovation is likely to draw unwanted attention from regulators, their motivation to invent new goods and methods could wane. And as a practical matter, the courts are probably ill equipped to create incentives for technological advancement. The third possibility is that innovation and antitrust have no causal relationship.

In fact, scholarship has often noted how little is known about antitrust’s influence on innovation. Despite the literature’s efforts—employing case studies, formalized logic, and theoretical explorations—“the consensus is that there is no clear answer.” Professor Alan Devlin remarked, “[u]nfortunately, the specific antitrust policies that best promote technological advancement are far from clear.” Professor Marina Lao found that “there is neither empirical nor clear theoretical support for the hypothesis that monopolistic conditions, relative to competition, encourage more innovation.” One commentator summed up these efforts, stating that “we may not be confident that antitrust suits enhance innovation, but we cannot be confident that they retard it either.”

My research responds to this state of affairs by empirically testing antitrust enforcement’s relationship with innovation. The history of antitrust law is an ideal natural laboratory for empirical study since its rate of enforcement has fluctuated, creating variations that generate strong statistical results. For example, each category of antitrust action initiated by the government has changed in a unique pattern. The rate of Section 1 investigations has steadily declined, but merger enforcement—which has traditionally been less common than sections 1 and 2 investigations—peaked in the 1990s and has since become more prominent than Sherman Act investigations. As a result, it can be statistically determined with a high level of confidence whether the rate of innovation has changed in accordance with increases and decreases of antitrust activity, controlling for mitigating factors.

I constructed a new dataset of publicly available information as well as data received from Freedom of Information Act (“FOIA”) requests. The dataset spans from 1963 to 2015 with a unique entry each year. The results of the models are consistent, strong, and quite unexpected, demonstrating the effects of antitrust enforcement on society’s ability to produce patents and R&D.

First, a greater number of antitrust lawsuits filed by private parties—which are the most common type of antitrust action—impedes innovation. Second, the different types of antitrust actions initiated by the government tend to affect innovation in profoundly different ways. Merger challenges (under the Clayton Act) promote innovation while restraint of trade and monopolization claims (under sections 1 and 2 of the Sherman Act) suppress innovative markets. Even more interesting, these effects become stronger after the antitrust agencies explicitly made promoting innovation a part of their joint policies.

My results suggest that the arguments for and against antitrust have merit. On one hand, antitrust enforcement fosters the incentives to innovate when it preserves the number of firms competing within a market. Yet enforcement reduces innovation when it scrutinizes how firms compete. This makes sense. Commentators have noted that the Sherman Act is designed to raise suspicions about many activities in which innovative firms typically engage. An inventor may, for instance, exclude competitors from using her invention or enter into contracts and agreements with competitors to license or develop technology— either scenario can draw an antitrust challenge. Enforcing the Sherman Act can thus curb innovation by creating liability for inventors who would like to comply with the law. In short, antitrust appears to promote innovation when it maintains competition by preserving the number of firms competing within a market, but it retards innovation when it limits how exactly those firms compete against each other.

My analysis also supports concerns that the mere presence of the Federal Trade Commission and the Department of Justice in dynamic markets might chill the incentives to innovate. As the administrative state of antitrust increases—measured by the size of agency budgets and the number of investigations, actions, and personnel—the innovation in private industry decreases. To offer an analogy, when drivers can spot a police officer by the highway, they are more likely to drive below the speed limit, acting in an overly conservative manner. In the innovation context, a similar effect appears to be true: Although the presence of antitrust regulators in innovative markets may make some firms abide by the law, it can also make others overly cautious and reduce innovation.

#### Tech-sector antitrust crushes competitiveness and deters innovation in every sector.

Hedger ’21 [Patrick; January 6; Vice President of Policy for the Taxpayers Protection Alliance, M.A. in Public Policy from George Mason University; Inside Sources, “Antitrust Suits Against Tech Expensive, Frivolous,” <https://insidesources.com/antitrust-suits-against-tech-expensive-frivolous/>]

Once upon a time, frivolous litigation was something conservatives of almost all stripes vociferously opposed.

Fast forward to 2020, however, and it has become the favorite tool of many self-styled proponents of the free market. As more conservatives evolve into anti-tech populists, these lawsuits are being targeted at American tech companies to extract political concessions.

Aside from being petty political maneuvers, these suits are disastrous policies with potential long-term consequences. These lawsuits will cost taxpayers at all levels of government millions of dollars.

The recent omnibus/stimulus bill [gives](https://www.axios.com/spending-bill-boosts-funding-for-techs-antitrust-cops-9312bbd0-b23f-4829-bb8a-a81b0fc95279.html) both the Department of Justice (DOJ) and Federal Trade Commission (FTC) a combined $38 million boost, in a preview of how much these suits will cost states as well.

Google has been a [particularly popular target](https://www.politico.com/news/2020/12/17/3rd-antitrust-lawsuit-hits-google-447741) as of late. In October, the DOJ filed a lawsuit against the tech giant, vaguely alleging anticompetitive behavior.

Recently, [Texas](https://www.texastribune.org/2020/12/16/texas-google-lawsuit/) (along with eight other states) sued complaining about Google’s dominance in the online advertising market. Finally, a coalition of 35 states — plus Guam, Puerto Rico, and Washington, D.C. — filed a suit very similar to DOJ’s allegations.

The DOJ lawsuit attempts to paint Google as a “monopoly.” However, this could not be further from the truth. While Google certainly holds a lion’s share of the online search market, it has been steadily declining since late 2018.

Google faces very real competition from companies like DuckDuckGo and Amazon, where most product-specific searches begin. Google does not lack competitors. Its dominance is a result of providing better, more efficient services to consumers. This is really what suits like the DOJ’s will harm if allowed to succeed.

Texas makes the counterfactual claim that Google is positioning itself to dominate the online ad market as a monopoly. They ignore the fact that digital advertising prices have fallen, not risen. Conversely, in the same suit, Texas also alleges

Google has worked illegally with Facebook to coordinate ad strategies. Google can either be a monopoly or be working hand in hand with its main competitor. However, both statements cannot be true. It is clear Texas is throwing everything at the wall to see what sticks.

This latest 35-state coalition effort to go after Google alleges that Google is seeking to disadvantage its competitors and promote its own products. If that is enough to warrant a lawsuit from roughly two-thirds of the nation’s attorneys general, then most successful businesses in America are in deep trouble.

It should be the goal of any right-minded businessman to implement policies that increase market share at the expense of competitors and to promote their own products. This is hardly a new strategy. Yet, in their rush to ride the wave of anti-big tech fervor, these attorneys general seemed to forget this very basic truth.

The effort to score cheap political points — at great taxpayer expense — during this moment in our nation’s history has dangerous prospects for the future. Lawsuits like these create mountains of uncertainty not only for tech giants like Google, but for upstart competitors as well.

The notion that there is a certain unspoken threshold at which government regulators can declare you a monopoly and sue you will hang over tech entrepreneurs across the nation.

It will greatly disincentivize investment and actually serve to advantage the tech giants themselves. After all, only they have the vast resources to deal with the barrage of fickle lawsuits.

Lawsuits like this also create massive taxpayer burdens as new attorneys are hired by the state or current attorneys are tasked with this frivolous lawsuit instead of bigger and more important issues.

America’s relative hands-off approach to the technology sector has allowed it to become a global leader.

The political grudges of this time should not be used as a pretense to destroy what made America dominant in the first place.

Taxpayers and consumers cannot risk setting precedents that will harm the marketplace and leave the nation wanting.

### A2: 2AC 4 – Exclusionary Conduct Bad

#### Their ev cites Kill zones, those motivate innovation---aff limits it

Joe Kennedy 20 [Senior Fellow, Information Technology and Innovation Foundation, "Monopoly Myths: Is Big Tech Creating “Kill Zones”?," 11-9-2020, https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones, hec]

One argument made against large technology companies is that they limit innovation, either by acquiring start-ups in order to terminate the development of innovations that threaten their continued dominance (“killer acquisitions”) or by creating areas of the market in which they exert dominance to the extent others won’t invest in these areas (“kill zones”). Either way, large tech companies supposedly limit prospective challengers from being able to take root and grow, thereby limiting not only competition but overall U.S. innovation. In fact, acquisitions may be beneficial, at least to innovation, if they allow the larger firm to benefit from economies of scale or network effects, and enable the smaller firm to reach many more customers much more quickly with a higher quality product. Moreover, the prospect of being purchased by a larger company often motivates founders and venture capitalists to invest. Making it more difficult for them to sell might make it harder for promising firms to find funding. And rather than looking at so-called kill zones as an innovation deterrent, it is more accurate to view them as an innovation enabler, guiding entrepreneurial resources (talent and capital) to areas that have the best chance of success. Why invest in companies seeking to duplicate usually mature products offered by large firms that benefit from economies of scale or network effects? It is better for society if new companies concentrate instead on other markets they can break into. Indeed, that seems to be occurring as venture capital investment, especially in early-stage deals, has grown significantly over the last decade, indicating that there is no shortage of innovation opportunities. Although the areas of investment have shifted in response to market developments, this reflects the natural evolution of Internet platforms, rather than a pernicious attempt to stifle competition or innovation. In either case, regulators already have sufficient powers to protect competition. The current focus on consumer welfare adequately incorporates concerns about innovation. While antitrust authorities going forward probably should broaden their review of acquisitions by dominant companies, there is no need to significantly change antitrust statutes or embrace structural remedies such as structural separation or breakups, as these would likely slow innovation and harm consumers.

### A2: 2AC 5 – LX Turn (a) – National Champions Bad

#### Western tech is exiting China now [Post-Dates Sitaraman by a good bit, and the relevant law pushing exit started Nov 1]

Soo 11-3-2021 (Zen, “EXPLAINER: Why are foreign tech firms pulling out of China?,” *ABC News*, <https://abcnews.go.com/Technology/wireStory/explainer-foreign-tech-firms-pulling-china-80942558>)

Yahoo Inc. is leaving the China market, suspending its services there as of Monday amid what it says is an “increasingly challenging” business and legal environment. Foreign technology firms have been pulling out or downsizing their operations in mainland China as a strict data privacy law specifying how companies collect and store data takes effect. Such companies have decided the regulatory uncertainty and reputational risks outweigh the advantages of staying in the huge market. WHICH FOREIGN TECHNOLOGY COMPANIES HAVE RECENTLY DOWNSIZED OPERATIONS OR LEFT CHINA? Yahoo Inc. said in a statement Tuesday its services in China stopped as of Nov. 1. Users visiting the Engadget China site run by Yahoo this week find a popup notice saying the site will not publish any new content. Last month, Microsoft’s professional networking platform LinkedIn said it would shutter the Chinese version of its site this year and replace it with a jobs board with no social networking functions. Epic Games, which operates the popular video game Fortnite, also says it will pull the game out of the China market as of Nov. 15. The game was launched in China via a partnership with the China's largest gaming company, Tencent, which owns a 40% stake in Epic. WHY ARE COMPANIES LEAVING CHINA NOW? The Personal Information Protection Law that took effect on Nov. 1 limits the amount of information companies are allowed to gather and sets standards for how it must be stored. Companies must get users' consent to collect, use or share data and provide ways for users to opt out of data-sharing. Companies also must get permission to send users' personal information abroad. The new law raises costs of compliance and adds to uncertainty for Western companies operating in China. Companies caught flouting the rules could be fined up to 50 million yuan ($7.8 million) or 5% of their yearly revenue. Chinese regulators have cracked down on technology companies, seeking to curb their influence and address complaints that some companies misuse data and engage in other tactics that hurt consumers' interests. The downsizing and departures also come as U.S. and China tussle over technology and trade. Washington has imposed restrictions on telecoms equipment giant Huawei and other Chinese tech companies, alleging they have ties with China’s military and government. Local companies are also feeling the heat, with e-commerce companies like Alibaba facing fines. Regulators are investigating some companies and have imposed strict rules that affect gaming firms like NetEase and Tencent. WHAT OTHER HURDLES DO FOREIGN TECH COMPANIES FACE IN CHINA? China operates what is known as a “Great Firewall” which uses laws and technologies to enforce censorship. Content and keywords deemed politically sensitive or inappropriate must be scrubbed from the internet. Companies must police their own platforms, deleting posts and making sensitive keywords unsearchable. Western social media networks such as Facebook and Twitter have long been blocked by the Great Firewall and are generally not accessible for people in mainland China. “China has installed a very draconian policy governing internet operators, telling them what to do and especially what not to do,” said Francis Lun, CEO of GEO Securities Limited in Hong Kong. “I think the question comes down to why bother (operating as a foreign company in China) with such a limited return, and such heavy liability,” he said. Michael Norris, a research strategy manager at the Shanghai-based consultancy AgencyChina said compliance costs will rise further.

1. **Internal link goes one way---large-firm dynamism is the only way to maintain tech leadership**

**Lee**, senior lecturer at the University of Hong Kong Faculty of Business and Economics, **‘19**

(David S., “Antitrust action risks holding back US tech giants in competition with China,” <https://asia.nikkei.com/Opinion/Antitrust-action-risks-holding-back-US-tech-giants-in-competition-with-China>)

But the administration should not forget the law of unintended consequences -- **effective** antitrust measures could **stifle** the ability of American tech companies to **compete with their Chinese challengers**. Presumably, that is the last thing the America First president wants to see.

While antitrust has been used to regulate technology companies before, perhaps most notably Microsoft two decades ago, its application against Amazon.com, Facebook, and Google seems different.

For the last half-century or so, U.S. antitrust law has been underpinned by the concept of maximizing **consumer welfare**, frequently measured by price to consumers. In regulating big technology companies today, however, a new paradigm has emerged, dubbed "hipster antitrust."

Hipster antitrust looks beyond traditional economic harm and includes wider effects such as wage inequality, data privacy intrusions, and sheer size as grounds to invoke the law.

But **the wider the antitrust authorities reach**, the more likely they are to **damage the tech giants' global competitiveness**. This applies **especially in the key field of artificial intelligence**, where the U.S. and China are world leaders.

AI is the engine powering the Fourth Industrial Revolution and the fuel for that engine is data, **lots of data**. Such data can **only be collected at scale**, which conflicts with hipster antitrust **notions of size**. If American antitrust measures compel large technology companies to shrink or in the extreme, to break up, then the U.S. will find itself at a **disadvantage** to China.

The idea of **size** is one of many **fundamental differences** separating Chinese and American technology ecosystems. Chinese government leaders have clearly grasped that scale matters for the technologies they want to dominate, such as artificial intelligence, as well as for the type of digital governance Beijing is striving to implement.

In the U.S., however, the economic value attached to scale is offset by deep-rooted concerns about privacy, bullying behavior and unfair political and social influence. Senator Elizabeth Warren of Massachusetts, a popular Democratic Party candidate for the 2020 presidential election, wrote: "Today's big tech companies have too much power -- too much power over our economy, our society and our democracy."

But in China this is not a hot-button political issue. In a recent fintech course I helped lead comprised of students from different countries, mainland Chinese students considered privacy differently than peers elsewhere. Though aspects of privacy are important to Chinese users, many readily understand there are trade-offs in operating on technology platforms.

Chinese technology platforms such as Alibaba and Meituan have developed **so-called "super apps"** that serve the same functions that users in the West might find by going to different applications on their devices.

Super apps are designed to be convenient to users so they can handle everything from ride hailing, shopping, food purchases, and payment, all without leaving the digital confines of a single app. This has become the dominant way Chinese citizens consume online. With the most internet users in the world, approximately 750 million, super apps also provide Chinese technology companies an incredible amount of data.

In his book, "AI Superpowers: China, Silicon Valley, and the New World Order," technology executive and investor, Kai-Fu Lee outlined four factors necessary to win the AI race: talent, computing speed, data, and government policy. Though the U.S. has an advantage in many areas, **that lead is shrinking**, and if China does overtake the U.S. in artificial intelligence, it will likely be a result **of advantages in data and government policy**.

This combination of data and government policy is perhaps best exemplified by SenseTime, widely considered the world's most valuable artificial intelligence startup. SenseTime boasts world leading facial recognition, which is enhanced because it reportedly has access to Chinese government databases, a rich source of data to further develop models.

Chinese companies like SenseTime have excelled in facial recognition, with some reports estimating that there are almost ten times as many Chinese facial recognition patents filed as American. Chinese surveillance technology is already used in the U.S., including New York City.

This widening gap will have **broader implications** beyond surveillance, security, and policing. Facial recognition technology will also serve as a biometric identifier for finance, retail, and health. With China moving forward aggressively both domestically and abroad in its use of such technologies, American competitors who are pursuing facial recognition, such as Amazon and Google, may not be able **to close the growing competitive chasm**.

So while American politicians may see antitrust investigations into large technology companies as necessary, there could be a significant impact on America's ability to compete with China.

Google's former CEO, Eric Schmidt forecast last year that China and the United States would lead the bifurcation of the internet into two spheres. Evidence of this splintering is already apparent. What remains undetermined, however, is which of those spheres will dominate.

Large Chinese technology companies, for example Alibaba Group Holding, are already setting-up far-flung outposts by partnering with and investing in local, non-Chinese technology companies around the world. This form of Chinese technological expansion allows Chinese big tech to **shape user privacy norms,** establish global networks, and attract more users into their ecosystems, all of which leads to increased user activity and ultimately more data.

While China aggressively expands its technological reach and hones its ability through mining evermore data, it is important that U.S. regulators understand that **aggressive antitrust sanctions** would risk **inhibiting American companies** from **maintaining the scale necessary to compete with their Chinese rivals**.

**AI supremacy will be a defining feature of superpower status**. And if future researchers one day examine how the U.S. **lost the war for artificial intelligence**, the hindsight of history may show that **the current antitrust debate was the fatal turning point**.

#### Small companies won’t go through DOD procurement.

Foster ’20 [Dakota and Zachary Arnold; May; Visiting Researcher at Georgetown's Center for Security and Emerging Technology, graduate student in the Department of War Studies at King’s College London; Research Fellow at the Center for Security and Emerging Technology, J.D. at Yale Law School; Center for Security and Emerging Technology, “Antitrust and Artificial Intelligence: How Breaking Up Big Tech Could Affect the Pentagon’s Access to AI,” <https://cset.georgetown.edu/wp-content/uploads/CSET-Antitrust-and-Artificial-Intelligence.pdf>]

Contracting with the Pentagon is difficult, expensive, and time-consuming. Smaller AI firms may be less able to navigate the federal procurement process, effectively preventing the Pentagon from accessing their technology. The few DOD programs that do partner with smaller firms are under scrutiny for their efficacy.

The high barriers of entry, coupled with an unstable budgetary environment and the high certification costs of federal contracting, favor larger companies.148 Simply put, large firms have more resources and deeper institutional knowledge to bring to the federal contracting process.

#### Breakthroughs by big tech are accessible and critical – small firms are hopeless.

Vanian ’20 [Jonathan; August 4; citing Dakota Foster, Visiting Researcher at Georgetown's Center for Security and Emerging Technology, graduate student in the Department of War Studies at King’s College London; Fortune, “How antitrust investigations impact U.S. A.I. supremacy,” https://fortune.com/2020/08/04/how-antitrust-investigations-impact-u-s-a-i-supremacy/]

Antitrust inquiries into U.S. tech giants could upend the development of artificial intelligence.

Last week, lawmakers interrogated the CEOs of Apple, Alphabet, Amazon, and Facebook about whether their companies have become too powerful. House members drilled in on Big Tech's acquisitions (they allegedly stifle innovation) and their collection of huge amounts of data (it gives the companies a huge advantage over rivals in developing A.I. and improving their products).

But even if lawmakers agree Big Tech is too big, they are in a quandary about what to do about it. Should they break the companies up? Fine them? Do nothing?

As antitrust expert Dakota Foster recently explained in a paper for Georgetown University's Center for Security and Emerging Technology, what Congress decides could be critical to the federal government. Research and technology from major tech companies both directly and indirectly benefits the Pentagon. Tech giants often open source their A.I. research, which means that the federal government can use the findings for free. The companies also sell cloud computing and A.I. services to government agencies.

By taking action, lawmakers risk hurting the ability of tech companies to develop A.I., Foster warned Fortune. They may end up cutting spending into A.I. research, and thereby achieve fewer technological breakthroughs.

In the past, the government would have been easily able to dump Big Tech in favor of contractors like Lockheed Martin and Raytheon, Foster explained. But in recent years, the tech giants have leapfrogged the defense industry's A.I. skills, she said.

Members from both political parties are concerned that slowing progress by Big Tech in A.I. may benefit China. That country is investing heavily in A.I., with the goal of becoming the world’s leader 2030.

Whatever the case, the federal government shifting to using smaller U.S. tech companies as an alternative to Big Tech isn't particularly realistic. The data used by the upstarts for A.I. projects isn't as complete as what the tech giants have. Furthermore, the small fry lack the money to pay for the tremendous amount of computing power required for A.I. projects. At the same time, they face a tougher time attracting the necessary talent, she explained.

### A2: LX Turn (b) – Disruptive Entrants

#### Big tech is vital for small businesses---*any* anti-trust action destroys them.

Szabo 18 [Carl Szabo is vice president and general counsel at NetChoice, an association of e-commerce businesses and online consumers, “Commentary: Don't damage our democracy by breaking up big tech”, 7-6-2018, TCA News Service; Chicago] IanM

Regardless of the mechanism used against **big businesses**, we must also recognize the harm to small businesses from antitrust actions against **large** online **platforms.**

**Anti-tech** advocates **claim** that "**big is bad**," but for **America's small** and **midsize businesses**, the bigger the platform the better for small businesses trying to reach a **big audience.**

**Consider** the **local greeting-card** and **stationery store**. A **decade ago** this **business** could **barely afford** to **place an ad** in a **local newspaper**, let alone on **TV** or **radio.** But for less than $10 spent **with online platforms**, this **small business** can **reach thousands** of **potential customers**, and **target them** more accurately than ever too.

Risking small businesses and giving government agencies new political powers are risks not justified by benefits promised by critics who want to break up big tech. Let's retain our consumer welfare standard until anti-tech advocates can show the genuine benefits in their approach.

Critics of big tech should put down their pitchforks before all of us get hurt.

#### Big tech is crucial for startups and small businesses across all industries.

Moore 20 [Stephen Moore is the Distinguished Visiting Fellow at the Project for Economic Growth at the Heritage Foundation, “Don't break up Big Tech”, Washington Examiner, June 11, 2020, https://www.washingtonexaminer.com/opinion/dont-break-up-big-tech] IanM

It is reassuring. From the start of the internet age, conservatives such as me and Grover Norquist and **many** more have **argued** the best way for America **to dominate** the **digital age** of **online commerce** was to **keep** the **internet tax**- and **regulation-free**. That is what we have **mostly done** in America, and the **rewards have been bountiful**. Millions of jobs and the spurt of innovation and entrepreneurship has the top six American tech companies with a **higher production capacity** than the entire GDP of **most other** nations in the **world.**

We have seen first-hand how the **gig economy** **saved our nation** from plunging into a **Great Depression** over the past three months. These were terrible times, with as many as 40 million people losing their jobs. But thanks to our multitrillion-dollar tech sector, and not just Big Tech but **hundreds** of **new** **entrepreneurial online services**, **commerce kept flowing**, **food was available** on the shelves, **gas was in the tanks**, **packages were delivered**, and **paychecks were processed.** They saved America from utter chaos and severe deprivation.

It was **the services**, **know-how**, and **infrastructure built** by our pioneering tech giants that **enabled** the tens of **thousands** of **small tech firms** to sprout up from nowhere, and these firms will be essential to securing the next phase of recovery. **Our construction firms**, **steel**, **oil**, and **gas industries**, as well as **hospitals**, **media**, **food processing**, and **manufacturers**, are all dependent on the kinds of **just-in-time inventory** and **supply chain** **management** **made possible** by the **tech sector**. In many ways, **the success** and the **array of business-to-business** **services** provided at little cost (often for free) **from companies** such as Google, Facebook, Amazon, and **the like** are what makes the next generation of tech firms possible **through free market competition**. Innovation stops monopolies, **not government lawyers**.

High tech isn't swallowing up small businesses. It is saving them. A **new report** from the Connected Commerce Council, which **analyzed** the **impact of internet platforms** and **digital tools** on **small companies** in the COVID-19 crisis, **found** almost 1 in 3 (31%) business **owners said** that **without digital tools**, they would have **had** to close part or all of **their business**. Nearly **70%** said digital tools have **been useful** during the COVID crisis.

There is **now a call** from both parties for multitrillion-dollar government "infrastructure bills." Wait a minute. Our **most critical infrastructure** today is the **gig economy** connectivity through **satellites**, **internet platforms**, **clouds**, **fiber optic cables**, the sophisticated nationwide **electric grid** system, and the like that was almost all built out by the very tech and telecommunications companies that are now coming under fire for being too successful and making too much money.

### A2: LX Turn (c) – Internal Growth

## Adv 2

#### FTC dedicating substantial resources to fighting fraud now. Status quo rulemaking heightens penalties.

FTC 12-16-2021 (“FTC Launches Rulemaking to Combat Sharp Spike in Impersonation Fraud,” <https://www.ftc.gov/news-events/press-releases/2021/12/ftc-launches-rulemaking-combat-sharp-spike-impersonation-fraud>)

The Federal Trade Commission launched a rulemaking today aimed at combatting government and business impersonation fraud, a pernicious and prevalent problem that has grown worse during the pandemic. Impersonators use all methods of communication to trick their targets into trusting that they are the government or an established business and then trade on this trust to steal their identity or money. The COVID-19 pandemic has spurred a sharp spike in impersonation fraud, as scammers capitalize on confusion and concerns around shifts in the economy stemming from the pandemic. Incorporating new data from the Social Security Administration, reported costs have increased an alarming 85 percent year-over year, with $2 billion in total losses between October 2020 and September 2021. Notably, since the pandemic began, COVID-specific scam reports have included 12,491 complaints of government impersonation and 8,794 complaints of business impersonation. “It is reprehensible that scammers are preying on people during this pandemic by pretending to be someone they can trust,” said Samuel Levine, Director of the FTC’s Bureau of Consumer Protection. “The sharp spike in impersonation scams has cost our country billions and undermined response and relief efforts. The FTC is prepared to use every tool in our toolbox to deter government and business impersonation fraud, penalize wrongdoers, and return money to those harmed.” Government and business impersonators can take many forms, posing as, for example, a lottery official, a government official or employee, or a representative from a well-known business or charity. Impersonators may also use implicit representations, such as misleading domain names and URLs and “spoofed” contact information, to create an overall net impression of legitimacy. These scammers are fishing for information they can use to commit identity theft or seek monetary payment, often requesting funds via wire transfer, gift cards, or increasingly cryptocurrency. Government impersonators typically assert an air of authority to stage their scam. These impersonators sometimes threaten their target with severe consequences such as a discontinuation of benefits, enforcement of tax liability, and even arrest or prosecution. Government impersonators have also been known to deceive consumers into paying for services that would otherwise be free, or to lure them with promises of government grants, prizes, or loan forgiveness. Business impersonators typically get consumers’ attention with emails, telephone calls or text messages about suspicious activity on consumers’ accounts or computers or supposed good news about a refund or prize in hopes of gaining trust and receiving personal information. The harm is substantial, as people who lose money on the leading business impersonator scams report an individual median loss of $1,000. In the Advance Notice of Proposed Rulemaking (ANPR), the FTC is seeking comment from the public on a wide range of questions about these schemes. The ANPR outlines the extensive data the Commission has collected related to these types of impersonation scams, drawn largely from the FTC’s Consumer Sentinel Network database of fraud reports, and its law enforcement experience in this area. The FTC has brought numerous cases against government and business impersonation schemes through the years under its existing authorities, but the ANPR notes that the Commission’s authority to seek consumer redress or civil penalties in these cases is currently very limited. The provisions related to impersonation under the Telemarketing Sales Rule and Mortgage Assistance Relief Services Rule cover only specific sectors or methods of scams. This is the first rulemaking initiated under the Commission’s streamlined rulemaking procedures. A potential rule resulting from the ANPR could allow the FTC to seek strong relief for consumers across a broad array of government and business impersonation cases, which is especially important following the Supreme Court’s ruling in AMG Capital Management LLC v. FTC. If, after reviewing the public comments in response to the ANPR, the Commission decides to proceed with proposing such a trade regulation rule, its next step would be to issue a notice of proposed rulemaking.

#### FTC is focused on fraud now.

---it’s popular, which answers the argument that uniqueness thumps the wing-clipping link

Leach 1-26-2022, partner in Mayer Brown's Washington DC office and a member of the Litigation & Dispute Resolution practice. He joined Mayer Brown from the US Federal Trade Commission (FTC)’s Division of Financial Practices, where he focused on fintech and fair lending issues. (Christopher, “US FTC Holds Its First Open Meeting Of 2022: What Happened?,” Mondaq, <https://www.mondaq.com/unitedstates/financial-services/1154146/us-ftc-holds-its-first-open-meeting-of-2022-what-happened>)

Background: In the past, FTC commissioner meetings have taken place exclusively behind closed doors. Breaking with tradition, Chair Khan began her tenure at the agency by holding monthly meetings of the FTC commissioners that are open to the public. To be sure, the vast majority of the commissioners' deliberations and meetings are closed to the public. But over the past half year, the FTC has held monthly open meetings where the commissioners vote on certain, pre-selected agency initiatives and read pre-written statements. The FTC also allows individuals from the public two minutes of airtime to raise issues for the FTC's consideration.

So far, these meetings have seen a number of recurring themes:

The issues up for consideration are often more partisan—before then-Commissioner Rohit Chopra left to lead the US Consumer Financial Protection Bureau (CFPB) as its director, many of the open meetings generated 3-2 party-line votes. That pattern has changed now that the commission is deadlocked 2-2 between Democrats and Republicans. But expect party-line votes to return when the Senate confirms Chopra's replacement, Alvaro Bedoya.

The Republican commissioners, Christine Wilson and Noah Phillips, often use their speaking time to observe the shortcomings of the open-meeting format and to raise broader concerns regarding the FTC's direction under Chair Khan, in addition to comments regarding the specific matters under consideration.

FTC staff frequently make presentations about various initiatives or topics that often are related to the items the commissioners will be voting on.

The FTC has been playing with formatting. For the first handful of meetings, the commissioners voted on matters before hearing from the public, the reverse of what one would expect. Starting in November, Chair Khan switched the order after receiving comments to that end.

The individuals from the public who participate range wildly in perspective and experience, from industry representatives raising broader policy concerns to individual workers bringing their personal experiences to the FTC's attention.

The "tentative" agenda. A week prior to these public meetings, the FTC typically releases a tentative agenda. Released on January 13, the tentative agenda for this meeting stated that Chair Khan would begin the meeting with opening remarks and that the "business" for the day would consist of a staff presentation on recent trends in identity theft.

What actually happened? True to the FTC's word, its only official business consisted of a staff presentation regarding identity theft and comments from the commissioners regarding the FTC's law enforcement efforts in that space. The lack of acrimony of this latest meeting is consistent with the FTC's public meetings since Chopra left for the CFPB. For example, the previous two open meetings dealt with bipartisan votes related to a rulemaking on impersonation scams and a study of supply chain disruptions.

#### The FTC wants certain wins, but they will NOT commit resources to endeavors that will fail in court.

Posner 7-21-2021, American law professor at the University of Chicago Law School. He teaches international law, contract law, and bankruptcy, among other areas. As of 2014, he was the 4th most-cited legal scholar in the United States (Eric, “The Antitrust War’s Opening Salvo,” Project Syndicate, https://www.project-syndicate.org/commentary/biden-antitrust-executive-order-what-it-does-by-eric-posner-2021-07)

Still, the Biden administration’s antitrust agenda will face significant judicial obstacles. Over the past 40 years, an increasingly business-friendly Supreme Court has gutted antitrust law. In ruling after ruling, it has weakened the standards used to evaluate anti-competitive behavior; raised the burden of bringing an antitrust case; limited the types of antitrust victims who are allowed to bring cases; allowed businesses to use arbitration clauses to protect themselves from class action lawsuits; and much else. On top of that, the Supreme Court has disseminated throughout the judiciary a generalized suspicion of antitrust claims. Judges at all levels have absorbed an academic skepticism about antitrust law that is now 30 years out of date. Accordingly, business plaintiffs are usually seen as sore losers who have resorted to the law because they were beaten in the marketplace. Consumer cases are attributed to the machinations of trial lawyers. The pretexts businesses offer for their anti-competitive practices are swallowed whole. So, while Biden is right that “federal government inaction” is partly to blame for the decline in antitrust enforcement, there is little that his (or any) administration can do unless it has the courts on its side. This probably accounts for the order’s careful language. Agencies like the DOJ and the FTC would surely like to enforce antitrust laws more vigorously than in the past, but they are not going to commit resources to bringing cases that will fail in court.

#### Big wins against big players cause FTC wing-clipping

Hyman 14, Workman Chair in Law and Professor of Medicine, University of Illinois, and former special Counsel at the Federal Trade Commission (David A., and William E. Kovacic, Hyman is H. Ross & Helen; Kovacic is Global Competition Professor of Law and Policy, The George Washington University Law School, “Can’t Anyone Here Play This Game - Judging the FTC’s Critics The FTC at 100: Centennial Commemorations and Proposals for Progress: Essays,” George Washington Law Review, 83.6)

The ABA Commission set out three basic guidelines for the FTC's future antitrust work:

(1) Forsake trivia in favor of economically significant matters;123

(2) Emphasize cases involving complex, unsettled questions of competition economics and law, and leave per se cases to the DOJ;124 and

(3) Replace voluntary commitments with binding, compulsory orders. 12 5

Each of these changes certainly sounds sensible, particularly when taken one at a time. After all, who could be against the forsaking of trivia? But, each change involved a shift from a safer law enforcement strategy to a riskier one. The pursuit of economically significant matters galvanizes tougher opposition in litigation and motivates firms to seek out legislative assistance in backing down the agency. Focusing on complex and unsettled areas of the law involves greater litigation risk (because the cases are on the edges of existing doctrine) and exposes the agency more broadly to claims that it is engaged in unprecedented enforcement or sheer adventurism. The pursuit of tougher remedies arouses a stronger defense by respondents and, again, increases efforts to enlist Congress to discipline the FTC. Although the ABA Commission noted the importance of political support and a vigorous chairman who would "resist pressures from Congress, the Executive Branch, or the business community," 1 26 it paid almost no attention to the predictable consequences of having the FTC occupy the risk-heavy end of the spectrum of all possible enforcement matters. The political science literature before 1969 had emphasized the political dangers inherent in the Commission's expansive norms-creation mandate and its broad information-gathering and reporting powers.1 27 For example, Pendleton Herring's study in the mid-1930s about the political hazards facing economic regulatory bod-ies said the agency's mandate placed it in "a precarious position" from the start: The parties coming within [the FTC's] jurisdiction were often very powerful. The more important the business, the wider its ramifications, and the more numerous its allies and subsidiaries, the closer it came within the commission's responsibility. To review the firms with which this agency has had official contacts, especially in its early years, is to go down the roster of big business in this country. Making political enemies was soon found to be an incident in the routine of administration. The discharging of official duties meant interfering with business and often "big business."128 Had it read and absorbed the teaching of the available political science literature, the ABA panel would have had to confront deeper, harder questions about the causes of the FTC's performance. The panel missed (or underestimated) the big issue of politics. Like many blue ribbon studies of government performance, the ABA Report was long on demands for bold action and short on practical suggestions about how to cope with the crushing political backlash that boldness can breed.129 B. The Posner Dissent Posner argued that the FTC would not be able to deliver on the ABA Commission's ambitious agenda because the FTC's leaders and staff lacked the necessary incentives to do so. 130 In his view, FTC Commissioners deliberately avoided confrontation with powerful eco- nomic interests that could frustrate reappointment or deny the board member a suitable landing place in the private sector upon leaving the agency.131 Similarly, FTC staff saw little upside (and considerable downside) to being overly aggressive in enforcing the law.1a2 Posner's assessment was certainly plausible. Government service disproportionately attracts people who plan to stay, and keeping your head down is an excellent way of doing that. "Don't make waves" becomes the default strategy of the lifers, and those who are tempera-mentally unsuited to that approach either self-select out, or are ac- tively encouraged to depart. 33 But matters are not so simple. Regulators that create or adminis- ter a program that threatens major commercial interests can leave government and monetize their expertise by guiding firms through the regulatory shoals.1 34 The prosecution of big cases attracts media at- tention and raises the prominence of the officials who set them in mo- tion. This publicity often translates into attractive offers for post- government employment. Posner also overlooked the emergence of attractive career paths for aggressive enforcement officials outside the private sector. A reputation for toughness would prove to be an asset, not a barrier, for those aspiring to join university faculties, think tanks, or advocacy groups that wanted to add high visibility officials to their ranks. III. SOME LESSONS AND A FEW MODEST SUGGESTIONS People like morality tales. The conventional morality tale in- spired by the ABA Report goes like this: In 1969, the FTC had a long history of existence, but almost nothing else to recommend it.1" The ABA Report accurately diagnosed the problems and laid out a clear agenda for the FTC to redeem itself.136 The FTC followed the recom- mendations in the ABA Report, and the agency was saved. All hail the ABA Commission, and the wisdom of those who served onit.13 Of course, life is more complicated. Unambiguous morality tales are more common in children's books than in real life. 38 A close reading of the record indicates that the pre-1969 FTC was not as aw-ful, and the ABA Report was not as good, as the conventional wisdom would indicate.1 39 We consider the lessons that should be drawn and offer four "modest suggestions that may make a small difference" the next time we encounter a similar situation.140 A. Be Careful What You Demand (Or Wish For) The ABA Commission wanted the FTC to be a fierce and aggressive enforcer/regulator, and it generated a detailed list of all the things the agency had to do to justify its continued existence.141 The FTC responded aggressively to the challenge-but in so doing, it became significantly overextended. In other work, we consider a number of factors that appear to be associated with good agency performance.14 2 One of the most important factors is whether the agency has the capacity and capability to perform the tasks that it has been given (or for which it has assumed responsibility).143 An agency that is overextended will find itself engaged in a constant process of regulatory triage-meaning it is unlikely to do a good job on any of the tasks within its portfolio of responsibilities. It is one thing to launch a single bet-the-agency case and entirely another to launch a half-dozen of those cases and an equal number of significant rulemaking projects simultaneously-let alone staff each case and rulemaking project so as to maximize the likelihood of good outcomes across the entire portfolio.144 The ABA Commission set a high bar for the FTC to clear if it was to remain in business-and the FTC responded with the enforcement equivalent of building and launching an armada of 1,000 ships.145 Little thought was given by the ABA Commission (or by top FTC management) as to whether the agency was up to the task of waging the functional equivalent of multiple land wars in Asia. 146 In particular, the ABA Commission gave no attention to the time it would take the agency to build the highly skilled teams of professionals it would need to perform the ambitious agenda it had recommended. There should have been an express caution that building this capability would take time. Instead, the ABA Report's "one last chance" admonitionl47 led the FTC to take on a daunting agenda before it had the ability to deliver. This consequence arguably is one of the ABA Commission's most unfortunate legacies. The remarkable thing is that the FTC managed to do as well as it did-notwithstanding the Herculean list of labors handed to it by the ABA Commission. B. Leadership Incentives Matter Posner did not think the FTC leadership would ever be able to rouse itself from its stupor.14 8 He also could not envision a set of in- centives that would motivate the FTC to become an activist presence on the regulatory scene. 149 As detailed above, Posner's assessment on both of these issues was wrong.150 But, it does not follow that the FTC's leadership (or the leader- ship of any other agency) is subject to an optimal set of incentives. Agency leadership always faces a choice between consumption and investment-and the stakes are systematically skewed toward con- sumption (in the form of launching new high-profile cases) by the short duration of any given leader's tenure.'51 As one of us noted in another article, the case-centric approach to evaluating agency per- formance-which is what the ABA Commission effectively embraced and encouraged-has a critical vice: It accords no credit to long-term capital investments. It gives decisive weight to the initiation of new cases. This incentive system can warp the judgment of incumbent political appoin- tees who typically serve terms of only a few years. The per- ceived imperative to create new cases can create a serious mismatch between commitments and capabilities, as the si- rens of credit-claiming beckon today's manager to overlook the costs that improvident case selection might impose on the agency in the future, well after the incumbent manager has departed. It is a common aphorism in Washington that agency leaders should begin by picking the low-hanging fruit.... What is missing in the lexicon of Washington poli- cymaking is an exhortation to plant the trees that, in future years, yield the fruit.1 52 [FOOTNOTE 152 BEGINS] 152 Kovacic,supra note 144, at 922; see also Kovacic, supra note 151, at 189 ("[A] short-term perspective may incline the manager to launch headline-grabbing initiatives with inadequate regard for the matter's underlying merits or the ultimate cost to the agency, in resources and reputation, in litigating the case. If the case goes badly, the manager responsible for the take-off rarely is held to account for the crash landing. He can hope the passage of time will dim memories of his involvement, he can blame intervening agents for their poor execution of his good idea, or he can shrug his shoulders and say he was making the best of the fundamentally bad situation that policymakers encounter in the nation's capital."); Timothy J. Muris, Principlesf or a Successful Competition Agency, 72 U. CHi. L. REV. 165, 166 (2005) ("An agency head garners great attention by beginning 'bold' initiatives and suing big companies. When the bill comes due for the hard work of turning initiatives into successful regulation and proving big cases in court, these agency heads are often gone from the public stage. Their successors are left either to trim excessive proposals or even to default, with possible damage to agency reputation. The departed agency heads, if anyone in the Washington establishment now cares about their views, can always blame failure on faulty implementation by their successors."). [FOOTNOTE 152 ENDS] Thus, if anything, the ABA Commission's "do something" recommendations encouraged (and hyper-charged) precisely the wrong incentives. C. Don't Forget About Politics Perhaps the largest failing of the ABA Commission was its failure to anticipate the political risks associated with its recommendations. Academics and do-gooders will enthusiastically lecture all and sundry about how the government exists to promote the general public interest-but decades of research on political economy make it clear that there is not much of a constituency for that mission.153 Indeed, an agency that seeks to promote the general public interest is an agency without any constituency.1 54 Thus, the ABA Commission wound up and sent into battle an agency without any real constituency or political backing, to wage war against a large and politically powerful collection of firms in every sector of the economy. There is no question that the FTC was unlucky, in that many of its most enthusiastic supporters were being voted out of office at the same time the FTC was picking fights with everyone and their brother.155 But, luck aside, if you were trying to create a "coalition of the willing" determined to clip the wings of the FTC, you would be hard-pressed to pick a better strategy than the one selected by the ABA Commission.15 6

#### wing-clipping link---that turns the case

William E. Kovacic 14, George Mason University Foundation Professor at the George Mason University School of Law, “Politics and Partisanship in U.S. Federal Antitrust Enforcement”, Antitrust Law Journal, Volume 79, Number 2, p. 688-690

What accounts for these and other notable variations in federal enforcement activity? One common explanation is “politics”9—a shorthand expression for the capacity of elections and elected officials to bend the antitrust enforcement system to serve a set of policy preferences or constituent desires. By this view, the political process affects enforcement through presidential elections, the selection of agency leadership, the intervention of executive branch and congressional officials in routine agency decision making, and the appointment of federal judges who hear antitrust cases.

It is unsurprising that a regulatory system rich in power and prosecutorial discretion would have some connection to the political process. The substantial economic significance of the statutes whose enforcement is entrusted to the DOJ and the FTC ensures that elected officials will study what these agencies do and sometimes seek to influence the exercise of their prosecutorial authority. It is also difficult to imagine that a nation would give significant responsibility to law enforcement bodies without some means for elected officials to hold agency officials to account for their policy choices. Expansive grants of authority tend to come with accountability strings attached.10

For academics, practitioners, and public officials, the question is not whether political forces surround the DOJ and the FTC, or whether decisions by elected officials sometimes influence agency behavior. They assuredly do.11 The relevant queries are how, and how much? This Article addresses these questions by examining one dimension of the relationship between the federal antitrust agencies and the political process. It discusses how electoral politics can increase the influence of partisanship in the operation of the DOJ and the FTC. As used in this Article, partisanship is a determined commitment to party goals and causes. It manifests itself in a tendency to exaggerate the virtues of the party and to disregard or devalue the accomplishments of political rivals. Through the political appointment of the DOJ and FTC leadership, partisanship can spill over into the formulation and presentation of agency policy.

As will be shown, partisanship can have destructive effects. Among other consequences, partisan attitudes can lead officials to act in ways that serve party goals at the expense of the agency’s programs and reputation. The partisan tends to overlook how continuity of policy and incremental improvements have strengthened the DOJ and FTC antitrust programs regardless of which party controls the White House.12 Partisanship impedes the development of a norm that recognizes the importance of cumulative improvements, respects past contributions to agency effectiveness regardless of party origin, and encourages long-term investments that enhance the agency’s capability and reputation. 13 The striving for electoral success can beget partisanship, and, by eroding support for a norm that encourages cumulative investments for improvement over the long term, partisan attitudes can diminish agency effectiveness. In this sense, politics can influence federal antitrust enforcement, and influence it negatively.

#### Antitrust fails---legal resources and firms outcompete enforcement

Kang 7/1 [Reporter for The New York Times, The New York Times (Abstracts), The Daily Gazette (Schenectady, N.Y.), San Francisco Chronicle,“Boom Times for Lawyers as Washington Pursues Big Tech”,https://www.nytimes.com/2021/06/29/technology/boom-times-for-lawyers-as-washington-pursues-big-tech.html, July 1, 2021]LPAL

WASHINGTON — Lawyers at Kellogg, Hansen, Todd, Figel & Frederick, a top corporate law firm, were abuzz on Monday as they grappled with a federal judge’s rulings about antitrust cases related to their client: Facebook. Last month, lawyers at Cravath, Swaine & Moore, one of the country’s elite law firms, advised Amazon over its acquisition of MGM, which is facing antitrust scrutiny from regulators. And a slate of litigators for the prominent law firm Gibson, Dunn & Crutcher gave closing arguments for Apple in an antitrust lawsuit brought by Epic Games. The mounting legal and regulatory scrutiny facing Big Tech has led to a wave of lawsuits, investigations and proposed legislation aimed at ending the dominance of Amazon, Apple, Facebook and Google. Whether those efforts succeed may take years to sort out, but there is already one clear winner: the nation’s legal industry. Not since the government sued to break up Microsoft in the late 1990s has there been greater demand for people who know the ins and outs of corporate competition law. That is only certain to increase after a federal judge dismissed a states’ antitrust case against Facebook on Monday and said the Federal Trade Commission’s complaint against the social network needed to be revised. The rulings put the Facebook case back into the hands of Lina Khan, a fierce critic of the tech industry, who recently became chair of the F.T.C., an agency that regulates antitrust. Last week, bills aimed at weakening the companies’ grip on the industry also advanced in the House. The clamor for talent extends to lobbying firms and economists, who can help the companies formulate counterarguments and provide expert testimony about the companies’ market power. But it is particularly acute in the legal profession. The tech giants are already flooding courtrooms with large teams of prominent lawyers to press their case. Google faces multiple antitrust lawsuits, one brought by the Justice Department, and two others from state attorneys general. Since those suits were filed, 16 lawyers from six law firms have appeared in courts to defend the company, according to public records. In total, 51 lawyers from 21 law firms have appeared in court in the Google cases, including lawyers representing states like Texas and some of Google’s competitors. Facebook, which faces its own antitrust case, has hired a team of lawyers in a similar way. As a result, antitrust work — once a relatively sleepy area of the legal world — is now providing a windfall for the big firms. Top partners at a large firm often bill $1,000 to $2,000 an hour, and the scores of young associates who help them charge hundreds of dollars an hour. The cost is minimal for the giant tech companies. But it has widened the divide in resources between regulators and the companies they police, making it harder for the government to recruit and keep talent to take on the industry. It has also raised fresh concerns about Washington’s revolving door, since many of the lawyers used by the tech companies recently worked for the government. In 2019, when the Justice Department searched for a lead investigator into Google and other tech giants, officials came up with a list of candidates from about 10 law firms, according to two people with knowledge of the search. But one by one, they said, potential candidates had to be crossed off the list because they already worked for Big Tech clients, leaving few options. More recently, conflicts of interest have complicated the Biden administration’s search for the head of the Justice Department’s antitrust division. Several times, critics of the industry have criticized a potential candidate because of the person’s ties to Big Tech. “These companies have the monetary resources to hire the best and the brightest,” said William J. Baer, former head of antitrust at the Justice Department under President Barack Obama. “But it does emphasize the resource disparity between what the government can throw at these issues and the virtually unlimited resources of these companies.” Rebecca Slaughter, a Democratic commissioner at the F.T.C., said antitrust cases were among their most expensive. The cost for one expert witness to speak on behalf of the agency exceeds the witness costs for all other cases pursued by the agency in any given year. “The demand for antitrust enforcement has gone up dramatically over the last decade and has really skyrocketed in the last year,” Ms. Slaughter said. “The costs involved in bringing large and complex cases and reviewing the tsunami of proposed mergers are huge, especially for a small agency like ours.” Amazon, Facebook and Google declined to comment. Apple and the law firms did not respond to requests for comment. Freshfields, the oldest global law firm in the world, shows the extent of the boom times for antitrust legal work. In 2018, the firm hired Eric Mahr, a former lead litigator for the Justice Department, to expand the firm’s antitrust practice in Washington. Mr. Mahr then brought on many former colleagues, including Julie Elmer, an experienced trial lawyer. The firm now has a dozen partners with antitrust expertise. Ms. Elmer and Mr. Mahr are leading Google’s defense against an ad-tech lawsuit led by the Texas attorney general. The firm has also expanded west, to be closer to its valuable tech clients. The firm, which is based in Britain, sent its lead European antitrust partner, Alan Ryan, to open an office in Menlo Park in Silicon Valley. He has since added six partners from other firms. In total, 25 people work in the firm’s office on Sand Hill Road, the most expensive office real estate in the nation and home to venture capital firms including Kleiner Perkins. Next year, the company will move into two floors in a new office complex in Redwood City to accommodate more staff members, including four new antitrust partners Mr. Ryan is seeking to hire. “Can we double it in the next year? I hope so.” Mr. Ryan said. “We plan to grow. The only question is how fast we can get there.” The tech firms are also bringing antitrust experts in house. Amazon, Facebook and Google each have dozens of in-house lawyers. In January 2020, Amazon hired a former F.T.C. lawyer, Amy Posner. In April 2020, Facebook hired numerous government officials, starting with another longtime Federal Trade Commission lawyer in the competition bureau. “What’s striking is the number of people going to work directly for tech companies from the agencies,” said William Kovacic, a former chairman of the F.T.C. “That reflects a real change.” The opportunities to work for tech clients, or the tech companies themselves, drew a big audience at a recent mock trial held by the American Bar Association. The workshop centered on a fictional big search engine called Knowsmore, which was being sued by a smaller search engine that wanted to charge for more privacy features. The event was one of the best-attended workshops put on by the A.B.A. over the past few years, said David Reichenberg, a lawyer at Cozen O’Connor and the association’s litigation committee co-chair. “Every year there is more and more interest among the members to learn more about tech and antitrust,” he said.

## Tech Stocks UQ CP/DA

#### Settlement and dismals RAISE stock prices, but the plan triggers “a political moment” to trigger selloff.

Horowitz 21 (Julia, CNN Business Analyst, Citing JP morgan analysts, “Facebook's antitrust win doesn't put Big Tech stocks in the clear”, https://www.cnn.com/2021/06/29/investing/premarket-stocks-trading/index.html)

London (CNN Business)The news for Facebook (FB) couldn't have been better. What's happening: On Monday, a US judge dismissed two complaints that accused the company of holding a monopoly on social media — a major setback for regulators that are increasingly looking for ways to break up Silicon Valley's top players. Facebook's shares soared more than 4%, pushing the company's market value above $1 trillion for the first time. But CEO Mark Zuckerberg may want to hold off popping the champagne. The judge said the Federal Trade Commission did not do enough to back up its assertion that Facebook controls at least 60% of the social media market. The FTC had alleged that Facebook violated the nation's anti-monopoly laws by acquiring nascent startups like Instagram that it perceived as a threat to its dominance, and by preventing others from plugging into Facebook's services. However, the agency can still file an amended complaint. An FTC spokesperson said it's closely reviewing the decision. The dismissal may also serve to harden the resolve of US lawmakers, who are pursuing a parallel track to rein in Big Tech with new legislation. "The FTC should do everything it can to pursue its case against Facebook. But the ruling shows why our antitrust laws need to be updated after years of bad precedent," Sen. Amy Klobuchar, a Democrat, tweeted after the decision. "We can't meet the challenges of the modern digital economy with pared down agencies & limited legal tools." "Agreed," Rep. Ken Buck, a Republican, said in response. Plus, Facebook is still under the microscope outside its home country. Earlier this month, European regulators announced two separate antitrust investigations that will probe whether the social network's use of data gives it an unfair advantage in online advertising. Big picture: The dominant narrative for months has been that investors are brushing off regulatory risks to tech stocks. Clearly, looking at the bump Facebook got after the US judge's ruling, that's not entirely true. It's a reminder for investors to watch what's happening closely. Given Big Tech's clout — Facebook, Amazon, Apple, Alphabet and Microsoft now make up almost 23% of the market value of the S&P 500 — there could be big consequences if critical regulators ultimately find even limited success. "The temptation is to believe that tech will remain all powerful in a post-pandemic world. However, history cautions against this automatic assumption," JPMorgan strategists Jan Loeys and Shiny Kundu wrote in a note to clients late last week. Loeys and Kundu focus on the potential for the "start of a political movement against mega companies" that would likely center on Big Tech. If it gains traction, that could end the era of US stocks outperforming other regions market dominance, they warn.

#### ‘Prohibitions’ are strictly mandatory

Rodney King Potter 83, Judge on the California Court of Appeal, 2nd District, J.D. from the University of California, Berkeley, BA from the University of California, Los Angeles, Former Partner at O’Melveny & Myers, “People v. Superior Court (Spencer)”, Court of Appeal of California, Second Appellate District, Division Three, 189 Cal. Rptr. 669, 677-678, 1983 Cal. App. LEXIS 1434, 2/25/1983, Lexis

However, the framer's use of the term “prohibited” manifests their intent to make the “Limitation of Plea Bargaining” mandatory. In Bright v. Los Angeles Unified Sch. Dist. (1976) 18 Cal.3d 450, 462 [134 Cal.Rptr. 639, 556 P.2d 1090], the court stated: “We observe that the word ‘prohibit’ is defined as follows: ‘(1) to forbid by authority or command: … 2.a: to prevent from doing or accomplishing something….’ (Webster's Third New Internat. Dict. (1963 ed.) p. 1813.) [\*678] ” It would be difficult to conceive of more mandatory language than that which is employed in section [\*\*21] 1192.7.

#### The must be binding

Dr. Francis Jacobs 90, Member of the European Court of Justice, DPhil from the University of Oxford, Former Professor of European Law at the University of London and Director of the Centre of European Law for King's College London School of Law, “Commission of the European Communities v French Republic – Opinion of Mr Advocate General Roberts”, European Court Reports 1990 I-00925, Case C-62/89, 2/20/1990, p. 942

20. In my view, those arguments cannot be accepted. It is plain from the wording of Article 10(2) of Regulation No 2057/82 and from the scheme and objectives of the Community legislation that Member States are required to anticipate the exhaustion of the quota and to act to prohibit fishing provisionally before the quota is exhausted . That the exhaustion of the quota must be anticipated is indicated by the requirement in Article 10(2) that each Member State shall determine the date from which its vessels "shall be *deemed to have exhausted* the quota ..." ( emphasis added ). The use of the word "prohibit" in Article 10(2) and the mandatory wording of the second subparagraph of Article 10(3) (" Fishing vessels ... shall cease fishing ...") indicate that the measures taken to halt fishing provisionally must be of a binding nature. It is moreover apparent from the scheme of the legislation that the obligation imposed on Member States by Article 10(2) is of crucial importance for ensuring respect for quotas: the obligation must therefore be construed strictly. An interpretation of Article 10(2) which would permit Member States to wait until after the quota was exhausted before taking action, or to adopt measures of a non-binding nature, would be inconsistent with the binding character of the quotas. It would also undermine the underlying objective of quotas, i.e. the conservation of scarce fishing resources.

#### 1. Antitrust applies to all industries, so there’s no way to limit the plan’s scope AND firms and lawyers are risk-averse and think this is true---the result is fear of liability that scales back 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

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 counterplan is the opposite---it resolves fears by signaling that regulated industries are the exception.

Dr. Babette E.L. Boliek 14, Ph.D. in Economics from the University of California, Davis, J.D. from the Columbia University School of Law, Professor of Law at Pepperdine University, “Antitrust, Regulation, and the "New" Rules of Sports Telecasts”, Hastings Law Journal, 65 Hastings L.J. 501, February 2014, Lexis

I. The Current Relationship of Antitrust, Regulation, and Sports Broadcast

As noted, antitrust and industry-specific regulation are two distinct means to achieve much the same social goal - to protect consumers and encourage efficiencies in production and distribution. 38 However, the two regimes are by no means interchangeable, and the choice between them is itself imbued with certain social policy preferences. 39

[FOOTNOTE] As then-Chief Judge Stephen Breyer stated, while regulation and the antitrust laws "typically aim at similar goals - i.e., low and economically efficient prices, innovation, and efficient production methods," regulation looks to achieve these goals directly "through rules and regulations; [but] antitrust seeks to achieve them indirectly by promoting and preserving a process that tends to bring them about." Town of Concord, Mass. v. Bos. Edison Co., 915 F.2d 17, 22 (1st. Cir. 1990). [END FOOTNOTE]

Antitrust law is an enforcement regime that preserves competition across all private industries by condemning anticompetitive conduct only after it occurs. 40 In contrast, industrial regulation is inherently a social admission that, in a given industry, market forces are too weak to produce the consumer benefits that are realized in competitive markets. 41 Therefore, regulated industries are an exception to the economy at large and are subject to preemptive, regulatory rule that may actively engineer industry conduct far beyond that permitted under antitrust law. 42

#### 2---Uncertainty---abrupt expansion of antitrust generates 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.)

#### Defensive expenses---businesses will divert resources to build up a legal war chest. The mere possibility of new suits is enough.

Elyse Dorsey 20, Adjunct Professor at Antonin Scalia Law School at George Mason University, JD from George Mason University, BA from Clemson University, et al., “Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement”, Pepperdine Law Review, 47 Pepp. L. Rev. 861, Lexis

B. More Politicized Antitrust

The populist movement's effort to shift the economic constraints on modern antitrust jurisprudence to more open-ended enforcement would expose antitrust law to increased politicization. 277 If enforcers can call upon a large list of political justifications for their enforcement decisions, they will be able to pursue cases that best fit within a political agenda--which will necessarily change over time as political administrations change--rather than being forced consistently to focus upon the limited practices that are most injurious to consumers. In proposing such a political regime, the populist antitrust model thus largely fails to offer a definable set of metrics to distinguish strong cases from weak ones. What would stand in its place is political discretion.

But our lived experience is that political discretion is a poor substitute for economically-grounded antitrust enforcement. 278 As discussed above, United States antitrust struggled to incorporate a wide variety of often conflicting values throughout the early and mid-twentieth century--and it was anything but successful. 279

Despite our nation's negative experiences with politicized antitrust, many modern populist antitrust calls sound remarkably similar to earlier ones. 280 One particularly persistent effort relates to condemning market concentration and firm size independently of any evidence of actual anticompetitive effects, which is primarily rooted in a reflexive application of the largely-discredited 281 [\*910] structure-conduct-performance (SCP) paradigm. 282

Such calls are in vogue today, but it is far from the first time. 283 In 1973, for instance, "Michigan Senator Philip Hart introduced Senate Bill 1167, the Industrial Reorganization Act [(IRA)], 284in order to address perceived problems arising from industrial concentration." 285 Among other things, 286 the bill would have required the creation of an "Industrial Reorganization Commission" to "study the structure, performance, and control" of seven "[p]riority" industries, 287 and, for each, to "develop a plan of reorganization . . . whether or not any corporation [was determined to possess monopoly power]." 288 "The bill was [grounded] in the belief that industry concentration led inexorably to monopoly power; that monopoly power, however obtained, posed an inexorable threat to freedom and prosperity; and that the antitrust laws . . . were insufficient to address the purported problems." 289That sentiment has "resurfaced today as the asserted justification for similar . . . antitrust" reform legislation. 290 But as discussed, the populist movement fundamentally fails to grapple with the reality that "constraining firm size in an effort to promote the political and economic power" of consumers (or of [\*911] favored businesses) "may actually have the opposite of its intended effect." 291

Another driving force behind the IRA--which we also see echoed today--was the allegation that economic power leads to political power. This is, perhaps, the most consistently leveled attack today: that economic concentration and the presence of large firms lead inexorably to the subversion of democracy. 292 But this purported causal relationship has already been rejected as having no basis in reality; and no new evidence suggests otherwise. 293 As Henry G. Manne explained in his senate testimony on the IRA in 1974:

There is, however, a "political" argument that should also be considered. It is that some corporations are so large that they are able to "control" the Government, presumably as it were, to "buy" the protection, the subsidy, the transportation system, the war, or whatever they want from the Government. . . .

Unfortunately, the energy utilized in making these assertions is about the only force behind them, and again it does not require complicated empirical studies to show the error, or perhaps the mendacity . . . behind these assertions.

There is simply no correlation between the concentration ratio in an industry, or the size of its firms, and the effectiveness of the industry in the halls of Government.

This scare argument about the political power of large corporations [\*912] is a sham.

We all know that the institutions that influence policies in Washington are those that can deliver the votes or utilize their finances to secure votes.

And these are the very practices that large corporations are relatively weakest in performing, especially as compared to unions, farmers, consumer organizations, environmentalists, and other large voting blocks.

There is even less substance to this political argument about corporate concentration than there is to the economic ones. 294

Many things other than dollars influence political decision-making. It can hardly be said that any large company succeeds in all its efforts to influence politics--just as it must be acknowledged that relatively small companies, labor unions, activist organizations, and even well-connected individuals often succeed in theirs. 295 Not only is the risk of political influence arising from concentrated industry overstated, the risks and costs of adopting politicized enforcement are, as discussed, significantly understated.

Indeed, we have observed the costs of politicized antitrust, and our experience is that they are both real and significant. When "imbue[d] . . . with an ill-defined set of vague [socio-]political objectives," antitrust becomes a sort of "meta-legislation." 296 "As a result, the return on influencing a handful of government appoint[ees] with authority over antitrust becomes huge . . . [thereby] increasing [significantly] . . . the incentive[s] to do so." 297

[\*913] As Baumol and Ordover observe, antitrust law is inherently prone to rentseeking, especially protectionism. 298 This rent-seeking, in turn, leads to numerous harms, including the misallocation of resources (both government and private), less efficient firms, and a diversion of firms' energies towards less productive ends, including both offensive (aimed at having enforcers investigate and prosecute competitors) and defensive (protecting oneself from such endeavors and actions) efforts. 299 It can also lead to regulatory capture, whereby enforcers may be "captured" by certain interests and fail to act in a way that aligns with their stated objectives. 300 Explicitly incorporating opaque socio-political goals into antitrust enforcement only exacerbates these harmful tendencies--and simultaneously decreases the ability to hold captured enforcers responsible, as they can justify nearly any outcome. 301 Indeed, evidence drawn from analyzing early enforcement actions, arising before antitrust fully embraced the consumer welfare standard--and when it was seeking to further a wider set of socio-political goals--indicates that such public interest factors failed to explain significant percentages of enforcement actions. 302

The economically grounded consumer welfare standard helped substantially to cabin such harms and align enforcement with consumer interests. 303 But reintroducing a political dimension to antitrust law would reestablish a regime inherently prone to capture by rivals seeking to ride populist waves of protectionism to economic dominance. And so politicized antitrust is, quite contrary to the populist movement's stated goals, a recipe for a corporate welfare regime.

Moreover, as discussed, when antitrust policy is unmoored from economic analysis, it exhibits fundamental and highly problematic contradictions. 304 Perhaps most critically, attempting to promote socio-political goals [\*914] through competition laws tends to undermine competition itself. 305 If competition law is unconstrained on its own terms--that is, if it is unmoored from a set of subject-specific limitations imposed by courts and legislatures--it threatens to morph into a large, sprawling, economy-wide set of regulations resembling a national industrial policy. 306 The merits or demerits of actually having an economy-wide industrial policy aside, it is unquestionably a perversion of competition law to facilitate the imposition of policies from law and regulation outside of competition policy in ways that, of necessity, will promote other polices at the very expense of competition.

#### Broadening antitrust creates fear of strategic litigation---that decks business growth, even if meritless

Patrick J. Medeo 18, Judicial Law Clerk at the New Jersey Superior Court, Appellate Division, JD from Rutgers Law School, BS in Business Administration and Legal Studies from Drexel University, “Potential Negative Impacts of Antitrust Litigation on Businesses”, Rutgers Law School Center for Corporate Law and Governance, 4/6/2018, https://cclg.rutgers.edu/blog/potential-negative-impacts-of-antitrust-litigation-on-businesses-by-patrick-j-medeo/

In the United States, antitrust litigation is not solely a matter of government concern. In fact, antitrust enforcement is a tool strategically used by private parties as part of business operations in the United States. By increasing litigation costs, potential damages, risk of suit, and regulatory oversight costs, antitrust litigation can be an impediment on businesses. Further, fear of litigation and associated costs stifles new product development and production in the United States by creating a high barrier to entry in the form of regulatory costs and significant risk of liability. With the number of antitrust cases rising annually, the negative impact on businesses should be of concern for enforcers especially as the number of private claims grows. Properly applied antitrust laws allow both government and private parties the ability to stop or hinder abuses of market power by participants seeking anticompetitive advantages.

A meritorious use of antitrust law by private parties may entail a situation where a cartel of competitors in an industry work together to fix prices, control supplies, and divide market share. In doing so the cartel blocks access to necessary resources for new entrants to the market; through strategic distribution, wholesale, and manufacturing contracts the cartel is able to raise barriers to entry so high that a new entrant would be unable to enter the market or would be unable to effectively compete upon entry. Proper application of antitrust laws by a private party would allow for recourse against the cartel participants and would promote competition in the industry by lowering barriers to entry for new market participants. However, due to the staggering effects that antitrust litigation can have, private parties may also abuse the laws in order to subvert competition.

According to an article published by the International Bar Association in 2009, it was noted how “broad procedural and substantive rules providing incentives to litigation produce economic harm” to companies and employees, specifically emphasizing the role played by antitrust cases. The liability is of such a drastic nature that liability policy premiums “increase (s) of 300 or more percent are not uncommon for [European] companies with a US [stock] listing.” In 2016 alone, there were 853 antitrust cases heard in federal courts, a majority of which were brought by private actors. This is an increase of 10.9 percent from 2015 and a 21 percent increase from 2012, where 702 antitrust cases were filed in federal court alone. [1] As of 2007, the average duration of an antitrust case, from filing to completion, was 24.6 months.[2] Such prolonged cases prove expensive for defendants and can create a disincentive to enter the United States Market as the frequency of them increases.

A poignant example of prolonged litigation is the LIBOR-Based Financial Instruments Antitrust Litigation. With lawsuits dating back to 2007, the private litigation against numerous banks is still in the process of closing, over a decade later. Collectively, the defendant organizations have paid hundreds of millions and potentially billions of dollars to end litigation, with firms like Citigroup paying individual settlements with private litigants upwards of $100 million.[3] The use of private antitrust litigation may be abused by private litigant as a strategic and anti-competitive tool.

Although Antitrust laws are meant to be used to uphold the competitive integrity of US Markets, the laws may also be used by private litigants for anti-competitive ends. This specifically comes into play where non-dominant firms in competitive markets utilize antitrust laws to sue dominant firms. According to a United State Department of Justice paper on the procompetitive and anticompetitive nature of private antitrust litigation, antitrust suits brought by non-dominant firms in competitive markets are more likely to constitute abuses of the law rather than true claims of anticompetitive activity.[4] Further, the use of private antitrust litigation can be highly profitable for nefarious plaintiffs; for instance, not only is the risk of long, complex, and the costly litigation a major deterrent for defendants but it may often lead to profitable settlements for the plaintiffs. In addition to profitable settlements, plaintiffs in private antitrust actions may also be rewarded with easier competition due to fear by defendants of copy-cat lawsuits, this is especially true after a successful government claims. Overall, even where claims may have merit private parties may be less likely to use antitrust laws to impede anticompetitive behavior than use it for their own profit.

Antitrust lawsuits are not only costly because of settlements, litigation costs, and other directly monetary outputs; instead, antitrust may also take a toll on opportunity and operational costs ultimately stifling innovation and go-to-market strategies. A prime example is the strategic use of antitrust laws by Digital Equipment Corp. against Intel in 1997. As illustrated in the Department of Justice’s article “The Strategic Abuse of the Antitrust Laws”, a well-timed antitrust allegation can be effective and profitable for the aggressing party. Although suit was never brought, the prospect of a large scale antitrust battle led to a $700 million settlement deal between Digital and Intel, ending months of patent litigation.[5] The settlement came just after a press release by Digital claiming that Intel was bolstering a monopoly in high power micro processing chips, at the same time the FTC began questioning Intel’s dominance in the chip and semi-conductor market.

In a highly competitive market Digital was able to nearly stop Intel in its tracks by threatening antitrust litigation and utilizing a Public Relations campaign to draw attention to the company’s market power, founded upon verifiable anticompetitive activity or not. The benefits of this strategy for Digital were not limited to a cash settlement, although the settlement was highly profitable more significant gains were made. In the settlement agreement it was stipulated that Digital would be guaranteed discounts on Intel Pentium chips (used in Digital’s computer products instead of its own competing chips), and continued access to the same Intel Pentium chips. Digital’s personal computers, which incorporated Intel chips, represented nearly 25% of its total revenues. By strategically threatening antitrust litigation Digital was able to slow Intel’s growing and usurping dominance in the high-power chip market, where both parties were competing. In doing so Digital added to its cash reserves while forcing Intel to acquire its chip technology. [6] Ultimately the FTC investigation lead to the finding that Intel had withheld information in the patent litigation process, but Digital’s threat antitrust suit forced a settlement exclusive to them and not benefitting other patent litigants against Intel.

Although private parties may, and often do, have a vested interest in utilizing antitrust law to stop anticompetitive behavior strategic uses such as Digital’s are viewed more as abuses. This is because they ultimately do not better competition in the market as a whole, and instead are highly profitable for only the aggressing party. Strategic uses of antitrust such as this appear problematic for businesses. Although they strong arm parties into dealing together, they also hinder development of new products and allow intelligent abusers to systematically restrain their competitors that may otherwise be outperforming other market participants. This may be done regardless of the veracity of their claim. Ultimately, it is the consumer that pays in the form of higher prices, slowed product development and potentially inferior products.

#### Bull market is currently driven by narrowing market bredth the plan’s shock to key companies upsets the bull

FI 1/14/22 (Fisher Investments, “Bad Breadth Doesn’t Stop Bull Markets”, https://www.fisherinvestments.com/en-us/marketminder/bad-breadth-doesnt-stop-bull-markets)

Across the financial press, a common theme has begun emerging: Fewer and fewer stocks are performing well—so-called narrowing market breadth—which, to proponents, means this bull market is fragile. Don’t buy it—in our view, this is faulty logic. Narrowing breadth is normal as bull markets mature, and there is no preset level indicating the bull market’s end is near. To us, it is just another sign this less-than-two-year-old bull market is acting late stage. However, we think widespread fear of typical bull market behavior is yet another indication stocks have more room to run.

There are several different ways to measure market breadth. Some look at the number of stocks hitting new 52-week lows, which are currently far outpacing new highs. Others track the “advance-decline line”—the ratio of advancing stocks to declining ones. Early this week, some touted the fact daily NYSE and Nasdaq decliners outnumbered advancers by about four to one.[i] Our preferred measure is the percentage of stocks outperforming the index average. For the S&P 500, this jumped to 61% during value’s early 2021 countertrend rally amid optimism over mass vaccine rollouts and global economic reopening. But it has steadily declined since last May, with only 44% now beating the index on a rolling 12-month basis. (Exhibit 1)

When the current S&P 500 bull market began in March 2020, its breadth (as we define it) was below 40%. It stayed low through the rest of the year. Spring 2021’s subsequent broad-based gains weren’t unwelcome, but the narrowing breadth that followed in 2021’s second half didn’t stop the bull market, either.

Narrow breadth at the market cycle’s start is atypical. Ordinarily, during a bear market’s depths, depressed sentiment overshoots reality by miles. Many small-cap and economically sensitive value stocks—the majority of the market in numbers—crater the most. The ones surviving, though, are mostly running lean and mean, after frozen credit markets and sagging sales forced them to slash costs. This means that, as the economy revives, their earnings growth can soar off low bases. Markets, anticipating earnings’ upswing, often launch these stocks upward well before recessions officially end. This is why in standard market and business cycles, small-cap and value stocks generally lead off a bear market low—and why breadth is usually high early in a bull market. For example, coming out of 2007 – 2009’s bear market, the S&P 500’s breadth hit over 55% routinely through 2011.[ii]

Later in the cycle, after the initial upsurge, stocks settle down; the market’s winnowing process gets tougher—there are fewer winners. As the bull market matures, earnings growth tends to slow significantly. Year-over-year benchmarks become tougher to beat. Many companies reach the end of what they can squeeze out by cutting costs (largely under their control) and must rely increasingly on revenue growth (less controllable) to drive earnings. Then too, GDP growth usually slows to a more pedestrian pace after the recovery phase out of recession—as economic activity hits its prior peak and begins a new expansion phase.

At this point, it can get harder for companies to outperform. This is when large-cap and growth stocks tend to take the leadership reins, as their higher-quality characteristics shine. Because they feature strong balance sheets, high margins and growth prospects independent from the broader economy’s, they stand out from the crowd—able to generate earnings on their own accord when most others may begin to flounder. There just aren’t as many stocks with high-quality, growth traits. So breadth narrows.

That is what normally happens. But as we noted, this cycle’s breadth looks very different—narrow out of the gate with a brief bump early last year that subsided fast. In our view, this is due to the lockdown bear market’s very unusual cause—and duration. We think it was too short to reset the cycle. Ditto for the fleeting downturn’s effect on the broad economy. Contraction from lockdowns was short and sharp. It came when businesses hadn’t built up a lot of excess and inefficiency. Lockdowns—and associated government support—suspended economic activity. As those ended, the economy overall picked up where it left off. We think this is why large-cap growth stocks have led throughout—a fact supercharged early by big growth firms’ business models being very aligned with a locked-down world.

Looking back on the whole, what that leaves is a young bull market with an old soul. If you treat 2020’s lockdown-driven bear market as a hugely oversized correction, stocks are behaving as if this new bull market is a continuation of 2009 – 2020’s. Narrow breadth and growth leadership characterized the previous one as it ended. Those features reasserted themselves immediately in this one. The new bull market just resumed the same late-cycle behavior as before global lockdowns temporarily interrupted.

#### Chinese tech stocks follow US & FAANG stocks lead

Buckland 10/22/21 (Reuters, “Asian tech shares jump, China property stocks rally as Evergrande makes payment” https://www.reuters.com/business/global-markets-wrapup-1-2021-10-22/)

TOKYO, Oct 22 (Reuters) - Tech stocks climbed in Asia on Friday, following U.S. peers higher, while Chinese property stocks rallied following a surprise interest payment by debt-ridden property developer China Evergrande Group. Meanwhile cyclical stocks dragged amid worries that central bankers will need to tighten monetary policy into slowing growth in order to tackle persistent inflation. Regional bond yields rose with those on U.S. Treasuries, where the market priced in higher inflation by narrowing the spread between short- and long-term yields, and pushing breakeven rates to the highest since 2012. The dollar held gains from overnight - when it rose the most since the start of last week against major peers - as better jobs and housing data boosted the case for a faster tapering of Federal Reserve stimulus and earlier interest rate hikes. Japan's Nikkei (.N225) rose 0.7% led by technology shares, while energy shares were the biggest drag. The broader Topix (.TOPX) added 0.3%, with a 0.6% jump in the Topix growth index (.TOPXG) handily outpacing a 0.1% advance for the value index (.TOPXV). Chinese blue chips (.CSI300) gained 0.3%, with the CSI300 Real Estate Index (.CSI000952) rising 2.5%. Hong Kong's Hang Seng (.HSI) rose 0.4%, as an index tracking Hong Kong-listed mainland developers (.HSMPI) rallied 4.3%. Australia's benchmark index (.AXJO) slipped 0.2% as commodity-linked shares fell. China Evergrande Group (3333.HK) wired funds to a trustee account on Thursday for a dollar bond interest payment due Sept. 23, a source told Reuters on Friday, days before a deadline that would have plunged the embattled developer into formal default. The stock jumped 5.4%. read more MSCI's broadest index of Asia-Pacific shares outside Japan (.MIAPJ0000PUS) edged down 0.1%. Meanwhile, S&P 500 E-minis futures slipped 0.1% after the cash index posted a record closing high overnight, led by surging tech shares. The S&P 500 (.SPX) added 0.3%, while the Nasdaq Composite (.IXIC) rallied 0.6%, although the Dow Jones Industrial Average (.DJI) edged slightly lower. Next week, almost all the so-called FAANG giants report earnings: Facebook, Apple, Amazon, and Google-owner Alphabet. Netflix (NFLX.O) posted its results on Oct.19, and for the quarter that ended in September, diluted earnings-per-share came in at $3.19, beating analyst expectations of $2.57. read more "The narrative over the last couple of days has been earnings focused and tech stocks have led the charge," said Kyle Rodda, a market analyst at IG Australia. "There's momentum there, simple as that."

#### Threshold low—bull market drives irrational action

Landsman 10/31/21 (CNBC, “Market’s biggest bull sees year-end rally, but warns it’s setting up Wall Street for a scare next year”, https://www.cnbc.com/2021/10/31/market-is-melting-up-to-new-records-but-2022-looks-rough-wells-fargo.html)

The S&P 500, Nasdaq and Dow ended the week in record territory. The S&P and Nasdaq were up 7% in October while the Dow gained 6%.

“What we’re seeing from a lot of individuals and investors is they feel like the market is unbreakable at this point in time. We’ve had several pullbacks. You’ve bent it, but you’ve never broken,” said Harvey. “That brings another level of FOMO [fear of missing out], and that brings in a level of confidence.”

Harvey lists strong economic fundamentals, better-than-expected earnings, low capital costs and massive cash on the sidelines as fuel for gains.

“It’s late in the bull market,” he said. “Now is a period where irrationality becomes much more rational. Things you don’t expect to happen can happen, and most likely will.”

Harvey contends momentum names, which include banks, will be major drivers into year-end. He calls financials a “stealth leadership play” that will get traction from the Federal Reserve’s taper plans.

#### US tech is key after Evergrande

Bloomberg 9/22/21 (“China Stocks From Property to Tech Jump on Evergrande Respite’, https://www.bloomberg.com/news/articles/2021-09-23/china-property-stocks-surge-with-evergrande-amid-repayment-hopes)

Beaten-down Chinese shares from property developers to tech giants and casinos advanced on Thursday as worries that a spread of China Evergrande Group’s debt woes to the broader market ebbed. The Hang Seng Property Index gained 4.6%, the most since Nov. 10, while gauges of technology company stocks and Macau casino operators both climbed at least 0.9%. China Evergrande surged 18%, the most in a year. Investors are closely watching an Evergrande bond interest payment due Thursday after the company said a day earlier it had “resolved” a payment for an onshore note. Meanwhile, Chinese authorities have begun laying the groundwork for a debt restructuring, which would greatly reduce the risk of contagion from an uncontrolled collapse of the developer. “The markets are now pricing in Evergrande’s debt crisis is likely to be ring-fenced within the property sector and not spill over to the wider financial system,” said Kelvin Wong, an analyst at CMC Markets (Singapore) Pte. Liquidity injections by China’s central bank coupled with the resumption of the stock connect program have allowed mainland investors to buy Hong Kong shares “in search of deep discounts,” which is also lifting markets, said Bloomberg Intelligence analyst Marvin Chen. Adding to relief in markets, U.S. shares took in their stride the prospect of a reduction in Federal Reserve stimulus as early as November, which flowed through into Asian equities. The jump in gaming shares was led by SJM Holdings Ltd. and Wynn Macau Ltd. A record rout last week that followed proposed revisions to local laws wiped out nearly $20 billion in market value. The Hang Seng Tech Index’s advance came as Meituan gained 5.2% while Tencent Holdings rallied 2.9%.

#### Growth incredible

Xinhua 2/6/22 (“China's capital market to see more development opportunities in 2022: experts”, http://www.xinhuanet.com/english/20220206/eddef095594d44b585717bedba0f65b2/c.html)

BEIJING, Feb. 6 (Xinhua) -- China's capital market is expected to see sound development with more opportunities this year, experts said. "The opportunities outweigh the challenges for China's capital market in 2022," said Peng Wensheng, chief analyst of the China International Capital Corporation, in a recent interview with Xinhua. Peng added that the country's innovation drive and policies to stabilize growth would further stimulate vitality and unleash the potential of China's capital market. Despite uncertainties in the global financial market in 2022, China's capital market still has the foundation and conditions for sustainable and sound development, said Liu Yuanchun, vice president of Renmin University of China. More liquidity support and continued reforms would help China's capital market maintain its sound development, said Liu. The steady growth momentum of the Chinese economy has laid a solid foundation for capital market development, said Liu. Liu added that China's economic growth is forecast to range from 5.2 to 5.6 by some agencies. Chinese authorities have underscored a "triple pressure" -- shrinking demand, supply shocks, and weakening expectations -- and prioritized stability in its economic work for 2022 in a tone-setting economic meeting. Despite the triple pressure, China's economy will likely maintain steady growth momentum this year with decreased unemployment, generally stable commodity prices, and enhanced technological innovation, Liu said. ■

#### Growth high

Cheng & Choudhury 1/19/22 (Evelyn Cheng and Saheli Roy Choudhury contributed to this report, “Exports could be key driver for China’s growth as Covid drags down spending, say analysts”, https://www.cnbc.com/2022/01/20/china-economy-exports-seen-as-growth-driver-domestic-market-is-weak-.html)

Exports will continue to drive China’s economy for the rest of the year as the domestic market remains sluggish, according to analysts. Chinese leaders have indicated for many years that they want to move away from exports as the main source of growth and toward domestic consumption for sustainable economic growth, said Mattie Bekink, China director at the Economist Intelligence Corporate Network. “But that’s certainly not what’s happened during the pandemic. So China’s economic recovery has largely been dependent upon on return to its old export driven model, while consumption has really lagged,” she told CNBC’s “Squawk Box Asia” on Thursday. “In 2020, for example, net exports contributed the largest share of Chinese GDP growth since 1997 and consumption is not even recovered yet to its pre-Covid trend, according to China’s National Bureau of Statistics,” Bekink said. Despite global disruptions of supply chains during the pandemic, China’s trade surplus rose to $676.43 billion in 2021— up from $523.99 billion in 2020, and the highest on record going back to 1950, according to official data from Wind information. “Exports will still continue to be a very important growth driver for the Chinese economy in 2022,” Zerlina Zeng, a senior credit analyst at CreditSights, told CNBC on Wednesday. On Thursday, China’s central bank cut its benchmark lending rates again amid rising concerns of slowdown in the economy, and reduced the one-year loan prime rate as well as the five-year LPR. Loan prime rates affect the lending rates for corporate and household loans in the country. The world’s second largest economy grew 8.1% in 2021 as industrial production rose steadily through the end of the year, according to official data from China’s National Bureau of Statistics released Monday. GDP in the fourth quarter rose 4% from a year ago, faster than analysts expected. “China’s economy is almost running on two tracks. The export-based economy actually is fine, but the domestic economy is quite soft,” Steve Cochrane, chief Asia-Pacific economist at Moody’s Analytics, told CNBC’s “Squawk Box Asia” on Wednesday. Lackluster spending in China Still, domestic demand will continue to be a drag on the economy due to China’s zero-Covid policy, which has prompted multiple travel restrictions within the country including the lockdown of Xi’an city in late December. Official data from Monday showed that retail sales missed expectations and grew by 1.7% in December from a year ago. “Given the zero-Covid policy and the difficulty in terms of traveling tourism, even spending over the upcoming holiday season is going to be quite weak,” Cochrane added. The Lunar New Year — which starts in early February this year — is China’s biggest holiday season, with millions of people crisscrossing the country to join loved ones for the Spring festivities. With consumer sentiment uncertain and hiring still soft, China is expected to continue its policy easing measures to boost the domestic economy. “This is why the PBOC has been front loading on monetary policy easing, including policy rate cuts well as net injection of medium to long-term liquidity,” said Zeng, referring to the People’s Bank of China’s recent surprise move to cut its loan rates. On Monday, China’s central bank cut the borrowing cost of medium-term loans for the first time since April 2020. It also cut the seven-day reverse repurchase rate, another lending measure. The PBOC also injected another 200 billion yuan ($31.5 billion) of medium-term cash into the banking system. “I wouldn’t be surprised given the vast amount of uncertainty in the economy, if there are continued additions to the liquidity and additional cuts to interest rates to help shore up the economy in China,” added Moody’s Cochrane.

#### Foundations are strong despite slowdown in GDP

Zhang 11/11/21 (Zhaoyong, Edith Cowan University, “Will the Chinese renminbi keep rising?”, https://www.eastasiaforum.org/2021/11/11/will-the-chinese-renminbi-keep-rising/)

The trend of the Chinese renminbi (RMB) rising against the US dollar reached a three-year high in May 2021. This signalled an end to the currency’s depreciation in response to the Trump administration’s trade war with China. Whether the current rally in RMB will be maintained remains a hotly debated topic, especially given the current COVID-19 pandemic-related global economic recovery and the long-term headwinds to China’s growth.

China’s sound economic outlook and strong fundamentals have contributed to this trend. With its economy growing by 2.3 per cent in 2020, China was the world’s only major economy to achieve growth despite COVID-19 lockdowns.

China is expected to take the lead in the global recovery, with domestic consumer spending rising faster than anticipated. The IMF’s October projection indicates that the Chinese economy will grow by 8 per cent in 2021. Recent data shows China’s exports grew faster than expected thanks to the ongoing global COVID-19 recovery and solid global demand.

Relatively high yields offered in China’s bond market, especially in comparison with that in the US market, have made it more appealing to international investors. Currently the Chinese 10-year government bond yields have been hovering around 3.3 per cent, versus about 1.6 per cent for the US 10-year Treasury.

Despite China’s slower than expected third-quarter GDP growth and the widely debated property crisis, RMB exchange rate expectations remain well anchored and strong. The RMB has appreciated over 1 per cent against the US dollar in October to RMB 6.37. Recent progress in RMB internationalisation also helps facilitate short-term capital inflows. This, together with a downward trend of the US dollar index, rising inflation and signs of slowing economic recovery in the United States, were factors supporting the appreciation of the RMB exchange rate.

A stronger RMB aligns with China’s ‘Dual Circulation Economic Strategy’ to expand domestic consumption and home-grown technologies through international trade and investment and become the world’s biggest consumer market. China held its first international import expo in 2018 in Shanghai — the world’s first import-themed national-level expo. Subsequently, the China International Import Expo has become an annual event that promotes the Chinese market to foreign companies. This is widely interpreted as China’s geopolitical and economic response to current US–China relations. The recent recovery helps curb surging commodity prices and dents the impact of imported inflation.

#### Nothing concrete has been implemented---the question is what will actually get through

Alden Abbott 1-26, Senior Research Fellow at the Mercatus Center at George Mason University, and Andrew Mercado, Adjunct Professor and Research Assistant at George Mason University's Antonin Scalia Law School, Master's Degree in Economics from George Mason University, “Developments in Competition Policy During the First Year of the Biden Administration”, Mercatus Center Policy Briefs, 1/26/2022, https://www.mercatus.org/publications/antitrust-and-competition/developments-competition-policy-during-first-year-biden

Conclusion

Competition policy developments in the first year of the Biden administration have a common theme. Very few concrete, actionable steps have been taken, but the groundwork has been laid for far greater government intervention to curtail disfavored types of business conduct. By bringing interventionist individuals into top positions at the antitrust agencies and releasing an executive order focused primarily on directing federal agencies to intervene to a greater extent in the economy, the new administration has made it clear that more aggressive antitrust enforcement actions—and novel competition rulemaking proposals—are in the offing. What’s more, growing fervor in the halls of Congress has led to bipartisan support for bills that would expand the power of antitrust agencies to limit or block mergers and other transactions by dominant firms. These developments all point to what may be the largest antitrust policy shift in nearly half a century, one that could significantly reshape the fabric of the economy and the welfare of consumers. Year two of the Biden administration will provide greater insights regarding the extent to which such a dramatic policy transformation will actually come to pass.