# Round 1 Wake Open Source

## Off-Case

### T Subsets

#### Core antitrust laws’ must be economy wide---the aff only effects a subset

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

C. A Core Definition

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

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

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

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

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

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

#### Voting issue--- the number of potential subsets is infinite which creates a moral hazard to rush to small non-controversial tweaks that shreds limits and ground

### T Settlements Not Business Practices

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

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

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

#### Settlements are not ongoing conduct

Legal Information Institute no date [https://www.law.cornell.edu/wex/settlement]

Settlement Primary tabs 1. An agreement that ends a dispute and results in the voluntary dismissal of any related litigation. Regardless of the exact terms, parties often choose to keep their settlement agreements private. 2. In business law, the payment, satisfaction, and closing of an account. 3. In wills and estates, the complete execution of an estate by the executor. 4. In wills and estates, the conveyance of property interests to beneficiaries in a way that alters what they would receive as heirs under statutes of descent and distribution.

#### Vote neg for limits and ground---conflating all activities businesses engage in as business practices explodes the topic to any choices made during litigation processes and spikes core DA links are about preventing transaction based activities that allow market concentration and spikes generics

### Adv CP

#### The United States Federal Government should:

#### Legalize painkillers, distribute, and subsidize opioid treatment medicine, expedite research into opioid alternatives, increase access to treatment centers, and educate the public on opioid consequences

#### Create a non-profit drug manufacturer to provide supply of affordable medicine, import foreign generic drugs, and promote substitution of in-class generics

#### Create tax breaks for companies that generate new drugs, pass the PASTEUR Act, and fund national lab research for AMR drugs

#### First plank solves Access Adv. We’re blue.

1AC Kim 17— Major Jacob J. Kim, U.S. Army Foreign Area Officer Specializing in the Latin American and Northeast Asian Regions, M.A. in Latin American Studies from the University of California Los Angeles, Dissertation on Mexican Drug Cartel Influence in Government, Society, and Culture in 2014, 8-28-2017, Accessed: 10-4-2017, "Solving the Opioid National Security Crisis" Real Clear Defense, <https://www.realcleardefense.com/articles/2017/08/28/solving_the_opioid_national_security_crisis_112158.html>

Opioid addiction in the United States has quickly become a complex crisis with enormous implications. Overdose deaths involving opioids nearly tripled from 1999 to 2014, and they currently claim the lives of approximately 142 people every day.[1], [2] Experts say opioid related deaths could kill nearly 500,000 Americans in the next decade.[3] The greatest culprits and beneficiaries of this epidemic are Mexico’s drug cartels, which provide more than 90 percent of America’s heroin and rake in billions in profit.[4] As long as demand for the drug in the U.S. remains high, Mexico’s drug traffickers and cartels will continue to flourish. Significantly decreasing demand for illicit opioids in the U.S. is the most effective way to reduce the power of these cartels, and this can only be done through a combination of education, legalization, and effective medical treatment. One Problem Fuels the Other America’s addiction to illicit drugs is the Mexican drug cartels’ primary source of income. It has always been this way, but the drug of choice has changed. Trafficking of opioids such as fentanyl and heroin is now more profitable than marijuana and cocaine, and cartels have ramped up local production of opioids significantly since 2013.[5] The profitability of opioids has become so high that gangs of rival drug cartels in Mexico are going to war to control poppy fields, which the federal government struggles to find and destroy.[6] In the U.S., the demand for opioids shows no sign of abating, as addicts in all 50 states abuse everything from overprescribed OxyContin to more lethal opioids such as fentanyl and heroin. If the demand for opioids in the U.S. were to decrease, Mexican drug cartels would likely lose a proportional amount of money and power.

**[Their Card Ends] ☹**

Ineffective Strategies

Multiple initiatives have made relatively little progress in decreasing the influence of Mexican drug cartels and the soaring demand for illicit opioids. Federal and state efforts to limit the number of painkillers a doctor can prescribe has been ineffective, with current data showing that “prescribing remains high and var[ies] widely from county to county.”[7] Even if the prescription was not an option, it is too easy for Americans to purchase opioids through a variety of illegal means. Mexican drug traffickers have a sophisticated distribution chain in all major U.S. cities, and a growing number of transactions are completed on the dark web and delivered straight to the customer.[8][9] Meanwhile, attempts by federal and state law enforcement to arrest and incarcerate drug-abusers and traffickers have been futile. The demand is simply too high, and it is expected that President Trump’s proposed wall will do nothing to stem the tide of opioids flowing across the border.[10]

Reducing U.S. Demand

Reducing America’s demand for opioids is a **difficult** and **complex task** that requires economic and medical sensibility. Approximately 100 million Americans suffer from chronic pain.[11] Doctors in the U.S. have been prescribing excessive quantities of opioids to mitigate pain, and the addictive qualities of the drug are causing patients to seek temporary relief or highs rather than a long term solution. It’s a slippery slope that often leads to more dangerous opioids that are being peddled by Mexican drug cartels. Overprescribed painkillers have proliferated in American households, making them easily accessible to friends and family members and raising a new generation of addicts.[12] U.S. government officials should take the following actions to address these issues:

Legalize opioid painkillers and make them available for public purchase. Mexican drug cartels have already cornered the U.S. market share for heroin.[13] It’s only a matter of time before they have a monopoly on more common painkillers to replace prescription medication such as Vicodin and OxyContin. Legalizing prescription pills with codeine, hydrocodone, meperidine, and oxycodone and making them available for over-the-counter purchase is an economically sensible and **viable** method of reducing illegal opioid trafficking. The demand for cartel-trafficked opioids would dramatically decrease, making more lethal opioids such as heroin among the few remaining in-demand products in cartel inventory. Once opioids become available for purchase to adults without a prescription, they should be taxed and labeled similarly to alcohol and cigarettes.  Graphic and descriptive warning labels should warn adults of the addictive and negative consequences of abusing the product.

Many would balk at the idea of making such potent, addictive drugs available for public purchase but it is important to remember that legal inaccessibility does not necessarily equate to a lower rate of abuse. Enactment of Prohibition in 1920 actually increased alcohol abuse, crime, corruption, and government spending while reducing much-needed tax revenue.[14] Nearly a century later, legalization of marijuana in U.S. states such as Colorado decreased teen usage and diminished marijuana on the black market.[15] It is clear that imposing restrictive laws and punitive measures do little to mitigate widespread substance abuse and may likely result in wasted taxpayer funds and other social issues.

Increase access to affordable medication to reduce opium craving. The U.S. government should widely distribute and subsidize overdose-reversing drugs such as naloxone as well as medicines such as methadone, buprenorphine, and naltrexone to reduce opioid cravings. The availability and affordability of these drugs and medicines should rival that of birth control products and nicotine patches. A recent study found that treating opioid addicts with buprenorphine is effective in reducing cravings and also cost-effective compared to referrals and interventions.[16] This is one effort that the federal government can act on sooner rather than later as long as funds are available.

Subsidize increased research on alternatives to opioids. Drug companies are already working on creating alternatives to opioids in the wake of the federal crackdown on lax prescriptions. Several potential alternatives offer the hope of numbing or stopping pain without the addictive qualities of opioids or other negative side-effects. Scientists have ideas on everything from injections using synthetic capsaicin to nerve-growth inhibitors and oral drugs based on genetic mutations.[17] It is important for the government to support and expedite these developments, particularly the ones that show the most promise, to replace addictive opioids in the near future.

Increase access to specialty care facilities. The majority of heroin addicts require detoxification to gradually recover from addiction. The federal government should subsidize special treatment centers, where addicts can inject the drug under medical supervision. Not only does this encourage heroin addicts to seek treatment, but it also significantly decreases the chance of overdose deaths and infections from unsanitary conditions. This is an initiative that is backed by an increasing number of physicians and medical professionals who believe that supervised injection is the lesser of two evils.[18] Under the watchful eye and care of doctors, addicts have a chance to gradually return to normalcy.

Increase education and awareness on the use of opioids. President Trump had the right idea when he said that young people need to be taught the consequences of opioid abuse.[19] Proper education and awareness can alter cultural trends and significantly decreases the next generation’s likelihood of using and abusing opioids. Expanded drug awareness and substance abuse programs should be mandatory for school-aged children in public and private schools. Public service announcements on television, radio, and social media should constantly remind Americans of the dangers of opioid use and the medical treatments available for addicts.

#### Second plank solves the econ adv. The aff doesn’t. We’re blue.

---competition exists in the drug market, but despite that, prices increase – means even though the plan increases competition, it can’t solve the root cause of price increases

1AC Gupta et al. 21 (Ravi Gupta, MD,1 Nilay D. Shah, PhD,2 and Joseph S. Ross, MD, MHS3 1Department of Medicine, Johns Hopkins Hospital and Johns Hopkins School of Medicine, Baltimore, Maryland; 2Division of Health Care Policy and Research and Robert D. and Patricia E. Kern Center for the Science of Health Care Delivery, Mayo Clinic, Rochester, Minnesota; 3Section of General Internal Medicine, Department of Medicine, Yale University School of Medicine; Department of Health Policy and Management, Yale University School of Public Health; and the Center for Outcomes Research and Evaluation, Yale–New Haven Hospital, 2-1-2021, accessed on 7-17-2021, PubMed Central (PMC), "Generic Drugs In The United States: Policies To Address Pricing And Competition", <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6355356/>)

The cost of prescription drugs in the U.S. continues to be a source of concern for patients, caregivers, and policymakers. In a recent poll of U.S. adults, 77% of respondents with varying political affiliations said that prescription drug costs were “unreasonable” (1). In 2016, the U.S. spent $450 billion on prescription medicines, accounting for 14% of total health care spending and projected to increase to $610 billion by 2021 (2). Much of this increase in drug spending is due to brand-name drugs that are protected from generic competition by patents and regulatory exclusivity (3). Though they constitute only 10% of prescriptions dispensed in the U.S., brand-name drugs account for 74% of drug spending (4). During the market exclusivity period, the brand-name manufacturer can earn sizable profits, which can help to drive further pharmaceutical innovation and investment in drug development.

In the U.S., drug prices typically decline rapidly once generic drugs receive U.S. Food and Drug Administration (FDA) approval and begin to enter the market. The greater the number of generic manufacturers’ versions in a market, the steeper the price decline, with prices decreasing to less than 20% of the original drug’s price (5, 6). In 2016, generic drugs accounted for only 27% of overall U.S. drug spending yet constituted 89% of drug prescriptions in the U.S. (7), a dramatic increase from just 19% of prescriptions in 1984 (8). Low-cost generic drugs generated $253 billion in savings to the U.S. health care system in 2017 and more than $1 trillion in the past decade (4, 9). Appropriate use of low-cost generic drugs is associated with improved patient medication adherence (10, 11) and health outcomes (12).

In the past decade, however, there has been growing concern about the rapid rise in costs and shortages of generic drugs, despite their substantially lower prices when compared to brand-name drugs. A recent U.S. Government Accountability Office report found that 315 of 1,441 (22%) generic drugs sold in the U.S. experienced price increases of 100% or more from 2010 to 2015, many of which were older, small-market medicines (13). Shortages of generic drugs in the U.S. have also risen, quadrupling between 2005 and 2011, from 61 to 250 drugs (14, 15). Large price increases of generic drugs have been associated with decreases in physician prescribing and drug utilization (16). Despite no longer being protected by patents and regulatory exclusivity, these older drugs experiencing price increases and shortages often lack robust competition.

**[Their card ends] ☹**

In some cases, individual companies have drawn sharp public condemnation for dramatically raising the price of single-source drugs that have been off-patent for decades. The most notable example was that of Turing Pharmaceutical's acquisition of pyrimethamine (Daraprim), wherein pharmaceutical entrepreneurs acquired the rights to the drug and raised its price from $13.50 to $750 a tablet due to the absence of any competition.[17](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0017) To address this issue, the FDA recently published lists of drugs that are off-patent yet still lack any generic versions, with the aim of attracting additional competitors to enter specific drugs’ markets.[18](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0018)

Although competition from multiple independent competitors exists for most large-market and easy-to-manufacture **generic drugs** and helps drive down prices, many drugs have increased in price despite facing competition from generic versions. These specific drug markets often continue to lack sufficient generic competition, face supply limitations due to concentration of manufacturers, or experience market exit of individual manufacturers due to low profits. Complicated arrangements among drug manufacturers, pharmaceutical benefit managers, and insurance companies can also result in the use of brand-name drugs even though generic alternatives are available. A recent report from the Office of the Assistant Secretary for Planning and Evaluation found that Medicare Part D plans spent almost $9 billion on brand-name drugs when therapeutically equivalent generics were available, and the program could have saved $3 billion had generic versions been dispensed instead.[19](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0019)

Here, we examine the reasons underlying the price increases of off-patent drugs, some of which continue to lack any competition from generic versions, and others that have increased in price despite having generic versions. We discuss the role of the FDA in promoting competition through prioritization of approval applications for off-patent drugs with few generic competitors. We also examine policy solutions and areas for further research that could help address the price increases of off-patent drugs.

Fda drug approval and price impact of generic drugs

The Drug Price Competition and Patent Term Restoration Act of 1984—commonly known as the Hatch-Waxman Act—instigated the growth of generic drugs in the United States by allowing for their earlier and less costly FDA approval. The new system aimed to accelerate patient access to affordable prescription drugs while also protecting pharmaceutical innovation. In the first phase of this system, to spur continued innovation, manufacturers of brand-name drugs approved by the FDA are awarded a monopoly consisting of patent protection and 5–7 years of market exclusivity. During this time, no other competitor can enter the market, and the manufacturer of the sole-source drug can set any price. In the second phase, once the patent protection and exclusivity extensions have ended, the FDA approves additional drugs that are proven to be bioequivalent and considered interchangeable with the original drug product.

Although manufacturers of a new drug product that has never before been approved by the FDA submit a New Drug Application to obtain approval, manufacturers of generic drugs submit Abbreviated New Drug Applications. Prior to the 1984 Hatch-Waxman Act, generic drug manufacturers were required to conduct the same lengthy and expensive clinical trials as their brand-name counterparts in order to demonstrate their version's safety and efficacy. As a result, few generic drugs made it to market. To introduce greater competition, the Hatch-Waxman Act established a new system in which instead of repeating clinical trials, manufacturers of generic drugs must demonstrate bioequivalence to their brand-name counterparts, meaning that the drug must contain the same active ingredient in the same dosage form and route of administration and have the same availability of the active ingredient at the site of action. Comparisons of generic drugs with the original brand-name drug have largely demonstrated clinical equivalence.[20](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0020)-[23](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0023) The equivalence of some drugs, such as levothyroxine[24](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0024) and lamotrigine,[25](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0025), [26](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0026) has been called into question, although evidence from comparisons of brand-name and generic versions confirm their equivalence.[27](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0027), [28](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0028)

The Hatch-Waxman Act allows manufacturers of generic drugs to begin conducting bioequivalence tests and to apply for FDA approval prior to the expiration of brand-name patent protection and exclusivity extensions. A generic manufacturer must either wait for the expiration of any patents held by the original drug before marketing its drug, or it can certify (Paragraph IV certification) that its drug does not infringe the patents, that the patents are invalid, or both.[29](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0029) The first generic manufacturer to file a substantially complete Abbreviated New Drug Application and a successful Paragraph IV certification is awarded 180 days of exclusivity, during which time a second generic manufacturer cannot sell their drug. The 180-day exclusivity period was created to incentivize the entry of generic manufacturers into individual drug markets. However, during this duopoly period, prices do not appreciably decline given the lack of competitors,[30](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0030) leading some observers to question the continued utility of this exclusivity period.[31](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0031)

Prices typically decrease rapidly with the entry of subsequent generic manufacturers. Generic drugs that entered the market between 2002 and 2014 reduced drug prices by 51% in the first year, and after a plateau in drug prices during the 180-day exclusivity when only the first generic drug manufacturer can market its drug, nearly all reductions in the price of oral medications occurred in the first 8 months after generic entry.[32](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0032) As the number of generic manufacturers within specific drug markets increases, drug prices continue to decline. A 2005 FDA analysis found that after patent and exclusivity expiration, the introduction of one generic manufacturer into the market reduced the price of the drug by only 6%[5](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0005) (Figure [1](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-fig-0001)). With two generic manufacturers, the price reached 52% of the brand-name drug's price. Additional studies have found that at least four generic manufacturers are required to achieve substantial price reductions.[30](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0030), [33](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0033) A more recent analysis corroborated these results, finding that the impact on price was most evident with the entry of three to four generic manufacturers,[6](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0006) although more than one-third of off-patent drugs have three or fewer generic versions.[34](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0034) The spread of laws throughout every state that authorize, and in some states require, automatic substitution of generic drugs for their brand-name counterparts at the pharmacy has helped contribute to the rapid market penetration of generic drugs.[35](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0035)

Delayed availability of generic drugs

Given the impending loss of profits of brand-name manufacturers’ products with expiring patents and exclusivity, the period of patent and exclusivity expiration or invalidation typically generates substantial litigation as manufacturers of brand-name drugs challenge the generic manufacturers’ certifications. Brand-name manufacturers often engage in various strategies to delay and prevent the entry of generic drugs into the market during this period. Such strategies increase overall spending on drugs and may delay patient access to low-cost generic drug alternatives.

One way in which brand-name manufacturers achieve this is by modifying their initial drug, such as by developing an extended-release version that can reduce the number of times a patient takes the medication in a day, thereby helping improve adherence. In many cases, however, in a strategy called “product-hopping,” the brand-name manufacturer precludes automatic switching of its drug for a generic version by launching a branded reformulation at the time of generic entry and simultaneously discontinuing its original version. In the case of fenofibrate, for example, Abbott Laboratories engaged in a serial switching strategy in which at the time of generic entry it launched multiple sequential branded reformulations without demonstrated superiority to the original product,[36](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0036) which prevented their substitution with generics of the older products. Abbott also simultaneously filed patent litigation to delay the approval of generic versions.

Similarly, brand-name manufacturers may acquire “secondary patents” that cover peripheral aspects of the drug product, such as modified forms of the active ingredient, salt moieties, and various methods of administration. These additional patents make it difficult for successful challenges by generic competitors once the patent period has ended. One analysis found that among drugs approved by the FDA between 1988 and 2005, secondary patents extended the original drug's patent life by an average of 6.7 years.[37](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0037) Features covered by secondary patents sometimes offer improvements that are beneficial for patients, but in many cases they do not represent a therapeutic advance.[38](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0038)

Brand-name drug manufacturers have also used “reverse-payment” or “pay-for-delay” settlements to delay generic entry. In these settlements, the brand-name drug manufacturer and the first generic drug manufacturer come to an agreement in which the latter withdraws its legal challenge to the brand-name drug manufacturers’ patent and delays the generic drug's market entry in exchange for monetary compensation. In other situations, brand-name manufacturers release a branded generic, called an “authorized generic,” to compete with the newly approved generic versions. There is some evidence suggesting that authorized generics may prevent multiple generic drugs from entering the market and limit potential competition.[39](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0039)

Another way that brand-name drug manufacturers can delay the entry of generic competitors is by using citizen petitions, which were intended to allow an average citizen to voice their concerns regarding a drug product. A recent analysis found, however, that brand-name drug manufacturers were increasingly filing citizen petitions with trivial claims just prior to generic entry, thereby delaying approval of generic versions and extending their monopoly period.[40](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0040) Filing of citizen petitions increased between 2001 and 2010, with half filed by brand-name companies targeting generic drugs.[41](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0041) Although the FDA is required to rule on citizen petitions within 180 days, the number of citizen petitions does not seem to have declined.[41](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0041) Finally, brand-name manufacturers can delay generic entry by invoking risk evaluation and mitigation strategies requirements.[42](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0042), [43](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0043) In doing so, the brand-name manufacturers refuse to provide generic drug manufacturers with samples of their drugs in order for the generic manufacturers to conduct bioequivalence studies for FDA approval of their application. Brand-name manufacturers can also delay negotiations with generic drug manufacturers to meet the FDA requirement of developing a single shared REMS program, thus preventing the final approval of the generic drug.

Causes of high prices for generic drugs

Once brand-name drug patent protections and regulatory exclusivities expire, in most cases, particularly for widely used drugs, multiple generic competitors enter the market, and prices quickly decline. The number of generic drugs that enter markets is driven by a variety of manufacturer-specific factors, including the availability and cost of raw materials, fixed start-up costs, synchronization with other product lines manufactured by the company, and experience with similar drug products. The time to drug approval and the attractiveness of specific drug markets, based on size of the patient population being treated and projected profits, also dictate the competitiveness of the market. Previous studies have demonstrated that the number of generic manufacturers entering a market is greater for drugs with higher sales prior to expiration of patents and exclusivity.[44](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0044), [45](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0045) Drugs that treat smaller patient populations, such as many older orphan drugs, have fewer generic competitors.[34](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0034)

Some generic markets, however, have faced price escalations in part due to increasing concentration and reduced competitiveness of the generic drug industry. One reason for increased concentration is that, although the number of mergers and acquisitions among generic companies has remained steady over the past several years, the transactions have increased in value and a greater number have involved large companies,[46](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0046) suggesting growing consolidation among larger companies. In 2016, for example, Teva, one of the largest generic drug companies in the world, acquired Allergen's generic business, prompting the Federal Trade Commission (FTC) to require Teva to divest 79 pharmaceutical products given the anticompetitive nature of the merger.[47](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0047) Large generic drug companies that own more extensive drug portfolios can more easily increase prices in noncompetitive markets to balance lower profits in more competitive ones.

Another reason for recent price escalations pertains to the number of generic manufacturers entering and exiting in the industry. Historically, the number of generic manufacturers entering the drug industry was greater than the number exiting. A recent analysis found, however, that in the last 5 years the number of manufacturers exiting the industry has begun to outpace the number entering.[48](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0048) One explanation for decreased entry to specific markets is that the generic drug industry is composed primarily of relatively small companies with limited drug portfolios, each of which on average brings modest revenue.[48](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0048) New manufacturers may find it difficult to enter a market given the modest revenue associated with each drug product, in addition to the start-up time and cost for approval. In certain scenarios, particularly for drugs in mature markets with a large number of competitors, as the price of the drug product approaches its marginal cost, generic manufacturers make a calculated decision to exit the market.[49](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0049) As the competition decreases in these markets, the remaining manufacturers can dramatically raise the price of drugs.

The most notable examples of price increases have been among drugs in monopolistic or duopolistic markets, including pyrimethamine,[17](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0017) nitroprusside,[16](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0016) isoproterenol,[16](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0016) and albendazole.[50](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0050) Drugs with such limited competition are vulnerable to being acquired by a new company that can then dramatically raise the price of the drug. The price of repository corticotropin, for example, used to treat infantile spasms, multiple sclerosis exacerbations, and various autoimmune states, increased from $1,650 to over $24,000 per 5-mL vial when it was acquired by Questcor in 2001, and increased again to $34,034 after being acquired a second time by Mallinckrodt in 2014.[51](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0051) There is evidence to suggest that this practice may be more widespread[52](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0052) and that companies may be targeting old, essential medicines that are particularly susceptible.[53](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0053) In most cases, acquisitions do not offer valuable drug modifications and provide no additional benefit to patients. Additional entrants into suddenly more lucrative markets may be dissuaded by the threat that the initial manufacturer will drop the price of its product. Drug products with few competitors are also more susceptible to shortages, which can lead to abrupt price increases, particularly among injectable drugs.[54](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0054), [55](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0055)

Some drugs remain expensive despite generic competition, often due to insufficient generic substitution for the brand-name drug. For example, after the patent expiration of the cholesterol-lowering drug Lipitor (atorvastatin) and the availability of a generic version, continued prescription of Lipitor resulted in $2.1 billion in extra spending,[56](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0056) likely due to both brand-name drug coupon promotion and arrangements made between pharmacy benefit managers and the brand-name drug manufacturer.[57](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0057) Recent analyses found that Medicare Part D could realize sizeable savings through greater promotion of generic substitution.[19](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0019), [58](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0058) Another report found that Medicare could have saved nearly $1 billion in 2016 had generic constituents of brand-name combination drug products been substituted.[59](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0059) Even when generics are prescribed, until recently, pharmacy contracts with insurers and pharmacy benefit managers sometimes included a “gag clause” prohibiting pharmacists from telling patients that a drug might be cheaper if paid for directly, without insurance, as opposed to through the insurance copay. For example, despite being offered through Medicare prescription drug plans, many generic drug products are cheaper through commercial generic drug discount programs like Walmart's $4 drug program.[60](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0060)

As noted above, brand-name drug manufacturers also produce drug coupons that lower patient cost-sharing for brand-name drug products beyond that of generic alternatives, thereby undermining the tiered-formulary system used by insurers to promote the use of cheaper generic versions.[61](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0061), [62](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0062) Although coupons make drug products more affordable for patients in the short-term through lower out-of-pocket costs, systemwide spending increases because insurers must still pay the cost of the brand-name drug to the manufacturer. Moreover, insurers may ultimately pass on the increased costs to the patients through higher premiums.

Role of the fda and review prioritization

The time and cost of FDA approval of generic drug applications can be an additional barrier to generic entry into drug markets. Due to under-resourcing,[63](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0063) prior to 2013, the FDA accumulated a large backlog of generic drug applications, and review times increased to over 3 years, a long delay in drug approval. In 2012, Congress passed the Generic Drug User Fee Amendments, also known as GDUFA I, as part of the FDA Safety and Innovation Act, requiring the generic drug industry to pay $300 million per year for 5 years to the FDA. This legislation helped to nearly eliminate the majority of the backlog by the end of 2017 and decrease application review times to < 1 year. Moreover, 2017 saw the largest number of generic drug approvals, of which 80 were first generics for brand-name drugs[64](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0064), [65](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0065) (Figure [2](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-fig-0002)).

Although part of the delay in generic drug approval is due to the speed of the FDA, inadequate applications submitted by generic companies are also part of the problem. According to the FDA's estimate, < 10% of generic drug applications are approved in the first review cycle, compared to 90% of new drug applications for brand-name drugs.[66](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0066) On average, in late 2017, generic drug applications required four review cycles for approval, often due to the applicant providing insufficient scientific evidence to support approval. Multiple review cycles further delay the availability of generic drugs, although the number of cycles needed for approval seems to be declining.[67](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0067)

In 2017, as part of the FDA Reauthorization Act, the GDUFA was reauthorized for an additional 5 years, known as GDUFA II. Instead of requiring flat fees for all generic manufacturers, which favored large companies with multiple drug portfolios, GDUFA II introduced a tiered system in which the fees differed based on the number of drug portfolios held by the generic company, with the aim of reducing the barrier to entry for smaller companies. GDUFA II also set a goal of completing application reviews within 8 months if no preapproval facility inspection was required and 10 months if an inspection was deemed necessary. In 2017, the FDA also announced a Drug Competition Action Plan to streamline the generic drug approval process to address the issue of multiple review cycles and to prevent “gaming” of the system by brand-name manufacturers, which impedes generic competition, such as by making it difficult for generic manufacturers to purchase drug samples to conduct bioequivalence studies.[68](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0068), [69](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0069) The Action Plan also specifically aims to update the FDA's scientific and regulatory capabilities to assess the bioequivalence of complex drugs, such as products that are difficult to measure in the blood or act locally on an organ.[69](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0069)

The FDA Reauthorization Act also authorized the Office of Generic Drugs to expedite the review of generic drug applications for products with fewer than three competitors to help attract additional manufacturers to noncompetitive drug markets.[70](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0070), [71](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0071) In addition, the act created a new pathway for generic drug approval called the Competitive Generic Therapy (CGT) designation.[72](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0072) A drug is eligible for this designation if the FDA determines there is “inadequate generic competition,” meaning that there is only one other approved, marketed drug product. As part of the pathway, the FDA will provide additional resources and advising to the applicant throughout the approval process. If approved, these CGT-designated drugs are awarded 180 days of exclusivity, a period in which no other drugs can be marketed, if the applicant begins to market the drug within 75 days of approval. Furthermore, in an effort to improve transparency and promote the competitiveness of monopolistic markets, the FDA published a publicly available list of off-patent drugs that have been approved for > 1 year but still lack any generic competition.[18](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0018) The FDA plans to update this list every 6 months.

These measures are encouraging, although their effect is not yet clear. The FDA continues to approve generic drug applications at a higher rate than before, but whether this is due to the additional resources now available to the agency or because of incentives, such as prioritization of review, remains uncertain and requires additional investigation. The larger reason that certain markets contain few generic competitors is because of limited demand for the drug product and, thus, lower potential profits. Increasing the speed with which generic drug applications are approved by the FDA is a necessary step in promoting generic competition, but it is not enough. Additional solutions are needed to help spur competition and thereby reduce prices of and shortages among generic drugs.

Additional policy solutions and areas for research

For drug markets with few competitors and limited demand to attract greater competition, one strategy could be the development of a nonprofit generic drug manufacturer with the clear aim of providing a stable supply of affordable medicines.[73](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0073) For example, a collaboration of Intermountain Healthcare, Trinity Health, SSM Health, and Ascension, together with the Department of Veteran Affairs, is forming a nonprofit generic drug company called Project Rx that will either manufacturer generic drugs or subcontract with other organizations.[74](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0074) Such a nonprofit manufacturer could rely on purchasing agreements that set a predetermined price and minimum volume to ensure stable demand and to prevent being driven out of the market by existing for-profit manufacturers that suddenly decrease the drug's price. A similar arrangement could be led by the federal government through bulk purchasing of single-source drugs at a negotiated price in situations where drugs face dramatic price increases. Long-term contracts with the government ensuring stable demand could also be used to incentivize additional manufacturers to enter these markets.

Another strategy to increase competition for off-patent drugs with few US versions is to import additional generic versions that have not been approved in the United States but have been approved in other countries with comparable regulatory approval standards and requirements. The FDA recently announced plans to create a working group to examine how to safely import drugs when there is a sharp price increase of an off-patent, single-source drug.[75](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0075) Imported drugs are already widely used in the United States, with drugs manufactured outside the United States constituting approximately one-quarter of the US pharmaceutical market.[76](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0076) One way that the FDA could accelerate the importation of generic drugs is through a mechanism known as reciprocal approval, in which the FDA would issue its approval of a drug based on the evidence of the drug's prior approval by another stringent national regulatory authority. Such a system could incentivize the entry of previously non-FDA–approved generic versions of drugs manufactured by companies that may have otherwise been deterred by the cost of additional approval by the FDA.[77](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0077) A recent analysis suggests that almost half of off-patent drugs approved by the FDA since 1939 with limited generic competition in the United States could reach four or more generic competitors through a system of reciprocal approval.[78](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0078) Such a system would preclude the need for a manufacturer to newly enter the market by obtaining the FDA approval and building new manufacturing capabilities. Further research is needed to better understand the ability of non-US manufacturers to handle the increased demand that such a system would create, along with the price points of the drugs outside the United States.

The FDA will also need to continue to work closely with the FTC to address anticompetitive mergers and acquisitions that lead to increasing industry concentration, as it did when Teva acquired Allergen's generic business.[47](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0047) The two agencies will also have to carefully monitor the acquisitions of small generic companies and individual off-patent drugs in monopolistic or duopolistic markets that face sudden price increases. The FDA and FTC recently held a joint public meeting to discuss shared efforts in addressing rising generic drug prices.[79](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0079)

Furthermore, when there are no approved generic versions for off-patent drugs, promoting the substitution of in-class generic drugs, known as therapeutic substitution, could be one potential solution. One study found that between 2010 and 2012, > $73 billion was spent on brand-name drugs when there was no FDA-approved generic, but a within-class generic was available.[80](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0080) Where clinically appropriate, such therapeutic substitution could result in substantial savings for patients and for the health system. Moreover, allowing for therapeutic substitution of the generic constituents of brand-name combination drugs could also generate savings. As most states have enacted pharmacy-level generic substitution laws to promote generic drug use when available, additional research is needed to further understand when therapeutic substitutions are safe, beneficial, and feasibly implementable, based on patient and clinician preferences, as well as outcomes.

#### Third plank solves innovation adv, but intervening actors solve regardless. We’re blue.

---over 135 nations have already completed national plans to develop AMR drugs which resolves their impact even if the US fails to innovate.

1AC Davies 6-4 (Professor Dame Sally Davies is UK Special Envoy on Antimicrobial Resistance; Thomas Cueni is Director General of the International Federation of Pharmaceutical Manufacturers and Associations (IFPMA), 6-4-2021, accessed on 6-11-2021, The Telegraph, "The silent pandemic of superbugs could be far deadlier than Covid-19 – we must fix it", https://www.telegraph.co.uk/global-health/science-and-disease/silent-pandemic-superbugs-could-far-deadlier-covid-19-must/)

In 2016, the United States National Security Council drew up a playbook on fighting pandemics so that the next response to an epidemic was better handled than the response to the spread of Ebola. The same year, the G7 put tackling antimicrobial resistance (AMR) on the agenda. Today, the twin global health security threats of viruses and bacteria are very real. Every corner of our health system depends on antibiotics. It’s thanks to antibiotics that illnesses such as pneumonia, meningitis and TB are now treatable. They are used for caesarean sections, routine operations such as arthroscopic knee surgery, and cancer chemotherapy. Worryingly, bacteria mutate, just as viruses do. As a result, increasingly people are dying of diseases where the existing antibiotics did not work. Since 2016, over 3.5 million people have died of a drug-resistant infection. Overuse of antibiotics and declining investment in research for new and novel drugs are the causes of this pandemic hidden in plain sight. Without urgent action, 10 million people globally could die annually as a result of AMR by 2050. The question is, how to make sure that one goes from policy papers, dire projections and simulations to action? In the case of Covid-19, against the odds and in record time, we already have a range of vaccines to protect against the SARS-CoV-2 virus. The speed of the response is thanks to decades of research on vaccine technologies. In contrast, research for new antibiotics that could stave off the worst of AMR has been stuck in the doldrums. And whilst there are exciting signs at the early end of the pipeline, this innovation is primarily happening in small companies without the infrastructure to take a promising product all the way to market. Between 2018 and 2020, four companies that had brought new antibiotics to market declared bankruptcy or put themselves up for sale, despite having survived the perilous, decade-long process of development and testing to get a new drug approved. To give a boost to the antibiotics pipeline, the AMR Action Fund has been created to develop two to four new antibiotics by 2030, thanks to close to $US 1 billion from pharmaceutical companies, topped up with support from the European Investment Bank and the Wellcome Trust. To ensure there is a healthy pipeline of antibiotics that keep up with bacteria’s natural evolution to build resistance, we need more than a fund to boost innovation. Once new antibiotics are approved, they need to be used sparingly to preserve effectiveness and slow the development of further resistance. While this makes sense for public health, it doesn’t support the level of investment needed to maintain a robust antibiotic pipeline. Despite the huge societal costs of AMR, our health care systems are not currently designed to recognise the value of new antibiotics. **We need** adapted market-based **policy reforms**, including **reimbursement** reform and new ‘**pull’** incentives to create market conditions that enable sustainable investment in antibiotic R&D. We need industry to fully recognise the insurance value that antibiotics provide them. We need healthcare systems to pay their ‘fair share’ for innovation. And most of all, we need governments, researchers and life sciences companies to work together, to put patient needs at the forefront. Some governments have started to take decisive action to revitalise the antibiotics market. The United Kingdom NHS’s ‘Netflix’ model to value antibiotics differently and pay for them by subscription rather than per pill has been designed to empower the health service in England to keep watch over antibiotic use whilst also encouraging investment in developing the new treatments we all need. It is a positive example of what can emerge from collaborative dialogue between government, clinicians and industry. In the United States, the PASTEUR Act that is currently before Congress should create a predictable path to rewarding new antibiotics for their value to society via a subscription contract (valued at $750m to $3bn) that prepays for all US federal use of the drug. This would be a delinked pull incentive that is large enough to move the R&D needle, with powerful support for antibiotic stewardship. More generally, the **global community** is also moving to take action on AMR – 135 countries have **finalised** national action plans, but they must be fully funded and implemented. These are good actions and are pointing us in the right direction. But, if Covid-19 has taught us something, it is that global health security, as the name implies, needs to be truly global. As the G7 Health Ministers meet, it is crucial that they give AMR a last push and agree global action to strengthen research and development for new antibiotics, once and for all. Let us not fall into the trap of tunnel vision and squander the opportunity that we have been building up to over the past seven years, to fix this silent pandemic of AMR, which otherwise could have consequences far more deadly than Covid-19.

### States CP

#### The fifty states and all relevant entities through the National Association of Attorneys General Antitrust Task Force should prevent anticompetitive settlements related to pharmaceutical patents

#### 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)

### Regs CP

#### The United States federal government should reform patent law to prevent anticompetitive settlements related to pharmaceutical patents

#### Regulation is better than antitrust.

Dennis W. Carlton et al. 16, David McDaniel Keller Professor of Economics, Booth School of Business, University of Chicago; Research Associate, National Bureau of Economic Research, 9-20-2016, "DOES THE FTC’S THEORY OF PRODUCT HOPPING PROMOTE COMPETITION?," Journal of Competition Law & Economics, DOI: 10.1093/joclec/nhw025

The FTC’s novel “**product hopping**” theory has recently appeared in court cases and has led to publically reported FTC investigations.1 Courts have disagreed on the merits of the theory.2 According to this theory, under certain circumstances explained in more detail below, a firm can violate the **antitrust** laws by introducing a new product that harms its rivals and consumers. Rivals are supposedly harmed because they lose sales to the new product. Consumers are supposedly harmed because they are assumed to gain no significant therapeutic benefits from the new product compared to the old one but must pay a higher price for the new product. Although the FTC so far has applied the theory only to pharmaceuticals, **nothing** in the theory **limits its application** to the drug industry. The theory is at best a **misguided attempt** to fix a regulatory problem in the pharmaceutical industry associated with the Hatch-Waxman Act3 and is premised on the proposition that competition does not work. Using **antitrust** law to fix such a regulatory problem, assuming one exists, would not only potentially cause consumer harm in pharmaceutical markets, but also create an **undesirable antitrust precedent** for other industries.

Assuming for sake of argument that there is a problem to be fixed in pharmaceutical markets, the appropriate remedy would be to alter the regulation, as opposed to applying the antitrust laws, which is designed to address harm to competition and not harm caused by ineffective regulations. The objective of the antitrust laws is to promote market competition, based on the underlying assumption that such competition benefits rather than harms consumers. The creation, introduction, and promotion of new products and the protection of investments by limiting “free-riding” off these investments by other competing firms is desirable competitive behavior. To use the antitrust laws to condemn such behavior would therefore misuse antitrust law. Creating disincentives for firms to introduce new branded products, under the guise of “fixing” problems that exists only when viewed by the FTC in the context of Hatch-Waxman’s regulatory objectives, contradicts the antitrust law’s ultimate goal of promoting competition. Even worse, the consequence of attempting to fix the problem, if one indeed exists, through antitrust enforcement will be to chill incentives for product innovation in an industry where the most important health advances come from product innovations. Furthermore, such an attempt could also chill product innovation in **other industries**, because antitrust law applies broadly to all industries, and not merely the pharmaceutical industry.

### FTC DA

#### The FTC’s focusing on international outreach to globally coordinate investigations---new authorities and burdens trade off, crushing cooperative controls over AI---no agency is a magic pudding!

--ICN = international competition network

Boswell et al. 19, Matthew Boswell is the Commissioner of Competition of the Competition Bureau Canada; Laureen Kapin (moderator) has practiced consumer protection law with the U.S. Federal Trade Commission for the past 18 years; Molly Askin (moderator) is Counsel for International Antitrust at the U.S. Federal Trade Commission’s Office of International Affairs; Fiona Schaeffer is an antitrust partner at Milbank LLP; Maria Coppola (moderator) is counsel for international antitrust at the U.S. Federal Trade Commission, where she is responsible for the agency’s enforcement and policy work with Europe; Marcus Bezzi has been Executive General Manager at the Australian Competition and Consumer Commission (ACCC) since early 2009, “FTC Hearing #11: The FTC’s Role in a Changing World,” 3/26/19, https://www.ftc.gov/news-events/events-calendar/ftc-hearing-11-competition-consumer-protection-21st-century

MR. BOSWELL: Oh, okay. Well, I'll go back to what has been a common theme, which is supporting the ongoing personal relationships between people around the world. You know, people move in and out of jobs. You have to keep those relationships, and it can be expensive. And it can be to certain outside parties hard to justify to expend those resources on having people attend, for example, ICN workshops so that they know people around the world, they're sharing best practices, we’re not reinventing the wheel. Somebody has come up with a good way to do something, we should have those relationships where we can learn it, but it costs money to invest and to always invest in relationships.

MS. KAPIN: Well, I want to thank everyone. I think we heard a recognition that we should recognize the value of infrastructure, some common protocols and definitions and best practices can also help us overcome the challenges for international cooperation. But first and foremost, what I heard echoed was the recognition that this human glue really is the stuff that lets us stick together and accomplish our common goals. So, Molly?

MS. ASKIN: I think one thing I've also heard is the importance of the networks that we have seen evolve over, if we’re looking at the past 25 years, either be founded in the first instance or have changed in their mission to really be able to be nimble enough to address some of these important issues and give agencies a forum for interaction that can facilitate both the tools and the relationships. So thank you all very much for participating. And we are now going to go into a 15- minute break and return for the next panel at 11:30. Thank you.

MS. KAPIN: Thank you.

CONSUMER PROTECTION AND PRIVACY ENFORCEMENT COOPERATION

MS. FEUER: Okay, it’s about one minute early, but we’d like to get started. I’m Stacy Feuer. I’m the Assistant Director for International Consumer Protection and Privacy here at the FTC’s Office of International Affairs. This entire morning we’ve heard about a number of very interesting enforcement developments and challenges all over the world. Now we’re going to take a deeper dive into enforcement cooperation in the area of consumer protection and privacy. One of the most interesting aspects of our work here at the FTC on international consumer protection and privacy matters is the very wide range of issues we cooperate on, everything from telemarketing scams to online subscription traps to cross-border data transfer mechanisms, and to other privacy law violations. Equally remarkable to me is the incredibly wide range of authorities that we cooperate. So, for example, we cooperate with not only consumer protection agencies but data protection authorities, criminal regulators, and sometimes telecommunications and financial regulators. Our panelists that we have here today represent these different strands of our enforcement cooperation activities. They will highlight the issues involved in some of these different cooperation strands, and I will introduce them individually as we move through this panel. I do want to remind you at the outset that we have comment cards available, and please do send up questions. We’ll try and be a little interactive and ask some of your questions during the panel and not just wait until the end. So please ask away. So we’ve segmented our panelists into mini- groups so as to better draw out some of the cooperation strands. I’ll turn first to James Dipple- Johnstone who is the Deputy Commissioner at the UK’s Information Commissioner’s Office and ask him, and then followed by Deputy Assistant Secretary Jim Sullivan from the Department of Commerce’s International Trade Administration for their thoughts about cooperation and particularly focusing on the privacy sphere. We are so pleased that you are both here. So, Commissioner Dipple-Johnstone, can you begin?

MR. DIPPLE-JOHNSTONE: Yes, and thank you, Stacy, and thank you to FTC colleagues for your invite and the opportunity to speak with you today. I’m looking forward to our discussion of these important issues, and it was interesting to hear the different perspectives from the previous panel. A little bit about the Information Commissioner’s Office first, given there’s a range of different types of organizations on the panel, in case it helps with my comments later on. With the implementation of the GDPR, which has already been referenced this morning, I’m pleased to hear, and the new equivalent legislation in the UK, the ICO has been through a significant growth process over the past 12 to 18 months. We’ve taken on new powers, and as has been mentioned this morning, as many other organizations, we’ve been through a capability growth over the past few months, which has begun to see us work more internationally and deal with more complex and challenging caseload. This reflects in part the importance the UK Government places on data protection and consumer protection, but also the seriousness of some of the recent scandals we’ve seen, for example, that involving Cambridge Analytica recently. In granting powers, the UK Parliament has gone further than many other EU legislatures to ensure that the ICO has both the funding through its funding regime to give us the financial resources, but also the new powers to do its work in the digital age. There was significant national debate in the UK about these new powers, many of which are actually quite intrusive and are more common in law enforcement agencies than in a traditional data protection authority and the balances in checks and balances being put in place to go with those powers through the UK’s Information Rights Tribunal who oversee our work and our individual case judgments. I couldn’t come here and talk to you without recognizing there’s quite a lot of difference within the ICO as well. As well as our data protection remit, we have a remit for access to information. So one part of the office is working very hard around keeping privacy concerns and how data can be safeguarded and secured and only disclosed where appropriate; another side of the office is hearing appeals about how to make public information more widely available. We have around 700 officers and new powers to seize equipment, search premises, examine algorithms in situ for bias to make sure that they are working effectively, and audit company systems and processes. We also have powers which were touched upon this morning as well, around the power to compel provision of information from wherever and whomever holds it, which is quite a wide remit for an office of our type. We deal with around 50,000 citizen complaints each year and undertake around 3,500 investigations across different parts of our office. And we cover both the commercial sector, but also the public and law enforcement sector. In many ways, as colleagues are, we're learning as we go with these powers and these new resources. And one of those key areas of learning has been that which has been touched upon this morning. And that’s the importance of working collaboratively with others internationally. Many of the most significant files on my desk -- and I have responsibility for the enforcement and investigation arms of the office -- in the last 12 months, we’ve engaged with 50 international colleagues on various different files. And most of the major cases we have on at the moment are involving international colleagues, either as joint investigations, seconding staff to and from other offices, or sharing information and intelligence about the work we're doing. As our citizens become more aware and concerned about the use of data and as the digital economy becomes the economy, people expect this kind of international engagement. And with this in mind, we value hugely the UK's positive relationship with its colleagues on this side of the Atlantic, the FTC, but also our colleagues in Canada who have been speaking this morning. We value the different networks we're involved in. There have been mention of some of those networks already, but in particularly GPEN, the Global Privacy Enforcement Network, but also those networks which involve looking at unsolicited communications, which continues to be a significant part of my office's work. We learn a huge amount from these relationships, as well as the sort of human glue that was described this morning, just the opportunity to discuss tactics, approaches, to understand how each other work is a real positive that comes out of that work and allows us to do our jobs more effectively. To support this, we have a number of legal gateways to share and receive information. These are backed by strict protections within UK domestic law, which bite both collectively on the organization but also the individual officials within that. They are backed by criminal sanctions, and nothing focuses the mind like those. In the course of our investigation, we could use one or any of MOUs, MLATs, and we’ve heard about the challenges with the time scales that MLATs take. Membership arrangements, such as GPEN or the International Conference of Data and Privacy Commissioner arrangements or, indeed, Convention 108. This very much depends on the exchange of information, what's involved, who it’s going to, who’s asked for it, and what we need to do our work. Of particular note are the DPA 2018, which is the Data Protection Act in the UK. That contains formal information gateways. That allows us to share information for law enforcement purposes or for regulatory purposes where there’s an overlap and there’s a public interest. Of relevance to the FTC in particular is Schedule 2 of the DPA. That sets out the conditions for public interest and information- sharing within the UK law. And I understand the UK has been working through these for a number of years from the 1998 act and now into the 2019 act and working with colleagues at the FTC through the SAFE WEB Act provisions and the criteria for sharing information there with foreign enforcers. And that's been a huge positive. Just in the short time I've been with the Office over the last two years, there have been a number of cases that we've been working on, on sharing information and understanding. And, of course, this goes alongside our EU work. We mustn’t forget that. We are a competent authority under the GDPR, the EU provisions for the one-stop-shop mechanism. And around a fifth of those cases in the mechanism over the past year have involved the UK as either a lead supervisory authority or a concerned supervisory authority. Many of the big issues we are grappling with is privacy authorities, algorithmic transparency, adtech, microtargeting and profiling of citizens, part of the bread and butter of those cases we're working through. And our ability to work with international colleagues, in particular the FTC, has been really helpful in us discharging our role, notably on the Ashley Madison file, but also on other confidential matters more recently, where we found the insight afforded by our bilateral arrangements with the FTC help us fill in the missing pieces. They help us make better investigations. We know that the FTC has helped us by using its SAFE WEB powers to obtain information for us, in particular with some of the -- I think you call them robocalls here, but unsolicited communications in the UK, and that information has been hugely beneficial in protecting UK citizens. And we hope the reciprocal has been helpful to the FTC and colleagues here. And I’m mindful of time, but in closing, I'd just like to say we're very keen in the ICO to continue to use these positive engagements and continue to build them, particularly as you come to look at the renewal of the SAFE WEB Act. Thank you. MS. FEUER: Thank you very much. Deputy Assistant Secretary Sullivan, how does the issue of privacy enforcement cooperation come within your purview at the Department of Commerce?

MR. SULLIVAN: So in my role, I'm in the International Trade Administration, which is one of the agencies at the Commerce Department, and one of the offices that I oversee is responsible -- they are the US Government Administrator for and our interagency lead on different privacy frameworks -- international privacy frameworks, including both privacy shield frameworks, the EU and US Privacy Shield and the Swiss-US Privacy Shield. We're also very actively engaged in promoting the expansion of the Asia-Pacific Economic Cooperation and Cross-Border Privacy Rule system, APEC CBPR as it’s called. And we work extremely closely with the FTC on those issues around the world as we see a growing number of countries grappling with privacy while trying to balance innovation at the same time, which as everyone here knows, I'm sure it's not always the easiest formula. So that's a quick summary of what we do at Commerce. I'll leave it at that for now.

MS. FEUER: Great, great. Well, it's interesting to hear you both speak about the importance of enforcement cooperation in the privacy area, James, for your agency on many, many individual files and Jim as the sort of overarching systemic systems for cross-border transfers. So I want to follow up with a few questions. So, James, sort of the elephant in the room, we've heard a lot this morning in the first panel about privacy as a "barrier" to regulatory enforcement cooperation. And I’m wondering what your view is of that statement or assertion and what kinds of tools do agencies need to cooperate effectively given some of these limitations and, of course, in privacy enforcement investigations?

MR. DIPPLE-JOHNSTONE: Yes, yes. And it's not something we've -- you know, which is uncommon to us. We get that call often. I mean, we want to be clear, we're not the “ministry of no.” But, actually, what’s really important in this space is to do that groundwork and that thinking about what information do you need, how is it going to be transmitted, how is it going to be secured, what purpose is it going to be used for. And we often find there are many avenues and routes to be able to share information. We also get the -- interesting when we ask for information, we sometimes get from colleagues internationally, we can't because of privacy. And, oh, that's an interesting concept. How do we work through that? We've often found there is a way through. Sometimes where these arrangements are being agreed internationally and where, for example, it was mentioned this morning about the challenge with the advent of the GDPR, IOSCO working with colleagues at the EDPB and needing to sort of tease through that, it can sometimes be tough to be the first going through that process, but once those processes are in place, people understand how they work, those relationships are built, that common understanding is built. Things do flow a lot quicker and a lot easier in subsequent cases. And so very much it’s that sort of keep talking, keep engaging. And, importantly, I've recently come back from an international conference working group, where one of the key challenges has been that with the scale and pace of change internationally with enforcement agencies and enforcement bodies, some of which, again, was referenced this morning, just keeping pace of who can do what where and with what data is really important. So if those international networks can really help their members understanding where the right levers are and how their respective national laws work, that can only be a good thing.

MS. FEUER: Thank you. Well, Secretary Sullivan, in your experience, how important has the issue of enforcement cooperation been with the foreign governments and stakeholders that you have negotiated these international data transfer mechanisms with, and how important are the powers that the FTC has in those discussions?

MR. SULLIVAN: So, again, I'm going to refer to the three frameworks that I cited just a moment ago. And both the enforcement power and the international cooperation authority granted to the FTC under the SAFE WEB Act are both integral to the functioning of those frameworks, I think. Without them, they would lack legitimacy or credibility. You have to have some teeth behind these frameworks so that folks know that companies are going to be held accountable for the pledges and the promises and commitments they're going to make to comply with the principles or the practices that they have pledged to comply with in accordance with these frameworks. I don't know how that would be possible without what we just cited to, both the powers to enforce but also to coordinate with other enforcement agencies cross-border.

MS. FEUER: Thanks. As a follow-up, I asked you about how important this is for foreign governments, but I'm wondering what you hear from your industry stakeholders here in the US.

MR. SULLIVAN: I don't want to generalize. We certainly hear a lot. I think there's a strong recognition among most of the stakeholders that we engage with, sort of along the lines of what I just said. I mean, first of all, what would be the incentive to comply with something that really didn't have any teeth? I think they know increasingly how important it is to align their practices with these frameworks, given a lot of the developments. We’ve seen recently, and it's I think -- they generally -- and I am generalizing -- they do want to see strong frameworks that are actually enforceable and, they do want to see, as I think James just alluded to, greater collaboration because that’s going to lead to more consistent best practices or principles and approaches to a lot of these issues as opposed to just this fragmented, diverse, ad hoc approach to a lot of these same dilemmas that we're all facing.

MS. FEUER: Thank you. I want to ask my fellow panelists, while we're talking about privacy, whether there was anything that they want to add in sort of response to what Commissioner Dibble-Johnstone and Secretary Sullivan were talking about. So does anyone want to -- it looks like Marie-Paule wants to hop in.

MS. BENASSI: Yes. What I would like to say is that we should make a difference between issues related to privacy and to the confidentiality of investigations. And very often, indeed, it is quite a common answer to refuse cooperation, to say, oh, no, we cannot share information because of problems of privacy. But in the European Union, first of all, I think we have solved this, and I think that our GDPR itself helps a lot to clarify that authorities can exchange information, including information which contains personal data. And so this enables, in principle, very seamless type of cooperation in the European Union, because for law enforcement purposes, we can exchange this information between authorities in one member state or in other member states. And this -- I think in this way, the GDPR is an enabler. And when we look into the implementation of the GDPR for international cooperation, we should also look at it in the same way as an abler and enabler, because if it is respected; then exchange of information for law enforcement purposes should be facilitated. And, for example, we are also doing adequacy decisions, for example, with some other countries in order to also create the seamless facilities, including for law enforcement purposes.

MS. FEUER: Thank you. Anyone else? Kurt.

MR. GRESENZ: So I agree with Marie-Paule's sentiments there. You know, the issue that we encountered at the SEC as a civil agency with administrative investigatory powers, while the Department of Justice was out in front with an umbrella agreement to facilitate cooperation in the criminal sphere under the public interest mechanism, which is something that James talked about at the beginning, it was less clear how that applies in the civil or administrative context. So the step that IOSCO took to negotiate what is the first administrative arrangement under the GDPR will enable the second step of what Marie-Paule talked about, which are transfers of personal data from the EU to jurisdictions and authorities outside the EU. And now with that process, as Jean-François in the earlier panel talked about, having been blessed by the European Data Protection Privacy Board, we in the security space are looking forward to the data protection authorities in the 28, possibly 27, EU members states adopting that and approving that and so it can be the standard with the securities authorities who are IOSCO members.

MS. FEUER: Thanks. So I want to shift us now from what has been a privacy-heavy conversation to more of a focus on consumer protection. Our second pair of panelists represent two of the different strands of the kind of consumer protection enforcement cooperation we do here. So to hear about the EU enforcement model, we'll have Marie-Paule Benassi from the European Commission’s DG Justice, and to hear about our cross-border work with our Canadian criminal counterparts, we'll hear from Jeff Thompson, Acting Superintendent in Charge of the RCMP's Canadian Anti- Fraud Centre. So, Marie-Paule, can you start us off?

MS. BENASSI: So thank you, Stacey and thank you for the FTC to invite me. So, first of all, I would like to remind you that the European Union is currently counting 28 member states, and it's very well known for being something very complicated, and I would like to try to break that myth. But unfortunately, I think, or fortunately for a better understanding of the complexity of the Union, I think that Brexit and the interest which this is bringing in the headlines is also maybe shedding some light on why it is so complicated. So we have an integration of EU-level and national laws, a model, and this is where I think it’s simple. It's based on a very simple principle. We have one EU law in a certain domain, and it tries to harmonize national laws using key high-level principles. What is not harmonized is how this law is implemented. So it is -- except in a very few cases, it is implemented nationally. It is enforced nationally, and we try to do this in a way which preserves the diversity of the enforcement model in the member states. And so in the area of consumer protection, it is how it works. And the European Commission for which I'm working has no direct enforcement power. It is the member states which have the enforcement powers. So when I speak of enforcement, it means enforcement of the law towards businesses and other possible subjects because the European Commission is in charge of checking that the member states are enforcing the laws correctly, but we are not directly involved to stamp out illegal practices. In the area of consumer protection, so we have a strong role. And this role has been strengthened in the recent past. What is our role? Our role is to facilitate the cooperation of the member states because this is a EU, I would say, a harmonized law, and we want it to be implemented in a consistent manner in all the member states. And to do this, the only solution is cooperation. So we have a long tradition of cooperation inside the European Union and now we are doing it via a law which is called the Consumer Protection Cooperation Regulation. This law is establishing the framework for cooperation. So we start by first saying even if the member states are very different, they should have similar type of powers, so investigative powers. For example, the power for mystery shopping, the power to request information on financial flows, the power to obscure illegal content online. Another thing, also, is the framework for cooperation. So we have two types of cooperation now in our new legislation. One is what we call the bilateral cooperation, the more traditional cooperation, where one member state asks -- requests enforcement cooperation from another member state. But now we have this new system which is E- level coordination. And there, the European Commission has a new role because we have a role of market surveillance. And from this role, we can ask the member states to check some practices that we think are likely to be illegal. And if the member states find that there is sufficient evidence to start an investigation, then the Commission is coordinating this investigation. We also have a new power in terms of intelligence I mentioned. And we are also doing coordination of priorities. So, in fact, the role which we have is quite strong. And the new model, which we are going to implement from January next year, in fact, is already functioning, maybe in a lighter way. And it's working. So we have in the past done some coordinated actions, which are concerning. For example, illegal practices by big companies operating at the level of the European Union. Today, we are publishing a press release on an action done in the field of car rental, for example. So with the authorities, we have been working together with the authorities to find -- to analyze bad practices of the five leaders of this sector, and we wrote a common position asking these companies to change their practices. They made commitments, and now we have been monitoring the commitments and concluding that finally these companies are implementing these commitments. This is a negotiated procedure, so this is another element I would like to stress. These EU-level actions are not based on strong enforcement means because they don't exist at the European level. They are based on a coordinated approach and the cooperation with the traders. If the traders refuse to cooperate, do not cooperate sufficiently, or do not follow their commitments, then what is going to happen is coordinated enforcement action by the member states. And we have just added something very recently which is a system of fining that can be applied for this kind of EU-level infringement and coordination of the fines. And this is a big -- it's not yet completely finalized, but it's going to be a big step forward because in certain member states, they don't even have a fining system for consumer offenses. So we are building the system. So for the future, what is -- what can we do? We can do international agreements. So there is a possibility on the basis of this framework to agree international cooperation agreements with certain countries. And the framework which I've described can be applied also with the said countries to the extent possible, of course, depending on the type of base laws that exist in the member states. And what I could say is that we would like to start discussing on the basis of this new regulation with the FTC, if we can progress such an agreement. Why an agreement would be necessary? Because it's important that the formal part is there. Because as we heard from various speakers, the formal part is an enabler also for an efficient cooperation. This system, however, has several challenges. One of the challenges, as I said, it’s based on negotiation with traders. So it doesn't work when there is fraud, fraudulent operators. This is really required to develop additional cooperation, for example, with police forces because in most of our EU member states, they don't have this possibility of going against fraudulent operators. They need the cooperation of police, so this is an area where we need to develop in the future. And then relation with competition, relation with data protection, these are the future avenues for our cooperation. Thank you.

MS. FEUER: Thank you very much, Marie- Paule. And that was the perfect segue to Jeff Thompson, who is from the RCMP's Canadian Anti-Fraud Centre. And, Jeff, maybe you can sort of talk us through a little bit about what some of the tools and challenges you face and we face in cooperating on US- Canada cross-border fraud matters.

MR. THOMPSON: Sure. Thank you, Stacy. It's a pleasure to be here today to talk about international cooperation and consumer protection. Since the start of my career, I've learned that cross- border fraud was an evolving criminal market that cannot be tackled by any one country alone and even more so today. Consumer Sentinel reporting shows more than 1.4 million reports were received in 2018, up from 433,000 in 2005. Similarly, the Canadian Anti- Fraud Centre data shows annual losses to fraud continues to increase, reaching 119 million in 2018, a 495 percent increase since 2005. So it's easy to say that mass marketing fraud and cross-border fraud continues to be a threat to the economic integrity of Canada and the US, furthermore, if you consider technology, voice-over- net protocols, social media, virtual currencies, money service businesses, and other key facilitators that continue to provide criminals and criminal organizations behind a scam opportunities to operate across multiple international jurisdictions. And as we heard this morning, while this is an evolving threat, there is good news. There are, indeed, existing strategies that do exist and tools that provide an effective approach to attack on this criminal market. In fact, as we heard this morning again, the history between Canada and the US is long. It dates back to 1997, when Former President Clinton and Prime Minister Chretien met at the first US Cross- Border Crime Forum. It was at this meeting that telemarketing fraud first got identified as a major Canada-US cross-border crime concern. And it also made a number of recommendations, including the establishment of a multiagency task force, the development of consumer reporting and information- sharing systems, enforcement actions, and better public education and prevention measures. Since then, both US and Canada cooperate to implement and refine a number of these strategies, and while all recommendations made are important, I'm going to focus my discussion on the existing multiagency task force, or in today's terms, strategic partnerships. This case and work that the partnerships have done showcase an effective enforcement approach. They highlight intelligence-led policing and integrated policing models, along with providing insight into some of the tools and approaches to consumer protection. So if we consider the cross- border fraud partnerships as an intelligence-led approach, what we see is a group of key stakeholders joining efforts to achieve a common enforcement objective, namely, reducing fraud. To give you a practical idea of this, I think back to some of my early meetings at the Toronto Strategic Partnership. I did not fully recognize or appreciate the significance of the discussions held around the table. Members from several different agencies and organizations discussed top reported scams, scam trends, top offenders, current investigations, and gaps and challenges in enforcement options. Oftentimes, this intelligence-led approach was started by members from the Federal Trade Commission or the Canadian Anti-Fraud Centre, bringing intelligence developed from their respective central databases, Consumer Sentinel and the Anti-Fraud Centre database. This dialogue helped identify the new and emerging scam trends and discussion around the key facilitators to the scams. It also helped to coordinate joint priority setting, identify lead agencies, investigative assistance, and actions required to complete the files, and in many cases helps with deconfliction amongst the agencies. Sharing information around the table was a key factor, and as long as there’s a willingness to share, there is a way to share. There is also a common trust and understanding amongst the partners to share information within the confines of law. Thus, the partnerships serve as an intelligence-led approach in as far as they create a platform to share and synthesize information from multiple perspectives. Turning now to consider the partnerships as an integrated policing approach, we begin to realize that criminals and criminal markets can be disrupted through civil, regulatory, or criminal investigations and that different agencies and different laws all play a role. If we dissect again the Toronto Partnership, we have a minimum of eight different organizations: the Federal Trade Commission, the Royal Canadian Mounted Police, the United States Postal Inspection Service, Toronto Police, the Ontario Provincial Police, the Ministry of Consumer and Government Services, the Competition Bureau of Canada, and the Ministry of Finance. The FTC alone has 70 different laws that it enforces. Who really knew that the Ministry of Consumer and Government Services enforces numerous consumer protection laws such as the Loan Brokers Act, which can be used to go after the advance-fee loan scammers? Or that, again, as we heard this morning, CASL legislation also has clauses that allow for foreign enforcement to request assistance from respective Canadian law enforcement partners? At the heart of an integrated policing model is a give-and-take approach. And in the US-Canada cross-border partnership context, this approach is formalized by MOUS. As recent as 2017, the Federal Trade Commission and the Royal Canadian Mounted Police formalized an MOU that identifies best efforts that participants can use to further the common interest of combating fraud. The language used highlights the foundation of information-sharing and cooperation. Participants shall share materials, provide assistance to obtain evidence, exchange and provide materials, coordinate enforcement, and meet at least once a year. So, again, if we take a practical view, the strategic partnership model against cross-border fraud uses intelligence-led and an integrated policing approach that allows investigators from Canada and the US to move beyond simply coming together to talk about cross-border fraud concerns to developing investigative plans that identify investigative steps and processes needed to gather that evidence. Each participant brings a range of tools that can be leveraged to ensure the effective cooperation. One such tool that we’ve heard plenty of today is the US SAFE WEB Act. From a Canadian-US perspective or from the Canadian perspective, I mean, it provides us an avenue to formally seek investigative assistance in the US from the FTC. It also formally acknowledges by name some of the regional partnerships that exist today. This act alone has assisted strategic partnerships in countless cases, at least 22 by my count since 2007, and as we’ve heard, a lot more. These cases have led to arrests -- civil arrest charges, civil forfeitures, and, most importantly, victim restitution, which in the Canadian context is often rare to see. This includes Operation Telephony, which involved more than 180 actions brought by the Federal Trade Commission, including actions in Canada and the US, and it also includes the Expense Management Case that we heard about in the last panel involving $2 million that was eventually turned over to the FTC for consumer redress. And while there's a history of success and continuing work and outcomes to look forward to, we know that the criminals adapt. Today's frauds typically involve solicitations coming from one country targeting consumers in another country and funds going to yet another one. Mass marketing fraud is truly a transnational crime. We know that in a number of cases, the criminals and criminal groups involved are deeply rooted in Canada and the US and that moreso today, the work being done by these partnerships exposes these international networks who are also providing each other an opportunity to leverage our international networks to tackle this problem collectively. And we’re already doing this to some extent. The International Mass Marketing Fraud Working Group is another example of how Canada and the US cooperation has extended beyond North America. As recently as March 7th, this group announced -- or the US Department of Justice announced the largest ever nationwide elder fraud sweep, and the International Mass Marketing Fraud Working Group played a role. At least eight different countries were engaged. At the same time, there are other challenges, such as the willingness of other countries to identify mass marketing fraud as a transnational threat, whereas in many cases fraud or financial crime is not a priority. And this even holds true today to some extent. The parties and law enforcement agencies are subject to change, and the ability of any one agency to solely lead a partnership can be impacted by this change. Albeit, there's still partnership models that work in which chairs to partnerships rotate and changing priorities are acknowledged. In May of 2018, the RMCP coordinated a national mass marketing fraud working group meeting whereby we acknowledged the changing nature of mass marketing fraud and sought to renew our efforts. We also sought input from key US stakeholders. The Federal Trade Commission and the United States Postal Inspection Service were at these meetings. And while work continues to renew this renewal, such as the emergence of a Pacific partnership to replace Project Emptor, there's still work to be done. So in concluding, there’s a long and successful history of Canada-US enforcement in consumer protection, and that demonstrates effective cooperation through integrated and intelligence-led approaches and that this continued cooperation is integral to combating this transnational crime today. Thank you.

MS. FEUER: Thank you very much, Jeff. So I think that we now have a couple of very interesting issues out on the table about consumer protection and enforcement cooperation, both the EU model of the CPC network and the FTC Canada model, which focuses on these seven strategic partnerships that exist in Canada. So I want to ask a few questions of our panelists, Marie-Paule and Jeff Thompson, and then I do want to turn back to Secretary Sullivan. But, first, Marie-Paule, I did want to ask you one thing. I know that the CPC network uses a technological tool to facilitate the cooperation among the 28 member agencies. I'm wondering your thoughts about how well that works and how it might work in a more multilateral context.

MS. BENASSI: Thank you, Stacy, for this. So, first of all, I think I would like to make two types of tools. One is the system which we use to network, and I would say this is based on technologies of collaborative websites. And we have been using them now since several years and we are quite confident that it is safe for exchanging information and including information on containing personal data, for example, on businesses or on witnesses, and also it can be adapted. But currently, the CPC system doesn't contain a lot of cases. So it's growing organically, I would say. And it's also very much used to exchange information, best practices, for example. In the future, we are building something which is going to be a case management system and it will contain several modules, including a module for our external [indiscernible]. So we are going to open this to various entities -- NGOs, entities. And so we are going to build doors, in fact, in such a way that the two systems can communicate, but without having [indiscernible] you know, for -- so that the stakeholders will only see their external areas. And I'm quite confident that we can build the same type of modules for international cooperation with our technology. But what I would like to say is that we are also developing technologies for online enforcement tools. And what we want is to create, for example, a system where we would have an internet lab that could be used by the various member states, and we are also building capacities of administration in the EU countries. We are developing training, and we think also that this kind of tools could benefit from pooling of expertise from various agencies, including in an international context.

MS. FEUER: Thank you. So I want to turn -- before I turn back to Jeff Thompson, I want to turn back to Secretary Sullivan and ask what are the tools that can be used to facilitate cooperation under the various cross-border mechanisms? And why are they important?

MR. SULLIVAN: So in terms of why they’re important, I mean, again, a lot of this is probably self-evident to those in this room, but the data explosion we've seen is only going to continue. And we now have these cross-border data flows that really do benefit stakeholders across our societies and our economies. So you’ve seen these cross-border data flows help enable consumers, for example, to access more and better services and products. They help our companies to increase the efficiency of operations and innovation, and they help nations in terms of their competitiveness and their ability to help create jobs and facilitate economic growth. So this is all great. The problem we're dealing with is that different counties now take very different approaches to how they regulate these data flows specifically on privacy. And so what I wanted to just touch on a bit was what we do, the Commerce Department, in conjunction and partnership with the FTC to deal with this issue, this dilemma. How do you continue to facilitate these cross-border data flows when you are dealing with countries that have all adopted varying approaches, legal regimes, or policy priorities. I touched on the three frameworks, and I just quickly wanted to go through some of the tools within those frameworks, if I could, which from our perspective are absolutely critical to digital trade because, again, right now, there is no single comprehensive binding multilateral approach governing these cross-border data flows. So you know, again, I'm repeating myself a bit but we have stakeholders that we meet with all the time coming in, telling us about this constantly shifting and evolving and rapidly accelerating policy landscape that they have to deal with. So in response to this challenge, one approach that we've taken, as I alluded to earlier, for example, is the APEC CBPR system. And it's basically a voluntary enforcement code of conduct based on internationally recognized data protection guidelines. It establishes principles for both governments and for businesses to follow to protect personal data and to allow the data flows between APEC economies. To join this system, an APEC economy has to designate a third party called an accountability agent. And that accountability agent is empowered to audit a company's privacy practices and take enforcement action as necessary in some instances, but if that accountability agent cannot do that, resolve a particular issue, an APEC economy, their domestic enforcement authority serves as a backstop for dispute resolution. And in the United States, the FTC is our designated regulator, obviously, and enforcement authority for the CBPR system. And they enforce the commitments that are made by the CBPR participating companies to comply with the principles that they have committed to comply with. I do want to note all CBPR participating economies also have to join the cross-border privacy enforcement arrangement, CPEA, to ensure cooperation and collaboration among their designated enforcement authorities. To date, if memory serves, I know the FTC has brought four enforcement actions against companies for making deceptive statements about their participation in CBPR, and it’s also used its authority under the SAFE WEB Act to enhance cooperation with other privacy and data protection regulators within APEC. So, again, as I noted at the outset, FTC enforcement and international cooperation are absolutely critical to the credibility, to the integrity, and the success of the CBPR system. There are currently eight economies in APEC of the 21 economies participating in the system: the US, Japan, Mexico, Canada, South Korea, Singapore, Australia, and Chinese Taipei. And the Philippines is currently working on joining the system as well. I want to underscore that if this system were to scale across APEC, the framework would help underpin over a trillion dollars in digital trade. So we regard that as a very big priority and, again, we cannot emphasize enough just how critical the FTC is to that framework. And it's also a similar dynamic with the EU. It's been, the FTC, extremely integral to the success of both privacy shield frameworks. We all know, and it’s been touched on, about a year ago, GDPR was put into effect in Europe. And like the predecessor directed before it, it imposes certain restrictions on the ability of companies to transfer certain data from Europe to other jurisdictions, so we have Privacy Shield. And, again, like CBPR, it's a voluntary enforceable mechanism that companies can use to promise certain protections for data transferred from Europe to the United States, and the FTC enforces those promises made by Privacy Shield-participating companies in its jurisdiction. Again, I talked about how big APEC was and how these data flows underpin trade there. The EU is actually the largest bilateral trade investment relationship with the US in the world. That, too, is valued at over a trillion dollars. And I know the Transatlantic economy accounts for about 46 percent of global GDP, about one-third of global goods trade, and the highest volume of cross-border data flows in the world. And the Privacy Shield program is absolutely key to underpinning this economic relationship. We have about 4,500 companies now participating in the program. They've all made these legally enforceable commitments to comply with the framework, and they range from startups and small businesses to Global 1000 and Fortune 500 companies across every sector, from manufacturing and services to agriculture and retail. And I do want to note that about 3,000 -- nearly 3,000 -- of those companies are actually SMEs, so it’s not just the big tech companies that we're talking about. So to help protect data against improper disclosure or misuse, the Commerce Department and the FTC do work together, and they move swiftly to ensure that participating businesses who join Privacy Shield and certify under Privacy Shield are complying with their obligations. And over the last two years, Commerce, for example, has implemented a buying arbitration mechanism and new processes to enhance compliance oversight and reduce false claims. And by the same token, the FTC has enforced companies’ Privacy Shield declarations and commitments by bringing several cases pursuant to Section 5 of the FTC Act, which prohibits unfair and deceptive acts. We also refer false claims participation in the program to the FTC, which have often resulted in FTC settlement agreements. And under those agreements, the FTC can obtain certain remedies such as remediation measures and compliance monitoring that are, I think, generally otherwise unavailable in an enforcement action. And to date, the FTC has brought about four false claims cases. So, again, as with CBPR and APEC, the FTC has been just an essential element in bridging the gap between the EU and the US approaches to privacy. And, again, I'll just end by saying you're not going to get buy-in legitimacy or credibility without that enforcement power and that collaboration and cooperation that we're all talking about today. So thank you.

MS. FEUER: Thank you very much. I want to turn back to Jeff for a minute. So everyone has done, I think, a really fantastic job of outlining the tools. And, Jeff, you talked about these partnerships, and I guess I'd like to know a little bit more about the partnerships in terms of their status today, whether you think that they kind of could be adapted for a more, I guess, global enforcement model and whether you have any ideas about how cross-border cooperation and consumer protection matters could be improved.

MR. THOMPSON: Sure. Thanks, Stacy. So, yeah, the status of the partnerships -- as I mentioned, the partnerships stem from a 1997 meeting. There were three partnerships created across Canada -- one in Vancouver, one in Toronto, Ontario, and one in Montreal, Quebec. At one point in time, we saw this increase to seven Canada-US cross-border partnerships, but that wasn't maintainable for a number of reasons, primarily being there wasn't a lot of enforcement work in Atlantic Canada and Saskatchewan, for instance. So, I mean, things changed. And, again, as I said, priorities change. So right now we have three partnerships, including the new Pacific partnership which replaced Project Emptor. The Montreal Canada project, Project Colt is also defunct currently, but I mentioned we're working on renewing these efforts and coordinating something there. So, right now, as it stands, there’s the Alberta Partnership and the Toronto Strategic Partnership, and the Montreal Partnership. As far as improvements go, one area for I think more global enforcement cooperation that we discuss a lot at the office is disruption. And by disruption, I'm not talking about actual enforcement action. I'm talking about cooperation with private sector partners, using the data that we capture in our central fraud databases to block, say, shut down foreign numbers, to get bank accounts blocked. In Canada, we're sharing information with banks and credit card providers to go after the subscription traps, the continuity schemes, the counterfeit sales of other goods online and nondelivery goods. So the information we house that there's other alternatives to enforcement, and those are some of the areas that need to be improved on internationally.

MS. FEUER: Thank you very much. I now turn to Kurt Gresenz, who is the Assistant Director at the SEC’s Office of International Affairs. And, Kurt, as we heard earlier from Jean-François Fortin, securities enforcement collaboration is truly global and truly impressive, I have to say. I'm interested in hearing more from your perspective to inform our thinking about the cooperation in the areas that fall within the FTC's jurisdiction.

MR. GRESENZ: Thank you, Stacey. Let me start out by giving the disclaimer I’m required to give, that these are my views, only my views, and not necessarily those of the Securities and Exchange Commission, its Commission, or its staff, which I like doing because that frees me up now to say what I would like to say, which hopefully follows what the SEC would say. Okay, so let me start out with building on some of the themes that have been talked about. One of the reasons, I think, that we have been successful in forging a pretty broad alliance of securities authorities around the world that are cooperating is by virtue of the fact that the IOSCO principles of securities regulation are part of what national economies are assessed against as part of the financial sector assessment program that is done by the IMF. So essentially when the IMF and team comes into a jurisdiction to grade you on your financial resiliency and financial regulation, they're going to look at the IOSCO principles. And the IOSCO principles say that your securities has to have certain minimum powers and also the ability to share information across borders for enforcement purposes. And I think that has been one of the key tools that has caused one of the things that Jean-François talked about from early adoption, say two dozen countries in 2002 under the MMOU to where we are now as 121, that it's an easy way to getting a failing grade by not being signed up to the MMOU. And national legislatures have, for the most part, made the amendments to their domestic law to enable them to meet the MMOU standards. So in the scale of cooperation, Jean- François talked about over 5,000 requests that were made under the MMOU last year. The SEC is, as you might expect, a big user of those, probably 600 to 800 of those were ours. So we have an incentive in that process working smoothly. And where the parallels are, I think, for me is when I talk to my colleagues at the FTC, we're talking about consumer protection. And the concept of investor protection is essentially the same concept. The investor is our consumer. And one of the focuses of our enforcement priorities is on the mom-and-pop investor, the retail investor who really is somebody that will benefit from an active securities authority acting in their stead. In the securities context, one of the things Jeff talked about was he mentioned you have people set up in one country, you have targeting of investors somewhere else and then you have sending the funds elsewhere. I would actually build on that. In an ICO case for example, the entities might be incorporated in two or three different jurisdictions. The investors might be targeted in the UK, Australia, and the US. They might be storing their documents in a fourth or fifth jurisdiction or in the cloud so it’s very difficult to, you know, figure out where those are to begin with. So those are the challenges, and building through those, and I think we've had a good discussion of the privacy challenges, but two things I want to mention that also came up in the earlier points is one is what I call regulatory arbitrage, which somebody called regulatory competition. Cooperation works very well, but we also have to be cognizant that there are competing policy concerns with how we approach our enforcement tasks. So for example, a sophisticated fraudster is going to have some basic awareness of what the regulatory scope is in a given jurisdiction. And these people may set up shop in particular places and do things in particular places for taking advantage of whatever the legal system is there, and often that legal system may be one that is less conducive to cross-border sharing. So then as we advance down the path of the investigation, either related to that or other things, regulators move at different speeds. They may have different approaches as to how they approach witnesses. Are we going to go let everybody know in advance? I will tell you that from an SEC investigative perspective, which I'm sure people around the room and at this table would share, that people acting in a manner that is entirely consistent with their own investigative processes and procedures, but that may be contrary to what somebody is doing elsewhere. Those are things that are going to almost always result in people wanting to control their own investigation, perhaps at the expense of greater coordination. And I think that's where, you know, discussion is certainly important. And I don't know if this is really privacy. Maybe this goes to confidentiality. Also, different authorities have different legal requirements when it comes to what types of information they have to disclose in a particular setting. So let's say that we transmit files to an authority who assigned assurances of confidentiality and then we read a newspaper report that talks about things that we disclosed on a confidential basis, and then we drill down and it turns out that, well, yes, they kept it confidential but not from a lawful request, and it might be a Freedom of Information Act request or something like that. So that’s obviously going to be something that maybe you don't anticipate on the front end, but it might chill information exchanges going forward. And then the case of the ambitious prosecutor, he or she who may leak to the press. I know that that’s always a source of great consternation, whether it's the SEC or DOJ or elsewhere, when you read confidential details that are unattributed by a source who’s not authorized to speak about something that you thought you transmitted in confidence. So I do want to talk about those. I think the last thing I want to talk about in challenges is one of the things that we are dealing with frequently at the SEC, and I think we sort of have a little bit of a handle on it, and I know it must be something that the FTC confronts, also, but the law has been unsettled for a number of years as it relates to the Electronic Communications Privacy Act and what type of records we can get from internet service providers, and maybe who a subscriber is, who is the identity of a particular account. Maybe that’s something that is reachable, but what about the cases where you know there's communications and you want those communications, and maybe there's impediments there. I know that the criminal authorities can go through a warrant process for things like that. What is the recourse of an administrative agency where we don't necessarily have recourse to a criminal mechanism to show just cause, due cause, probable cause, reasonable suspicion, whatever the standard is. So cooperation works, but we have to be, I think, vigilant of the challenges to that, and like we’ve already talked about in the GDPR space, how do we get to a solution that works for most people most of the time.

MS. FEUER: Thank you very much. So let me ask you one follow-up, which is about your statutory authority which underlies your ability to cooperate. I know that you have some tools that you've had since the 1970s that are somewhat similar to what we have in SAFE WEB. And I'm wondering how they actually underpin what you do and how effective you think having that statutory authority has been.

MR. GRESENZ: So there are three sections that I'll talk about. And absent these three things, we would not be able to meet the IOSCO principles, which means we wouldn't be able to sign the MMOU, which means the Treasury Department would be unhappy when we were adjudged to be noncompliant in an FSAP in these areas. The first one is what I call our access request authority, and what this says is the Commission has discretion to share confidential file materials with any person, provided that person demonstrates need and can make appropriate provisions of confidentiality. And I think more or less that tracks what the FTC can do, although maybe the Safe Web is restricted to regulatory authorities, where the SEC, in theory, has discretion to share with any person. Our Commission has delegated that authority to exercise the discretion to the staff in the area where I work with, which is cross-border enforcement cooperation. Now, typically, my office will look at any request for access for SEC files that comes from a foreign authority, and we will make a baseline determination of whether sharing is appropriate with that organization or not. Obviously, if they’re an MMOU signatory, that question is easier. So that's the first one, the ability to give access to materials and files. The second one is to use our compulsory power on behalf of a foreign authority. And I think, again, here, there's probably parallels all down the line with the FTC's existing authority, is we have to make sure that there's -- well, for us to start with, the requesting authority has to be a foreign securities authority, which means do they enforce laws that fall within their securities regulation. Number two, the authority has to be able to provide reciprocal assistance. And, again, if it’s an MMOU party, that's already written in and baked into our principal cooperation mechanism. The sharing has to be consistent with the public interest of the United States, and we go through that process of the deconfliction process with the US Department of Justice. So that's something else that is taken care of. And one interesting fact here is it's not necessary for the conduct to be a violation of US law. So, for example, if it's illegal in Country X but it may not be illegal here, we do have the authority to assist in appropriate circumstances. The third piece after the access request and the compulsory authority, you know, of course, you list three and then you forget the third one. Let me come back to that one. I should have made a note when I was thinking about this.

MS. FEUER: Okay. Well, that's great. So we have a lot here to work with to start us off on questions, and there are so many strands to the strands that we've brought out that it's hard to know where to start, but I am going to start with two questions that have come in. And the first really builds on, Kurt, what you were just talking about, that your investigative assistance power doesn't require the law violation to be a law violation in the United States if it is a law violation in another country. And we actually have a question on that. And this is, I think, to the consumer protection and privacy areas where I think laws diverge more than they do in the securities arena. But the question is this, when an act or practice would violate consumer protection law in a consumer's home country but it isn’t against the law in the seller's country, should agencies cooperate? When there is a conflict of laws, what should consumer and privacy agencies do? And I'm going to throw that out to the panel and see who hops on it. James?

MR. DIPPLE-JOHNSTONE: Is it helpful to say just in terms of our experience at the ICO's offices for that very reason is our legal gateways are framed with a public interest test? And that's a very widely drawn public interest test, so it doesn't need to be a specific offense in the UK for us to be able to cooperate and exchange information, for that very reason is there is quite a variety.

MS. FEUER: So that's helpful to know. By way of background, the FTC's -- yes, I work for the FTC -- the FTC’s authority to obtain investigative assistance for foreign counterparts relates to unfair or deceptive acts or practices, as well as violations of laws that are substantially similar to those that the FTC enforces. So we have a little bit more defined statutory language, although as you can see here, it allows to us cooperate with a wide variety of agencies. Anyone else want to opine on this first question from our audience? Marie-Paule?

MS. BENASSI: Yes, thank you. It's a very important and interesting question. So in the European Union, we have laws which are harmonized, fully harmonized, or minimum harmonization. So our system of cooperation for enforcement actions are based on the minimum harmonization, when it is minimum harmonized. So it means that you cannot take an enforcement action for a violation which goes beyond the minimum harmonization and which would not be the same in one -- in your member state where the trader is established compared to the member states of the consumer. But requests for information and other types of assistance I think can function. And what we see when we work with cooperation in an informal setting with other jurisdictions outside of the European Union is that very often the principles -- at least the principles are quite the same. And so it’s on this basis, I think, that in many cases exchange of information can be possible.

MS. FEUER: Jeff.

MR. THOMPSON: Yeah, I think this touches a little bit on what I was referring to with disruption as well. Enforcement is not the only answer where we can't enforce the law in another country or a law doesn't exist that prohibits a certain action. However, we may be able to work with, again, private sector partners or other agencies to block these services from being offered in Canada. Binary options was a great example in Canada where we worked with credit card companies, and Canadian law prohibits the sale of securities if somebody is not registered. So, therefore, there was no binary options. Companies registered in Canada, therefore, any sales to Canadians are against our laws. So we're able to work with Mastercard and Visa and the credit card companies to prevent any Canadian transactions for binary options.

MS. FEUER: So that’s very interesting. So there are really a range of options here from a very broadly defined public interest standard to the European Union's concept of minimally or maximally harmonized laws, which essentially means whether every EU country has the exact same law or whether they have more leverage and freedom to implement laws differently. To the example that Jeff has given with disruption and also being able to cooperate across the civil and criminal divide, because we obviously cooperate with the RCMP as a criminal agency, and many of our colleagues, for example, the UK ICO, has criminal authority as well as civil authority. Kurt, I saw you want to say one more thing here.

MR. GRESENZ: Yes, I was actually thinking about a topic that you and I have talked about. So one of the questions that can come up in the work that I do is there might be a hesitation on the part of some of our foreign counterparts to work with us in some cases if they are afraid that an SEC outcome will foreclose them from acting. And I think this is the result of different legal interpretations of what amounts to double jeopardy. So you know, in the US, depending, we have different sovereigns for different purposes. What some of my colleagues overseas have said that essentially should the SEC take some action, even administrative action against an actor where the conduct is based on something the foreign authority is looking at that that could potentially preclude the foreign authority from doing any action at all? So that's in one direction we have to be sensitive to that. You know, the question there is let's say we ask for help in a case and they're looking at it and they say, well, we don't want to tell you because you're going to take action and then we're going to be left with nothing. And, again, we would work through that stuff, but it's a real issue. You know, from our side, we take Foreign Corrupt Practices Act violations seriously. And from an economic perspective, my personal view is there's a really good strong reason to do that. That's not always the approach that some foreign jurisdictions take. And we have from time to time encountered hesitancy to help us on our FCPA investigations on the SEC side, not speaking for the Department of Justice, because of a view that well, you know, I don't understand how that falls into a securities violation. It could be just code for, well, we don't really look at it in that way from our country. So we don't think we can help you. Again, people have to decide are they going to step up and are they going to help.

MS. FEUER: Right. So really interesting question and really interesting responses. I want to turn to another question that sort of focuses on one of the hot topics of today, which is this. Congress is considering passage of a comprehensive data protection and privacy law. How might that change or affect the relationship between US regulators and those in Europe and elsewhere, particularly as it relates to privacy investigations and litigation? And I'm going to put James on the spot first.

MR. DIPPLE-JOHNSTONE: Okay. Well, I think in many ways, you know, we should look at the opportunities. There are many countries around the world which are looking either at their first data protection act or privacy act or enhancing the one they’ve got. And I think the key things are to make sure that, you know, as referenced by the international conference, that there are those opportunities to collaborate and cooperate to ultimately do what we’re all there to do, which is to keep our citizens safe. And this will continue to be a theme as we go forward. Countries like India are looking at the data protection bill, going through their Parliament and their legislative process. They will be significant, given the scale and size of their economies and their country. So we should look for the opportunities to work better together.

MS. FEUER: And I thought you were going to mention GPEN again.

MR. DIPPLE-JOHNSTONE: Well, GPEN provides a great opportunity to do that, both in terms of the cooperation, but also more importantly the technical challenges, the assistance. One of the great things GPEN does, if I can make a plug for it, is coordinate around sweeps, so looking at upcoming threats and risks that might affect privacy authorities and sharing that load out and sharing that learning out in terms of all of us looking consistently at threats within each of our nations and then bringing together the results of that for a common discussion.

MS. FEUER: So any other observations on the question? It focuses on whether changes in privacy laws might affect cooperation, but I think the question is really broader. As we talked about this morning, many countries are in the process of updating their laws, whether it be consumer protection laws, privacy laws, securities laws, maybe? And so I wonder how this whole issue of changing laws, changing standards affects the way or the opportunities or the challenges for cooperation. And I'll throw that out to whoever wants to go first. Secretary Sullivan.

MR. SULLIVAN: So I'll just say, we in the International Trade Administration have been working with the National Telecommunications Information Administration and the National Institute of Standards and Technology, also sister agencies at the Commerce Department, to evaluate what, if anything, the Federal Government should do to address some of the privacy concerns that have certainly captured a lot of attention in the last couple of years. I think this goes back to what I was talking about. This is my personal opinion. I think we're probably quite a long ways off from any global standard. I think -- you know, you talked about India, Brazil. A lot of countries, you know, many have been looking to GDPR as an example, but no one is replicating GDPR exactly. There are still these differences, and those are going to continue because, as I think I said earlier, different countries have different cultural norms and legal traditions and histories, and they have different policy priorities that are all going to, you know, result in differences of kind if not degree. Again, I sound like a one-trick pony, but this goes back to the APEC CPBR system because what that basically is, is it takes these internationally recognized norms that we all agree on, which came from the OECD guidelines and the fair information principles before that and said let's all agree to these baselines, because you are going to have these differences. And we have to find a way to bridge these differences between these different regimes that countries have. I think, again, you know, there are aspirations for a single global standard. I don't think that’s about to happen anytime soon, so we’ve got to figure out, you know, how these different regimes can be made to work together. The approach in APEC is this interoperability approach, which I really think has a lot of appeal, is very well developed, and has been embraced, as I said, by a lot of countries in APEC, and we’ve heard a lot of interest from other countries around the world because it really is very flexible and can be adapted. On the one hand, it definitely protects privacy, but it can deal with technology because we in government are always going to be one step behind in regulation and legislation to begin with, but in this space in particular with the technology evolving so quickly, I really think there’s great appeal there.

MS. FEUER: Thanks. Anyone else? Marie-Paule?

MS. BENASSI: I agree with what James Sullivan said. I think it's going to be really incredibly difficult to sort of have a very harmonized universal framework for that data protection but also for consumer protection. And in the European Union, we are -- we have these principle-based laws and even in case of maximum harmonizations, there remain some differences. So our reply is to work on common enforcement actions and develop these actions in a way that they have become also guidance in a way. So -- and they are less theoretical than the law because they are applied to practical problems, practical practices. And in the future, what we want to do is to do more of these actions where, in fact, we have -- we publish the common position of the CPC network in the form of a guidance that can be applied by all the different operators in a certain industry. The other point I wanted to mention is notice and action procedures. So in the European Union, we have a law which is called the E-Commerce Directive, and which provides that marketplaces and social networks do not have a duty to monitor illegal practices, but they have a duty to act upon notification against an illegal practice. And this means, for example, withdrawing the account, obscuring the information. One of the problems of these operators, because we are now discussing a lot with them, is that, first of all, the domain of laws, which should apply, which is enormous and then it's -- for them, it's very difficult in a way to have an efficient action when the domain of law is so big and also the enforcement type are very big. And so I think that also cooperation on common notice and action procedures at the international level with a certain level of recognition, so this is what Jeff is saying about this disruption, so looking into also other type of models which are more based on practical enforcement tools, systems.

MS. FEUER: Thank you. Anyone else? So in the few minutes we have remaining, what I'd like to do is turn to each of the panelists and, similar to the first panel today, ask for a one-, maybe two-minute takeaway of what you see as the most important tools for international cooperation, what you see as your main challenges, and how you might remedy them. So I'm going to put Kurt on the spot and ask our SEC colleague to start first.

MR. GRESENZ: So when you started with tools, I did remember the third tool that was so important that I forgot it, but it actually is very important. So we have two provisions of law which help us protect information we receive from foreign authorities. The first one is a statutory protection that protects from any third parties any materials that we receive from foreign securities authorities. So outside of the litigation context, that essentially gives us ironclad protection for SEC files for enforcement purposes. But more recently, we added a legal amendment, a new tool that protects in litigation any material that would be privileged in the foreign jurisdiction. So let's say, for example, we get confidential financial intelligence from a foreign authority, and as a condition of receiving that, the foreign authority makes a good faith representation that this is for intelligence purposes, and it is privileged from disclosure in our jurisdiction. Under Section 24(f) of our 34 act, that protection would carry over into US law, and there is an absolute privilege it would stand discovery, for example, that it will carry over the foreign privilege to US law. And it could be anything. It could be financial intelligence, it could priest-penitent. I mean, if there is a privilege that is recognized in the foreign jurisdiction and we receive materials pursuant to that privilege without waiver, then there's no examination behind the statute for the court to make. It just has to be the representation. So that, I think, gives us added teeth when it comes to representations that we, in fact, can protect things in our files. So, you know, the takeaway for me is the big difference that I see is it looks like what we do in the security space is much more concentrated. You know, we know exactly who the players are. We see them all the time. There's crossover to some criminal authorities and other domestic agencies, but by and large, we seem to be in a more narrow lane. And I think my takeaway would be that listening to my colleagues here is there's a lot of lanes running in parallel and overlapping and overpasses and other sides that I think that we just don't have that much of in the security space in my view.

MS. FEUER: Thanks. And that raises two interesting points. I think this afternoon we'll have a panel on competition enforcement, and I think there might be a few less lanes, although I know there are some. And, also, your mention of your statutory ability to protect information, we have an analog in the SAFE WEB context for information provided by foreign law enforcement agencies when they ask for confidentiality that gives a privilege against FOIA disclosure. So turning now to Jeff, your top takeaway.

MR. THOMPSON: At the end of the day, what I got out of this is, I mean, there's an increasing abundance of information in the world, and we need to be able to prioritize our enforcement efforts. So it's processing all that information that’s certainly a challenge, and there’s all kinds of technology tools to help us. But not only that, it’s setting the right priorities and working smarter. So the intelligence- led approach, where we’re using the central fraud databases such as Consumer Sentinel or Anti-Fraud Centre to start driving enforcement action in a more targeted and effective manner.

MS. FEUER: Thank you. So intelligence is key to international cooperation. Marie-Paule?

MS. BENASSI: So I wanted to say two things. The first thing Jeff said it already, which is about prioritization. And I think that fraud is becoming internet fraud, all the different facets of it, and its internationalization, I think, is becoming a very big problem in terms of the harm caused to consumers and collectively in the world. And also in this respect, the role of the big platforms, you know? And if we don't prioritize and don't find efficient ways, building also on what this platform can do, I think is going to become more and more difficult to prevent fraud. And we see organized crime moving into these kind of activities, which seems to be giving them the possibility to earn a lot of money very easily. But then we have a different type of problem which we didn't discuss much, because also we have a bit -- had discussions a bit in silos here, but which is how to tackle the new types of misleading practices which are developing and which are based on the data economics. So on this we need to build links between competition, data protection, and consumer protection in order to understand this and see how -- what are the impact on consumers in terms of also the possible harm and also for businesses, possible lack of competition that this type of new data models are creating.

MS. FEUER: Thank you. Secretary Sullivan.

MR. SULLIVAN: So, again, for me, my perspective, the biggest challenge we're dealing with right now is the fragmentation or the vulcanization of the internet around the globe. You're seeing rising delocalization, which, again, I think that just impoverishes everybody, those within the country that have imposed delocalization measures, those that have overly strict restrictions on data flows. I think certainly we share a legitimate and strong desire for consumer privacy with a lot of other countries. And as I noted earlier, we take different approaches. I do think we need to be very wary because these issues, the way we're headed and in the coming years, we're going to be looking at, you know, more and more connected devices that are transmitting data, and this data has to be protected on the one hand, but it can lead to such tremendous opportunities. I mean, in the public sphere, in terms of smart cities and efficiencies and health breakthroughs and precision medicine and detecting disease patterns. And we want to be very wary of going too far in one direction, I think. So I agree with you about the balancing of these interests. And, again, I'll go back to my -- I really think, you know, the EU, for example, and the US do take different approaches, but we ultimately share, at eye level, the very same goal. And I think interoperability between GDPR on the one and CBPR on the other could be a very positive development. I know there was a referential a few years ago with BCRs, binding corporate rules, which is an EU proof mechanism for data transfers and mapping it relative to CBPRs. And, again, these all derive from the same OECD guidelines, and I think there's a lot of overlap. And I know GDPR allows for certification mechanisms, and I think there's a tremendous opportunity there for us to make these systems work together and make sure that we are extending privacy protections around the globe, while at the same time making sure that we're not quashing or squashing innovation and, again, doing damage to our long-term interests. So I think interoperability would be my solution there. And as, again, I've said a couple times already, you know, the FTC is probably the preeminent privacy data protection authority, as it were, in the world going back to the 1970s, has been a great partner as we go around the world and talk to countries on this. And so we should continue to do that. And I hope we can partner with other like- minded countries to that end.

MS. FEUER: Thank you. And the clock is quickly counting down, so I’ll ask Commissioner Dipple-Johnstone to say a final word.

MR. DIPPLE-JOHNSTONE: I will be very quick, then. I mean, I can almost echo the comments of others. I think it’s that keeping updated and keeping pace with vast changes in the landscape and technology and making sure that we don't become the ministries of no, that we support innovation in a very practical sense. And as part of that, it’s making sure we make the right links both internationally with each other but also in each of our respective homes with the other agencies and authorities we have to work with so that the offer we can make internationally is the right one.

MS. FEUER: So thank you very much to the panel for some incredibly thought-provoking ideas. Before we break for lunch, I just want to mention that the Top of the Trade on the 7th floor has catering available for you to purchase. There's a handout on the table just outside with information about nearby restaurants. If you leave the building, you will have to go through security again unless you are an FTC employee. And be mindful that there is a small group of protesters outside the building, so leave ample time to get back in for our fascinating afternoon panels. Thank you. (Applause.)

AFTERNOON SESSION

COMPETITION ENFORCEMENT COOPERATION

MS. COPPOLA: Okay. I’m getting the green light from Bilal Sayyed, our head of Policy. So I think we should get started. Thank you all for coming to this afternoon’s panel. Today, we’re going to talk about enforcement cooperation on the competition side. You’ve just heard, in the break before lunch, about cooperation on the consumer side. It has a very different nature on the competition side. So we’ll be talking about that this afternoon. I’d like to introduce my panelists briefly. Starting with -- going in alphabetical order, Nick Banasevic. Nick is from the European Commission’s DG Competition where he heads the unit that covers IT, internet, and consumer electronics. So we’ve had the very good fortune to cooperate with Nick on a number of cases. Next to Nick is Marcus Bezzi. He is the Executive Director at the Australian Competition and Consumer Commission, where, among other things, he oversees all of the ACCC’s international engagements. So I also have had a great time working with him, even though very often the calls were extremely early for us and extremely late for him. We still have a terrific relationship. Then we have Fiona Schaeffer, who is an Antitrust Partner at Milbank LLP. She has practiced on both sides of the Atlantic. So she brings unique perspective in that sense and has lot of experience in multijurisdictional mergers in particular. Then just to my left -- I was a little thrown off because I thought it was alphabetical and that’s why I was -- yeah, you didn’t look like Jeanne, anyway. So Jeanne Pratt, who is Senior Deputy Commissioner from the Canadian Competition Bureau. She oversees their abuse of dominance and mergers and noncartel horizontal conduct matters. She also has experience at the ACCC. So I’m sure that she will bring that to the discussion today. So those are our panelists and you’re going to hear from them, not from me. Just by way of background, a lot of the cooperation issues that are relevant to the competition enforcement discussion were addressed in this morning’s session. So we’ll try to get into a little bit more granular level so that we don’t repeat what was discussed this morning. Just I guess to set the stage in thinking about cooperation in general, we engage in enforcement cooperation for a number of reasons. Often, we find that it will improve our own analyses. It allows us to identify issues where we have a common interest, it allows us to avoid inconsistent outcomes, and perhaps, most importantly, for the outcome to coordinate remedies. So with that in mind, I have asked the panel to start off -- we’re trying to understand strengths and weaknesses of enforcement cooperation, get some advice for the FTC. So before we delve into specific questions, I’ve asked each of the panelists to deliver the headline of their story. What is your elevator speech? Starting with Nick.

MR. BANASEVIC: Thank you, Maria. Thank you to you and to the FTC. It’s really a great pleasure to be here and, hopefully, share some interesting insights. My elevator ride is 27 floors up and it takes about half a minute. So I don’t know if that’s how long I’ve got. But I think my five-second message is don’t neglect cooperation, it can really bring benefits. Of course, I think the first instinct that we have and what we’re responsible for by definition is our own jurisdiction, and the bread and butter of that is doing individual cases and that’s what we focus on. That’s, as I say, the bread and butter of our work. Beyond that we have our policy, guidance, soft law role which is complementary to the actual case enforcement. I think my core message and, hopefully, I’ll illustrate it during the panel is, although you’re not going to necessarily spend the majority of your time, although you might spend a lot in an individual case on cooperation, I think it’s trying really -- in terms of what agencies can gain and benefit mutually. Don’t view it as add-on activity, something extra that you have to do. It can really bring organic benefits to either an individual case -- and, hopefully, I’ll give some examples -- and also to policy to avoid misunderstandings, to converge where possible. It’s really something that should be fostered over the years. I’ve known Maria and her colleagues and colleagues at the DOJ for many years, and it’s really very useful in terms of building trust, facilitating relationships, and understanding where each of us are coming from. So from my perspective, I’ve had very good experiences over the years and I will give some more insights as we go on.

MS. COPPOLA: Thanks. Marcus?

MR. BEZZI: Well, if Nick had been standing next to me in the elevator, I would say I agree with all of that. I’d also say -- make the point that was made a lot this morning, that commerce is now more global than ever and, indeed, that’s a trend that’s significantly enhanced by the digital economy. And the corollary of that is that enforcers have to respond to the pace of change and globalization by working more closely together. We have to be more joined up and timely. And we need to do this for three reasons. Firstly, because I believe that in doing so, we will facilitate more efficient commerce. It will actually be better for the commercial parties if we are more joined up. Secondly, it will make us better at our jobs. We’ll be more effectively able to police compliance with laws in our jurisdictions. And, finally, because we’ve got scarce resources and working closely together is likely to prevent us from reworking issues, from seeking to reinvent the wheel or overlapping each other’s work. It will make us more efficient. Thanks.

MS. COPPOLA: Great.

MS. SCHAEFFER: Well, hopefully, we’re not in a Dutch elevator so there’s room for me as well. I certainly agree with everything that both Nick and Marcus have just said. I particularly like the idea that cooperation is not the icing on the cake, but, hopefully, the glue, as Kovacic would say, or the icing in the middle. What does cooperation mean? It doesn’t mean achieving the same result on the same timetable in every transaction or investigation. That’s not cooperation. That’s utopia. And that’s never going to exist. But I do think it can and often does mean a greater understanding of the issues, an enhanced understanding, as you said, Maria, for your own investigation and how to address concerns. And it, hopefully, can be used to maximize all of the efficiencies in the process given the substantive constraints and the procedural limitations that each jurisdiction has to live within. So I think from a private practitioner perspective, I agree there is a lot to be gained from cooperation. And I would love to use this panel to talk about practical ways that we can enhance cooperation, again using Kovacic’s human glue analogy, more at that human level than at the formal, procedural MLAT kind of level that I think we’ve all worked with or had our frustrations with over the last decade or so, and have found that it is these informal connections and understandings that have facilitated greater cooperation more than the very formalistic process.

MS. PRATT: Well, I agree with everything that everyone said. The only thing I would add is I don’t think cooperation is only good for enforcement agencies, I think it’s good for business. It allows competition law enforcement agencies to benefit from the experience of one another, reach conclusions quicker, and with less probability of conflict and ultimately, hopefully, increased timeliness and effectiveness of the outcome. But it’s -- as all of these people have said, it’s more than about sharing information, it’s that human glue. It’s having the trust amongst agencies to be able to have productive discussions, to be able to exchange theories of harm, to talk about what they’re hearing from the marketplace, to sort of be in a united front with the businesses so that they understand that it is in their benefit and it will be more efficient for them to cooperate with all of us together. And so I think the result, hopefully, is that investigations aren’t longer, are more focused, and the probability of outcomes being conflicting outcomes is minimized, and ultimately for all of us, the predictability, consistency, and effectiveness of outcomes across jurisdictions is maximized. The Canadian Competition Bureau, as you heard from Commissioner Boswell this morning and as you heard from some of my colleagues from the RCMP, I think Canada generally is a strong advocate for international cooperation and we’re always looking for opportunities to cooperate further, including with respect to not just merger cases, but unilateral conduct cases as well.

MS. COPPOLA: Thanks, Jeanne. Okay. So there’s a lot of human glue. So we seem to all agree that there’s a lot of great things that come out of cooperation, cooperation is very important. I guess drilling down to the next level, what can parties expect for agencies, and I guess for Fiona, what can agencies expect at a more detailed level from cooperation. Why don’t we start with Marcus this time.

MR. BEZZI: Thanks, Maria. Well, there are things like sharing case theories, if waivers are given there will be sharing of information. If we use our formal processes, they can expect them to take a long time. In our experience, MLATs -- well, I’ll just relate one story. We used an MLAT in a criminal matter recently and were absolutely stunned to get a result from the process in one year or a little bit less than one year. That’s the fastest that anyone can ever think of. Mostly, they take two years, three years, four years. We’ve got 19th Century formal cooperation procedures, 19th Century timetable for our formal cooperation procedures. So really we spend most of our time on the informal. And I must say, I listened to some of the sessions this morning and heard people talking about the IOSCO MMOU. I was very envious hearing about how quickly their processes work. They really do seem to operate at a more reasonable speed given the speed of commerce today. I should say that in mergers, the informal cooperation works extremely well and we don’t have to rely upon the formal. A lot of the time in Australia, we use the processes to coordinate remedies and people can reasonably expect us to do that in a fairly efficient way. I think that is a good aspect of the current system.

MS. COPPOLA: Thanks. Jeanne, do you want to –

MS. PRATT: Sure. I mean, we cooperate very closely with the Federal Trade Commission and with the US Department of Justice and the DG Comp. Those are the three jurisdictions or three agencies that we cooperate most with. And if you’re a party either on the merger side or on the conduct side, you can expect that we would have in-depth discussions related to investigative approach, theories of harm, market definition, concerns expressed by market contexts in the various jurisdictions and, frankly, our analysis of the data and evidence that we’ve seen. In some cases, you will see us do joint market interviews of joint market context. We’ll have sometimes joint calls with the parties and we’ll coordinate that interaction with the parties to make sure that the risk of uncertain or conflicting messages is minimized. And where cross border competition concerns are identified, you can expect the Canadian Competition Bureau to engage agencies in remedy discussions, because we need to make sure that those remedy discussions are considered in the broader context, including the need for remedies in one or more jurisdictions and whether a remedy in one jurisdiction may actually be sufficient to address concerns in another, so that we may not need our own consent agreement in Canada. We also look at whether a common monitor should be appointed or looking at the consistency of the language around preservation of assets or hold separate arrangements. And in some cases that cooperation with the Canadian Competition Bureau may ultimately lead to us accepting a remedy that is proposed from a sister agency and it can, where appropriate, ensure the most efficient and least intrusive form of remedy for market participants. So we do cooperate very deeply with our agency. And that, again, is based on a strong foundation of trust that has been built over 20 years of cooperating with the counterparts with whom we cooperate most frequently.

MS. COPPOLA: Thanks, Jeanne, very much. I’m very sorry to have to ask Nick to add to that because I think you about covered the universe. But, Nick, what do you think that parties can expect from cooperation and thinking specifically about your perspective from a shop that deals with conduct matters?

MR. BANASEVIC: I agree with everything so far. So not –

MS. COPPOLA: Okay. Can we be clear? You have to disagree at some point. This would be like dreadfully boring if you –

MR. BANASEVIC: In the post-panel, perhaps. No, but I think, as Jeanne said -- and perhaps -- and this is something I think we’ll develop perhaps as a difference in terms of incentives in conduct in mergers. Most of what my experience, in terms of what parties have incentive-wise, is in conduct. I’ve worked on a few mergers where the incentives have been aligned. We’ve had issues with parties where sometimes they don’t want to give waivers in conduct cases because they feel that that would somehow not be beneficial to them. That is, of course, their prerogative. My personal view is that actually, you know if they’ve got a good story to tell, there’s no issue with giving away, but because it’s precisely those things that we can discuss openly with them and with our colleagues, our sister agencies. But I think exactly the kinds of things that -- whether or not there is a waiver, because I think even without a waiver we’re able to, from our perspective, in terms of what we can gain, talk about theories of harm in the abstract and general levels, test, test theories, test realities. So I think if we’re doing that anyway, there is an interest for parties to give us a waiver. Again, that’s my personal view. But as I say, we’ve had some cases where we haven’t had waivers. To switch, in terms of what -- because I think we do have that responsibility ourselves to parties. And, again, maybe it’s more in mergers that it happens that they have these incentives where they’re aligned in terms of timing, coordination. In terms of what we can expect as an agency, just to develop a bit what I was saying at the beginning, I think, again, it’s not that we must always dream of having the uniform solution worldwide. We all have different legal traditions, different systems. Having said that, I think where we can achieve at least a high level of convergence where possible, I think that’s something that is desirable. So I think we, in terms of both policy development -- and then when we’re doing cases, I think it is invaluable and we each have a lot to gain in terms of, again, coming back to some of the things I’ve said in terms of case specifics, theories of harm, making sure that we’ve got a reality check on whether something is correct or not, testing these theories with each other, and if appropriate, moving the cases forward in the same or similar direction. If not, at least understanding the background to where we’re each coming from and why we may take a different approach. And I found that invaluable over the years in many cases, and I’ll develop that a bit more a bit later.

MS. COPPOLA: Thanks. I think that the last point you mentioned, this idea that the effects of case cooperation are not just contained to the case itself, but to a longer-term story of deepening the understanding between agencies is really important. Fiona?

MS. SCHAEFFER: Sure. Well, I think from the parties’ perspective -- and my comments are primarily in the context of merger reviews -- the goals of what can realistically be achieved from cooperation include reducing duplicative effort, reducing the burdens of investigation, convincing the agency, through cooperation, that just because there is a hill there to climb doesn’t mean that everyone has to climb it. One can climb and report, assuming, of course, it is a similar hill. We hope to have consistent, if not identical, outcomes and that includes, where possible, hopefully convincing an agency that they don’t need to have the same remedy as everyone else just because someone else has a remedy. We don’t have to have every jurisdiction reviewing, believing that it needs to have its pound of flesh in order to believe that it’s conducted an effective review. And that, of course, involves some levels of trust between the different agencies as well, that the enforcement of a remedy in one jurisdiction is going to be sufficiently robust to protect others. And, you know, that may not always be the case and it may vary by jurisdiction. We hope, also, that through cooperation we will, if not have a shorter overall timetable, certainly not a longer one. I think that is sometimes a concern that private parties feel is that a potential cost of cooperation is that you may be put on, in essence, the timeline of the slowest jurisdiction, rather than promoting efficiency throughout the process. I guess a word on waivers just to Nick’s point. In principle, I agree that knowledge is power and I like everyone at the table to have a similar level of knowledge, if we have good substantive points and arguments and documents to share, or even if not so good. The agency can do a better job armed with that knowledge than if there is some game-playing and trying to orchestrate the process and manage who knows what. I do think that that calculus is quite different in merger versus conduct cases. And it’s not a question of giving different agencies the same level of knowledge, necessarily, although in some cases it can be. But I think for us there is a bigger concern in conduct cases that information provided to one regulator and then shared more broadly increases the risk of discovery obligations and private class action consequences that aren’t so much of a practice concern in a merger context. So it’s not the sharing within the agencies necessarily that is the biggest challenge there; it’s what can be done with the information once it is within multiple agencies. We know that we’re dealing with jurisdictions that have very different levels of confidentiality protection, and in some instances, for example, are required to give third parties due process or other government agencies access. So I think there’s a greater feeling of concern about being able to manage the flow of that information in the conduct arena.

MS. COPPOLA: Thanks, Fiona. I think we’ll come back to that point about information exchange in a moment. But I think, before that, I want to pick up on Marcus’ point about keeping pace. I don’t know that -- the 19th Century might be a bit of an exaggeration, but I think even 20th Century tools are not fit for purpose. Last night, I was watching All the President’s Men with my 12-year-old son and they were trying to find the phone number for someone and they had a room full of phone books, and he just kind of said, what’s that, what are they doing? Anyhow, what types of things, what kind of -- what would a tool look like that was fit for the 21st Century? Are these more in the realm of informal cooperation? What tools do you use? What tools do you wish you had? What can we learn from you?

MR. BEZZI: Would you like me to go first?

MS. COPPOLA: Yes. That’s why I’m looking at you. I’m sorry. (Laughter.)

MR. BEZZI: Well, where do I start. So informal -- I’ll start on the informal. And, look, I should say 95 percent of the cooperation that we’re involved in -- probably more than 95 percent is informal and it’s very effective and it involves engagement with the various agencies that we’ve got excellent relationships with. We have many counterpart agencies that we’ve got second generation cooperation agreements with or first generation cooperation agreements with. And they help to create a formal framework in which we can engage in informal cooperation. And I should actually just go back a step. The formal arrangements really do enhance the informal. We have a very formal arrangement with the United States. We have a treaty with the US. I think we’re the only country that has an antitrust cooperation treaty with the US. We rarely use it. I think the number of times it’s been formally used you could probably count on probably less than two hands. But I believe that it promotes the use of waivers, it promotes the cooperation of witnesses, the cooperation of parties with our investigations, and it really facilitates and creates the atmosphere in which informal cooperation works very, very well. So what does that actually mean? It means that we can have case teams that have regular phone calls if we’ve got a common investigation or we’re investigating common or related issues. We can talk about case theories. We can talk about practical things like when we’re going to interview common witnesses. We can talk about lines of inquiry that have not been successful that have been a waste of our time and suggest to each other perhaps don’t bother going there, it won’t lead anywhere or, actually, look here, it’s a better place to look. Those sorts of discussions happen between case teams and they are really valuable. The exchange of information when we’ve got waivers -- confidential information when we’ve got waivers is very, very useful. I should emphasize that we very, very rarely -- in fact, I can’t think of a single occasion that we’ve done it using a waiver, but we very rarely exchange evidence. I can think of two cases where we’ve done that using formal processes. If we want evidence, we will go to the source and get the evidence from the source if we possibly can. It’s much more valuable to us that way, anyway. So I think you said, what would be better? Well, some of the processes that exist under IOSCO where -- and, indeed, exist under the antitrust treaty that we have with the US -- where we can ask counterpart agencies to compel testimony, we can ask counterpart agencies to compel the production of evidence or production of information and to do so in a very timely way, to put in a request that can be responded to in days or weeks rather than months or years. Those sorts of things are things that we aspire to. We get a lot of it informally, I should emphasize that. I don’t want to understate the importance of the informal. But having a more formal framework which would enable more of that -- and I think they have in IOSCO context -- would really be a facilitator of even greater informal cooperation.

MS. COPPOLA: I think we heard on the consumer protection and privacy panel that some of that investigative assistance is already happening on that side. So it’s –

MR. BEZZI: Very much so, yes.

MS. COPPOLA: Since we’re all -- many of us have it housed in the same agency, you would hope that we can have that transfer over to the competition side. Jeanne, could you pick up a little bit on the informal cooperation point and tools?

MS. PRATT: Yeah, I’ll try not to do –

MS. COPPOLA: So we can just –

MR. PRATT: I, again, agree with everything that Marcus said. And I think what I would say is it only works -- those informal cooperation tools, again, only work if you’ve got trust in the legitimacy, the competence, the candor and, frankly, the ethics of your counterparts in the other agency. And you can’t develop that necessarily in the context of just having a case discussion. You’ve got to take the time to have the conversations to understand different frameworks, to understand how they go about doing their work. And, frankly, that in our experience has led to us getting to learn some of the lessons from our colleagues so that we don’t have to repeat the same mistakes and, hopefully, we have also shared some of those with our foreign counterparts. So some of the mechanisms that we use outside of informal cooperation on a case to try and do that are the case team leader meetings that you heard Commissioner Boswell talk about this morning, which I find incredibly useful because it is our officers who are doing the work, that are leading those cases, that will take some time out to talk about how they do their work, what issues they are facing. Sometimes it’s talking about a particular case development or a lesson learned that they have from their jurisdiction. And that builds relationships amongst our staff, it builds trust, it builds confidence in our counterpart’s abilities as economists and lawyers doing the same type of work. Exchanges are another tool. And as was mentioned this morning, I am the very lucky candidate who got to go to the ACCC for a full year and see how they do their merger work, and I benefitted greatly as an individual. But I also I think benefitted the Bureau because we got to see not just how a particular case unfolds, but how you actually manage the organization, how you do your work, what tools you use and, frankly, seeing how something can be so different in some areas, but there’s a lot of commonality in the analysis that we do in mergers.

MR. BEZZI: We loved having you, too, Jeanne. It was great having you.

MS. PRATT: It was a tough winter in Ottawa, I have to say. The other thing that we have found valuable is taking some time out, maybe more publicly, to have workshops on particular issues. The FTC and the DOJ and the Competition Bureau in 2018 had a joint workshop on competition in residential real estate brokerage. And, you know, we had eight years of litigation in the real estate industry surrounding the use and display of critical sales information through digital platforms that wasn’t resolved until years after the US. But because we had taken so long, there had been a lot of evolution in the law and the economy. And so some of the lessons that we learned along the way were also informative to update since the fight in the US. So the only other formal thing that I think I would I say, not the informal, is we have a gateway provision in the Canadian Competition Act, Section 29. So when we’re doing mergers, we don’t ask for waivers in Canada. As long as we’re working on a case and we feel that that cooperation is necessary for enforcement of the Competition Act in Canada, we feel that that gives us the ability to have that conversation with our counterparts. So if you -- and I think this would be particularly useful in the unilateral conduct side where you may be looking at different incentives. The merging parties may want to get through our process as quickly as possible. They, I think, have come to see more of the benefits of our cooperation to get them where they need to get to with less conflict and quicker results. But, you know, that kind of a gateway provision could allow us to have discussions on the unilateral conduct side because the discussion is only as good as the two-way communication allows.

MS. COPPOLA: Thanks. The senior level exchange, I think, would be a big hit here if the destination was Australia. But I guess kidding aside, it’s interesting because what you learn there, you’re coming back and you’re in charge so you can actually implement the changes. So that must have had a terrific effect. Okay, Nick, just thinking a bit more about cooperation in conduct investigations. I almost said antitrust investigations because I was looking at you. What kind of practical experience tips do you have that you would like to share?

MR. BANASEVIC: So I’m going to go back in time a bit and give you a couple of examples of very intense cooperation with the FTC and the DOJ. Actually, let me first say, to go back a step even, for us, cooperation starts at home in the sense that we’ve got the European Competition Network, which in -- I don’t know if “unique” is the word, but it’s the network of us, the European Commission with all the national member state competition authorities in the EEA, the European Economic Area, all applying European competition law. And so we first need to cooperate at home in terms of both just allocating cases and, of course, generally the European Commission does the cases that are over a broader geographic scope, whereas the national agencies tend to focus on more national ones and in terms of substance coordination as well. Beyond that, I think we have extensive international cooperation with all the major competition authorities around the world, including Canada and Australia. But to give the two examples that, for me, have been personally particularly instructive over the years, going back to the beginning of the century is first the Microsoft case with DOJ, where, as background, you remember that the D.C. Circuit Court of Appeals affirmed a monopoly maintenance finding here under Section 2. And that was while our case was still ongoing in Europe. We had an interoperability and a tying abuse, tying of Media Player. And then there was a remedy implemented in the US that changed the way that some things were done. So it had a kind of factual impact on some of the things that we were doing in our case while it was still ongoing. And the issues were also -- even though the liability case here was little bit different, through the remedy, there was an interoperability element as well. So the kinds of issues were very similar. We met, I think, for a period of a few years twice a year. We would come here once a year and the DOJ would come to see us in Brussels. And it was invaluable just to exchange theories, to understand where each side was coming from, and to develop a trust and understanding over the years. So I think it’s fair to say that even though the issues were different, there wasn’t always perfect agreement, but it was a relationship that we valued and that really brought a lot in terms of understanding where we were coming from and in my view, at least, having a solution that was not necessarily exactly the same, didn’t lead to an overt situation of conflict, which, again, in my view was greatly facilitated by these contacts. The second example is the kind of policy and case area standard essential patterns. This goes back to even Rambus with the FTC where we had a similar case ourselves in Europe. But more generally and more recently, or five, six years ago, I guess, this issue of injunctions based on standard essential patterns. The FTC -- I think it was 2013 you had the consent decree with Motorola and we had a prohibition decision against Motorola a year earlier on the same kind of issue. And, again, take a step back or try and remember, this is a very -- I don’t know if “novel” is the word, but it was a controversial area of law. And perhaps it still is. For us in Europe, at least, we adopted a prohibition decision, which said that injunctions against willing licensees, based on standard essential patterns where you’ve given a commitment to license on FRAND terms, are an abuse. That was confirmed by our Supreme Court, the European Court of Justice, in a separate case, but the principle was confirmed. But it was, and still is, a subject that attracts a great deal of attention and a great deal of controversy. There were many people -- and that debate still goes on. But there were many people saying, how can you possibly do this? There are some people saying that. But against that background of that -- again, I’m not sure if “novel” is the word, but a very complex, important issue, it was really invaluable to have both the case coordination with the FTC on Motorola, where we had regular contact in terms of meetings and calls, and then on the policy level with both the FTC and the DOJ, where essentially we were on the same page in terms of developing this policy and this approach towards how we deal with the specific issue of injunctions based on standard essential patterns. I think particularly because it was an area that was so complex and controversial, my personal view is that we all mutually benefitted from being able to really share these experiences and insight. So those are two examples and there are many more, but it’s really, for me, a manifestation of just concrete case teams talking to each other regularly, being open, exchanging ideas, evidence if appropriate, if you have the waiver, and it’s been a great benefit.

MS. COPPOLA: Yeah, I think interplay of the case level and the policy level is a really good point that really deepens greatly the discussion and understanding. Fiona, we’ve heard kind of rah-rah-rah cooperation and lots of pluses on cooperation. You’ve talked about how cooperation doesn’t mean getting to the finish line at the exact same time. What are some of the practical limitations on cooperation from a private practitioner’s perspective?

MS. SCHAEFFER: Well, I think we start out with very different procedural frameworks in different jurisdictions. We happen to have probably two of the closest jurisdictions here in Canada and the US, on process. But others look quite different in terms of the amount of prefiling work in a merger context that needs to be done, the time that that will take, the uncertainty around when you actually get on the clock in say Europe or China versus in the US. And all of that leads to, you know, in many cases, if not an impossibility, certainly, all of the stars would have to align for the timing to actually be the same. So we are working with different processes, different timetables, and I think we have to accept that the timing is not going to be the same. The question is, can we make it sufficiently compatible that we can have substantive discussions at a similar time frame, particularly on remedies. That will, you know, minimize inefficiencies and maximize the ability to have a consistent compatible remedy. And even when you’ve done all of those things and there’s been I think an earnest, concerted goodwill effort to align those discussions, you’re inevitably going to have cases where, you know, something surprising happens like one jurisdiction decides, yes, we like the remedy package that everyone else has agreed to, but lo and behold, we think there ought to be a different purchaser in our jurisdiction, which shall remained unnamed, than in the rest of the world, which as you can imagine when you’re dealing with products that are sold around the globe under one brand name can be pretty challenging. I’m not sure that cooperation could have changed that result. But you’re always going to have these unpredictable aspects of a multijurisdictional merger review that can occur right up until the end. What can we do to enhance practical day-to- day cooperation, I think your earlier question. A lot of the time when we talk about cooperation, it’s really in a bilateral context. You’ve got parties speaking with Agency A, parties speaking with Agency B, parties speaking with Agency C, and then similar conversations happening between those agencies who are essentially, you know, in some cases, playing Chinese whispers, but reporting on conversations they’ve had trying to find common approaches, common understandings. I wonder sometimes can we expedite -- streamline those conversations to have fewer bilateral conversations and more multilateral conversations in the same room. Just as when we are faced with a conduct or a merger investigation ourselves, trying to understand better the facts, what’s going on, where, we often have multijurisdictional, multicounsel calls. I don’t see why we couldn’t do more of that involving multiple agencies on the same video conference or the same phone call. There is a limit, of course, where you get these huge conversations that, you know, are impossible to schedule, and no one says anything because there’s 100 people on the line. So yes, that level of cooperation can be unwieldy, but I think we can do more to explore having simultaneous conversations. I think there’s been a mindset probably maybe more in the minds of -- well, maybe equally in the minds of the companies and counsel, as well as agencies, that everyone needs to have their kind of process, everyone needs to have their separate meeting, everyone needs to have the merger explained to them, you know, Australian or in Canadian or in -- (Laughter.)

MS. SCHAEFFER: But I don’t think that that’s necessarily the case, not for all meetings or forms of cooperation. So that’s something I think we could do more with.

MS. COPPOLA: That’s a really interesting idea. I mean, we’ve heard earlier, and on this panel, that there’s a lot of joint third party calls. I know at the FTC we have limited experience with joint party calls, but that’s a really neat idea and it’s certainly very 21st Century if it’s video. So thinking I guess -- so those are some of the practical limitations on the practitioner’s side. Thinking about some of the practical limitations on the agency’s side, it seems like the one that has appeared a few times in this discussion is confidentiality. Nick has already talked a little bit about what we can exchange when we don’t have waivers. So what falls within the realm of public or agency nonpublic information, so, as he said, theories of harm, market definition, kind of basic thinking on remedies. But, of course, those discussions are much more robust when we’re saying because of evidence of X, Y, and Z. Marcus, you had mentioned that you have an information gateway in Australia. What does that mean and what can the FTC learn from that?

MR. BEZZI: So an information gateway is a legislative provision that enables our Chairman to make a decision to release material that we’ve obtained through some confidential process either a compulsory power, exercise of a compulsory power, requiring compelled production of information, or otherwise, and it enables us to release that information without the consent of the party whose information it is. So it’s something we don’t do lightly and it’s something we don’t do often. And it’s something we’ll only do if there are -- if we’re really 100 percent confident that people are going to comply with the conditions that are imposed on the release of the information. So if we’re dealing with a trusted agency, and we are confident that they will maintain the confidentiality of the information that we disclose, then we have got the capacity to release it. As I say, it doesn’t happen very often. There will be more than just a set of conditions imposed. There’s usually a fairly rigorous process that we put in place to ensure that the conditions are complied with. So there’s reporting. And after the agency that’s received the information has finished with it, we’ll require them to give the information back. And I should say this is a very similar provision to a provision that the CMA has in the UK and that Canada has. And it, as I say can be -- it’s more useful in being there than in being used, if I could put it that way.

MS. COPPOLA: Right, right. Thanks, Marcus. I think, Jeanne, I’ll have you answer next because he’s just talked about your information gateway. Does this have an impact on kind of target parties, third parties’ willingness to provide information, and what kind of notice do they get before you share the information? What are some of the consequences?

MS. PRATT: Yeah, I mean with great -- it’s -- we have to take that very, very seriously. So when we’re using our gateway provision, we have very transparent policies to stakeholders. It’s written in a confidentiality bulletin what the conditions of sharing are. Every time we do a market contact, it is disclosed to that market contact that we do have the information gateway, that we may use it obviously in an international merger context, that we may share it with our counterpart agencies and discuss it where they have waivers. So I think the lesson for us is transparency is really important to maintain your reputation because without our reputation to maintain the confidential information, we won’t be able to do our job and the effectiveness of our agency is diminished. It’s fundamental, frankly, to how we do our job. So in our confidentiality bulletin, we do set out the conditions quite clearly and we do say that we will seek to maintain the confidentiality of information through either formal international instruments or assurances from a foreign authority. And the Bureau also requires as a condition that the foreign authority’s use of that information is limited to the specific purpose for which it was provided. So our information gateway provides that we can use it for enforcement of the Act, which, for us, means if we’re working on a common case with an agency with whom we have a foreign -- or an instrument and we’ve got those certainties that that is when we will do so. Where there is no bilateral-multilateral cooperation instrument in force, the Bureau does not communicate information protected by Section 29 unless we are fully satisfied with the assurances provided by the foreign authority with respect to maintaining the confidentiality of the information and the uses to which it will be put. And this, again, is where trust becomes key for us, we’re not going to put our reputation and our effectiveness on the line if we are not certain that those conditions will be satisfied. In assessing whether to communicate the information and the circumstances, we do also consider the laws protecting confidentiality in the requesting country, the purpose of the request, and any agreements or arrangements with the country or the requesting authority. If we are not satisfied that it will remain protected, it is not shared. Likewise, when foreign authorities are typically communicating confidential information to the Bureau, they are doing so on the understanding that the information will be treated confidentiality and used for the purposes of administration and enforcement of the Act. I should mention, too, we do have another provision in our Act which ensures that all inquiries conducted by the Competition Bureau are conducted in private and that provides some legislative certainty that it will be maintained in confidence on our end. So I guess I would say the gateway for us, while similar to Australia, I think has been used a little bit different and that mostly is a result of practice, our transparency, the market having a lot of faith in our practices and procedures, to maintain confidentiality. And without it, I don’t think it would be as effective.

MS. COPPOLA: Thanks very much. Nick, turning to the European Commission, I mean, you have sort of the highest level of information sharing and investigative assistance with the ECN and you also have things like the second generation agreement that you have with Switzerland. Do you want to share a little bit of your experience with those?

MR. BANASEVIC: Sure. Again, the ECN is -- again, I don’t want to say it’s the highest level of cooperation, but everything is open there.

MS. COPPOLA: Right, right.

MR. BANASEVIC: There’s automatic transmission of everything, there is -- I mean, that’s a consequence of what the EU or the EEA is in a sense. So it’s critical that we share up front information just about who’s got what case so that we can allocate them most efficiently and to coordinate on issues of substance because we’re all applying the same law. In terms of outside the ECN and outside the EEA, I -- as a general point, I think the main issues have been outlined in terms of maybe there being different incentives -- I’m talking outside Switzerland, which I’ll mention briefly now in terms of different incentives maybe between mergers and conduct. I take Fiona’s point about -- concern about disclosure in another jurisdiction. I understand that. I think the instances that I have referred to in some conduct cases have rather been a concern about not wanting agencies to discuss theories of harm even. So that’s a different thing. And in terms of Switzerland, actually, I think it resonated. I mean, we have a second generation agreement with Switzerland, which means in practice that we can transmit evidence between us without consent. Obviously, we’re talking about where the same conduct has been investigated. And what we found -- and this resonated when Marcus was talking about it -- is actually we haven’t needed to use -- to invoke those provisions. And it’s actually encouraged that that framework, and maybe the trust or the mechanics of how things work, have encouraged information provision without needing to use the formal provisions under the agreement. So I think that’s an interesting point.

MS. COPPOLA: Right, yeah, yeah. Fiona, you’ve touched on this a tiny bit already, but what are -- can you bring out a little bit some of the concerns that agencies might have either about these types of agreements or about granting waivers in the nonmerger context? What are some of the red flags?

MS. SCHAEFFER: From a merging party’s perspective or from an investigated party’s perspective?

MS. COPPOLA: From both.

MS. SCHAEFFER: Yeah, I think there is -- certainly in terms of the exchange of confidential information as opposed to permitting agencies to discuss case theories, I think there is an understandable sense that if an agency really needs that kind of information and has a right to obtain that kind of information domestically, then they should just ask the parties for it directly rather than get it -- you know, it sounds a bit pejorative -- but through the back door. I do think, on the merger side, the incentives are greater to provide it anyway. But I think, also, at the same time, the actual exchange of confidential information is relatively rare and I think its use is overrated. I think the biggest benefit that I’ve seen from cooperation from a private party’s perspective -- and I suspect the agencies might agree with this -- is just being able to discuss the case, the theories, the investigation, the legal analysis, the basic understanding of how the products work, what third party concerns are without, you know, revealing any confidential information. And all of that dialogue I’ve found in all of the deals I’ve worked on, and maybe I’ve just been lucky, but I can’t recall a single case where we facilitated cooperation and we suddenly found that Agency C, that had been going on its normal course of business and investigating without big concerns, suddenly had a new theory of the case that was going to put them into an extended review. I’ve always had the opposite. Namely, Agency C, when we have facilitated contact with Agency A and B, typically has been relieved to know that Agency A and B is investigating these particular various areas, that it doesn’t necessarily have to cover all of the same ground. And I have found that it’s expedited, not prolonged, the review or started new lines of attack that didn’t exist before. And I think that could also hold true, although it’s less tested in conduct cases where some of the theories of harm are just more wacky or radical. And I think agencies that have been at it for a longer period of time, in that investigation or generally, may be able to help other agencies understand what are the real issues here, what are some of the false paradigms or paths that, you know, we looked at five years ago but discovered really weren’t productive.

MS. COPPOLA: Right, right. Sometimes that thinking can go the other way, too. The learning can go the other way. I think I want to circle back on your point on forbearance. But before I do that, does anyone have any reactions to what Fiona was saying about information sharing and thinking of it as a backdoor way when it’s done -- the confidential information between agencies?

MS. PRATT: Well, I think it’s -- I guess from my perspective it would -- I’ve never seen that risk become realized. Because each of our agencies are very concerned about the confidential forecast that we have, that we want to minimize the risk of that because, otherwise, it would be a reputational risk for us doing our job.

I do think a lot of the value, unless you are doing a joint investigation where there is evidence that you need in another jurisdiction, most of the value of that cooperation can come from not providing confidential, competitively-sensitive third party information. So if you have waivers or you have a gateway provision, that facilitates that cooperation quite well.

MR. BEZZI: I agree with that. I mean, parties know -- if ever we are using an information gateway, and it happens rarely, but they know. It’s not done secretly; it’s done in their knowledge; it’s done transparently.

MS. COPPOLA: Fiona, I may have misinterpreted you. When you were talking about backdoor, I think you meant even in the presence of waivers. You didn’t mean out extralegally, right?

MS. SCHAEFFER: Yeah, I meant exchange of confidential information, where there are waivers, but the agency couldn’t get the information directly.

MS. COPPOLA: Right, right. Nick, do you have anything you wanted to add here?

MR. BANASEVIC: Nothing spectacular.

MS. COPPOLA: Okay. I have one question from the audience, but before we -- and I encourage other questions. So now is the time to write them. But before we get to that, I wanted to talk, I think because at the end of the day, the immediate goal in a particular case of cooperation is making sure that you don’t have conflicting remedies, that you have remedies that are, if not identical, at least interoperable. And we’ve heard some discussion today that, you know, there’s been a lot of agencies, more agencies looking at things than there used to be. And sort of the question about should we be giving more attention to cooperation, in the form of forbearance, than coordination. And, Fiona, if you could start that discussion for us.

MS. SCHAEFFER: Sure. Well, we were having a discussion at lunch and Marcus mentioned the magic pudding story. I said to Marcus, will this audience understand the magic pudding story? And looking around the room, I see there are bemused faces. Well, it’s a story we all told our children growing up in Australia where, as a child, I really enjoyed it. The magic pudding just never stopped producing pudding until the entire town was flooded with porridge and pudding everywhere. Well, no agency is a magic pudding. Agencies have limited resources. They can’t just keep on producing. And I think from an agency perspective, as well as from the parties’ perspective, one always ought to ask what are the incremental benefits of this additional investigation we’re doing over -- you know, on top of what five other agencies are doing? What are the incremental benefits of a remedy that is the same or virtually identical to what another agency has obtained as opposed to taking our limited resources and using them for investigations and transactions that these other five agencies couldn’t review? And it’s been interesting to me just to look at how different agencies have been allocating their resources over time. Brazil is an agency that comes to mind. When I come to think about some of the cartel investigations, the merger investigations they focused on maybe ten years ago, my anecdotal perception is that there was a lot more of an international dimension to them than there is today. I think some of the larger Brazilian investigations have involved, in more recent times, transactions in the educational sector and the health care sector, in the domestic financial services sector. And their bang for their buck in those investigations I think is significantly higher than it would be if they were another me-too in a global transaction. Having said that, is it realistic to say if the US is looking at a deal or the EU is looking at a deal or Canada and they’ve got remedies, that everyone else should just back off? No, of course not. But I think at each stage of the investigation, it’s useful for the agencies to ask themselves, what is the incremental value and what are the areas of this transaction that may be specific to our jurisdiction that the other people aren’t covering? What are the holes that we need to fill potentially for our jurisdiction that the others aren’t worrying about as opposed to retreading the same ground? And as counsel to parties to transactions and conduct investigations, we ought to be asking ourselves those same questions about what are the specific impacts of this transaction or our conduct on this jurisdiction.

MS. COPPOLA: Mm-hmm, mm-hmm. That’s very interesting. Thank you, Fiona. Marcus, what did you say to the magic pudding discussion and what are your thoughts on the topic more generally?

MR. BEZZI: Well, exactly, we are not a magic pudding. We have limited resources. We’ve got to use them intelligently. So we’ve got to focus on the things that are most important within our jurisdiction.

Fiona raised the cartel issue and international cartels. We could all spend all of our time doing international cartels and nothing else. But -- and they’re important, don’t get me wrong. Many international cartels have a big impact in Australia. But we’ve explicitly said in our enforcement and compliance policy, which sets out our priorities for enforcement and is adjusted each year, that we will focus on international cartels that have an impact on Australians and Australian consumers. It’s the detriment in Australia that is the focus. If there’s no detriment in Australia, then we’ll let other agencies deal with those cartels.

Similarly, in mergers, we will focus on the detriment in Australia. We’ll focus on a remedy that can fix the problems we have identified in Australia, and if it happens that that remedy has already been devised somewhere else and the remedy somewhere else will completely fix the problem in Australia, then what we can do is accept what’s called an enforceable undertaking, which is essentially a statutory promise, which requires the parties to give effect to whatever the commitment that’s being given outside Australia is, give them -- they are required to give that commitment to us in Australia, and that essentially is -- deals with the problem that we’ve got jurisdiction to deal with.

MS. COPPOLA: Right. That allows you to have something that you can enforce of there is a –

MR. BEZZI: We’ve got something that we can enforce.

MS. COPPOLA: Right.

MR. BEZZI: And we’re recognizing that our resources will be managed in a better way.

MS. COPPOLA: Better focused. Right, right.

Jeanne?

MS. PRATT: Well, I guess speaking -- the Canadian approach in mergers in particular, we actually have accepted and gone probably one step further than what Marcus was saying and not even put a consent agreement in place in Canada because we have been satisfied that the remedy mostly in the United States addresses our concern.

The only way we get there, though, is, again, to have really close cooperation. We need to understand the scope of the issues, we need to understand the scope of the remedy, and, frankly, we also need to have trust in the agency that they are going to enforce that remedy at the end of the day, which we have full faith in the US Department of Justice and the US Federal Trade Commission to do that.

One of the primary reasons that we do use comity and forbearance is because we think it allows a more effective and streamline remedy that’s least intrusive to business, avoids conflict, and simultaneously allows us, as a very small agency north of the 49th Parallel, to focus our scarce enforcement resources.

So two examples I would give, we had one where we accepted the US FTC’s remedy in the GSK/Novartis merger in 2015. So we were satisfied there. We didn’t even need a me-too registered consent agreement. We were fully satisfied that the scope of the remedy addressed our concerns and would address the anticompetitive effects on the Canadian market.

The second one, which is more recent, was a case we cooperated on with the US Department of Justice, UTC/Rockwell last year, which was an aerospace systems review, and in that case just to underscore the importance of the cooperation to get us to the comity, we cooperated closely with the US DOJ and the DG Comp throughout the review.

There were waivers in place in both those jurisdictions by all the parties. We shared information and conducted some joint market calls. We discussed issues of market definition, presence of global effective remaining competition and remedies. And we determined that there were likely a substantial lessening of competition in two product markets for pneumatic ice protection system and trimmable horizontal stabilizers actuators, THSAs.

And Rockwell’s relevant business -- they were located primarily in the US and Mexico and these products were distributed on a global basis. So we got to a place where we didn’t have any assets relevant to the remedy in our jurisdiction and we were fully satisfied that the remedy addressed our concerns.

The other side of comity, which, you know, I’m not sure the parties appreciated at the time, Commissioner Boswell talked about our simultaneous filing of litigation in the Staples/Office Depot merger a couple of years ago. Part of that was we did not see the need to file an injunction the same day because we knew that there would be an injunction proceeding by the FTC. So the parties did actually benefit because they didn’t have to face an injunction proceeding north of the border as well as south of the border. We benefitted greatly from cooperation in that case.

Again, we had one of our Department of Justice lawyers come and was seconded and was actually part of the FTC counsel team to see how the injunctive process worked, to see the evidence go in, and at the end of the day, the injunction in the United States took care of the issues in Canada. So they still benefitted. They probably didn’t like it because it was in the form of litigation, but it could have been worse.

MS. COPPOLA: You know, in GSK/Novartis, it’s interesting, we did a lot of trilateral calls in that case with the EC, Canada, and the US. And that’s not obvious in a pharmaceutical case where you expect the markets to be very different. But, certainly, in trying to understand the markets, I think the third parties were very happy to have one call and not three. So that’s an interesting case.

Nick, we haven’t heard from you yet on remedies coordination or forbearance. Is there anything you want to add?

MR. BANASEVIC: The first thing I want to say is I’m going to look up, after this panel, what a trimmable horizontal actuator is.

(Laughter.)

MS. SCHAEFFER: I was going to say, that’s what you need cooperation for. It takes three agencies to understand that.

MS. COPPOLA: Right.

MR. BANASEVIC: And there was another adjective there as well. But, anyway, for us, I mean, if you look at mergers and conduct, of course, we have an obligatory notification system in mergers, once you reach certain thresholds. I mean, you have to reason every decision whether it’s a clearance of remedies or a prohibition. So there’s no discretion as such in that sense. But, of course, there’s great benefit in the cases that we’re looking at more closely and we’ve got many examples that have been mentioned in terms of coordinating on the substance, on the timing, and, if appropriate, the remedies and the potential impact and how that might read across. Where we have the discretion in terms of choosing which cases we do and which cases we don’t,

with scarce resources that any public body has by definition, is a number of things, but not least the impact -- the potential impact in our market, in our jurisdiction. We’re responsible for a jurisdiction of 500 million people.

So I think it’s likely if we believe that there is an issue in that market that we are going to want to look at it more closely, even if there are similar investigations going on or not around the world. So I think that’s the first thing to say.

That being said, I think I understand as well the argument, particularly in the sector for which I’m responsible, the high-tech sector, companies operate globally, so the issue is raised, well, could you have different solutions in different jurisdictions? I actually think this risk of diversion is somehow overblown in terms of just perception. It’s not that this is going around willy- nilly in every case in every sector. I think that’s slightly a perception issue and, actually, more generally illustrates my core point in the benefits of really having up front, preemptively with partner agencies, discussions about the approach to be taken.

Again, it’s not that one can or need guarantee precisely the same outcome, given the differences possibly in even conduct. I mean, some of our markets are national for some of the products even if the companies are operating globally. But I think there is a great benefit in this up-front shaping, sharing thoughts to, to the extent possible, minimize the risk of divergences.

MS. COPPOLA: We have a question from the audience about the ongoing investigations of the tech platforms. The EC, the Japan Fair Trade Commission, are already investigating these firms. What’s important to effectively investigate, including cooperation? Another question, what you can expect from the FTC, but as I’m not a speaker, but a moderator, I think I will punt that to what can you expect from the investigating agencies. And, Nick, according to this week’s Economist, you guys are the determinators. So I’m going to let you answer that question.

MR. BANASEVIC: Is that a type of actuator? A determinator?

MS. COPPOLA: There’s these like big guns and, yeah, sledgehammers.

MR. BANASEVIC: I’m not allowed to say anything about ongoing cases, so –

MS. COPPOLA: Right.

MR. BANASEVIC: So what was the –

MS. COPPOLA: The question was, how can -- I think the question is, how can those agencies effectively investigate? What kind of joint –

MR. BANASEVIC: I think I have to go back to my examples from the past. I think that’s the most instructive thing. I mentioned two. There have been others where in the US and in the -- particularly the same cases or the same issues have been looked at. In some, we’ve had waivers; in others, we haven’t. I don’t want to monopolize the last 2 minutes and 30 seconds.

MS. COPPOLA: Right.

MR. BANASEVIC: It’s really been of tremendous use. And it’s my opening statement, it’s not an add-on. It can really -- for these big cases where they’re very important, sensitive, and you want to get it right, there’s just a great benefit in sharing experiences, knowledge, with colleagues who have the same -- who want to get it right as well and get the best result. So it’s a very good thing that we shouldn’t have just as just a bolt-on.

MS. SCHAEFFER: Can I just add on to that? Maybe the Cooperation 2.0 for digital platform investigations is not necessarily between antitrust agencies, but between antitrust agencies, consumer protection, and privacy agencies. Because -- and I think the term “forbearance” might come in there as well, in that not everything involving a digital platform is necessarily an antitrust issue.

And we certainly have a lot of intermelding of privacy and consumer protection concerns, as we see with the Australian ACCC report. And how do we jointly investigate those issues or maybe have antitrust not be the primary investigation and enforcement mechanism there?

MS. COPPOLA: We are very close to the end of the session. So I guess, Marcus and Jeanne, starting with you, and if there’s time, we’ll move on to Fiona and Nick. What are your last words of advice for the FTC in the area of enforcement cooperation?

MS. PRATT: I’m not sure I have advice. I think, as you’ve heard, I have found or we have found that gateway provision in our legislation to be particularly useful and, you know, it might be interesting to consider that in your context and whether it’s appropriate.

And I would just want to lastly say thank you very much for having us here. I know the FTC can continue to rely on the Canadian Competition Bureau’s commitment to continuing to build upon the solid cooperation foundation that we have and in particularly dynamic fast-moving markets that we have today. I think the business case for cooperation is only getting stronger and will only get better from here.

MR. BEZZI: So I won’t advise the FTC, but the advice that I’ll give to the ACCC is that we need 21st Cooperation and mutual assistance frameworks.

MS. COPPOLA: Thanks.

Nick, Fiona, anything to add?

MR. BANASEVIC; I’ve said it all, I don’t want to repeat. I think it’s don’t underestimate it, use it, and benefit from the interactions and the knowledge you can have with colleagues.

MS. COPPOLA: Well, thank you all very much for your insights. These have been tremendous. Coming into the panel, I wasn’t sure I would learn anything since I spend most of my day engaged in enforcement cooperation. But I did. So bravo. Thanks so much for participating. I think we’ll move on to the next panel now.

(Applause.)

(Brief break.)

INTERNATIONAL ENGAGEMENT AND EMERGING TECHNOLOGIES: ARTIFICIAL INTELLIGENCE CASE STUDY

MS. WOODS BELL: Hello, everyone. Welcome back from break. I’m Deon Woods Bell. I’m a lawyer in the Office of International Affairs at the Federal Trade Commission. I’m so excited to be here today.

It is my extreme pleasure to introduce Julie Brill. Julie is Corporate Vice President and Deputy General Counsel for Global Privacy and Regulatory Affairs at Microsoft. Of course, everybody in the building knows her as a former Commissioner and friend of the Federal Trade Commission. She’s widely recognized for her work on internet privacy and data security issues related to advertising and financial fraud.

She’s received so many awards we could not list them all in her bio, nor could I enumerate them here today. One of my favorite is the Top 50 Influencers on Big Data in 2015. And one of my favorite memories is working together with her in Brussels on these same issues. Thank you, and please welcome Julie.

(Applause.)

MS. BRILL: Thank you, Deon. I remember that event, too, and it was great to work with you there. And it’s really an honor to be here today to contribute to today’s important discussions on the FTC’s international role in a world transformed by digital technology.

I am particularly excited to begin this session today that focuses on artificial intelligence. We have a truly distinguished panel, some of whom are -- here they come -- of experts from around the world, who will explore the implications of artificial intelligence at a time when innovative technology calls for innovative thinking about policy and regulation.

Today’s discussion comes at a critical moment. During the past few years, how people work, play, and learn about the world has been transformed. Industries have been reinvented. New ways to treat diseases emerge almost every day. Driving all this change are groundbreaking technologies like cloud computing that enable us to collect and analyze data scale that has never before been possible. But what we have experienced so far is just the beginning.

Rapid progress in the field of artificial intelligence has delivered us to the threshold of a new era of computing that will transform every field of human endeavor. Already, almost without us noticing, AI has become an essential part of our day- to-day lives. It powers the apps that help us get from place to place, predict what we might want to buy, and protects our systems from malware and viruses.

This is just a hint of what’s possible. Artificial intelligence has the potential to improve productivity, drive economic growth, and help us address some of the most pressing challenges in accessibility, health care, sustainability, poverty, and much more. Yet, history teaches us that change of this magnitude has always come with deep doubts and uncertainty.

I believe that if we are to realize the promise of artificial intelligence, we must acknowledge these doubts and work to build trust, trust that technology companies are working not just to maximize profits, but to improve people’s lives; trust that we use the personal data we collect safely, responsibly, and respectfully. But as we are learning the hard way, in the technology industry, trust is fragile.

In the wake of the Cambridge Analytica scandal and the spectacle of tech industry experts being hauled before Congress to answer for their business practices, people wonder if technology and technology companies can be trusted. The truth is that technology is neither inherently good nor bad. Cloud computing and artificial intelligence are just tools that people can use to be more productive and effective, basically the equivalent of the first Industrial Revolution’s steam engine. But it is also true that because technology has never been more powerful, the potential impact, both positive and negative, has never been greater.

So where does trust come from? It begins when companies like Microsoft, that are at the forefront of the digital revolution, acknowledge that in this time of sweeping change, we must consider the impact of our work on individuals, businesses, and societies. Today, we must ask ourselves not just what computers can do, but what they should do. This means there may be times when we have to be willing to decide that there are things that they should not do as well.

To guide us as we weigh these decisions at Microsoft, we have adopted six ethical principles for our work on artificial intelligence. It starts with transparency and accountability. We know that trust requires clear information about how AI systems work, coupled with accountability for the people and companies who develop them. We believe strongly in the principles of fairness which means AI must treat everyone with dignity and respect and without bias.

Our fourth principle encompasses reliability and safety, particularly when AI makes decisions that affect people. We also are strongly committed to the principles of privacy and security, for people’s personal information. And we believe that AI solutions should be built using inclusive design practices that affect the full range of experiences of all who might use them.

Now, while these principles are at the center of every decision we made about artificial intelligence research and development, we also know that the issues at stake are simply too large and too important to be left solely to the private sector. Trust also requires a new foundation of laws.

Here in the United States, right now, one area of the law demands our attention above all others. That area is privacy. Because so much of who we are is expressed digitally and so much of how we interact with each other and the world is captured and stored in digital form, how people think about privacy has changed. For more than a century, our understanding of this most fundamental human right has been shaped by the definition set forth by the great American legal thinker and fathers of the FTC, Louis Brandeis, who defined privacy as the right to be let alone. That right will always be important. But, by itself, it is no longer sufficient.

Now, modern privacy law must embrace two essential realities of life in the digital age. The first is that people expect to use digital tools and technologies to engage freely and safely with each other and with the world.

The second is that people expect to be empowered to control how their personal information is used. Whether we protect these two things is one of the critical challenges of our time. What we need is a new generation of privacy policies that embrace engagement and control without sacrificing interoperability or stifling innovation.

This is why we were the first company to extend the rights that are at the heart of the European general protection regulation, and we extended those to our customers around the world, including the right to know what data is collected, to correct that data, and to delete it or take it somewhere else. And over the last year, we’ve seen

the rise of a global movement to adopt frameworks that enhance consumer control mechanisms modeled on those required by Europe’s GDPR.

With participants here from India, Kenya and Brazil, this panel of distinguished guests is a perfect illustration of this important trend. Brazil’s general data protection law, which goes into effect a year from now, includes provisions that extend new privacy rights to individuals and mandates new requirements for notification, transparency, and governance for organizations. All of these requirements that will be new in Brazil are tightly aligned with GDPR.

In India and Kenya, new privacy laws modeled on GDPR are also currently moving through the legislative process.

Here in the United States, the California Consumer Privacy Act includes provisions that give people more control over their data. And Washington State is considering legislation based on consumer rights protected by GDPR as well.

As part of Microsoft’s commitment to privacy, we offer a dashboard where people can manage their privacy settings. Since May of last year, more than 10 million people around the world have used this tool, with the number growing every day. I think it is telling that while millions of people around the world are using our tool, our data demonstrates that US citizens are the most active in controlling their data. All of this should serve as a wakeup call for US companies and the US Government.

At Microsoft, we believe it is time for United States to adopt a new legal framework for access and use of data that reflects our new understanding of the right to privacy. To achieve this, I believe a strong US framework -- frankly, a strong privacy framework anywhere in the world -- should incorporate four core elements, transparency through robust standards that include and appropriate privacy statements within user experiences, individual empowerment that grants people meaningful control of their data and privacy preferences, corporate responsibility that is built on rigorous assessments that weigh the benefits of processing data against the risk to individuals whose data may be processed, and strong enforcement and rule-making. And, here, that means in the United States that should be all embedded at the US Federal Trade Commission.

While updated privacy laws are essential to building trust, new uses for artificial intelligence are emerging that will require special consideration for their own specific regulations. Facial recognition is a prime example. This technology has shown that it can provide new and positive benefits when used to identify missing children or diagnose diseases. But there is a real risk that -- there is a real risk which includes the danger that it will reinforce social bias and be used as a surveillance tool that encroaches individual freedom.

This is why Microsoft has called on the US Government to regulate facial recognition with a focus on preventing bias, preserving privacy, and prohibiting government surveillance in public places without a court order. It is also one of the reasons we have testified in support of the Washington State privacy bill, which includes provisions that address many of these important concerns about facial recognition technology.

We need laws that place appropriate guardrails to ensure that companies don’t take unfair advantage of individuals or violate people’s fundamental rights. That is the essence of trust. We believe that guardrails can be designed in ways that facilitate global interoperability and promote innovation so we can all work together to continue to harness the potential of the digital revolution to improve people’s lives and drive economic growth.

This will require a commitment from all of us to engage in ongoing discussions and consultations that span governments and sectors. This means it’s essential for the US Government and its agencies, including the FTC, to engage in a broad range of discussions with other governments on digital issues like we are doing with the honored guests here today.

Just as important are gatherings like this that will bring people together from around the world to explore policy approaches to new emerging technologies like artificial intelligence. More than 100 years ago, when Brandeis defined the right to be let alone in his famous Law Review article, The Right to Privacy, he described, with great eloquence, the ongoing process by which rights evolve as humanity progresses and how the law adopts and adapts in response.

“Political, social, and economic changes entail the recognition of new rights,” Brandeis wrote, “and the law in its eternal youth grows to meet demands of society.” Brandeis was moved to write this article because of the impact of photography, mechanical printing presses, and other disruptive new technologies of his time.

Today, we stand at the beginning of a new era of disruption and change, a time of technology- driven transformation that will require the recognition of new rights and the development of new laws to meet the demands of our societies. It’s a task that will ask us to convene in hearings like this one and in forums, meetings and conferences around the world to grapple openly and honestly with a host of issues that will touch on virtually every aspect of our lives and our businesses.

We, at Microsoft, look forward to being a part of these conversations and to working in close partnership with all of you to make sure that technology moves forward within a framework of respect for human dignity and with the goal of serving the greater good. Thank you.

(Applause.)

INTERNATIONAL ENGAGEMENT AND EMERGING TECHNOLOGIES: ARTIFICIAL INTELLIGENCE CASE STUDY (PANEL)

MS. WOODS BELL: Thank you. Thank you very much, Julie, for those remarks. You outlined very well the tremendous potential of AI and that’s one of the reasons why we’re here today, to discuss them even further.

Well, I’m still Deon Woods Bell. And my co- moderator here is Ellen Connelly, an Attorney Adviser in the Office of Policy and Planning. And, together, we want to welcome you to our panel on international engagement and emerging technologies focusing on artificial intelligence.

You’re in for a treat. As Julie described, we have quite a panel assembled for you here today. This session is a follow-on to the hearings in November, which focus on the same topic. And following the November meetings, colleagues here at the FTC -- and a lot of influence from Ellen here -- said we should go deeper, we should focus on international issues. So today, we’re thrilled to have this impressive group of international officials, practitioners, and academics here and on the line from Harvard.

During this panel, we’ll touch upon a variety of issues and we’ll go deeper and let you see what these colleagues have to offer. We won’t go into great detail on their bios, but we couldn’t resist showing off a little bit for you and letting you know who they are.

On the line from Harvard is Chinmayi Arun. She’s a fellow at the Harvard Berkman Klein Center for Internet & Society, and she’s the Assistant Professor of Law at the National Law University in Delhi. Her chair is there and her picture will soon be on the line as she can hear us right now.

Next, we have, again, he’s still James Dipple-Johnstone. You saw him earlier. He’s a Deputy Commissioner from the UK’s ICO, and prior to the ICO, he was in the Solicitor’s Regulatory Authority where he had been Director of Investigation and Supervision, and he’s not from the ministry of no.

(Laughter.)

MS. WOODS BELL: Next, Francis Kariuki, Director General of the Competition Authority of Kenya. Mr. Kariuki is the founding member and the current Chairman of the African Competition Forum. He’s also an expert in FinTech.

Next over to Marcela. She’s a partner at VMCA Advogados in Brazil focusing on data protection and antitrust. She’s served as Advisor and Chief of Staff for the President of Brazil’s famous CADE.

Over to Isabelle. She’s President and Member of the Board Autorité de la Concurrence, as she was previously the President of the Sixth Chamber of the Conseil d'État, the French Supreme Administrative Court, and other governmental capacities.

And last but not least, we have Omer Tene. Omer is a Vice President and Chief Knowledge Officer at the International Association of Privacy Professionals. He wears so many hats, we couldn’t list them either. He’s an Affiliate Scholar at Stanford and Senior Fellow at the Future of Privacy Forum.

So, before we get started, we want you to be open to looking to questions. We have our colleagues here. We’re going to have short introductory comments from each colleague, and then after this, we’ll have a moderated panel discussion, and we hope that you enjoy.

MS. CONNELLY: Great. So I will start us off by giving each of our panelists a chance to make a brief introductory statement to describe for us the key competition, consumer protection and privacy issues that they see emerging around the artificial intelligence field. We will start with Chinmayi.

MS. ARUN: Thank you for having me. It’s such an honor to be a part of this panel, and I’m happy to see that the FTC is listening to voices from around the world.

If I were to give you the three or four big highlights of how I would think about AI and the right to privacy in data sets in India, it would be -- the first would be in terms of global companies, usually American companies, operating in India versus Indian companies operating both in India, as well as elsewhere in places like Kenya.

The second would be in terms of data because, as you know, it’s a very big country and it provides large and rich data sets that can be complicated in ways that I’m going to describe to you shortly.

The third is that perhaps some of you have heard that there has been a rich and, again, contentious conversation about the right to privacy in India in the context of state surveillance, but also in the context of state protection. So we’ve had a major case on the right to privacy, and we’ve also got a data protection bill, which is very interesting, so I’m going to describe the highlights of that for you.

And the final -- because we’re discussing this in such an international context is this sort of almost a clash of jurisdictions that arises from the Indians, for example, floating proposals of data localization in certain contexts, but also the ways in which India is coping with norms that are emerging from the US and from Europe.

So the first is very simple, which is that as you know the major technology platforms, like Facebook and WhatsApp and Google, are used extensively in India and they have huge user bases in India, but there are also many Indian citizens that access them and have their data on them. Although I will focus a little bit more on the information platforms, it’s good to know that Airbnb, Uber, and other technology platform companies are also offering services in India.

So our legislation, our new privacy act, our proposed amendment to our information technology act are all coping now with the very real idea that there are many Indian citizens whose lives are affected by these technologies that are designed elsewhere based on rules from elsewhere. At the same time, they’re also trying to keep Indian companies competitive because there are Indian companies offering similar services in India.

Our NITI Aayog, which is sort of our version of the planning commission, has described India as the AI garage for 40 percent of the world, and they’ve got a strategy paper on AI. As you know, the big data set question, it’s complicated because, again, India is looking at it as a way towards machine learning, but there are also concerns of data protection and privacy that arise in that context.

And the big tension really is that, on one hand, the policymakers want to leverage this and have this data and sort of learn from it and, on the other, of course, there’s the question of the privacy rights of Indian citizens and especially of marginalized citizens, people who are not able to assert their rights in the consumer forum.

And the final -- so none of this is law yet, but both in the proposed privacy legislation and in the proposed IT amendment act, the question has arisen of whether foreign companies with a sizable user base in India should be asked to localize data in India. So both these proposed legislations have suggested that these companies might be made to host their data sets in India, and I think that that also is cause for concern if they’re thinking about it from a privacy and data protection point of view.

I’m going to stop here. I just wanted to flag all of this in case anyone has questions later. Thank you so much.

MS. CONNELLY: Thank you very much for those really interesting comments.

We’ll move down the line and next up is James.

MR. DIPPLE-JOHNSTONE: Thank you very much and thank you. It’s an honor to be here on this panel with you today.

So I’ve got four issues. And I think the first, which has already been very ably covered, which is that about public trust and the risk of losing public trust in the rollout of AI systems and the role of regulators needing to work together both within country, but also internationally, which is my second theme.

This is an emerging area, one where I don’t think we still have a clear picture of what AI’s impact on our societies will be. And with that in mind, it’s important that regulators keep themselves up to date, keep relevant and work together with others. And that’s very much the approach we’ve taken in the UK. The ICO has a remit in some of the technology, but actually, we work very closely with, for example, colleagues at the Competition and Market Authority, the Financial Conduct Authority, the Center for Data Ethics and Innovation and the Alan Turing Institute to look at the common issues that face us all and how we can improve our regulation.

An important third issue is to look at not only whether the data’s held -- and when we talk about big data sets, we sometimes think of the big tech companies, but in the UK context, the state has large and valuable data sets, too. The UK National Health Service and the UK Education Service have very comprehensive data sets with millions of data points, which would be of value to a number of organizations around the world.

And we are seeing increasing use of AI in the public sector as a model of efficiency and to help us all strive to meet our budget considerations. AI is being looked at for use to decide whether UK citizens are likely to commit crimes, which crimes should be investigated, who’s likely to reoffend, who’s likely to pay their rent on time. And that is beginning to introduce issues of fairness, accountability, and transparency.

And so that’s why, as a regulator, we are really keen to keep abreast of developments. So we are putting a lot of effort into doing that. We are recruiting post-doctoral researchers to help us look at how to regulate AI. We’ve taken new powers to examine AI’s use and look at AI systems in practice and in operation and we’ve reconfigured the office to set up an entire part of the office that will just focus on innovation and technology.

I said it this morning; I’ll keep saying it. We’re not the ministry of no, but we think the GDPR provisions around data protection impact assessments and our work around, for example, regulatory sand boxes and innovation hubs with other regulators. We’re trying to encourage early dialogue to tease through some of these issues together, because I’m not sure any one of us has the perfect answer for all the scenarios.

MS. CONNELLY: Thank you.

Francis?

MR. KARIUKI: Thank you, Ellen and Deon. It’s a pleasure for me to be here and to share my thoughts in regard to AI.

And my view is as a competition and consumer protection regulator, what am I worried about? And I have about four issues, and these are transparency and information asymmetries. What I would like to say is that AI has both created positive and external -- externalities. And in terms of competition and consumer protection, there’s an argument which has been found that they bring more efficiency in terms of prices and greater transparency compared to the traditional retail sales channels, and this is an inquiry which has been conducted in Europe and it has shown that. And, also, they provide additional benefits on these platforms. For example, AI [indiscernible], such platforms could improve choice and value for consumers.

However, the other challenge of -- an encountered challenge in regard to we don’t appreciate the criteria behind the decisions of AI, they are only known to the designer of these systems, and, therefore, the merchant or the consumer may not be aware of how the system has been created and it’s allocating the prices. So there’s the risk of intentional design of the systems in favor of certain participants in the market.

And this could be quite catastrophic in the continent I come from where there’s a lot of market concentration, and, therefore, the companies which are in Africa then can expand their space by being biased against the consumers in Africa.

The other areas that’s also barriers or pathways to entry are, in Kenya, I’ve seen some positive externalities especially AI has enabled new innovations, where in Kenya we have seen recent expansion of financial services for people who are not included in the financial services. And, therefore, companies have been enabled to expand financial services through lending positions for previously people who were not captured in the financial services and also in the insurance sector.

The challenge I see also from the AI is the line between open and proprietary data. AI often creates what is called, in fair data, an individual that is not perhaps -- not factual but opinion based, and, therefore, we may not get an optimal position for the product which is being offered or the prices which are being offered in the market. And, therefore, the challenge going forward is how do we determine data which is a product and which data is an input, and this choice of where the line is will have significant competitive implications as we move.

Besides information asymmetry, I’ve seen AI can also be used in consumer protection issues, discrimination based on other social issues like the region where people come from or even race, as I had mentioned earlier, and these are some of the things where we need, as regulators, both competition and consumer, to look before we fly, because right now is that we are flying blindly and we might be flying into a storm.

MS. CONNELLY: Thank you.

Marcela?

MS. MATTIUZZO: So first of all, thank you, Deon and Ellen, for the invitation for the FTC, to you both for inviting me personally, but also Brazil to be a part of this discussion.

A lot of the points that have been raised here focus on procedural challenges of AI. What I would like to also mention is perhaps the difficulty in both attaining international convergence in these topics, not necessarily laws that are exactly the same, but that point in the same direction, and also convergence within the many fields of law that are connected to AI.

So here, at the FTC, we’re naturally discussing antitrust, consumer protection, and privacy. And even when we’re speaking only of these three areas of law, we can already see that sometimes the objectives of these policies are not always totally convergent.

So, what I would like to -- just to give an example, I guess, that is comparing privacy and antitrust that to me is very clear. What technology has enabled today is for many companies to unilaterally access information and AI has also allowed that information, this data, to be combined and used efficiently for many purposes. So now we can know who bought something, how that person bought it, and so forth, and create, for example, consumer profiles.

Perhaps from an antitrust point of view, one of the solutions to a potential problem of unilateral abuse of this information would be to share the databases with other companies. So we would have many companies that have the access to the same set of data and, therefore, of course, we can have problems of collusion. But leaving that aside, we would have a level playing field.

If, however, we look from the consumer or data protection side of the discussion, we may come to a very different conclusion. And we may come to realize that, perhaps, consumers don’t want their data shared across different platforms and shared across many companies. So, naturally, both objectives pursued by either antitrust or privacy and consumer protection agencies, in the case of Brazil specifically as I hope to make clear throughout my interventions, we are at very different development stages. When it comes to antitrust and consumer protection, we are much more developed and, as you may be aware and former Commissioner Julie Brill already mentioned, in regards to data protection legislation, our specific legislation was approved just last August, August 2018, and has not yet come into force.

So building policy that brings all of these areas of law together in a coherent fashion to address AI challenges seems to me to be a particularly important goal and a particularly important topic for us to focus on.

MS. CONNELLY: Thank you, Marcela. Isabelle?

MS. DE SILVA: Thanks a lot to the FTC for the invitation. I’m really glad to be here.

I would like to say that, for me, the main point is that we think data, artificial intelligence, algorithm, are really key to the competitive process and that is why we must look at it closely. Of course, those processes affect also the way the state is being run. They also affect and they change society, but for us, the main issue is how do they affect the competitive process and the way companies do business?

So what we see is that we really need to invest a lot more than before in understanding what is going on in the market, in the companies, and also to use all our different tools, legal tools, to gain a better understanding and also to give better vision to the market, and I will try to illustrate this with some examples.

So first of all, we use sector inquiries. That is a tool that is common among agencies. But how do we use it? We really take a lot of time to understand a specific market that we deem to be interesting or a process. So that’s what we did with online advertising last year, and, of course, we had very interesting dialogue and followup with Australia, who has finished a very interesting report on online advertising.

And in this way, we get a lot of information from companies. They are sometimes reluctant to give information, but we have the legal framework that enable us to get a lot of information.

And also we give information back to the market. I think this is really something interesting because some sectors are moving so fast that even the companies engaging in the sector don’t always have the big picture, and that is something that has been deemed very useful in the field of what we did about programmatic advertising and the way it’s being run because it’s a very complex and new ecosystem.

Another type of tool we are using very much is the joint studies with other agencies. That’s what we did with the CMA about closed ecosystem in 2014, what we did with the German agency in 2016 about big data, and what we are doing right now about algorithm still with the German agency.

So what is the interest of this? It’s really to show the impact we see that algorithms have on the competitive process and maybe I will tell about a little bit more about this later. This is really something where we draw about, of course, what the experts have written about algorithm, but also in a very practical manner how do companies use algorithm and how does it change the way they do business in the market?

And, finally, another tool that we use is the conference or hearings like you have today at the FTC, but really focusing on what is new, for example, in the field of algorithm. Last year, we had lots of meetings with scientists, sociology experts about what is new about algorithm and also about companies. For example, we had meetings with Google and Facebook to know how they use algorithm in a very precise and detailed matter to help us to understand how it’s being used.

#### Upside AND downside risks of AI are existential---effective governance is key

Themistoklis Tzimas 21, Aristotle University of Thessaloniki, Faculty of Law, “Chapter 2: The Expectations and Risks from AI,” Legal and Ethical Challenges of Artificial Intelligence from an International Law Perspective, Springer, 2021, pp. 9–32 Open WorldCat, https://doi.org/10.1007/978-3-030-78585-7

Therefore, it is only natural to be at least skeptical towards a future with entities possessing equal or superior intelligence and levels of autonomy; the prospect even of existential risk looms as possible.7

AI that will have reached or surpassed our level of intelligence make us wonder why would highly autonomous and intelligent AI want to give up control back to its original creators?8 Why remain contained in pre-deﬁned goals set for it by us, humans?

Even AI in its current form and narrow intelligence poses risks because of its embedded-ness in an ever-growing number of crucial aspects of our lives. The role of AI in military, ﬁnancial,9 health, educational, environmental, governance networks-among others—are areas where risk generated by AI—even limited— autonomy can be diffused through non-linear networks, with signiﬁcant impact— even systemic.10

The answer therefore to the question whether AI brings risk with it is yes; as Eliezer Yudkowski comments the greatest of them all is that people conclude too early that they understand it11 or that they assume that they can achieve it without necessarily having acquired complete and thorough understanding of what intelli- gence means.12

Our projection of our—lack of complete—understanding of the concept of intelligence on AI is owed to our lack of complete comprehension of human intelligence too, which is partially covered by the prevalent and until now self- obvious, anthropomorphism because of which we tend to identify higher intelligence with the human mind.

Yudkowski again however suggests that AI “refers to a vastly greater space of possibilities than does the term “Homo sapiens.” When we talk about “AIs” we are really talking about minds-in-general, or optimization processes in general. Imagine a map of mind design space. In one corner, a tiny little circle contains all humans; within a larger tiny circle containing all biological life; and all the rest of the huge map is the space of minds-in-general. The entire map ﬂoats in a still vaster space, the space of optimization processes.”13

Regardless of what our well-established ideas are, there are many, different intelligences and even more signiﬁcantly, there are potentially, different intelli- gences equally or even more evolved than human.

From such a perspective, the unprecedented—ness of potential AI developments and the mystery surrounding them emerges as not only the outcome of pop culture but of a radical transformation of our—until recently—self—obvious identiﬁcation of humanity with highly evolved and dominant intelligence.14

The lack of understanding of intelligence and therefore of AI may be frightening but does not lead necessarily to regulation—at least to a proper one. We could even be led into making potentially catastrophic choices, on the basis of false assumptions.

On top of our lack of understanding, we should add a sentiment of anxiety as well as of expectations, which intensiﬁes as an atmosphere of emergency and of expected groundbreaking developments grows. The most graphic description of this feeling is the potential of a moment of singularity, as mentioned above according to the description by Vinge and Kurzweil.

As the mathematician I. J. Good–Alan Turing’s colleague in the team of the latter during World War II—has put it: “Let an ultraintelligent machine be deﬁned as a machine that can far surpass all the intellectual activities of any man however clever. Since the design of machines is one of these intellectual activities, an ultraintelligent machine could design even better machines; there would then unquestionably be an “intelligence explosion,” and the intelligence of man would be left far behind. Thus the ﬁrst ultraintelligent machine is the last invention that man need ever make, provided that the machine is docile enough to tell us how to keep it under control.”15 This is in a nutshell the moment of singularity.

The estimates currently foresee the emergence of ultra or super intelligence—as it is currently labelled—or in other words of singularity, somewhere between 20 and 50 years from today, further raising the sentiment of emergency.16 We cannot even foretell with precision how singularity would look like but we know that because of its expected groundbreaking impact, both states and private entities compete towards gaining the upper hand in the prospect of the singularity.17

Despite the fact that such predictions have been proven rather optimistic in the past18 and therefore up to some extent inaccurate, there are reasons to assume that their materialization will take place and that the urgency of regulation will be proven realistic.

After all, part of the disappointments from AI should be blamed on the fact that certain activities and standards, which were considered as epitomes of human intelligence have been surpassed by AI, only to indicate that they were not eventu- ally satisfactory thresholds for the surpassing of human intelligence.19 Partially because of AI progress we realize that human intelligence and its thresholds are much more complicated than assumed in the past.

The vastness’s of deﬁnitions of intelligence, as well as its etymological roots are enlightening of the difﬁculties: “to gather, to collect, to assemble or to choose, and to form an impression, thus leading one to ﬁnally understand, perceive, or know”.20

As with other relevant concepts, the truth is that until recently our main way to approach intelligence for far too long was “we know it, when we see it”. AI is an additional reason for looking deeper into intelligence and the more we examine it, the most complicated it seems.

The combination of lack of complete understanding of intelligence, the unpredictability of AI, its rapid evolution and the prospect of singularity explain both the fascination and the fear from AI. Once the latter emerges, we have no real knowledge about what will happen next but only speculations, which until recently belonged to the area of science ﬁction.

We are for example pretty conﬁdent that the speed of AI intelligence growth will accelerate, once self—improvement will have been achieved. The expected or possible chain of events will begin from AI capacity to re-write its own algorithms and exponentially self—improve, surpassing human intelligence, which lacks the capacity of such rapid self—improvement and setting its own goals.21

We can somehow guess the speed of AGI and ASI evolution and possibly some of its initial steps but we cannot guess the directions that such AI will choose to follow and the characteristics that it will demonstrate. Practically, we credibly guess the prospects of AI beyond a certain level of development.

Two existential issues could emerge: ﬁrst, an imbalance of intelligence at our expense—with us, humans becoming the inferior species—in favor of non-biological entities and secondly a lack of even fundamental conceptual communication between the two most intelligent “species”. Both of them heighten the fear of irreversible changes, once we lose the possession of the superior intelligence.22

However, we need to consider the expectations as well. The positive side focuses on the so-called friendly AI, meaning AI which will beneﬁt and not harm humans, thanks to its advanced intelligence.23

AI bears the promise of signiﬁcantly enhancing human life on various aspects, beginning from the already existing, narrow applications. The enhanced automation24 in the industry and the shift to autonomy,25 the take—over by AI of tasks even at the service sector which can be considered as “tedious”—i.e. in the banking sector—climate and weather forecasting, disaster response,26 the potentially better cooperation among different actors in complicated matters such as in matters of information, geopolitics and international relations, logistics, resources ex.27

The realization of the positive expectations depends up to some extent upon the complementarity or not, of AI with human intelligence. However, what friendly AI will bring in our societies constitutes a matter of debate, given our lack of unanimous approach on what should be considered as beneﬁcial and therefore friendly to humans—as is analyzed in the next chapter.

Friendly AI for example bears the prospect of freeing us from hard labor or even further from unwanted labor; of generating further economic growth; of dealing in unbiased, speedy, effective and cheaper ways with sectors such as policing, justice, health, environmental crisis, natural disasters, education, governance, defense and several more of them which necessitate decision-making, with the involvement of sophisticated intelligence.

The synergies between human intelligence and AI “promise” the enhancement of humans in most of their aspects. Such synergies may remain external—humans using AI as external to themselves, in terms of analysis, forecasts, decision—making and in general as a type of assistant-28 or may evolve into the merging of the two forms of intelligence either temporarily or permanently.

The second profoundly enters humanity, existentially—speaking, into uncharted waters. Elon Musk argues in favor of “having some sort of merger of biological intelligence and machine intelligence” and his company “Neuralink” aims at implanting chips in human brain. Musk argues that through this way humans will keep artiﬁcial intelligence under control.29 The proposition is that of “mind design”, with humans playing the role that God had according to theologies.30

While the temptation is strong—exceeding human mind’s capacities, far beyond what nature “created”, by acquiring the capacity for example to connect directly to the cyberspace or to break the barriers of biology31—the risks are signiﬁcant too: what if a microchip malfunction? Will such a brain be usurped or become captive to malfunctioning AI?

The merging of the two intelligences is most likely to evolve initially by invoking medical reasons, instead of human enhancement. But the merging of the two will most likely continue, as after all the limits between healing and enhancement are most often blurry. This development will give rise, as is analyzed below, to signif- icant questions and issues, the most of crucial of which is the setting of a threshold for the prevalence of the human aspect of intelligence over the artiﬁcial one.

Human nature is historically improved, enhanced, healed and now, potentially even re-designed in the future.32 Can a “medical science” endorsing such a goal be ethically acceptable and if yes, under what conditions, when, for whom and by what means? The answers are more difﬁcult than it seems. As the World Health Organi- zation—WHO—provides in its constitution, “Health is a state of complete physical, mental and social well-being and not merely the absence of disease or inﬁrmity”.33

Therefore, why discourage science which aims at human-enhancement, even reaching the levels of post-humanism?34 Or if restrictions are to be imposed on human enhancement, on what ethics and laws will they be justiﬁed? How ethically acceptable is it to prohibit or delay technological evolution, which among several other magniﬁcent achievements, promises to treat death as a disease and cure it, by reducing soul to self, self to mind, and mind to brain, which will then be preserved as a “softwarized” program in a hardware other than the human body?35

After all, “According to the strong artiﬁcial intelligence program there is no fundamental difference between computers and brains: a computer is different machinery than a person in terms of speed and memory capacity.”36

While such a scientiﬁc development and the ones leading potentially to it will be undoubtedly, groundbreaking technologically-speaking, is it actually—ethically- speaking—as ambivalent as it may sound or is it already justiﬁed by our well— rooted human-centrism?37

Secular humanism may have very well outdated religious beliefs about afterlife in the area of science but has not diminished the hope for immortality; on the contrary, science, implicitly or explicitly predicts that matter can in various ways surpass death, albeit by means which belong in the realm of scientiﬁc proof, instead of that of metaphysical belief.38

If this is the philosophical case, the quest for immortality becomes ethically acceptable; it can be considered as embedded both in the existential anxiety of humans, as well as in the human-centrism of secular philosophical and political victory over the dei-centric approach to the world and to our existence.

From another perspective of course and for the not that distant philosophical reasons, the quest for immortality becomes ethically ambiguous or even unacceptable.39 By seeking endless life we may miss all these that make life worth living in the framework of ﬁniteness. As the gerontologist Paul Hayﬂick cautioned “Given the possibility that you could replace all your parts, including your brain, then you lose your self-identity, your self-recognition. You lose who you are! You are who you are because of your memory.”40

In other words, once we begin to integrate the two types of intelligence, within ourselves, until when and how we will be sure that it is human intelligence that guides us, instead of the AI? And if we are not guided completely or—even further—at all by human intelligence but on the contrary we are guided by AI which we have embodied and which is trained by our human intelligence, will we be remaining humans or we will have evolved to some type of meta-human or transhumant species, being different persons as well?41

AI promises tor threatens to offer a solution by breaking down our consciousness into small “particles” of information—simplistically speaking—which can then be “software-ized” and therefore “uploaded” into different forms of physical or non-physical existence.

Diane Ackerman states that “The brain is silent, the brain is dark, the brain tastes nothing, the brain hears nothing. All it receives are electrical impulses--not the sumptuous chocolate melting sweetly, not the oboe solo like the ﬂight of a bird, not the pastel pink and lavender sunset over the coral reef--only impulses.”42 Therefore, all that is needed—although it is of course much more complicated than we can imagine—is a way to code and reproduce such impulses.

Even if we consider that without death, we will no more be humans but something else, why should we remain humans once technologies allow us be something “more”, in the sense of an enhanced version of “being”? Why are we to remain bound by biological evolution if we can re-design it and our future form of existence?

Why not try to achieve the major breakthrough, the anticipated or hoped digita- lization of the human mind, which promises immortality of consciousness via the cyberspace or artiﬁcial bodies: the uploading of our consciousness so that it can live on forever, turning death into an optional condition.43

Either through an artiﬁcial body or emulation-a living, conscious avatar—we hope—or fear—that the domain of immortality will be within reach. It is the prospect of a “substrate-independent minds,” in which human and machine consciousness will merge, transcending biological limits of time, space and mem- ory” that fascinates us.44

As Anders Sandberg explained “The point of brain emulation is to recreate the function of the original brain: if ‘run’ it will be able to think and act as the original,” he says. Progress has been slow but steady. “We are now able to take small brain tissue samples and map them in 3D. These are at exquisite resolution, but the blocks are just a few microns across. We can run simulations of the size of a mouse brain on supercomputers—but we do not have the total connectivity yet. As methods improve, I expect to see automatic conversion of scanned tissue into models that can be run. The different parts exist, but so far there is no pipeline from brains to emulations.”45

The emulation is different from a simulation in the sense that the former mimics not only the outward outcome but also the “internal causal dynamics”, so that the emulated system and in this particular case the human mind behaves as the original.46 Obviously, this is a challenging task: we need to understand the human brain with the help of computational neuroscience and combine simpliﬁed parts such as simulated neurons with network structures so that the patterns of the brain are comprehended. We must combine effectively “biological realism (attempting to be faithful to biology), completeness (using all available empirical data about the system), tractability (the possibility of quantitative or qualitative simulation) and understanding (producing a compressed representation of the salient aspects of the system in the mind of the experimenter)”.47

The technological challenges are vast. Technologically speaking, the whole concept is based on some assumptions which must be proven both accurate and feasible.48 We must achieve technology capable of scanning completely the human brain, of creating software on the basis of the acquired information from its scanning and of the interpretation of information and the hardware which will be capable of uploading or downloading such software.49 The steps within these procedures are equally challenging. Their detailed analysis evades the scope of this book.

Some critical questions—they are further analyzed in the next chapters—emerge however: how will we interpret free will in emulation? What will be the impact of the environment and of what environment? How will be missing parts of the human brain re-constructed and emulated? What will be the status of the several emulations which will be created—i.e. failed attempts or emulations of parts of the human brain—in the course of the search for a complete and functioning emulation? Will they be considered as “persons” and therefore as having some right or will they be considered as mere objects in an experimental lab? How are we going to decode the actual subjective sentiments of these emulations? Essentially, are emulations the humans “themselves” who are emulated or a different person? Even further what will human and person mean in the era of emulation?

From a different perspective, the victory over death may be seen as a danger of mass extinction, absorption or de-humanization. In this new, vast universe of emulations will there be place for humans?50

From the above—mentioned discussion, it becomes obvious that at a large extent, the prospect of risk or of expectation is a matter of perspective, for which there is no unanimous agreement in the present. This may be the greatest danger of all, for which Asimov warned us: unleashing technology while we cannot communicate among us, in the face of it.

The existential prospect as well as the risks by AI may self-evidently emerge from technological advances but are determined on the basis of politico—philosophical or in the wider sense, ethical assumptions. This is where the need for legal regulation steps in. Such a need was often underestimated in the past in favor of a solely technologically oriented approach—although exceptions raising issues other than technological can be found too.51 The gradual raising of ethic—political, philosoph- ical and legal issues constitutes a rather recent development, partially because of the realization of the proximity of the risks and of the expectations.

The public debate is often divided between two “contradictory” views: fear of AI or enthusiastic optimism. The opinions of the experts differ respectively.

Kurzweil, who has come with a prediction for a date for the emergence of singularity—until 2045—expects such a development in a positive way: “What’s actually happening is [machines] are powering all of us,” Kurzweil said during the SXSW interview. “They’re making us smarter. They may not yet be inside our bodies, but, by the 2030s, we will connect our neocortex, the part of our brain where we do our thinking, to the cloud.”52

In a well-known article—issued on the occasion of a ﬁlm—Stephen Hawking, Max Tegmark, Stuart Russell, and Frank Wilczek shared a moderate position: “The potential beneﬁts are huge; everything that civilization has to offer is a product of human intelligence; we cannot predict what we might achieve when this intelligence is magniﬁed by the tools AI may provide, but the eradication of war, disease, and poverty would be high on anyone’s list. Success in creating AI would be the biggest event in human history. . . Unfortunately, it might also be the last, unless we learn how to avoid the risks.”53

### PTX DA

#### Reconciliation is the only feasible way to avoid debt default---infrastructure set the stage for future negotiations

Sabrina Escobar 11-10 [Barrons, "What Are the Chances for Another Debt Ceiling Showdown? Experts Say Markets Shouldn't Worry," accessed 11-10-2021, https://www.barrons.com/articles/debt-ceiling-showdown-stock-market-51636558004, hec]

But experts said there has been an important shift in the political environment since the last debt battle. Democrats have since passed the trillion-dollar infrastructure plan, and have narrowed down a top-line for President Joe Biden’s social spending bill—two key moves that will give party leaders more space to negotiate a long-term debt ceiling resolution, said James Lucier, analyst at Capital Alpha. Investors may also be assuaged by a shift in the political environment since October, when Senate Majority Leader Chuck Schumer was trying to harness all his bargaining power for the Democrats’ social spending legislation amid a razor-thin majority in Congress. “It would have been an opportunity for the Joe Manchins of the world to say, ‘Hey, I am not going to vote yes unless you promise to me that the top-line of the bill was cut,'” Lucier said. Democrats are thus more willing to raise the debt ceiling through the reconciliation process, with Treasury Secretary Janet Yellen saying it was a viable option to avoid defaulting, and House Speaker Nancy Pelosi saying it was “one path.” “This has gone for existential threat to, you know, a serious procedural problem,” Lucier said.

#### Antitrust reform requires PC and trades off

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

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

**Cascades to multiple intersecting existential risks** – including nuclear wars, environmental destruction, and critical infrastructure – **AND turns case** – including implementation and enforcement capacity, alliances and authoritarianism

--VUCA = volatility, uncertainty, complexity, and ambiguity

--JIT = just in time

**Maavak 21** (Mathew Maavak, consultant at Risk Foresight, specializing in Strategic Foresight, Contingency Planning, Perception/Crisis Management, Energy and Resource Geopolitics, Defense and Security Analysis, PhD policy studies, Universiti Teknologi Malaysia, MA International Communication, University of Leeds, “Horizon 2030: Will Emerging Risks Unravel Our Global Systems?” Salus Journal, 9(1), 2021, https://salusjournal.com/wp-content/uploads/2021/04/Maavak\_Salus\_Journal\_Volume\_9\_Number\_1\_2021\_pp\_2\_17.pdf)

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

[FIGURE 1 OMITTED]

Figure 1: Systemic Emergence of Global Risks

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

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

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

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

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

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

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

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

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

ENVIRONMENTAL

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

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

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

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

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

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

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

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

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

GEOPOLITICAL

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

Contemporary **geopolitical risks** include a possible **Iran-Israel war**; **US-China military confrontation** over **Taiwan** or the **S**outh **C**hina **S**ea; **No**rth **Ko**rean **prolif**eration of **nuclear** and **missile tech**nologies; an **India-Pakistan** **nuclear war**; an Iranian closure of the Straits of Hormuz; fundamentalist-driven implosion in the Islamic world; or a **nuclear confrontation** between **NATO and Russia**. Fears that the Jan 3 2020 assassination of Iranian Maj. Gen. Qasem Soleimani might lead to WWIII were grossly overblown. From a systems perspective, the killing of Soleimani did not fundamentally change the actor-interconnection-interaction-adaptivity equation in the Middle East. Soleimani was simply a cog who got replaced.

Geopolitics will still be dictated by major powers. However, how will the vast majority of nations fare during this VUCA decade? Many “emerging nations” have produced neither the intelligentsia nor industries required to be future-resilient. Raw materials and cheap labour cannot sustain anaemic societies in a volatile world. Advances in material sciences and robotic automation as well as technological “ephemeralization” (Fuller, 1938; Heylighen, 2002) may shift manufacturing back to the Developed World.

In an attempt to mask the looming redundancy of these nations, untold billions have been wasted on vanity studies, conferences and technological initiatives drawn up by an army of neoliberal experts and native proxies. Risks were rarely part of the planning calculus. National and regional blueprints ranging from Malaysia’s Vision 2020, Saudi Vision 2030, ASEAN 2025 to Africa 2030, amongst others, will fail just as their innumerable precursors did.

The author defines a redundant nation as one which persistently lacks a comprehensive brain bank and an adaptive governance structure in order to be future-resilient. Redundant nations are preludes to failed states. They will lack native ideations and coherent policies that are critically needed in a VUCA decade. While policies intended to “promote growth in developing countries” had traditionally acted “as agents for conflict prevention” (Humphreys, 2003), the trade-off was often bureaucratic overgrowth, corruption, ethnoreligious discrimination and resource wastages.

Attempts to re-use these nations as geopolitical proxies a la the Cold War may prove too costly for potential sponsors. The Fat Leonard scandal (Whitlock, 2016) in Southeast Asia – which entrapped senior US naval officers in a web of sleaze – may be a harbinger of similar breaches on friendly territory, particularly as China’s Belt and Road Initiative (BRI) challenges US geopolitical hegemony worldwide. The BRI however snakes through many potentially redundant nations and may expose China to a “death by a thousand cuts” via geo-economic extortion. Beijing’s recent attempts to portray itself as a humanitarian superpower has somewhat backfired after numerous defects were discovered in its “medical aid” exports (Kern, 2020).

Ultimately, one should not underestimate the possibility, however remote, of national boundaries being redrawn before the Great Reset period is over. The global map was different only 100 years back. The once-mighty Soviet Union no longer exists while its former nemesis, the United States, faces social clefts of ominous proportions. Alarming parallels are now being drawn between the inauguration of President Abraham Lincoln on March 4, 1861 – which led to the US civil war – and the swearing in of Joe Biden as 46th President of United States on Jan 20 2021 (Waxman, 2021). How will a **weakened U**nited **S**tates affect **NATO** and the **larger** **Western-led** **global alliance**?

SOCIETAL

The WEF (2017) had pencilled “global social instability” as the biggest threat facing our collective future. A similar outcome was gamed out in a 2007 study by the Development, Concepts and Doctrine Centre at the United Kingdom Ministry of Defence (DCDC, 2007).

According to Peter Turchin (2016), a professor of Evolutionary Biology at the University of Connecticut, the **U**nited **S**tates may experience “a period of **heightened** social and political instability during the 2020s” – marked by **governmental dysfunction**, societal **gridlock** and **rampant political polarization**. To blame this phenomenon on the presidency of Donald J. Trump is to wilfully ignore the gradual build-up of various fissiparous forces over decades.

The social media plays a force multiplier role here. While risks metastasize at the bedrock levels of society, policymakers are constantly distracted from the task of governance by a daily barrage of recriminations, fake news and social media agitprops. As a result, longterm policy imperatives are routinely sacrificed for immediate political gains. The importunate presidential impeachment sagas and electoral fraud accusations in the United States are reflective of wider social fissures, state fragilities and policy paralyses worldwide.

There is nothing new in this panem et circenses (bread and circuses) phenomenon. Juvenal had noted a similar trend during Rome’s imperial decline circa 100 A.D. Recently, despite clear signals that the world was facing an economic catastrophe, the United Nations seemed more focused on the discovery of gender bias in virtual assistant software like Siri and Alexa (UNESCO, 2019). How will this revelation benefit the bottom 99% of humanity in dire economic conditions; one where the victims will be preponderantly women and children?

Just like in Imperial Rome, bread and circuses are symptomatic of an economic system that relentlessly benefits the elite. The mountain is ignored and the molehill is prioritized through controlled public narratives. The issue of “stolen childhoods”, for example, is now couched in terms of climate change rather than on sexual exploitation. Few take note that nearly “100,000 children – girls and boys – are bought and sold for sex in the U.S. every year, with as many as 300,000 children in danger of being trafficked each year.” Child rape, as John Whitehead (2020) further notes, has become “Big Business in America.” Not surprisingly, human trafficking has emerged as a $150 billion global industry (Niethammer, 2020).

Such shocking human rights failures do not figure prominently in the calculus of various “social justice” movements. The Top 1% needs their “useful idiots” – a phrase misattributed to Lenin – to generate a constant supply of distractions. Activist-billionaire George Soros, for example, is pumping $1 billion into a global university network to “fight climate change” and “dictators” which curiously include elected leaders such as former US President Donald J. Trump and India’s Prime Minister Narendra Modi. These “academically excellent but politically endangered scholars” (Open Society, 2020), as Soros calls them, may turn out to be the very disruptors who will “undermine scientific progress” in the West – just as Turchin (2016) predicted in his seminal study. Soros’ pledge was coincidentally made when COVID19 began to decimate the global economy and healthcare systems. Elite philanthropy is now an avenue for global subversion. An assortment of scholars, government officials and NGOs are already channelling the agendas of their well-pocketed patrons, backed by Big Tech’s control of the mainstream and social media (Maavak, 2020c). Their narratives are reminiscent of giddy sophistries which fuelled a variety of communist and anarchist movements during the build-up to WWII.

Under these circumstances, some nations may eventually seal their borders and initiate **authoritarian measures** in order to **maintain internal stability**. This is no longer an unthinkable proposition as dissatisfaction with democracy has peaked worldwide (Foa et al, 2020). Measures **perfected by COVID-19 lockdowns** may have inadvertently served as a test run in this regard.

## Access Advantage

### \*Circumvention---1NC

#### Courts circumvent---they ignore intent and reject plain meaning

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

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

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

### AT: Opoids/Cartels IL---1NC

#### Drugs not key to cartels or violence---they’ve diversified.

Stephanie Leutert 16, Director of the Mexico Security Initiative at the University of Texas at Austin, “Fewer Drugs Doesn't Necessarily Mean Less Violence,” 10/20/16, https://www.lawfareblog.com/fewer-drugs-doesnt-necessarily-mean-less-violence

The article has prompted a range of responses, most of which argue that the blame should be placed squarely with prohibition policies rather than users (see here and here). But there’s an antecedent problem: the piece’s central premise that if Americans would just use fewer drugs, we’d see less violence.¶ If only it were so straightforward.¶ Mexico’s organized criminal groups are no longer mere drug traffickers, whose singular revenue streams would disappear if Americans kicked their drug habits. Instead, over the past decade, Mexico’s criminal groups have moved rapidly into a wide range of illicit activities, such as extortion, stealing oil, kidnapping, and taxing migrant smugglers. They’ve even gained a foothold in what used to be informal or even legal markets: pirated CDs, limes and avocados, and used cars, for example.¶ These are not just drug cartels any more. Most of them are diversified non-industrial criminal conglomerates of a sort. Think Samsung, only with guns and murder instead of heavy industry.¶ To really understand the real world effect that fewer drug dollars would have on Mexico’s violence, we’d need to know how much money these groups make overall and how much of it comes from drugs. Sound simple? It shouldn’t. Measuring any illicit market or activity is notoriously difficult and imprecise.¶ Plus if figuring out even the total amount of drug money is tough, trying to decipher how much cartels reap from their other illicit activities is even harder. Many of these activities (like extortion and kidnapping) are never reported and there are few indicators or reliable surveys to get a sense of the true and up to date scope. But lucky for us, analysts and scholars haven’t stopped trying, and their estimates help us get a sense of these activities importance.¶ Let’s take the Knights Templar cartel in Michoacán as an example. Back in their violent heyday a few years ago, the group’s number one revenue source was not the methamphetamines or cocaine that they trafficked, but rather the state’s mining industry. This was followed by their extortion of other industries, with the group illegally taxing an estimated 85 percent of Michoacán businesses, and then illegal logging. This means that stripping the Knights Templar of any drug revenues would have hurt the group’s bottom line, but certainly wouldn’t have been a coup de grace.¶ This brings us to one more important factor to consider when thinking about the effect of decreased drug money on violence in Mexico: revenue distribution.¶ Some of the drug money filters back to Colombia or criminal groups in other countries, but the vast majority goes to Mexican drug traffickers, more specifically: the Sinaloa Cartel and increasingly the Cartel Jalisco New Generation (CJNG). This means that the effects from dried up drug money would hit these two big groups particularly hard. And as the New York Times’ op-ed notes, this is a very good thing.¶ However, as with the example of the Knights Templar, there are at least forty or more smaller groups operating in Mexico that lack a serious foothold in international drug trafficking networks. Instead, they also rely on the other criminal activities mentioned above to help line their pockets. And unfortunately, these groups are also to blame for large chunks of Mexico’s violence.

### \*A2: Draw-In---1NC

#### No chance of great-power draw-in to Latin America.

---it’s unimportant strategically, has no money, US isn’t reliant on them for anything and there’s no way Biden who is pulling out of wars would start another messy one over Mexico

Malamud & Schenoni 20, \*Andrés, a senior research fellow at the Institute of Social Sciences of the University of Lisbon, Portugal. Twitter: @andresmalamud Luis L., upcoming research fellow at the University of Konstanz, Germany. (9-10-2020, "Latin America Is Off the Global Stage, and That's OK", *Foreign Policy*, https://foreignpolicy.com/2020/09/10/latin-america-global-stage-imperialism-geopolitics/)

But well into the 21st century, what if Latin America is so unimportant it isn’t even on the menu? Compare it with other decolonized, developing regions. Today, Africa is home to a fifth of humanity, and demographic trends suggest it might become a serious driver of global economic growth in a couple of decades. On the flipside, extreme poverty makes it a ticking bomb, with millions of people just a boat away from aging Europe. This means that, for better or worse, Africa is becoming increasingly geopolitically relevant in the eyes of the great powers.

This assessment applies even more clearly to Asia and the Middle East. Asia is the current driver of global economic growth and hosts the only challenger to American hegemony, which is winding up in quarrels with all of its neighbors. The Middle East has the largest energy reserves in the world and remains the epicenter of violent political conflict. In contrast, Latin America is declining in both economic weight and political relevance. It offers less promise and poses a smaller threat, and therefore is unlikely to be either courted or feared. Yet, you may think, it could still be eaten.

What in Latin America could still make the great powers’ mouth water? Early in the unipolar moment, the region was still relatively special to the United States thanks to the combination of energy, migration, and cocaine. Oil from Venezuela, migrants from Mexico, and drugs from Colombia were the main concerns. Today, the United States is close to self-sufficiency in both energy and drugs, and Mexico is retaining not only its own population but Central American refugees as well.

Direct intervention has long become unnecessary. Historically the United States has intervened, either overtly or covertly, to prevent extra-regional powers from meddling in the Western Hemisphere. But this is not the case with China—and is unlikely to be. In 2016, one of us published a collective study showing how Beijing filled the void left by a diminished U.S. presence in the region without threatening U.S. strategic interests. Since then, despite heightened rhetoric about a “troika of tyranny” (of Cuba, Nicaragua, and Venezuela) backed by Beijing, or perhaps because of it, China has turned inward and backed off on its economic statecraft.

### \*A2: Mexico Collapse---1NC

#### Obrador locks in Mexico collapse

Casteneda 21 [Jorge, secretary of foreign affairs from 2000-2003, former presidential candidate, Mexico leading intellectual, The U.S. Needs To Wake Up To A Failing Mexico, https://www.noemamag.com/the-u-s-needs-to-wake-up-to-a-failing-mexico/, poapst]

Jorge Castañeda, one of Mexico’s leading intellectuals and a former presidential candidate, was secretary of foreign affairs from 2000-2003. Among his many books are “Utopia Unarmed: The Latin American Left After the Cold War,” “Mañana Forever?: Mexico and the Mexicans” and, most recently in 2020, “America Through Foreign Eyes.” He recently spoke with Noema editor-in-chief Nathan Gardels. This interview has been edited for length and clarity. Gardels: You were a key figure in Mexico’s transition from 71 years of one-party rule by the PRI (Partido Revolucionario Institucional) to democracy in the late 1990s, and you joined the first post-PRI government. Going back to ancient Greece and Rome to the American founding fathers, democracy has been distrusted because it so often opens the way for demagogues — as it is now in our times with Donald Trump and Mexican President Andrés Manuel López Obrador, among others. In López Obrador’s case, he has the highest approval ratings of any leader in the Americas, reaching nearly 60%. That is far higher than Trump ever got. Why is he so popular? Castañeda: His approval ratings, between 55% and 60% in most polls, are almost exactly the same as former Presidents Vicente Fox and Felipe Calderón at the same point in their terms, albeit under perhaps less adverse circumstances. His policies, however, are deeply unpopular, whether on the economy, security and crime, education or fighting corruption. Personally, he is well-liked by half of the electorate and strongly disliked by the other half. This is in part Mexican tradition, in part a rejection of the past, in part his skill at dominating the agenda every morning, with his 7 a.m. press conferences and keeping the opposition off balance. He is an excellent communicator — albeit by pandering to Mexican society’s worst instincts — and a terrible ruler. “The current Mexican state is smaller, weaker and as corrupt as before, but under López Obrador it has become, in addition, much more incompetent.” Facebook Twitter Email Gardels: In what ways is he so disastrous for Mexico, in your view? Castañeda: The international media have highlighted his horrendous mismanagement of the pandemic, placing Mexico just behind Ecuador and Peru in excess deaths per inhabitant, along with a slow vaccination process. His cancelation of the Mexico City airport, which is only half-finished, without prosecuting anyone — in government or contractors — for the purported corruption it involved, discouraged private investment even before he took office. It has led, according to many analysts, to small negative growth in 2019, an 8.5% contraction in 2020 and practically zero growth for his six-year term as a whole. Lastly, López Obrador’s drug policy of “hugs, not bullets,” which implies a tacit or explicit truce with some of the cartels, is the worst of both worlds. He has adopted a policy of benign neglect toward some cartels (shaking hands with El Chapo’s mother in public and freeing his son after he had been captured by the army) without obtaining anything from them in return. Largely for this reason, the level of homicides is higher than ever, more than three times what it was under Fox and nearly twice the average under Calderón and López Obrador’s predecessor Enrique Peña Nieto. Gardels: In a recent article in Foreign Policy, you criticized U.S. President Joe Biden’s policy on Mexico — aid for southern Mexico and the northern triangle of Central American countries — as part of a one-dimensional approach that, following Trump, only focuses on immigration flows and the border. As you put it: “López Obrador is playing Washington with his control over the tap of Central American refugees” in return for its northern neighbor ignoring all else he is doing. “No one should need reminding that there are barely 30 million people in the northern triangle, whereas there are nearly 130 million in Mexico. With López Obrador at the height of his power and folly, for Washington to view its neighbor only through the lens of immigration could be labeled reckless. … [T]he real long-term challenge for the United States — Mexican economic, political, and social stability, with its obvious repercussions north of the border — will get dramatically harder to manage.” Since all presidents and political parties in Mexico have fiercely resisted American meddling in domestic affairs, what could the U.S. actually do — specifically — to curb López Obrador’s mismanagement? Castañeda: “All” and “fiercely” are words that are both too big. The U.S. has meddled constantly in Mexican affairs since at least 1836, and many Mexican presidents have used U.S. meddling to further their own ends. But in terms of specific policies the U.S. could pursue, first, Washington should clearly and publicly place several non-traditional items on the agenda: the rule of law, human rights and democracy, Mexican macro-economic policy and Mexican pandemic management. Second, it should follow the same “two-track” approach that it theoretically adopted with Russia and China: State disagreements explicitly, confront when necessary and cooperate when possible and desirable. Third, Washington should continue and even increase its support for Mexican civil society organizations, whether they focus on anti-corruption matters, human rights and freedom of the press, gender issues, climate change and renewable energy — regardless of whether López Obrador likes them or not, and even if he demands an end to American support for these groups. “The U.S. should follow the same ‘two-track’ approach that it theoretically adopted with Russia and China: State disagreements explicitly, confront when necessary and cooperate when possible and desirable.” Gardels: Absent any changes on this front, is it an exaggeration to say that Mexico is headed toward becoming a failed state? After all, one of the key definitions of a failed state is the authorities not having a monopoly on violence. Mexico has been spinning out of control in this way for many years now. What can be done? Castañeda: The Mexican state has never possessed a complete monopoly on the use of force. It has never controlled every inch of territory throughout the country. The issue really is whether it is more or less a functional state than before. If the answer is less — I tend to think so — then the question is different. Is the weakening of the Mexican state a product of collapse and the strengthening of the cartels, or simply that the democratization that began in 1997 made the previous state machinery dysfunctional, and a new one has not yet been constructed? I tend to think it’s the latter. The current Mexican state is smaller, weaker and as corrupt as before, but under López Obrador it has become, in addition, much more incompetent. Lower salaries and fringe benefits, political appointments, witch hunts and partisanship have taken a weaker, more democratic state and transformed it into a nearly failed one. If things continue along their present course, López Obrador will hand over a failed state to his successor: not Venezuela or Cuba, but something more like Argentina, with three times as many inhabitants and a border with the United States.

### 1NC No Readiness Impact

#### No readiness impact

John Mueller 16, Woody Hayes Senior Research Scientist, Mershon Center for International Security Studies; Adjunct Professor, Department of Political Science, Ohio State University, 6/5/16, “Embracing Threatlessness: US Military Spending, Newt Gingrich, and the Costa Rica Option,” <http://politicalscience.osu.edu/faculty/jmueller/CNArestraintCato16.pdf>

The United States seems to be substantially free from threats that require a great deal of military preparedness.

To begin with, it really seems time to consider the consequences of the fact that a conflict like World War II is extremely unlikely to recur. Spending a lot of money for an eventuality—or fantasy—of ever-receding likelihood is highly questionable. Some envision threat in China’s rapidly-increasing prosperity. But, although its oft-stated desire to incorporate (or re-incorporate) Taiwan into its territory should be watched, armed conflict would be extremely—even overwhelmingly—costly to the country. And Chinese leaders, already rattled by internal difficulties, seem to realize this. Russia’s recent assertiveness bears watching, but it does not suggest that the game has been crucially changed. It might make sense to maintain a containment and deterrent capacity against rogue states in formal or informal coalition with other concerned countries. However, the military requirements for the task are limited. Humanitarian intervention with military force is unlikely due to a low tolerance for casualties in such ventures, an increasing aversion to the costs of nation-building, and the lack of political gain from successful ventures. Concern about nuclear proliferation is overwrought: long experience suggests that when countries obtain the weapons, they “use” them only to stoke their national ego and to deter real or imagined threats. Europe seems to face no notable threats of a military nature, the Taiwan/China issue remains a fairly remote concern, and Israel’s primary problems derive from the actions of sub-state groups. The military relevance of the terrorism “threat” has been substantially exaggerated, and it mainly calls for policing and intelligence work and perhaps for occasional focused strikes by small units.

### No Defo Impact---1NC

#### No impact to defo

Hannah Voak 16, Assistant Ecologist, Nurture Ecology Ltd., 4/22/16, “A World Without Trees,” <http://www.scienceinschool.org/content/world-without-trees>

There are approximately 3.04 trillion trees on planet Earth (Crowther et al, 2015), covering 31% of the world’s land surfacew1. Today, for Earth day, we’re taking a look at trees. Around 15 billion trees are cut down each year. So, hypothetically speaking, it would take just over 200 years for the world’s forests to completely disappear. While this scenario is unlikely, what would be the consequences of a tree-free planet? Let’s start with perhaps the most obvious difference – oxygen concentration. A lack of oxygen? Oxygen makes up roughly 21% of the Earth’s atmosphere, but you probably know that already. What you might be surprised to find out, however, is that only half of this oxygen is produced through photosynthesis in trees and other plants on land. The other half is produced in oceans, by microscopic marine organisms called phytoplankton. The environment would not be devoid of oxygen if all trees were lost but the oxygen level would be lower. Would it be sufficient for humans to survive? In one year, a mature leafy tree produces as much oxygen as ten people breathe. If phytoplankton provides us with half our required oxygen, at current population levels we could survive on Earth for at least 4000 years before the oxygen store ran empty. However, that’s not considering a number of other factors: increasing population size, for example, would reduce the amount of oxygen available, whilst phytoplankton blooms due to an abundance of carbon dioxide could increase oxygen levels. Suffocating smog Whilst there may be enough oxygen for humans to survive on Earth, at least to begin with, the air we breathe could still be responsible for our demise. Like giant filters, trees help to cut down on pollution levels. Leaves intercept airborne particles and ozone, carbon monoxide, sulfur dioxide and other greenhouse gases are absorbed through the leaves stomata. In 2012, outdoor air pollution was estimated to cause 3.7 million premature deaths worldwidew2. Imagine the impact removing these environmental sieves would have on humankind. Air-pollution masks would become a necessity and bottled ‘clean air’ could come at a premium. Full of hot air? Armed with pollution masks, would the climate and temperature still be suitable for us? One important consideration is carbon dioxide. In one year, an acre of mature trees soaks up the same amount of carbon dioxide that we produce by driving the average car 26 000 miles. Since human activities like this increase the normal level of carbon dioxide in the atmosphere, cutting down trees would tip the balance even further, not to mention the enormous amount of stored carbon that would be released from doing so. Deforestation is already responsible for up to 15% of global greenhouse gas emissions and you might think that an overwhelming increase in carbon dioxide would result in a much warmer planet. However, the relationship between trees and global temperature is much more complicated. Energy and water fluxes between trees and the atmosphere also play a role and a tree’s colour, for example, can affect the amount of the Sun’s energy that is absorbed or reflected. Studies have shown that Europe’s trees have actually caused a slight increase in regional temperatures since 1750w3, while transpiration from plants in tropical forests cools the surface temperature. Therefore, whether the temperature becomes too hot to handle could depend on many factors, although a recent study concluded that reducing forest size increases average air surface temperatures in all climate zones (Alkama & Cescatti, 2016).

### Biod D---1NC

#### No environmental collapse or extinction

Peter Kareiva 18, Ph.D. in ecology and applied mathematics from Cornell University, director of the Institute of the Environment and Sustainability at UCLA, Pritzker Distinguished Professor in Environment & Sustainability at UCLA, et al., September 2018, “Existential risk due to ecosystem collapse: Nature strikes back,” Futures, Vol. 102, p. 39-50

The interesting question is whether any of the planetary thresholds other than CO2 could also portend existential risks. Here the answer is not clear. One boundary often mentioned as a concern for the fate of global civilization is biodiversity (Ehrlich & Ehrlich, 2012), with the proposed safety threshold being a loss of greater than 0.001% per year (Rockström et al., 2009). There is little evidence that this particular 0.001% annual loss is a threshold—and it is hard to imagine any data that would allow one to identify where the threshold was (Brook, Ellis, Perring, Mackay, & Blomqvist, 2013; Lenton & Williams, 2013). A better question is whether one can imagine any scenario by which the loss of too many species leads to the collapse of societies and environmental disasters, even though one cannot know the absolute number of extinctions that would be required to create this dystopia. While there are data that relate local reductions in species richness to altered ecosystem function, these results do not point to substantial existential risks. The data are small-scale experiments in which plant productivity, or nutrient retention is reduced as species numbers decline locally (Vellend, 2017), or are local observations of increased variability in fisheries yield when stock diversity is lost (Schindler et al., 2010). Those are not existential risks. To make the link even more tenuous, there is little evidence that biodiversity is even declining at local scales (Vellend et al., 2013, 2017). Total planetary biodiversity may be in decline, but local and regional biodiversity is often staying the same because species from elsewhere replace local losses, albeit homogenizing the world in the process. Although the majority of conservation scientists are likely to flinch at this conclusion, there is growing skepticism regarding the strength of evidence linking trends in biodiversity loss to an existential risk for humans (Maier, 2012; Vellend, 2014). Obviously if all biodiversity disappeared civilization would end—but no one is forecasting the loss of all species. It seems plausible that the loss of 90% of the world’s species could also be apocalyptic, but not one is predicting that degree of biodiversity loss either. Tragic, but plausible is the possibility of our planet suffering a loss of as many as half of its species. If global biodiversity were halved, but at the same time locally the number of species stayed relatively stable, what would be the mechanism for an end-of-civilization or even end of human prosperity scenario? Extinctions and biodiversity loss are ethical and spiritual losses, but perhaps not an existential risk.

## Econ Adv

### \*Spillover---2NC

#### The plan creates an abrupt shift and doctrinal instability in antitrust that spills over throughout the economy---it’s impossible to distinguish specific industries because, unlike regulation, it’s enforced in generalist common law

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I. GOING BEYOND ADJUDICATION FOR ANTITRUST ENFORCEMENT

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

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

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

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

B. Slow, Usually Predictable Doctrinal Development

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

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

C. Market-Driven Case Selection

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

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

D. Generalists versus Industry Experts

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

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

E. Tradeoffs Inherent in the Adjudicatory Approach to Antitrust

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

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

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

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

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

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

#### Unpredictable shifts ruin biz con AND overall growth---turns the advantage---we have a bigger internal link

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### AT: Prices---1NC

#### Antitrust doesn’t solve prices

Christine S. Wilson & David A. Hyman 20, Wilson is a commissioner of the Federal Trade Commission. Hyman is the Scott K. Ginsburg Professor of Health Law & Policy at Georgetown University School of Law and former commissioner of the Federal Trade Commission, 7-10-2020, "Pharma pricing is a problem, but antitrust isn't the (only) solution," The Hill, https://thehill.com/blogs/congress-blog/healthcare/506763-pharma-pricing-is-a-problem-but-antitrust-isnt-the-only?rl=1

As current and former FTC officials, we believe these proposals represent a flawed approach. The notion that the FTC should **prevent mergers absent evidence** of an **antitrust violation** is deeply misguided – and jeopardizes the FTC’s impressive winning streak based on the many cases it has brought. During the past five years, the Commission has challenged 14 pharmaceutical mergers and required companies to divest 131 drugs. Beyond mergers, in 2013 the FTC won a landmark victory at the Supreme Court in FTC V. Actavis, essentially eliminating anticompetitive patent litigation settlements. And in January, the FTC sued Vyera Pharmaceuticals and “pharma bro” Martin Shkreli. These efforts result in massive savings for consumers and taxpayers; just ending reverse payments in patent litigation settlements saves $3.5 billion each year.

Still, **drug prices continue to rise**, especially for new drugs debuting at prices once considered unimaginable. For example, Zolgensma, a gene therapy for treating spinal muscular atrophy, has a list price of $2.1 million. Cancer drugs are so expensive that oncologists talk about “financial toxicity” as a side effect of treatment.

This is a particularly knotty problem for the elderly who receive health care coverage through Medicare and have been hard hit by COVID-19. The government is **prohibited** from using competitive bidding or direct **negotiation** when sourcing drugs for **Medicare Part B** — those administered by medical professionals. So drugmakers name their price and the federal government **must pay**.

Medicare **Part D** operates under a different model – companies use formularies to push down prices for outpatient drugs. Even that model **falls short** for drugs that do not yet face competition, and Part D is projected to cost more than $88 billion in 2020. Market exclusivity on so-called biologics like vaccines and insulin often **outlasts patent protection**, given the technological **challenges in creating** bioequivalent **generics** known as biosimilars. Incumbents often compound this problem by **restrict**ing **distribution** and **withhold**ing samples from **potential competitors**.

We support **efforts** **to** address rising drug prices **while** maintaining strong incentives for innovation. Strategies **include** the new CREATES Act, which allows drug makers to **sue for** access to **drug samples**; expedited or automatic approval for biosimilars that have passed muster with the European Medicines Agency; and incentivizing innovation with prizes.

As this list indicates, many **causes of** breathtaking **pharma prices** **lie** beyond the reach of the antitrust **laws**. Notably, the structure of the U.S. health care system inhibits consumers’ ability and incentive to **choose** among different providers and products, including prescription drugs. Because insurers pick up much of the tab, patients have little incentive to compare the prices of potentially interchangeable drugs. Even if they were so inclined, the opacity of drug prices and dearth of data available to patients about quality and outcomes inhibits comparison shopping.

To fix the **root cause**s of high pharma prices, we should focus on the drivers of those prices rather than scrapping fundamental antitrust **doctrine**, including the requirement for evidence of an actual competitive problem.

### \*China Rise D---1NC

#### No violent China rise

Koh King Kee 20. President, Centre for New Inclusive Asia (CNIA). Associate Fellow, Institute of China Studies, University of Malaya. “China’s Rise Is No Threat to the Liberal International Order “ China Focus. 01-22-2020. http://www.cnfocus.com/china-s-rise-is-no-threat-to-the-liberal-international-order/

China has given the world a sterling report card for its economic reform over the last four decades. Its achievements have won admirations and applauses across the world, from men on the street to political elites. Its success stories are inspirations to leaders of the emerging economies who see in China an alternative development model, a growth path that is strikingly different from the conventional economic text. But its meteoric rise has also **stirred concerns and fears in the West**. To the advocates of Western democracy, China is a centralized authoritarian regime, the rise of which is a threat to the liberal international order. Particularly, America views China as a revisionist power that poses an imminent challenge to its global hegemony. In a radio interview last year, U.S. Secretary of State Mike Pompeo alleged that China is “buying an empire” with its Belt and Road Initiative, and America intends to “oppose them at every turn”. **Are such allegations justified** or misguided? What sets China’s political system apart from the rest of the world? China’s centralized system is rooted in its history “The Chinese tradition of order imposed by a centralized system” is “a pattern that goes back at least 3,500 years”, says Newt Gingrich, former US House Speaker in his newly published book “Trump Vs China: Facing America’s Greatest Threat”. Newt Gingrich, a harsh critic of the Communist Party of China (CPC) has no empathy for China. However, he is right in pointing out that China’s political system under CPC is rooted in thousands of years of its history, a system that is inextricably embedded in its millennial-old civilization. Centralization has been China’s mainstream political philosophy spanning from the ancient dynasties to modern days. China has remained a unified nation after Qinshihuang’s conquest of the Warring States more than 2,000 years ago despite the rise and fall of the dynasties, thanks to the centralized system. It glues the immense territory together and prevents China from falling into the fate of Europe – disintegration into small nation states. China’s centralized system of governance is run based on meritocracy – a key tenet of Confucianism, which is the **bedrock of Chinese civilization**. “When the Great Principle prevails, the world belongs to all, rulers are selected according to their wisdom and ability (⼤道之⾏也，天下为公，选贤与能),” said Confucius. In ancient China, talents were picked based on the principle of meritocracy through an open imperial examination system to serve the ruler of the day. Likewise, in present day China, leaders are selected after they have passed through tiers of ability and loyalty mill tests. Centralization and meritocracy are the foundation of Chinese polity. Despite regime change, they have remained China’s unchanged statecraft throughout its history. CCP’s consultative democracy is, in fact, a blend of centralization and meritocracy. Advantages of China’s political system Many factors have contributed to China’s startling economic rise. Free trade and globalization are unequivocally important drivers. However, many countries with a huge population or immense territory such as India, Russia and Indonesia have not been able to achieve the same economic growth as that of China, even though the same international environment and opportunities were availed to them. Many political pundits and economists have failed to recognize that what sets China apart from others in its development path is, in fact, its unique political system. China’s centralized CPC-led system has obvious advantages over electoral democracy as it allows the government to formulate long-term economic development plans for the country as opposed to focusing on short term populist policies for voters’ satisfaction. It is not uncommon for a new government to reverse development policies of the previous regime due to different ideologies in a parliamentary democracy. Meritocracy and political stability enhance government efficiency and accountability. China is well acknowledged for its high efficiency in delivering mega infrastructure projects. It builds highways, railways, bridges, dams, power plants, airports and other infrastructure projects in record time, now come to know as “China Speed”. Typically, a HSR project in China takes about 4 years to complete irrespective of its size, whilst in other countries, a similar project may take up to a decade to build. “China Speed” speeds up China’s economic growth as infrastructure is not only the prerequisite, but also the catalyst for economic development. BRI – a platform for international cooperation China’s Belt and Road Initiative (BRI) is the biggest infrastructure built out in the history of mankind. It is a mammoth transcontinental development project that aims to build connectivity across the Eurasian landmass based on the principles of mutual consultation, joint contribution and shared benefits. “China will actively promote international cooperation through the Belt and Road Initiative. In doing so, we hope to achieve policy, infrastructure, trade, financial, and people-to-people connectivity and thus build a new platform for international co-operation to create new drivers of shared development,” said President Xi Jinping at the 19th CPC National Congress. Sound infrastructures are the prerequisite for economic development. According to ADB’s estimate, Asia alone requires $26 trillion of infrastructure investment from 2016 to 2030 in order to maintain its growth momentum, eradicate poverty and respond to climate change. China is well positioned to contribute to the global infrastructure investment needs in view of its technology and expertise in building infrastructure projects, coupled with its huge pool of foreign reserves. To deepen its reform, China must move up the global value chain, migrate its low technology industries and alleviate its excess industrial capacities by opening-up new markets. BRI connects China’s landlocked northwest provinces to the world with overland highways and railways. It opens a safe passageway to the Indian Ocean through the China-Pakistan Economic Corridor. BRI is thus a **win-win transnational development project** benefiting China and the partner countries. However, in the eyes of Washington, BRI is China’s grand strategy to project its global influence and a challenge to America’s world supremacy. Washington accused China of coercive economic diplomacy by indiscriminate lending to developing countries with poor repayment ability, eventually seizing the strategic assets of the recipients when they failed to repay the loans – a scheme propagated by the West as “debt trap”. China is developing through interaction with the world China is a member of the global village. It is developing through interactions with the world. “China has been seeking development with its door open. China has **embraced the world**, learned from the world, and contributed to the world, **through positive interaction** and shared development.” China sums up its relationship with the world in “ China and the World in the New Era”, a White Paper commemorating the 70th Anniversary of the founding of the People’s Republic of China. China promotes interconnected development and **benefits from the existing international order.** It advocates **free trade and multilateralism.** When China started its reform and opening-up to the world, the West cast a mould, expecting China to grow accordingly. However, China took a path not traversed by others – a mixed economy under the centralized authoritarian system, or as CPC puts it, Socialism with Chinese Characteristics. It is a system rooted in thousands of years of its history and civilization, a development model that suits China and produces an economic miracle never seen in human history. The Belt and Road Initiative is China’s mega initiative for globalization **aiming at win-win outcome.** It is China’s offer of public goods to the world as an emerging economic superpower, a manifestation of its age-old philosophy, “When you are rich, share your wealth with the world (达则兼济天下）.” China is now the second largest economy and top trading nation in the world, contributing about 30 percent to global growth. Inevitably, the international order should reflect the new economic dynamics of the 21st century. While China’s economic achievements offer valuable lessons to the world, it has no messianic aspirations. As President Xi Jinping has categorically said, “We will not import other countries’ models, and will not export the China model.” China’s growth is being realized within the existing international order. China has **no reason to sabotage** it nor the intention to supplant America’s global preeminence. **China’s rise is no threat to the liberal international order!**

### \*No China War---1NC

#### No US-China war---nuclear deterrence and geography

Zackary Keck 17, Wohlstetter Public Affairs Fellow at the Nonproliferation Policy Education Center, 8/26/17, “The 2 Forgotten Reasons China and America Probably Won't Go to War,” https://nationalinterest.org/blog/the-buzz/the-2-forgotten-reasons-china-america-probably-wont-go-war-22061?page=0%2C1

In recent years, many observers have woken up to the fact that a war between the United States and China is not unthinkable. Although this is true, there are still strong pacifying forces. Two factors strike me as the most important.

The first, and most obvious one, is that both sides maintain secure nuclear arsenals. As Thomas Schelling and others have pointed out, nuclear weapons are not a game-changer simply because of their massive destructive capabilities. The speed and certainty of nuclear retaliation is just as important. These two characteristics simply aren’t present with conventional weapons. Leaders can delude themselves into thinking their conventional forces, however improbably, will end up victorious in battle. In any case, the consequences of being wrong are far in the future.

For instance, Imperial Japanese leaders knew it was a tremendous gamble to take on the United States. Isoroku Yamamoto, the Japanese admiral who planned Pearl Harbor, warned his civilian leadership beforehand: “In the first six to twelve months of a war with the United States and Great Britain I will run wild and win victory upon victory. But then, if the war continues after that, I have no expectation of success.” After the American economic embargo, however, Japanese leaders were only faced with bad options: capitulating in the face of American pressure or fighting a more powerful enemy in a likely futile effort. In these circumstances, Tokyo decided to gamble. After all, it was conceivable that America would be so exhausted from fighting Nazi Germany in Europe that it would ultimately sue for peace in Asia, especially in the face of fierce Japanese resistance.

Can America and Its Allies "Play Fort" against China Deadly Missiles?

While the outcome of conventional wars hinges on a number of unknowable factors, nuclear retaliation is certain. And, unlike with conventional weapons—especially before airplanes and missiles—one doesn’t have to defeat the other side’s military to wreak havoc on its cities. Nuclear weapons can do so immediately. Moreover, as Robert Jervis points out , when two countries with secure, thermonuclear arsenals go to war, “the side that is ‘losing’ the war as judged by various measures of military capability can inflict as much destruction on the side that is ‘winning’ as the ‘winner’ can on the ‘loser.’” This changes the calculation of leaders, and makes it inconceivable that rational leaders would opt for total war. This is not foolproof of course— there is still the possibility that miscalculations, gradual escalation, or the “threats that leave something to chance” will produce an outcome neither side wanted— but it is a strong incentive for peace.

While it is widely recognized that nuclear weapons make a U.S.-China conflict less likely, the pacifying effect of geography is often overlooked. Geography works to attenuate tensions in two interrelated ways. First, both China and the United States are massive countries that would be extremely difficult to conquer and occupy. Second, both are separated by the largest ocean on earth, and it is extremely difficult to project power over large bodies of water. As John Mearsheimer has written : “When great powers are separated by large bodies of water, they usually do not have much offensive capability against each other, regardless of the relative size of their armies. Large bodies of water are formidable obstacles that cause significant power-projection problems for attacking armies.”

These two geographical factors reduce the intensity of the so-called security dilemma. Despite all their disputes over issues like Taiwan and the East and South China Seas, China and the United States generally do not have to fear that the other side will seek to invade and conquer them. This has usually not been the case for rising and ruling powers that went to war. In many of these instances, the rivals were located on the same continent or even shared a border, which generated significant insecurity and led to conflict. As Mearsheimer again explains , “Great powers located on the same landmass are in a much better position to attack and conquer each other. That is especially true of states that share a common border. Therefore, great powers separated by water are likely to fear each other less than great powers that can get at each other over land.”

## Innovation Adv

### \*Innovation Up---1NC

#### US innovation is skyrocketing

Lisa M. Jarvis 20, BA in Physical Chemistry from Bard College. She also attended Northwestern University, "The New Drugs Of 2019," 2020, Chemical & Engineering News, https://cen.acs.org/pharmaceuticals/drug-%20development/new-drugs-2019/98/i3

Although pharmaceutical companies last year were unable to top the record-shattering **59 new drugs** **approved** in the US in 2018, they were still on a roll. In **2019**, the Food and Drug Administration green-lighted **48 medicines**, a crop that includes **myriad modalities** and many new **treatments** for long-neglected diseases.

Taken together, the **past 3 years** of approvals represent **drug companies’** **most productive period** in more than 2 decades. Still, some analysts caution that the steady flow of new medicines could mask troubling indications about the health of the industry.

The year brought several notable trends. The first was an uptick in the number of novel mechanisms on display in the new drugs. Roughly **42%** of the medicines were first in class, meaning they had new mechanisms of action; this is a **jump** over the **prior 4 years**, when that portion ranged between 32 and 36%. Another trend was the influx of newer modalities. While small molecules continue to account for the lion’s share of new molecular entities (NMEs), making up 67% of overall approvals in 2019, the list also includes several antibody-drug conjugates, an antisense oligonucleotide therapy, and a therapy based on RNA interference (RNAi).

Yet another encouraging trend was the **influx** of **innovative therapies** for underserved diseases. Standout approvals include two new drugs for **sickle cell anemia** (Global Blood Therapeutics’ Oxbryta and Novartis’s Adakveo), an antibiotic for **treatment-resistant t**u**b**erculosis (Global Alliance for TB Drug Development’s pretomanid), and a therapy for women experiencing postpartum depression (Sage Therapeutics’ Zulresso). “

**The quality of** the **drugs** over the **last decade** or so **has steadily improved since the depths of the** innovation crisis **10–12 years ago**,” says Bernard Munos, a senior fellow at FasterCures, a drug research think tank. “We’re seeing stuff that frankly would have looked like **science fiction** back then.”

### \*Innovation Turn---1NC

#### The plan crushes industry predictability---innovators are risk-averse---antitrust law triggers paranoia, hemming R&D.

Shepherd ’20 [Joanna; December 20; Professor of Law at Emory; CPIP, “The Legal and Industry Framework of Pharmaceutical Product Hopping and Considerations for Future Legislation,” <https://cip2.gmu.edu/wp-content/uploads/sites/31/2020/12/Shepherd-Product-Hopping.pdf>]

V. Consequences of Overly Broad or Vague Legislation

Legislation defining anticompetitive product hopping should aim to facilitate generic entry and lower drug prices. However, if the enacted legislation is too broad or overly vague, it could instead harm consumers by reducing innovation and increasing health care spending.

First, overly broad legislation would deter important future innovations. Most innovation in the pharmaceutical industry involves development of next-generation improvements, such as creating new products that expand therapeutic classes, increase available dosing options, remedy physiological interactions of known medicines, or improve other properties of existing medicines.35 According to FDA data, two-thirds of new drug approvals are for these incremental innovations.36 The World Health Organization has found that over 60 percent of the drugs needed to combat prevalent diseases have resulted from incremental innovation.37 Overly broad legislation would deter these important incremental innovations that are critical to improving health outcomes.

Second, legislation that fails to provide clear guidance will create uncertainty for brand innovators. This uncertainty can deter innovation in the pharmaceutical industry. Brand drug companies are the ones largely responsible for pharmaceutical innovations; in the last decade, they have spent over half a trillion dollars on R&D, and they currently account for over 90 percent of the spending on the clinical trials relied on by brands and generics alike.38 But if brand companies cannot reliably predict when their conduct will be considered anticompetitive, they will have less incentive to engage in costly R&D in the first place. The companies will not spend the billions of dollars it typically costs to bring a new drug to market when they cannot be certain that, years down the road, introducing that new drug will not expose them to damaging litigation, market-stopping injunctions, or penalties. If product hopping legislation increases the uncertainty around the introduction of new products, innovation will suffer.

### A2: ILX

#### There is none---cx

### \*No Pandemics Impact---1NC

#### Disease can’t cause extinction

Dr. Toby Ord 20, Senior Research Fellow in Philosophy at Oxford University, DPhil in Philosophy from the University of Oxford, The Precipice: Existential Risk and the Future of Humanity, Hachette Books, Kindle Edition, p. 124-126

Are we safe now from events like this? Or are we more vulnerable? Could a pandemic threaten humanity’s future?10

The Black Death was not the only biological disaster to scar human history. It was not even the only great bubonic plague. In 541 CE the Plague of Justinian struck the Byzantine Empire. Over three years it took the lives of roughly 3 percent of the world’s people.11

When Europeans reached the Americas in 1492, the two populations exposed each other to completely novel diseases. Over thousands of years each population had built up resistance to their own set of diseases, but were extremely susceptible to the others. The American peoples got by far the worse end of exchange, through diseases such as measles, influenza and especially smallpox.

During the next hundred years a combination of invasion and disease took an immense toll—one whose scale may never be known, due to great uncertainty about the size of the pre-existing population. We can’t rule out the loss of more than 90 percent of the population of the Americas during that century, though the number could also be much lower.12 And it is very difficult to tease out how much of this should be attributed to war and occupation, rather than disease. As a rough upper bound, the Columbian exchange may have killed as many as 10 percent of the world’s people.13

Centuries later, the world had become so interconnected that a truly global pandemic was possible. Near the end of the First World War, a devastating strain of influenza (known as the 1918 flu or Spanish Flu) spread to six continents, and even remote Pacific islands. At least a third of the world’s population were infected and 3 to 6 percent were killed.14 This death toll outstripped that of the First World War, and possibly both World Wars combined.

Yet even events like these fall short of being a threat to humanity’s longterm potential.15

[FOONOTE]

In addition to this historical evidence, there are some deeper biological observations and theories suggesting that pathogens are unlikely to lead to the extinction of their hosts. These include the empirical anti-correlation between infectiousness and lethality, the extreme rarity of diseases that kill more than 75% of those infected, the observed tendency of pandemics to become less virulent as they progress and the theory of optimal virulence. However, there is no watertight case against pathogens leading to the extinction of their hosts.

[END FOOTNOTE]

In the great bubonic plagues we saw civilization in the affected areas falter, but recover. The regional 25 to 50 percent death rate was not enough to precipitate a continent-wide collapse of civilization. It changed the relative fortunes of empires, and may have altered the course of history substantially, but if anything, it gives us reason to believe that human civilization is likely to make it through future events with similar death rates, even if they were global in scale.

The 1918 flu pandemic was remarkable in having very little apparent effect on the world’s development despite its global reach. It looks like it was lost in the wake of the First World War, which despite a smaller death toll, seems to have had a much larger effect on the course of history.16

It is less clear what lesson to draw from the Columbian exchange due to our lack of good records and its mix of causes. Pandemics were clearly a part of what led to a regional collapse of civilization, but we don’t know whether this would have occurred had it not been for the accompanying violence and imperial rule. The strongest case against existential risk from natural pandemics is the fossil record argument from Chapter 3. Extinction risk from natural causes above 0.1 percent per century is incompatible with the evidence of how long humanity and similar species have lasted. But this argument only works where the risk to humanity now is similar or lower than the longterm levels. For most risks this is clearly true, but not for pandemics. We have done many things to exacerbate the risk: some that could make pandemics more likely to occur, and some that could increase their damage. Thus even “natural” pandemics should be seen as a partly anthropogenic risk.

### No ABR Impact---1NC

#### ABR won’t get close to extinction, intervening actors solve it, their internal link can’t

Ed Cara 17, Science Writer for The Atlantic, Newsweek, and Vocativ, 1/27/17, “The Attack Of The Superbugs,” http://www.vocativ.com/394419/attack-of-the-superbugs/

Antibiotic-resistant infections kill at least 700,000 people worldwide a year right now, according to an exhaustive report commissioned by the UK in 2014, and without any substantial medical breakthroughs or policy changes that slow down resistance, they may claim some 10 million deaths annually by 2050 — eclipsing cancer in general as a leading cause. These deaths largely won’t come from pan-resistant infections, just tougher ones. A preventable death there, a preventable death here.

Leaving that aside, antibiotics, along with proper sanitation and nutrition, gird our entire way of living. Most every invasive surgery, pregnancy, organ transplant and chemotherapy session we go through will become riskier. Other diseases like HIV, malaria or influenza will become deadlier, since bacteria often exploit the opening in our immune system they leave behind. And already precarious populations like those living with cystic fibrosis, prisoners, and the poor will lose years off their lives.

For all the warranted gloom, though, Farewell does think there are reasons to be hopeful. “I don’t think we are doing enough, but the scientific community along with many governmental and private foundations are very actively involved in finding not only new antibiotics, but new solutions to this problem,” she said. There’s been a noticeable change in attitude and increased urgency surrounding antibiotic resistance, she said, one that she hadn’t seen even five years ago, let alone twenty.

Until recently, that attitude change could be seen from places as high up as the U.S. federal government. In 2014, former President Obama issued an executive order aimed at addressing antibiotic resistance, the first real acknowledgement of the problem from an administration, devoting funding and outlining a national action for combatting resistance. Through its federal agencies, the administration pushed to reduce antibiotic use on farms and encouraged doctors to stop using them in excess.

“There has been a lot of work done the last couple of years, much of it spurned by [Obama’s] National Action Plan,” said Dr. David Hyun, a senior officer for Pew Charitable Trusts’ Antibiotic Resistance Project. The CDC, in particular, has used its funding to open up regional labs that allow them to better detect and respond to antibiotic-resistant outbreaks like the Nevada case, he said. They ultimately hope to create an expansive surveillance system that can easily keep track of resistance rates on a national, state and regional level. A parallel system also exists for monitoring resistance in the food chain, shepherded by the CDC and the U.S. Department of Agriculture.

In fact, it was this sort of cooperation between national and local health agencies that enabled Nevada doctors to stop the worst from happening, said Dr. Lei Chen. The swift identification of a possible CRE strain by the hospital, coupled with the woman’s medical history, led to a precautionary quarantine, while also prompting Chen’s public health department and eventually the CDC into action. And it may help prevent future cases from spilling into the public. According to Chen, the CDC has allocated funding this year to all of Nevada’s state public health departments so they can better detect CRE and other dangerous resistant strains.

Under the Trump administration, there’s no telling how these small victories will hold up or whether they will advance. All references to antibiotics once found on the Whitehouse.gov site have been removed, including a link to the Obama administration’s national action plan, and the fact that they’re already tried to bar USDA scientists from discussing their work with the public while stripping funding from other public health agencies isn’t encouraging.

Even with the best public policy, however, there’s no clear light at the end of the tunnel. Antibiotic resistance has gradually been worsening, even within the last 15 to 20 years, when superbugs like methicillin-resistant Staphylococcus aureus (MRSA) first became widely known, said Hyun. The effort needed to develop new drugs has been in short supply, hamstrung by pharmaceutical companies’ inability to recoup the costs of bringing new antibiotics to market. That’s because, unlike the latest heart medication, any new antibiotics will have to be treated like the last drops of water during a drought, used as little as possible — the exact opposite way to make money off a new product. Yet, much like climate change, the financial toll of not doing anything will total in the trillions years down the road. And it already numbers in the billions now, according to the CDC.

Of course, we need bacteria to survive. And most need or pay no mind to us in return. Even pan-resistant bacteria don’t really mean harm. Some have been found in perfectly healthy people, a fact that’ll either comfort you or keep you awake at night, only causing problems when our immune system wavers. There’s no army of sentient E. coli that will rise up and someday overthrow the human race.

But barring the calvary showing up, a new fear of ours will learn to settle in, almost unnoticed. It’ll creep in when we pick our heads up from a nasty fall that scrapes our skin open or breaks our bones; when we wave goodbye to our loved ones before they enter an operating room, or when we cradle our newborns into a world teeming with the living infinitesimal, wishing there was still a way to shield them from it as our parents once could for us. A fear of naked vulnerability.

The antibiotic apocalypse will be gentle, if it fully arrives, but it won’t be any less devastating to the human spirit.

# Block

## T Subsets

### 2NC

#### ‘Antitrust’ applies to the entire economy---targeting single industries isn’t topical

Dr. Babette Boliek 11, Associate Professor of Law at Pepperdine University School of Law, J.D. from the Columbia University School of Law, and Ph.D. in Economics from the University of California, Davis, “FCC Regulation Versus Antitrust: How Net Neutrality is Defining the Boundaries”, Boston College Law Review, 52 B.C. L. Rev. 1627, November 2011, Lexis

Although the two regimes share a commonality of purpose--to protect consumers and to promote allocative efficiencies in production--the two have quite distinct, predominately opposing, means of securing social benefits. As Justice Stephen Breyer stated when serving [\*1629] as a judge on the U.S. Court of Appeals for the First Circuit, although regulation and the antitrust laws "typically aim at similar goals--i.e., low and economically efficient prices, innovation, and efficient production methods"--regulation looks to achieve these goals directly "through rules and regulations; [but] antitrust seeks to achieve them indirectly by promoting and preserving a process that tends to bring them about." The battle between these two regimes may be broadly summarized in a single issue thusly: in the face of the industry-specific regulator, what is (or what should be) the role of antitrust law?

Antitrust law preserves the process of competition across all industries by condemning anticompetitive conduct when it occurs. In contrast, industrial regulation by its nature is a public declaration that, in a given industry, market forces are too weak or underdeveloped to produce the consumer benefits that are realized in competitive markets--regulated industries are carved out from the rest of the economy and are subject to proactive, regulatory intervention that goes above and beyond antitrust enforcement measures. Not surprisingly, regulatory agencies were historically created as substitutes for market forces in the few markets that, by the nature of the product or technology, were natural monopolies or severely prone to monopoly. In the vast majority [\*1630] of markets, however, the antitrust law is the default government control, designed to supplement market forces to inhibit or prevent the growth of monopoly.

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

#### ‘Private sector’ means all businesses

Aminu Muhammad Fagge 14, and Mustapha Adamu Zubairu, “Private Sector and Youth Employment Generation in Nigeria: A Review”, SEAHI Publications, https://www.voced.edu.au/content/ngv%3A65719#:~:text=youth%20employment...-,The%20private%20sector%20refers%20to%20all%20economic%20institutions%2C%20business%20firms,not%20owned%20by%20the%20government.

The private sector refers to all economic institutions, business firms, foundations, and cooperatives etc., that are not owned by the government. Generally speaking, the contributions of the private sector to the development of the Nigerian economy cannot be over emphasized in terms of employment generation, capital savings and mobilization, efficiency, strong linkages with other sectors, and utilization of local technology training ground for entrepreneurs and self-reliance. The objective of this study is to examine the role and contribution of private sector on youth employment generation in Nigeria. The data for this paper were derived from a secondary source which includes previous research and analyses of scholars, government documents, newspaper/magazines as well as journal articles. Inequality of income is one of the effects of unemployment in Nigeria. In addition, unemployment resulted in increased activities of Boko Haram and many other crimes going on in the affected areas especially the north-west and north-east of Nigeria which resulted in closure of schools. In a place like Jos, people were divided along ethnic lines due to unemployment and poverty which adversely affected the role of the private sector. The findings of this work recommends an enabling environment for a vibrant private sector to create jobs in labour-intensive industries; exploration of employment opportunities not only available domestically but also outside Nigeria; and the federal government should hasten the power sector reforms and destabilize the power sector to end the looming energy crisis in Nigeria.

## Adv CP

### OV---Solves Drug Costs---2NC

#### Examples prove this would be easy to implement.

1AC Gupta et al. 21 (Ravi Gupta, MD,1 Nilay D. Shah, PhD,2 and Joseph S. Ross, MD, MHS3 1Department of Medicine, Johns Hopkins Hospital and Johns Hopkins School of Medicine, Baltimore, Maryland; 2Division of Health Care Policy and Research and Robert D. and Patricia E. Kern Center for the Science of Health Care Delivery, Mayo Clinic, Rochester, Minnesota; 3Section of General Internal Medicine, Department of Medicine, Yale University School of Medicine; Department of Health Policy and Management, Yale University School of Public Health; and the Center for Outcomes Research and Evaluation, Yale–New Haven Hospital, 2-1-2021, accessed on 7-17-2021, PubMed Central (PMC), "Generic Drugs In The United States: Policies To Address Pricing And Competition", <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6355356/>)

For drug markets with few competitors and limited demand to attract greater competition, one strategy could be the development of a nonprofit generic drug manufacturer with the clear aim of providing a stable supply of affordable medicines.[73](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0073) For example, a **collaboration** of **Intermountain** Healthcare, **Trinity** Health, SSM Health, and **Ascension**, together with the Department of **Veteran Affairs**, is forming a nonprofit generic drug company called Project Rx that will either **manufacturer** generic **drugs** or subcontract with other organizations.[74](https://ascpt.onlinelibrary.wiley.com/doi/10.1002/cpt.1314#cpt1314-bib-0074) Such a nonprofit manufacturer could rely on purchasing agreements that set a predetermined price and minimum volume to ensure stable demand and to prevent being driven out of the market by existing for-profit manufacturers that suddenly decrease the drug's price. A **similar arrangement** could be **led** by the **federal government** through bulk purchasing of single-source drugs at a negotiated price in situations where drugs face dramatic price increases. Long-term contracts with the government ensuring stable demand could also be used to incentivize additional manufacturers to enter these markets.

## FTC DA

### O/V---2NC

#### Control failures guarantee every scenario for extinction

Karina Vold & Daniel R. Harris 21, Vold is a philosopher of cognitive science and artificial intelligence & an assistant professor at the University of Toronto's Institute for the History and Philosophy of Science and Technology; Harris is a retired lawyer and Foreign Service Officer at the US Department of State, “How Does Artificial Intelligence Pose an Existential Risk?,” Oxford Handbook of Digital Ethics, Ed. C. Veliz., pp 1-34

4.1 AI Race Dynamics: Corner-cutting Safety

An AI race between powerful actors could have an adverse effect on AI safety, a subfield aimed at finding technical solutions to building “advanced AI systems that are safe and beneficial” (Dafoe, 2018, 25; Cave & Ó hÉigeartaigh, 2018; Bostrom, 2017; Armstrong et al., 2016; Bostrom, 2014). Dafoe (2018, 43), for example, argues that it is plausible that such a race would provide strong incentives for researchers to trade-off safety in order to increase the chances of gaining a relative advantage over a competitor.21 In Bostrom’s (2017) view, competitive races would disincentivize two options for a frontrunner: (a) slowing down or pausing the development of an AI system and (b) implementing safety-related performance handicapping. Both, he argues, have worrying consequences for AI safety.

(a) Bostrom (2017, 5) considers a case in which a solution to the control problem (C1) is dependent upon the components of an AI system to which it will be applied, such that it is only possible to invent or install a necessary control mechanism after the system has been developed to a significantly high degree. He contends that, in situations like these, it is vital that a team is able to pause further development until the required safety work can be performed (ibid). Yet, if implementing these controls requires a substantial amount of additional time and resources, then in a tight competitive race dynamic, any team that decides to initiate this safety work would likely surrender its lead to a competitor who forgoes doing so (ibid). If competitors don’t reach an agreement on safety standards, then it is possible that a “risk-race to the bottom” could arise, driving each team to take increasing risks by investing minimally in safety (Bostrom, 2014, 247).

(b) Bostrom (2017, 5-6) also considers possible scenarios in which the “mechanisms needed to make an AI safe reduces the AI’s effectiveness”. These include cases in which a safe AI would run at a considerably slower speed than an unsafe one, or those in which implementing a safety mechanism necessitates the curtailing of an AI’s capabilities (ibid). If the AI race were to confer large strategic and economic benefits to frontrunners, then teams would be disincentivized from implementing these sorts of safety mechanisms. The same, however, does not necessarily hold true of less competitive race dynamics; that is, ones in which a competitor has a significant lead over others (ibid). Under these conditions, it is conceivable that there could be enough of a time advantage that frontrunners could unilaterally apply performance handicapping safety measures without relinquishing their lead (ibid).

It is relatively uncontroversial to suggest that reducing investment in AI safety could lead to a host of associated dangers. Improper safety precautions could produce all kinds of unintended harms from misstated objectives or from specification gaming, for example. They could also lead to a higher prevalence of AI system vulnerabilities which are intentionally exploited by malicious actors for destructive ends, as in the case of adversarial examples (see Brundage et al., 2018). But does AI safety corner-cutting reach the threshold of an Xrisk? Certainly not directly, but there are at least some circumstances under which it would do so indirectly. Recall that Chalmers (2010) argues there could be defeaters that obstruct the self-amplifying capabilities of an advanced AI, which could in turn forestall the occurrence of an intelligence explosion. Scenario (a) above made the case that a competitive AI race would disincentivize researchers from investing in developing safety precautions aimed at preventing an intelligence explosion (e.g., motivational defeaters). Thus, in cases in which an AI race is centred on the development of artificial general intelligence, a seed AI with the capacity to self-improve, or even an advanced narrow AI (as per §3.1), a competitive race dynamic could pose an indirect Xrisk insofar as it contributes to a set of conditions that elevate the risk of a control problem occurring (Bostrom, 2014, 246; 2017, 5).

4.2 AI Race Dynamics: Conflict Between AI Competitors

The mere narrative of an AI race could also, under certain conditions, increase the risk of military conflict between competing groups. Cave & Ó hÉigeartaigh (2018) argue that AI race narratives which frame the future trajectory of AI development in terms of technological advantage could “increase the risk of competition in AI causing real conflict (overt or covert)”. The militarized language typical of race dynamics may encourage competitors to view each other “as threats or even enemies” (ibid, 3).22 If a government believes that an adversary is pursuing a strategic advantage in AI that could result in their technological dominance, then this alone could provide a motivating reason to use aggression against the adversary (ibid; Bostrom, 2014). An AI race narrative could thus lead to crisis escalation between states. However, the resulting conflict, should it arise, need not directly involve AI systems. And it's an open question whether said conflict would meet the Xrisk threshold. Under conditions where it does (perhaps nuclear war), the contributions of AI as a technology would at best be indirect.

4.3 Global Disruption: Destabilization of Nuclear Deterrents

Another type of crisis escalation associated with AI is the potential destabilizing impact the technology could have on global strategic stability;23 in particular, its capacity to destabilize nuclear deterrence strategies (Giest & Lohn, 2018; Rickli, 2019; Sauer, 2019; Groll, 2018; Zwetsloot & Dafoe, 2019). In general, deterrence relies both on states possessing secure second-strike capabilities (Zwetsloot & Dafoe, 2019) and, at the same time, on a state's inability to locate, with certainty, an adversary’s nuclear second-strike forces (Rickli, 2019). This could change, however, with advances in AI (ibid). For example, AI-enabled surveillance and reconnaissance systems, unmanned underwater vehicles, and data analysis could allow a state to both closely track and destroy an adversary’s previously hidden nuclear-powered ballistic missile submarines (Zwetsloot & Dafoe, 2019). If their second-strike nuclear capabilities were to become vulnerable to a first strike, then a pre- emptive nuclear strike would, in theory, become a viable strategy under certain scenarios (Giest & Lohn, 2018).

In Zwetsloot & Dafoe’s (2019) view, “the fear that nuclear systems could be insecure would, in turn, create pressures for states— including defensively motivated ones—to pre-emptively escalate during a crisis”. What is perhaps most alarming is that the aforementioned AI systems need not actually exist to have a destabilizing impact on nuclear deterrence (Rickli, 2019; Groll, 2018; Giest & Lohn, 2018). As Rickli (2019, 95) points out, “[b]y its very nature, nuclear deterrence is highly psychological and relies on the perception of the adversary’s capabilities and intentions”. Thus, the “simple misperception of the adversary’s AI capabilities is destabilizing in itself” (ibid). This potential for AI to destabilize nuclear deterrence represents yet another kind of indirect global catastrophic, and perhaps even existential, risk insofar as the destabilization could contribute to nuclear conflict escalation.

5. Weaponization of AI

Much like the more recent set of growing concerns around an AI arms race, there have also been growing concerns around the weaponization of AI. We use “weaponization” to encompass many possible scenarios, from malicious actors or a malicious AI itself, to the use of fully autonomous lethal weapons. And we will discuss each of these possibilities in turn. In §5.1 we discuss malicious actors and in §5.2 we discuss lethal autonomous weapons. We have combined this diverse range of scenarios for two reasons. First, while the previous Xrisk scenarios discussed (CPAX and an AI race) could emerge without malicious intentions from anyone involved (e.g., engineers or governments), the scenarios we discuss here do for the most part assume some kind of malicious intent on the part of some actor. They are what Zwetsloot & Dafoe (2019,) call a misuse risk. Second, the threats we discuss here are not particularly unique to AI, unlike those in previous sections. The control problem, for example, is distinctive of AI as a technology, in the sense that the problem did not exist before we began building intelligent systems. On the other hand, many technologies can be weaponized. In this respect, AI is no different. It is because AI is potentially so powerful that its misuse in a complex and high impact environment, such as warfare, could pose an Xrisk.

5.1 Malicious Actors

In discussing CPAX, we focused on accidental risk scenarios—where no one involved wants to bring about harm, but the mere act of building an advanced AI system creates an Xrisk. But AI could also be deliberately misused. These can include things like exploiting software vulnerabilities, for example, through automated hacking or adversarial examples; generating political discord or misinformation with synthetic media; or initiating physical attacks using drones or automated weapons (see Brundage et al., 2018). For these scenarios to reach the threshold of Xrisk (in terms of ‘scope’), however, a beyond catastrophic amount of damage would have to be done. Perhaps one instructs an AI system to suck up all the oxygen in the air, to launch all the nuclear weapons in a nation’s arsenal, or to invent a deadly airborne biological virus. Or perhaps a lone actor is able to use AI to hack critical infrastructures, including some that manage large-scale projects, such as the satellites that orbit Earth. It does not take much creativity to drum up a scenario in which an AI system, if put in the wrong hands, could pose an Xrisk. But the Xrisk posed by AI in these cases is likely to be indirect—where AI is just one link in the causal chain, perhaps even a distal one. This involvement of malicious actors is one of the more common concerns around the weaponization of AI. Automated systems that have war- fighting capacities or that are in anyway linked to nuclear missile systems could become likely targets of malicious actors aiming to cause widespread harm. This threat is serious, but the theoretical nature of the threat is straightforward relative to those posed in CPAX, for example.

One further novel outcome of AI would be if the system itself malfunctions. Any technology can malfunction, and in the case of an AI system that had control over real-world weapons systems the consequences of a malfunction could be severe (see Robillard, this volume). We’ll discuss this potential scenario a bit more in the next section. A final related possibility here would be for the AI to itself turn malicious. This would be unlike any other technology in the past. But since AI is a kind of intelligent agent, there is this possibility. Cotton- Barratt et al. (2020), for example, describe a hypothetical scenario in which an intelligence explosion produces a powerful AI that wipes out human beings in order to pre-empt any interference with its own objectives. They describe this as a direct Xrisk (by contrast, we described CPAX scenarios as indirect), presumably because they describe the AI as deliberately wiping out humanity. However, if the system has agency in a meaningful sense, such that it is making these kinds of deliberate malicious decisions, then this seems to assume it has something akin to consciousness or strong intentionality. In general we are far from developing anything like artificial consciousness and this is not to say that these scenarios should be dismissed altogether, but many experts agree that there are serious challenges confronting the possibility of AI possessing these cognitive capacities (e.g., Searle, 1980; Koch and Tonini, 2017; Koch, 2019; Dehaene et al., 2017).

5.2 Lethal Autonomous Weapons

One other form of weaponization of AI that is sometimes discussed as a potential source of Xrisk are lethal autonomous weapons systems (LAWS). LAWS include systems that can locate, select, and engage targets without any human intervention (Roff, 2014; Russell, 2015; Robillard, this volume). Much of the debate around the ethics of LAWS has focused on whether their use would violate human dignity (Lim, 2019; Rosert & Sauer, 2019; Sharkey, 2019), whether they could leave critical responsibility gaps in warfare (Sparrow, 2007; Robillard, this volume), or whether they could undermine the principles of just war theory, such as noncombatant immunity (Roff, 2014), for example. These concerns, among others, have led many to call for a ban on their use (FLI ,2017). These concerns are certainly very serious and more near term (as some LAWS already exist) than the speculative scenarios discussed in CPAX. But do LAWS really present an Xrisk? It seems that if they do, they do so indirectly. Consider two possible scenarios.

(a) One concern around LAWS is that they will ease the cost of engaging in war, making it more likely that tensions between rival states rise to military engagement. In this case, LAWS would be used as an instrument to carry out the ends of some malicious actor. This is because, for now, humans continue to play a significant role in directing the behaviour of LAWS, though it is likely that we will see a steady increase in the autonomy of future systems (Brundage et al., 2018). Now, it could be that this kind of warfare leads to Xrisks, but this would require a causal chain that includes political disruption, perhaps failing states, and widespread mass murder. None of these scenarios are impossible, of course, and they present serious risks. But we have tried to focus this chapter on Xrisks that are novel to AI as a technology and, even though we view the risks of LAWS as extremely important, they ultimately present similar kinds of risks as nuclear weapons do. To the extent that LAWS have a destabilizing impact on norms and practices in warfare, for example, we think that scenarios similar to those discussed in §4.3 are possible—LAWS might escalate an ongoing crisis, or moreover, the mere perception that an adversary has LAWS might escalate a crisis.

(b) A second scenario, described by Geoffrey Hinton, is that killer drones, equipped with explosives and deep learning neural net technology, could (somehow) learn to function independently of their human controllers (Robinson, 2016), and the system could then go on a rampage and destroy humanity. The bracketed “somehow” here is a critical piece of the story. Perhaps the control system has been hacked, in which case we are back to the malicious actor scenario described in §5.1. Or perhaps there is a malfunction, of the sort also described in §5.1. In this latter case, the malfunction could manifest in the form of a “hard takeoff” in which the system undergoes rapid recursive self-improvement (unintended by the designers) and then develops goals that are inimical to human interests. In such a case, we would be at the start of an intelligence explosion and would confront the kind of Xrisk already characterized by CPAX (§3). Our only point here is that upon closer examination, it's hard to see how this scenario looks distinct from ones previously discussed. Hence, the weaponization of AI can pose an indirect Xrisk in several different ways. In general, the more control an automated system has over weaponized systems that can cause real-world destruction, the greater risk there is of that system becoming a target for attack by malicious actors or of there being greater harm due to any accidental system malfunction.

6. Conclusion

Humanity is facing an increasing number of existential threats, many of which are of our own creation. Thankfully, there are also an increasing number of scholars, from a wide range of fields, studying the nature of these risks and strategizing how to mitigate them. But the field of Xrisk studies is still relatively young. There are significant debates being had over how to define the concept of Xrisk, how to understand its sources, and what methodologies should be used to assess these risks. When it comes to Xrisks from AI, these debates continue. Early concerns around AI Xrisks focused on the possibility of an intelligence explosion and the subsequent pathway to a scenario in which a powerful superintelligent AI has misaligned objectives from humanity. These concerns have not gone away, but they have evolved over time. This chapter has provided an up- to-date critical survey of these arguments, both old and new, looking at different foreseeable pathways towards AI Xrisk, possible global disruptions resulting from the emergence of an AI race dynamic between nations, and the weaponization of AI. In particular, we have tried to make the structures of each of these concerns more explicit, such that readers can begin to critically engage with them.

### A2: Antitrust Now---2NC

#### 1---‘Antitrust now’ is rhetoric---it’ll be light-touch and easily thwarted by litigation, unenforced due to regulatory capture and previous admins, AND foiled by partisanship

Jacob Silverman 21, Staff writer and Author, The New Republic. “Biden Wants to Tame Big Tech with a Thousand Paper Cuts,” July 9. <https://newrepublic.com/article/162940/biden-executive-order-big-tech-monopoly>

On Friday, the White House [announced](https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/) a potentially important, if modest, effort to further tamp down the power of the technology industry. This time the instrument is an executive order—the kind of wide-ranging declaration that often gets called “sweeping” or “major,” though its efficacy may take years to gauge—that covers everything from competition in the economy to drug prices to reforming a tech sector that is defined by a handful of seemingly unstoppable titans. Offering a mix of general recommendations, requests for action from other government agencies, and new administration policies, the Executive Order on Promoting Competition in the American Economy may be just what our overconsolidated economic system needs. But in tackling the power of a tech sector that has not only wrested control of the economy but remade it in its own data-hungry image, the Biden administration is still throwing pebbles at its enemy’s parapets. The tech industry has had 20 years to establish a stranglehold over our personal data, attention, and consumer choice. To tackle these problems, we need more, much more.

Despite promising to take on the power of Big Tech, President Joe Biden and his administration have so far taken a cautiously incrementalist approach. He’s [appointed tough industry critics](https://www.nytimes.com/2021/06/15/technology/lina-khan-ftc.html) like Lina Khan to be commissioner of the Federal Trade Commission, but he has yet to name a head of the Justice Department’s antitrust division, a key role for any future enforcement action. In Congress, Democrats have introduced six smallish antitrust bills, but their path out of the House is [murky](https://www.cnbc.com/2021/06/24/-big-tech-antitrust-debate-odd-alliances-form-and-party-fractures-show.html), as ongoing disputes between [Republicans](https://www.cnbc.com/2021/07/07/house-republicans-lay-out-tech-antitrust-agenda.html) and Democrats over how to fight this legislative battle mean that the final bills could look much different than they did in committee—if they make it to a floor vote at all. (It doesn’t help that some Silicon Valley–adjacent Democratic politicians, like Representative Ted Lieu and Representative Ro Khanna, have been less than supportive of the bills.)

As federal and congressional leadership lag, states have forged ahead, with dozens of attorneys general coming together in lawsuits like one, filed this week, accusing Google of [anti-competitive practices](https://www.vox.com/recode/2021/7/7/22567656/google-play-store-states-antitrust-suit-letitia-james-utah-new-york-north-carolina). Other ongoing antitrust suits include one [against Amazon](https://www.washingtonpost.com/technology/2021/05/25/dc-ag-antitrust/) over pricing issues; another lawsuit (this one with DOJ participation) [against Google](https://www.justice.gov/opa/pr/justice-department-sues-monopolist-google-violating-antitrust-laws); and two others against Facebook that a judge recently threw out. In this proliferating legal war against Big Tech—premised on a lack of competition and companies’ abusing their monopoly status—any of these cases could yield billion-dollar fines for one of the tech giants. But fines are easily paid. Whether these suits can lead to meaningful reform, to breaking up companies and redirecting business practices away from the current dominant model of user surveillance and bulk data collection—that is far less clear. As with proposed legislation in the House, bipartisan legal efforts may be sundered on the altar of competing partisan priorities, with Republicans focusing on [alleged censorship](https://newrepublic.com/article/162299/josh-hawley-gops-fake-war-big-tech) and Democrats more focused on [economic competition and user rights](https://newrepublic.com/article/160646/biden-antitrust-blueprint-monopoly-busting).

With the stage set for legislative gridlock, drawn-out lawsuits, and [bickering](https://www.politico.com/news/2021/07/06/ftc-staffers-public-appearances-498386) over the FTC’s legitimacy, a small opening has emerged for the Biden administration to take meaningful action on its own. And there are some measures in the executive order worth celebrating. One section aims to improve internet service by eliminating early termination fees and providing transparent pricing to help drive competition. Another proviso calls for gadget users—from farmers working on tractors to people tinkering with their own cell phones—to have what’s often [referred to](https://www.theverge.com/2021/7/9/22569869/biden-executive-order-right-to-repair-isps-net-neutrality) as “the right to repair,” a right that tech companies have suppressed by discouraging DIY or third-party work on broken items. (Forcing customers to take their doddering laptop to Apple’s Genius Bar helps the company maintain control over its products and ensures that repairs, and the money they generate, stay in-house.) Other relevant orders call for the restoration of net neutrality and applying more scrutiny to corporate mergers, which may prevent a tech giant from swallowing up the next WhatsApp or Slack, formerly insurgent chat/social media platforms that were absorbed by Facebook and Salesforce.

In the last year, tech companies have shifted their rhetoric, [claiming](https://newrepublic.com/article/162509/facebook-big-tech-nick-clegg-regulation-policy) that they are in favor of regulation—just on their terms. To that end, they’ve deployed armies of lobbyists to woo elected officials, making companies like Google and Facebook some of the most profligate spenders on K Street. With the potential for major legislative action still up in the air—a divided Senate doesn’t augur well, unless tech-critical Republicans like Senator Josh Hawley line up behind the Democratic legislative agenda, which seems unlikely—executive action may be the most promising way forward. Call it death by a thousand regulations. It’s also—as the executive order’s many prompts for action by the Federal Communications Commission, the FTC, and DOJ show—a plea for the government to do its damn job.

Even sympathetic observers may survey this latest initiative with some well-earned cynicism. [Regulatory capture](https://newrepublic.com/article/149438/big-pharma-captured-one-percent), in which regulatory agencies become beholden to the companies and industries they oversee, is a well-known feature of the land, and the families of leading politicians like Representative Nancy Pelosi periodically trade stocks based on what appears to be insider information. And as demonstrated by the measure to treat all internet traffic equally by restoring net neutrality (something that the Trump administration [did away with](https://newrepublic.com/article/146305/loses-war-net-neutrality)), the Biden administration is still playing catchup, fighting many of yesterday’s battles. For instance, the order “calls on the leading antitrust agencies, [the DOJ and FTC], to enforce the antitrust laws vigorously and recognizes that the law allows them to challenge prior bad mergers that past Administrations did not previously challenge.”

While divesting WhatsApp and Instagram from Facebook are worthwhile efforts, there’s also a sense that would-be tech reformers are struggling to deal with the mistakes and oversights of a previous generation of politicians (i.e., pushing for the enforcement of existing laws is yet another call for the government to do its job). Even the order’s directive that the FTC “establish rules on surveillance and the accumulation of data” seems incredibly belated. We are 20-odd years into a surveillance economy, in which consumers have become the main source to be mined for value. The resulting inequities are vast, as the tech giants have had decades to strengthen their positions. It will take far more than an executive order to undo all this, much less to ensure a more equitable future. The question is: Does the Biden administration understand this grim state of play, or is this the best we’re going to get?

#### 2---Everything is non-binding

Christopher Holding et al. 21 Christopher, Paul Jin, Andrew Lacy, Arman Goodwin; July 15; Experts at JD Supra, a daily source of legal intelligence on all topics business and personal, distributing news, commentary, and analysis from leading lawyers; JD Supra, “Biden Executive Order Calls for Heightened Antitrust Scrutiny,” <https://www.jdsupra.com/legalnews/biden-executive-order-calls-for-7783960/>

Key Implications

Revised horizontal and vertical merger guidelines are expected, which will likely implement a much more aggressive approach to deals. Note, however, that agency merger guidelines are not binding on courts and merger challenges under more aggressive theories may be met with skeptical courts;

Anticipate delays in HSR review especially for deals in industries singled out by the Order (e.g., tech, pharma, healthcare, among others), even if competitive overlaps are minimal;

Deals not subject to HSR filing requirements, even when purchase prices are relatively low, should be reviewed by antitrust specialists to assess risk, especially in the sectors identified in the Order;

#### 3---There’s no significant antitrust enforcement

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

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

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

Two to go

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

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

#### 4---Enforcement’s declining

Douglas H. Ginsburg 20, U.S. Court of Appeals for the D.C. Circuit and Professor at the Antonin Scalia Law School at George Mason University, and Cecilia (Yixi) Cheng, Law Clerk for the U.S. Court of Appeals for the D.C. Circuit, “The Decline in U.S. Criminal Antitrust CaseS: ACPERA and Leniency in an International Context”, George Mason University Law & Economics Research Paper Series, 19-31, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3460091

II. Downward Trend in Cartel Cases

The number of criminal cases filed annually by the Division decreased from 90 in 2011 to 18 in 2018, the lowest it has been since 1972.7 Similarly, whereas 27 corporations were charged with criminal antitrust violations in 2011, only 5 were charged in 2018. The total criminal fines obtained by the Division have also fallen, from an average of more than $1 billion per year in 2012 through 2015 to $172 million in 2018.

Criminal enforcement at the Division has always ebbed and flowed, of course, but this recent downward trend marks the greatest reduction in criminal enforcement activity since the leniency program was reformed in 1993:

Chart, line chart

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### Resources Sufficient---2NC

#### Recent streamlining is improving resource allocation

Lindsay Kryzak 21, FTC Office of Public Affairs, “FTC Authorizes Investigations into Key Enforcement Priorities,” FTC, 7/1/21, https://www.ftc.gov/news-events/press-releases/2021/07/ftc-authorizes-investigations-key-enforcement-priorities

The Federal Trade Commission voted to approve a series of resolutions authorizing investigations into key law enforcement priorities for the next decade. Specifically, the resolutions direct agency staff to use “compulsory process,” such as subpoenas, to investigate seven specific enforcement priorities. Priority targets include repeat offenders; technology companies and digital platforms; and healthcare businesses such as pharmaceutical companies, pharmacy benefits managers, and hospitals. The agency is also prioritizing investigations into harms against workers and small businesses, along with harms related to the COVID-19 pandemic. Finally, at a time when merger filings are surging, the agency is ramping up enforcement against illegal mergers, both proposed and consummated.

In remarks delivered during the open meeting, Chair Lina M. Khan noted that the resolutions approved today represent an important step in rethinking the work of the FTC. Instituting new cross-agency, investigatory resolutions will promote a more holistic use of the FTC’s enforcement authorities to stop bad actors across markets.

“The reforms are designed to ensure that our staff can comprehensively investigate unlawful business practices across the economy,” said Chair Khan. “They will help relieve unnecessary burdens on staff and cut back delays and ‘red tape’ bureaucracy when it comes to advancing our Commission’s law enforcement priorities. This is particularly important given that we are in the midst of a massive merger boom.”

Compulsory process refers to the issuance of demands for documents and testimony, through the use of civil investigative demands and subpoena. The FTC Act authorizes the Commission to use compulsory process in its investigations. Compulsory process requires the recipient to produce information, and these orders are enforceable by courts. The Commission has routinely adopted compulsory process resolutions on a wide range of topics. Many of these resolutions cover specific industries, like the automobile industry or the postsecondary education industry, while others involve business practices that cut across sectors, like privacy or the targeting of older Americans.

The actions taken today will broaden the ability for FTC investigators and prosecutors to obtain evidence in critical investigations on key areas where the FTC’s work can make the most impact. Each omnibus authorizes investigations into any competition or consumer protection conduct violations under the FTC Act. The omnibuses will also allow staff to use compulsory process to investigate both proposed mergers and consummated mergers. Individual Commissioners will continue to be required to sign compulsory process documents prior to issuance. With these in place, the FTC can better utilize its limited resources and move forward in earnest to fix the market structures that allow the worst predators to proliferate.

#### They’re getting a resource surge---but it’s narrow

Cat Zakrzewski 21, technology policy reporter, tracking Washington's efforts to regulate Silicon Valley companies, “Will Lina Khan bring a reckoning to Silicon Valley? She’ll face major challenges,” Washington Post, 6/17/21, https://www.washingtonpost.com/technology/2021/06/17/lina-khan-ftc-actions/

It seems likely the agency will see its funding grow under Khan, especially after the Senate passed legislation that would overhaul merger filing fees to provide more financing to antitrust enforcers. House lawmakers have introduced a similar proposal, which is less controversial than some of the other tech competition bills.

#### The FTC’s scaling back new obligations---but there’s no margin for error

Leah Nylen & Betsy Woodruff Swan 21, staff writers at POLITICO, “FTC staffers told to back out of public appearances,” POLITICO, 7/6/21, https://www.politico.com/news/2021/07/06/ftc-staffers-public-appearances-498386

Less than a week into Lina Khan’s tenure as Federal Trade Commission chair, her chief of staff ordered the agency’s staff to cancel all public appearances, according to internal agency emails viewed by POLITICO.

In a June 22 email to more than two dozen of the FTC’s top staffers, Khan’s chief of staff, Jen Howard, announced a “moratorium on public events and press outreach.”

“For the time being I am putting a moratorium on staff participating in external events,” Howard wrote. The message was sent to the head of the FTC’s major offices, including those who oversee all of the agency’s economics, antitrust lawyers and consumer protection attorneys.

In a follow-up message two days later, Howard said that any staff who were scheduled for public events should cancel those appearances.

“I want to make clear that for any situations where staff are currently scheduled to do a public event and thus need to contact event organizers to withdraw their participation, the message they should convey is that they are sorry they can no longer participate due to pressing matters at the FTC,” she wrote.

An FTC spokesperson confirmed that the agency has called off all staff public appearances for the time being.

"The FTC is severely under-resourced and in the midst of a massive surge in merger filings. This is an all-hands-on-deck moment,” Howard said in a statement to POLITICO. “So the agency pushed pause on public speaking events that aren't focused on educating consumers to ensure staff time is being used to maximum benefit and productivity. The American public needs this agency solving problems, not speaking on panels."

The FTC, which enforces antitrust and consumer protection laws, has about 1,100 staffers, fewer employees than the agency had at the beginning of the Reagan administration. Only about 40 of the agency's lawyers are devoted to privacy and data security issues, the agency's former chair told Congress in 2019, in contrast to the United Kingdom, which has an agency of roughly 500 employees focused on privacy.

As recently as December, the FTC was discussing steps to deal with a possible cash shortage including freezing pay and cutting back on the number of lawsuits the agency files.

Since taking over three weeks ago, Khan has swiftly begun advancing her priorities, holding the FTC’s first open meeting in decades last week. In her opening comment, Khan pledged to provide transparency for the agency’s work and host open meetings “on a regular basis.”

### Link Wall---2NC

#### Treading on new turf magnifies the link---the agency will take time AND money to develop new proficiencies

Seth B. Sacher & John M. Yun 19, Sacher is an Economist, Washington, DC; Yun is from the Antonin Scalia Law School, George Mason University, “TWELVE FALLACIES OF THE "NEO-ANTITRUST" MOVEMENT,” 26 Geo. Mason L. Rev. 1491, 1493, Summer 2019, Lexis

VII. Fallacy Seven: Not Recognizing That Their Proposals Will Strain Competition Agency Resources, Increase Uncertainty, and Make These Agencies More Political and Subject to Capture

Most of those that have worked within, or before, the antitrust agencies, despite their inevitable disagreement with certain actions or policies, are generally very impressed with the high degree of skill, professionalism, and dedication exhibited by the career staff. As will be discussed more fully in the [\*1515] context of Fallacy XI below, many proponents of neo-antitrust do not accept the proposition that the antitrust agencies and their staffs function relatively well, in spite of the views of many (on all sides of the political spectrum) who have had experience working within or before the antitrust agencies. Regardless of how neo-antitrust proponents view the agencies, many of their proposals run a serious risk of adversely affecting competition agency performance.

There are a number of objective reasons to expect antitrust agencies to function relatively well. First, antitrust agencies tend to be small relative to many other regulatory agencies and bureaucracies in general. Second, their staffs tend to be highly trained professionals, consisting primarily of lawyers and Ph.D. economists. Third, they have a well-defined objective (i.e., the consumer welfare standard or some similar standard based on economic reasoning, such as the total welfare standard). Finally, although antitrust is considered a form of regulation, it is distinct from other forms of regulation in that it does not involve a continuing relationship between the regulated firms and the regulator. As a goal, antitrust seeks to enable markets to more nearly achieve certain social objectives on their own.

First, advocates of neo-antitrust would like to see the responsibilities of the antitrust agencies expanded in a number of ways. This includes more aggressively enforcing existing antitrust laws, as well as the consideration of issues beyond those currently within that purview. Further, many of their proposals, such as requiring data sharing, monitoring markets to prevent tipping, or approving platforms' algorithm changes, will require significantly more active market supervision than is currently the case. While many [\*1516] proponents of modern antitrust would agree that the antitrust agencies are underfunded, there is certainly a point at which expanding the antitrust agencies will have "bureaucratic" diseconomies of scale. Fully following the recommendations of neo-antitrust advocates could very well require many antitrust agencies to expand beyond some critical point, which will inevitably lead to significantly larger bureaucracies and associated inefficiencies.

#### Even if money’s unlimited, staff are constrained AND trade-off

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

B. Augmenting the Human Capital of the Enforcement Agencies

Measures to expand federal antitrust intervention dramatically—through the prosecution of lawsuits or the promulgation of trade regulation rules—will face arduous opposition from the affected businesses. Assuming that litigation will provide the main method in the coming few years to attack positions of single-firm or collective dominance, the targets of big antitrust cases will marshal the best talent that private law firms, economic consultancies, and academic bodies can offer to oppose the government in court. The defense will benefit from doctrinal principles that generally are sympathetic to dominant firms (again, we assume that legislation to change the doctrinal status quo will not be immediately forthcoming). Beyond a certain point, the addition of new, high stakes cases to the litigation portfolio of public antitrust agencies will create a serious gap between the teams assembled for the prosecution and defense, respectively. Although therefore the public agencies can match the private sector punch for the punch when prosecuting several major de-monopolization cases, when the volume of such cases rises from several to many, the government agencies may have to rely on personnel with considerably less experience to develop and prosecute difficult antitrust cases, seeking powerful remedies upon global giants.

An enhanced litigation program will therefore go only as far as the talent of the agencies will carry it. We propose three steps to build and retain the human capital—attorneys, economists, technologists, and administrative managers133—to undertake a more ambitious litigation program. The first is to use antitrust as a prototype for a program to raise civil service salaries. The second two steps consist of cautions about the dangers of (a) denigrating the skills and accomplishments of existing agency personnel and (b) attempting to shut the revolving door through which professionals move between the public and private sectors. We discuss all three of these steps below.

1. Resources and compensation

To accomplish the desired expansion of enforcement, we see a need for more resources.134 Nonetheless, budget increases that simply allow the enforcement agencies to hire additional staff, while useful, are not enough. We would use more resources to boost compensation for agency employees. This means taking the antitrust agencies out of the existing civil service pay scale. The need is not simply to hire more people. It is to attract a larger number of elite personnel who are equal to the tasks that the ambitious reform agenda will impose. We do not see how the public agencies can recruit and retain necessary personnel without a significant increase in the salaries paid to case handlers and to senior managers. It surprises us that none of the proposals for bold reform mention compensation for civil servants.

### AI

#### It’s easily possible and doesn’t require AGI

Karina Vold & Daniel R. Harris 21, Vold is a philosopher of cognitive science and artificial intelligence & an assistant professor at the University of Toronto's Institute for the History and Philosophy of Science and Technology; Harris is a retired lawyer and Foreign Service Officer at the US Department of State, “How Does Artificial Intelligence Pose an Existential Risk?,” Oxford Handbook of Digital Ethics, Ed. C. Veliz., pp 1-34

3. The Control Problem Argument for Xrisk

The earliest line of thinking that AI poses an Xrisk warns that AI might become both powerful and indifferent to human values, leading to dangerous consequences for human beings. Despite it being a longstanding concern, the structure of this argument is rarely, if ever, explicitly laid out.3 By presenting the control problem argument for Xrisk (henceforth CPAX) in this way, our aim is to capture what we understand to be the line of reasoning while also making the epistemic moves more explicit.

CPAX rests on two central theses: the Orthogonality Thesis and the Instrumental Convergence Thesis, both of which were first explicitly articulated by Bostrom (2012, 130-132; 2014).

Orthogonality Thesis: The intelligent capacities of any system are logically independent from any goals the system might have.

Instrumental Convergence Thesis: Almost any intelligent system is likely to converge upon certain instrumental (sub)goals.

We will discuss each of these theses, as well as the premises and central inferences of the argument (below) in §3.1–§3.4.

P1. It is possible to build an AI system that has a decisive strategic advantage over all other forms of intelligence.

P2. If an AI system has a decisive strategic advantage over human intelligence, then we may not be able to control that system.

C1. It is possible to build an AI system that we are not able to

control (from P1 and P2).

P3. The intelligent capacities of an AI system are logically independent from any goals the system might have (supported by the Orthogonality Thesis).

C2. Therefore, it is possible to build an AI system that human beings are not able to control and that has goals that do not align with human values (from C1 and P3).

P4. AI systems are likely to converge upon certain instrumental (sub)goals that are inimical to human interests (supported by the Instrumental Convergence Thesis).

C3. It is possible to build AI systems that pose an existential threat to humanity (from C2 and P4).

This reconstruction of the argument is by no means uncontroversial, and we will discuss some of the disagreements and objections as we go through the argument.

3.1 Intelligence Explosion and Decisive Strategic Advantages

P1 states that it is possible to build an AI system that has a decisive strategic advantage over all other forms of intelligence (including human intelligence). Historically, CPAX was introduced as arising from an intelligence explosion that would lead to the creation of a superintelligent AI—a system that by definition has a decisive strategic advantage over human intelligence. More recently, some have argued that an intelligence explosion is not the only pathway to AI gaining a decisive strategic advantage. We will begin by explaining the pathway to a loss of control over AI (C1) from an intelligence explosion (in this section, §3.1) and consider some potential objections (§3.1.1). We will then, in §3.2, discuss P2 and some more contemporary takes on how C1 could result.

An intelligence explosion is a hypothetical event in which an AI system enters a rapid cycle of recursive self-improvement, whereby each new iteration creates a more intelligent version of itself, culminating in the creation of a superintelligence. Here, a superintelligence is “any intellect that greatly exceeds the cognitive performance of humans in virtually all domains of interest” (Bostrom 2014, 22). The concept of an intelligence explosion was first articulated by I.J. Good (1965, 33), who argued that an AI system whose intelligence exceeds humanity’s in all intellectual activities would necessarily also exceed it in terms of designing machine intelligence. Hence, if such a system were initially engineered by humans, it would possess the capability to design a machine more intelligent than itself. The subsequent new iteration, being more intelligent than its predecessor, would by the same logic also be capable of designing a machine more intelligent than itself. If each new generation of AI were to utilize its improved design capability, an intelligence explosion would occur (Chalmers, 2010).

Importantly, an intelligence explosion need not begin with the creation of a machine with greater than human intelligence, as Good’s argument suggests. In principle, it could be sparked via the creation of a more modest type of machine intelligence. Some might hold, for example, that an intelligence explosion merely requires a system with artificial general intelligence, where general intelligence is the ability to deploy the same core suite of cognitive resources to complete a wide range of different tasks (Shevlin et al., 2019). An even more modest possibility is that an intelligence explosion could spark from a mere artificial narrow intelligence, that is, a system that excels only at specific tasks and lacks the ability to use its resources to solve problems outside of its narrow domains.4 Bostrom (2014, 29), for example, suggests that a system “capable of improving its own architecture”, what he calls a “seed AI”, would be a sufficient starting point. For example, DeepMind’s AlphaZero, a current narrow AI system, has already shown the capacity to iteratively self-improve by repeatedly playing against itself. This illustrates how, under certain conditions, this process of recursive self- improvement might generate an intelligence explosion that begins from a mere narrow AI, in particular, any narrow AI system that enjoys a decisive strategic advantage (i.e., well above human level capacity) in some relevant domains, coupled with sufficient capacities for real-world modification.5,6

#### Good AI invents solutions to present AND speculative future risks---but regs are key

Toby Ord 20, Senior Research Fellow in Philosophy at Oxford University, “5. Future Risks,” The Precipice: Existential Risk and the Future of Humanity, First edition, Hachette Books, 2020, pp. 121–158

Even if these arguments for risk are entirely wrong in the particulars, we should pay close attention to the development of AGI as it may bring other, unforeseen, risks. The transition to a world where humans are no longer the most intelligent entities on Earth could easily be the greatest ever change in humanity’s place in the universe. We shouldn’t be surprised if events surrounding this transition determine how our longterm future plays out— for better or worse.

One key way in which AI could help improve humanity’s longterm future is by offering protection from the other existential risks we face. For example, AI may enable us to find solutions to major risks or to identify new risks that would have blindsided us. AI may also help make our longterm future brighter than anything that could be achieved without it. So the idea that developments in AI may pose an existential risk is not an argument for abandoning AI, but an argument for proceeding with due caution.

The case for existential risk from AI is clearly speculative. Indeed, it is the most speculative case for a major risk in this book. Yet a speculative case that there is a large risk can be more important than a robust case for a very low-probability risk, such as that posed by asteroids. What we need are ways to judge just how speculative it really is, and a very useful starting point is to hear what those working in the field think about this risk.

Some outspoken AI researchers, like Professor Oren Etzioni, have painted it as “very much a fringe argument,” saying that while luminaries like Stephen Hawking, Elon Musk and Bill Gates may be deeply concerned, the people actually working in AI are not.103 If true, this would provide good reason to be skeptical of the risk. But even a cursory look at what the leading figures in AI are saying shows it is not.

For example, Stuart Russell, a professor at the University of California, Berkeley, and author of the most popular and widely respected textbook in AI, has strongly warned of the existential risk from AGI. He has gone so far as to set up the Center for Human-Compatible AI, to work on the alignment problem.104 In industry, Shane Legg (Chief Scientist at DeepMind) has warned of the existential dangers and helped to develop the field of alignment research.105 Indeed many other leading figures from the early days of AI to the present have made similar statements.106

There is actually less disagreement here than first appears. The main points of those who downplay the risks are that (1) we likely have decades left before AI matches or exceeds human abilities, and (2) attempting to immediately regulate research in AI would be a great mistake. Yet neither of these points is actually contested by those who counsel caution: they agree that the time frame to AGI is decades, not years, and typically suggest research on alignment, not regulation. So the substantive disagreement is not really over whether AGI is possible or whether it plausibly could be threat to humanity. It is over whether a potential existential threat that looks to be decades away should be of concern to us now. It seems to me that it should.

One of the underlying drivers of the apparent disagreement is a difference in viewpoint on what it means to be appropriately conservative. This is well illustrated by a much earlier case of speculative risk, when Leo Szilard and Enrico Fermi first talked about the possibility of an atomic bomb: “Fermi thought that the conservative thing was to play down the possibility that this may happen, and I thought the conservative thing was to assume that it would happen and take all the necessary precautions.”107 In 2015 I saw this same dynamic at the seminal Puerto Rico conference on the future of AI. Everyone acknowledged that the uncertainty and disagreement about timelines to AGI required us to use “conservative assumptions” about progress—but half used the term to allow for unfortunately slow scientific progress and half used it to allow for unfortunately quick onset of the risk. I believe much of the existing tension on whether to take risks from AGI seriously comes down to these disagreements about what it means to make responsible, conservative, guesses about future progress in AI.

That conference in Puerto Rico was a watershed moment for concern about existential risk from AI. Substantial agreement was reached and many participants signed an open letter about the need to begin working in earnest to make AI both robust and beneficial.108 Two years later an expanded conference reconvened at Asilomar, a location chosen to echo the famous genetics conference of 1975, where biologists came together to pre- emptively agree principles to govern the coming possibilities of genetic engineering. At Asilomar in 2017, the AI researchers agreed on a set of Asilomar AI Principles, to guide responsible longterm development of the field. These included principles specifically aimed at existential risk:

Capability Caution: There being no consensus, we should avoid strong assumptions regarding upper limits on future AI capabilities.

Importance: Advanced AI could represent a profound change in the history of life on Earth, and should be planned for and managed with commensurate care and resources.

Risks: Risks posed by AI systems, especially catastrophic or existential risks, must be subject to planning and mitigation efforts commensurate with their expected impact.109

Perhaps the best window into what those working on AI really believe comes from the 2016 survey of leading AI researchers. As well as asking if and when AGI might be developed, it asked about the risks: 70 percent of the researchers agreed with Stuart Russell’s broad argument about why advanced AI might pose a risk;110 48 percent thought society should prioritize AI safety research more (only 12 percent thought less). And half the respondents estimated that the probability of the longterm impact of AGI being “extremely bad (e.g., human extinction)” was at least 5 percent.111 I find this last point particularly remarkable—in how many other fields would the typical leading researcher think there is a one in twenty chance the field’s ultimate goal would be extremely bad for humanity?

Of course this doesn’t prove that the risks are real. But it shows that many AI researchers take seriously the possibilities that AGI will be developed within 50 years and that it could be an existential catastrophe. There is a lot of uncertainty and disagreement, but it is not at all a fringe position.

There is one interesting argument for skepticism about AI risk that gets stronger—not weaker—when more researchers acknowledge the risks. If researchers can see that building AI would be extremely dangerous, then why on earth would they go ahead with it? They are not simply going to build something that they know will destroy them.112

If we were all truly wise, altruistic and coordinated, then this argument would indeed work. But in the real world people tend to develop technologies as soon as the opportunity presents itself and deal with the consequences later. One reason for this comes from the variation in our beliefs: if even a small proportion of researchers don’t believe in the dangers (or welcome a world with machines in control), they will be the ones who take the final steps. This is an instance of the unilateralist’s curse (discussed here). Another reason involves incentives: even if some researchers thought the risk was as high as 10 percent, they may still want to take it if they thought they would reap most of the benefits. This may be rational in terms of their self-interest, yet terrible for the world.

In some cases like this, government can step in to resolve these coordination and incentive problems in the public interest. But here these exact same coordination and incentive problems arise between states and there are no easy mechanisms for resolving those. If one state were to take it slowly and safely, they may fear others would try to seize the prize. Treaties are made exceptionally difficult because verification that the others are complying is even more difficult here than for bioweapons.113

Whether we survive the development of AI with our longterm potential intact may depend on whether we can learn to align and control AI systems faster than we can develop systems capable enough to pose a threat. Thankfully, researchers are already working on a variety of the key issues, including making AI more secure, more robust and more interpretable. But there are still very few people working on the core issue of aligning AI with human values. This is a young field that is going to need to progress a very long way if we are to achieve our security.

Even though our current and foreseeable systems pose no threat to humanity at large, time is of the essence. In part this is because progress may come very suddenly: through unpredictable research breakthroughs, or by rapid scaling-up of the first intelligent systems (for example by rolling them out to thousands of times as much hardware, or allowing them to improve their own intelligence).114 And in part it is because such a momentous change in human affairs may require more than a couple of decades to adequately prepare for. In the words of Demis Hassabis, co- founder of DeepMind:

We need to use the downtime, when things are calm, to prepare for when things get serious in the decades to come. The time we have now is valuable, and we need to make use of it.115

DYSTOPIAN SCENARIOS

So far we have focused on two kinds of existential catastrophe: extinction and the unrecoverable collapse of civilization. But these are not the only possibilities. Recall that an existential catastrophe is the permanent destruction of humanity’s longterm potential, and that this is interpreted broadly, including outcomes where a small fragment of potential may remain.

Losing our potential means getting locked into a bad set of futures. We can categorize existential catastrophes by looking at which aspects of our future get locked in. This could be a world without humans (extinction) or a world without civilization (unrecoverable collapse). But it could also take the form of an unrecoverable dystopia—a world with civilization intact, but locked into a terrible form, with little or no value.116

This has not happened yet, but the past provides little comfort. For these kinds of catastrophes only became possible with the advent of civilization, so our track record is much shorter. And there is reason to think that the risks may increase over time as the world becomes more interconnected and experiments with new technologies and ideologies.

I won’t attempt to address these dystopian scenarios with the same level of scientific detail as the risks we’ve explored so far, for the scenarios are diverse and our present understanding of them very limited. Instead, my aim is just to take some early steps toward noticing and understanding these very different kinds of failure.

We can divide the unrecoverable dystopias we might face into three types, on the basis of whether they are desired by the people who live in them. There are possibilities where the people don’t want that world, yet the structure of society makes it almost impossible for them to coordinate to change it. There are possibilities where the people do want that world, yet they are misguided and the world falls far short of what they could have achieved. And in between there are possibilities where only a small group wants that world but enforces it against the wishes of the rest. Each of these types has different hurdles it would need to overcome in order to become truly locked in.

[FIGURE 5.2 OMITTED]

Note that to count as existential catastrophes, these outcomes don’t need to be impossible to break out of, nor to last millions of years. Instead, the defining feature is that entering that regime was a crucial negative turning point in the history of human potential, locking off almost all our potential for a worthy future. One way to look at this is that when they end (as they eventually must), we are much more likely than we were before to fall down to extinction or collapse than to rise up to fulfill our potential. For example, a dystopian society that lasted all the way until humanity was destroyed by external forces would be an existential catastrophe. However, if a dystopian outcome does not have this property, if it leaves open all our chances for success once it ends—it is a dark age in our story, but not a true existential catastrophe.

The most familiar type is the enforced dystopia. The rise of expansionist totalitarianism in the mid-twentieth century caused intellectuals such as George Orwell to raise the possibility of a totalitarian state achieving global dominance and absolute control, locking the world into a miserable condition.117 The regimes of Hitler and Stalin serve as a proof of principle, each scaling up to become imperial superpowers while maintaining extreme control over their citizens.118 However, it is unclear whether Hitler or Stalin had the expansionist aims to control the entire world, or the technical and social means to create truly lasting regimes.119

This may change. Technological progress has offered many new tools that could be used to detect and undermine dissent, and there is every reason to believe that this will continue over the next century. Advances in AI seem especially relevant, allowing automated, detailed monitoring of everything that happens in public places—both physical and online. Such advances may make it possible to have regimes that are far more stable than those of old.

That said, technology is also providing new tools for rebellion against authority, such as the internet and encrypted messages. Perhaps the forces will remain in balance, or shift in favor of freedom, but there is a credible chance that they will shift toward greater control over the populace, making enforced dystopias a realistic possibility.

A second kind of unrecoverable dystopia is a stable civilization that is desired by few (if any) people. It is easy to see how such an outcome could be dystopian, but not immediately obvious how we could arrive at it, or lock it in, if most (or all) people do not want it.120

The answer lies in the various population-level forces that can shape global outcomes. Well-known examples include market forces creating a race to the bottom, Malthusian population dynamics pushing down the average quality of life, or evolution optimizing us toward the spreading of our genes, regardless of the effects on what we value. These are all dynamics that push humanity toward a new equilibrium, where these forces are finally in balance. But there is no guarantee this equilibrium will be good.

For example, consider the tension between what is best for each and what is best for all. This is studied in the field of game theory through “games” like the prisoner’s dilemma and the tragedy of the commons, where each individual’s incentives push them toward producing a collectively terrible outcome. The Nash equilibrium (the outcome we reach if we follow individual incentives) may be much worse for everyone than some other outcome we could have achieved if we had overcome these local incentives.

The most famous example is environmental degradation, such as pollution. Because most of the costs of pollution aren’t borne by the person who causes it, we can end up in a situation where it is in the self-interest of each person to keep engaging in such activities, despite this making us all worse off. It took significant moral progress and significant political action to help us break out of this. We may end up in new traps that are even harder to coordinate our way out of. This could be at the level of individuals, or at the level of groups. We could have nations, ideological blocs, or even planets or descendent species of Homo sapiens locked in harmful competition—doing what is best for their group, but bad for groups on the whole.

I don’t know how likely it is that we suffer a sufficiently bad (and sufficiently intractable) tragedy of the commons like this. Or that we are degraded by evolutionary pressures, or driven to lives of very low quality by Malthusian population dynamics, or any other such situation. I’d like to hope that we could always see such things coming and coordinate to a solution. But it’s hard to be sure that we could.

The third possibility is the “desired dystopia.”121 Here it is easier to see how universal desire for an outcome might cause us to lock it in, though less clear how such an outcome could be dystopian. The problem is that there are many compelling ideas that can radically shape our future— especially ideologies and moral theories, as these make direct normative claims about the world we should strive to create. If combined with the technological or social means for instilling the same views in the next generation (indoctrination, surveillance), this has the potential to be disastrous.

The historical record is rife with examples of seriously defective ideologies and moral views that gripped large parts of the world. Moreover, even reasonable normative views often recommend that they be locked in— for otherwise a tempting rival view may take over, with (allegedly) disastrous results.122 Even though the most plausible moral views have a lot of agreement about which small changes to the world are good and which are bad, they tend to come strongly apart in their recommendations about what an optimal world would look like. This problem thus echoes that of AI alignment, where a strong push toward a mostly correct ideal could instead spell disaster.

Some plausible examples include: worlds that completely renounce further technological progress (which ensures our destruction at the hands of natural risks),123 worlds that forever fail to recognize some key form of harm or injustice (and thus perpetuate it blindly), worlds that lock in a single fundamentalist religion, and worlds where we deliberately replace ourselves with something that we didn’t realize was much less valuable (such as machines incapable of feeling).124

All of these unrecoverable dystopias can be understood in terms of lock-in. Key aspects of the future of the civilization are being locked in such that they are almost impossible to change. If we are locked into a sufficiently bad set of futures, we have an unrecoverable dystopia; an existential catastrophe.

Of course, we can also see lock-in on smaller scales. The Corwin Amendment to the US constitution provides a disturbing example of attempted lock-in. In an effort to placate the South and avoid civil war, the proposed Thirteenth Amendment aimed to lock in the institution of slavery by making it impossible for any future amendments to the constitution to ever abolish it.125

I cannot see how the world could be locked into a dystopian state in the near future.126 But as technology advances and the world becomes more and more interlinked, the probability of a locked-in dystopia would appear to rise, perhaps to appreciable levels within the next hundred years. Moreover, in the further future I think these kinds of outcomes may come to take up a high share of the remaining risk. For one thing, they are more subtle, so even if we got our act together and made preserving our longterm potential a high global priority, it may take remarkable wisdom and prudence to avoid some of these traps. And for another, our eventual spread beyond the Earth may make us nearly immune to natural catastrophes, but ideas travel at the speed of light and could still corrupt all that we hope to achieve.

A key problem is that the truth of an idea is only one contributor to its memetic potential—its ability to spread and to stick. But the more that rigorous and rational debate is encouraged, the more truth contributes to memetic success. So encouraging a culture of such debate may be one way we can now help avoid this fate. (For more on this, see the discussion of the Long Reflection in Chapter 7.)

The idea of lock-in also gives us another useful lens through which to think about existential risk in general. We might adopt the guiding principle of minimizing lock-in. Or to avoid the double negative, of preserving our options.127 This is closely related to the idea of preserving our longterm potential—the difference being that preserving our options takes no account of whether the options are good or bad. This is not because we intrinsically care about keeping options alive even if they are bad, but because we aren’t certain they are bad, so we risk making an irreversible catastrophic mistake if we forever foreclose an option that would turn out to be best.

OTHER RISKS

What other future risks are there that warrant our concern?

One of the most transformative technologies that might be developed this century is nanotechnology. We have already seen the advent of nanomaterials (such as carbon nanotubes) which are just a few atoms thick and structured with atomic precision. But much larger vistas would open up if we could develop machinery that operates with atomic precision. We have proof that some form of this is possible within our very own cells, where atomically precise machinery already performs their essential functions.

In the popular imagination nanotechnology is synonymous with building microscopic machines. But the bigger revolution may instead come from using nanomachinery to create macro-scale objects. In his foundational work on the topic, Eric Drexler describes how nanotechnology could allow desktop fabricators, capable of assembling anything from a diamond necklace to a new laptop. This atomically precise manufacturing would be the ultimate form of 3D printing: taking a digital blueprint for the object and the raw chemical elements, and producing an atomically precise instance. This may allow us to construct things beyond our current technological reach, as well as cutting prices of existing objects such as computers or solar cells to near the cost of their raw materials, granting the world vastly more computing power and clean energy.

Such a powerful technology may pose some existential risk. Most attention has so far focused on the possibility of creating tiny self- replicating machines that could spread to create an ecological catastrophe. This may be possible, but there are mundane dangers that appear more likely, since extreme manufacturing power and precision would probably also allow the production of new weapons of mass destruction.128 Indeed the problems resemble those of advanced biotechnology: the democratization of extremely powerful technology would allow individuals or small groups access to the kinds of power (both constructive and destructive) that was previously only available to powerful nations. Solutions to managing this technology may require digital controls on what can be fabricated or state control of fabrication (the path we took with nuclear power). While this technology is more speculative than advanced biotechnology or AI, it may also come to pose a significant risk.

A very different kind of risk may come from our explorations beyond the Earth. Space agencies are planning missions which would return soil samples from Mars to the Earth, with the chief aim of looking for signs of life. This raises the possibility of “back contamination” in which microbes from Mars might compromise the Earth’s biosphere. While there is a consensus that the risk is extremely small, it is taken very seriously.129 The plan is to return such samples to a new kind of BSL-4 facility, with safeguards to keep the chance of any unsterilized particle escaping into the environment below one in a million.130 While there are still many unknown factors, this anthropogenic risk appears comparatively small and well managed.131

The extra-terrestrial risk that looms largest in popular culture is conflict with a spacefaring alien civilization. While it is very difficult to definitively rule this out, it is widely regarded to be extremely unlikely (though becoming more plausible over the extreme long term).132 The main risk in popular depictions is from aliens traveling to Earth, though this is probably the least likely possibility and the one we could do the least about. But perhaps more public discussion should be had before we engage in active SETI (sending powerful signals to attract the attention of distant aliens). And even passive SETI (listening for their messages) could hold dangers, as the message could be designed to entrap us.133 These dangers are small, but poorly understood and not yet well managed.

Another kind of anthropogenic risk comes from our most radical scientific experiments—those which create truly unprecedented conditions.134 For example, the first nuclear explosion created temperatures that had never before occurred on Earth, opening up the theoretical possibility that it might ignite the atmosphere. Because these conditions were unprecedented we lost the reassuring argument that this kind of event has happened many times before without catastrophe. (We could view several of the risks we have already discussed—such as back contamination, gain of function research and AGI—through this lens of science experiments creating unprecedented conditions.)

In some cases, scientists confidently assert that it is impossible for the experiment to cause a disaster or extinction. But even core scientific certainties have been wrong before: for example, that objects have determinate locations, that space obeys Euclid’s axioms, and that atoms can’t be subdivided, created or destroyed. If pressed, the scientists would clarify that they really mean it couldn’t happen without a major change to our scientific theories. This is sufficient certainty from the usual perspective of seeking accurate knowledge, where 99.9 percent certainty is more than enough. But that is a standard which is independent of the stakes. Here the stakes are uniquely high and we need a standard that is sensitive to this.135

The usual approach would be to compare the expected gains to the expected losses. But that is challenging to apply, as a very low (and hard to quantify) chance of enormous catastrophe needs to be weighed against the tangible benefits that such experiments have brought and are likely to bring again. Furthermore, the knowledge or the technologies enabled by the experiments may help lower future existential risk, or may be necessary for fulfilling our potential.

For any given experiment that creates truly unprecedented conditions, the chance of catastrophe will generally be very small. But there may be exceptions, and the aggregate chance may build up. These risks are generally not well governed.136

These risks posed by future technologies are by their very nature more speculative than those from natural hazards or the most powerful technologies of the present day. And this is especially true as we moved from things that are just now becoming possible within biotechnology to those that are decades away, at best. But one doesn’t have to find all of these threats to be likely (or even plausible) to recognize that there are serious risks ahead. Even if we restrict our attention to engineered pandemics, I think there is more existential risk than in all risks of the last two chapters combined, and those risks were already sufficient to make safeguarding humanity a central priority of our time.

UNFORESEEN RISKS

Imagine if the scientific establishment of 1930 had been asked to compile a list of the existential risks humanity would face over the following hundred years. They would have missed most of the risks covered in this book—especially the anthropogenic risks.137 Some would have been on the edge of their awareness, while others would come as complete shocks. How much risk lies beyond the limits of our own vision?

We can get some inkling by considering that there has been no slow-down in the rate at which we’ve been discovering risks, nor the rate at which we’ve been producing them. It is thus likely we will face unforeseen risks over the next hundred years and beyond. Since humanity’s power is still rapidly growing, we shouldn’t be surprised if some of these novel threats pose a substantial amount of risk.

One might wonder what good can come of considering risks so far beyond our sight. While we cannot directly work on them, they may still be lowered through our broader efforts to create a world that takes its future seriously. Unforeseen risks are thus important to understanding the relative value of broad versus narrowly targeted efforts. And they are important for estimating the total risk we face.

Nick Bostrom has recently pointed to an important class of unforeseen risk.138 Every year as we invent new technologies, we may have a chance of stumbling across something that offers the destructive power of the atomic bomb or a deadly pandemic, but which turns out to be easy to produce from everyday materials. Discovering even one such technology might be enough to make the continued existence of human civilization impossible.

## Econ

### 1NR – AT: Biz Con Low Now

#### Growth is strong – most recent CBO projections

Barnes 9/29 – Mitchell Barnes, research analyst for the Hamilton Project, part of the Brookings Institution, “11 facts on the economic recovery from the COVID-19 pandemic,” 9/29/21, https://www.brookings.edu/research/11-facts-on-the-economic-recovery-from-the-covid-19-pandemic/

With the ongoing effects of fiscal support, pent-up demand from consumers for face-to-face services, and the strength in labor markets and asset prices, economic growth is poised to be strong for the remainder of 2021. Indeed, the Congressional Budget Office (CBO) projects that real GDP will grow 7.4 percent from the fourth quarter of 2020 to the fourth quarter of 2021 (CBO 2021c). Moreover, CBO predicts that, by the middle of 2022, real GDP will exceed its sustainable level by 2.5 percent. The sustainable level of GDP, also known as potential output, is not a ceiling. Instead, it is the estimated level of output, given current laws and underlying structural factors, that the economy can achieve without putting upward pressure on inflation. As the factors boosting growth in the short term begin to wane, real GDP growth is expected to slow significantly.

CBO’s projection is subject to a great deal of uncertainty. In particular, the resurgence in the pandemic stemming from the Delta variant, vaccine hesitancy, and the slowness in vaccinating children ages 12 and younger appear to have dampened the growth of consumer demand and employment. Recent data suggest that the latest COVID-19 wave might be waning. However, if the Delta variant—or others that take its place—continue to affect consumer behavior and supply chains, the economic recovery will be notably slower.

#### Economic growth is stable but new shocks could derail the recovery

Irwin 9/27 – Neil Irwin, economics correspondent for the New York Times, “The Economy Looks Solid. But These Are the Big Risks Ahead.” 9/27/21, https://www.nytimes.com/2021/09/27/upshot/economy-risk-analysis.html

The Organization for Economic Cooperation and Development last week projected that the world economy would grow 4.5 percent in 2022, downshifting from an expected 5.7 percent expansion in 2021. Its forecast for the United States shows an even steeper slowdown, from 6 percent growth this year to 3.9 percent next.

Of course, a year of 3.9 percent G.D.P. growth would be nothing to scoff at — that would be much faster growth than the United States has experienced for most of the 21st century. But it would represent a resetting of the economy.

“We’ve had liftoff, and now we’re at cruising altitude,” said Beth Ann Bovino, chief U.S. economist at S&P Global.

After the global financial crisis of 2008-9, the great challenge for the recovery was a shortfall of demand. Workers and productive capacity were abundant, but there was inadequate spending in the economy to put that capacity to work. The post-reopening stage of this recovery is the opposite image.

Now there is plenty of demand — thanks to pent-up savings, trillions of dollars in federal stimulus dollars, and rapidly rising wages — but companies report struggles to find enough workers and raw materials to meet that demand.

Dozens of container ships are backed up at Southern California ports, waiting their turn to unload products meant to fill American store shelves through the holiday season. Automakers have had to idle plants for want of semiconductors. Builders have had a hard time obtaining windows, appliances and other key products needed to complete new homes. And restaurants have cut back hours for lack of kitchen help.

These strains are, in effect, acting as a brake that slows the expansion. The question is how much, and for how long, that brake will be applied.

“The kinds of growth rates we are seeing were a bounce-back from a really severe recession, so it’s no surprise that won’t continue,” said Jennifer McKeown, head of the global economics service at Capital Economics. “The risk is that this becomes less about a natural cooling and more about the supply shortages that we’re seeing really starting to bite. That may mean that economic activity doesn’t continue to grow as we’re expecting it to, as instead there is a stalling of activity and price pressures starting to rise.”

The problem is that the supply shortages have many causes, and it is not obvious when they will all diminish. Spending worldwide, and especially in the United States, shifted toward physical goods over services during the pandemic, more quickly than productive capacity could adjust. The Delta variant and continued spread of Covid has caused restrictions on production in some countries. And the lagged effects of production shutdowns in 2020 are still being felt.

Then there are the risks that lurk in the background — the kinds of things that aren’t widely forecast to be a source of economic distress, but could unspool in unpredictable ways.

#### The economy is stable and growing, but Delta makes it fragile

Bachman 9/16 – Daniel Bachman, senior manager with Deloitte Services LP, in charge of US economic forecasting for Deloitte’s Eminence and Strategy functions, “United States Economic Forecast: 3rd Quarter 2021,” 9/16/21, https://www2.deloitte.com/us/en/insights/economy/us-economic-forecast/united-states-outlook-analysis.html

The SARS-COV-2 virus surprised us once again. The economic impact, however, is likely to be much less dramatic than the initial phase of the pandemic.

Vaccines work against the Delta variant, but with an asterisk. Breakthrough infections (affecting vaccinated people) are possible. And the half of the US population that was unvaccinated in the middle of the summer has proven to be extremely vulnerable to the more highly transmissible Delta variant. Masks are back, and with them is, once again, some reluctance to participate in activities that might be thought “risky.”

By early August, indicators in pandemic-sensitive sectors such as restaurant reservations and air travel were trending down. Spending on consumer services is decelerating, and spending on goods is unlikely to replace it. But the economy isn’t shutting down like it did in March 2020. Sporting events are still taking place, religious services are happening, and while the number of air travelers may be falling, people haven’t stopped flying. In short, the Delta variant is not going to derail the economic recovery. But Delta definitely clouds the near-term outlook and serves as a reminder that our low-growth scenarios are a real possibility.

Meanwhile, economic fundamentals remain strong. Household and business balance sheets are still in good shape, and consumers are sitting on piles of savings. GDP is now above the prepandemic level, even though employment is 4.4% below the fourth-quarter average. That’s not good for the people still not working—but the strong growth in productivity (output per worker) is a positive sign. And continued government action in the form of the bipartisan infrastructure agreement should support the economy in the short term and foster even greater productivity growth in the long run.

Deloitte’s five-year baseline remains, therefore, quite positive (although slightly less so in the very near term). We expect GDP to remain above the prepandemic baseline level for the entire forecast horizon. That’s a surprising prospect and doesn’t alter the damage that the pandemic has done. The US economy’s ability to bounce back from such a sudden, damaging shock, is amazing. But don’t forget that alternative scenarios are a key part of our forecast. We continue to place a relatively high probability on our “Side effects in post-op” scenario, and the Delta variant could—if things get worse—easily lead there.

#### Business investment rising – generates longer-term growth

Ro 21 – Sam Ro, Markets Correspondent for Axios, “The "remarkable" business investment recovery,” 7/28/21, <https://www.axios.com/business-investment-recovery-0f7e7080-269e-4838-976a-fc91debb8d4f.html>

[Capex = capital expenditure]

Businesses are investing in themselves.

Why it matters: Core capital goods orders, or those for durable goods that aren’t aircraft or defense-related, are a proxy for business investment.

These equipment orders will get fulfilled in the months ahead, so they reflect businesses’ expectations for the future.

Continued growth in this measure suggests the economic growth we’re experiencing today may not be the peak.

By the numbers: Core capital goods orders increased by 0.5% in June to $76.1 billion, up from an upwardly revised $75.7 billion in May. Year-over-year, this measure is up 16.7%.

What they’re saying: Pantheon Macroeconomics’ Ian Shepherdson says the elevated levels of these orders is “remarkable.”

“A combination of rebounding earnings and support from the federal government, coupled recently with clear evidence of acute labor shortages, is pushing companies into raising capex in order to expand capacity and remain competitive,” he writes.

“If you aren't spending but your competitors are, you'll lose market share," Shepherdson adds.

The big picture: “These data points provide insight into businesses’ plans for investment in the third quarter,” Grant Thornton chief economist Diane Swonk writes.

“Continued strength in computers and electronics offset a small drop in orders in the vehicle sector, which has suffered some of the biggest supply-chain problems due to a shortage of computer chips,” Swonk says.

What to watch: These mounting orders for new capital equipment should translate to higher growth expectations from businesses.

Meanwhile, the monthly durable goods reports bear watching to see if these core capital goods orders continue to rise.

“Companies in aggregate are cash-rich, but they remain asset-constrained after a decade of under-investment following the financial crisis,” Shepherdson said. “Accordingly, we expect capex to continue rising at a rapid pace for the foreseeable future.”

The bottom line: Orders for business equipment represent companies putting their money where their mouths are. Whether or not you believe economic activity has peaked, it is the case that businesses are positioning themselves for more growth.

### General Link Wall---2NC

#### Abrupt expansion of antitrust common-law 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.)

#### Expanded antitrust regulation increases inflation

Bork 9/8 – Robert H. Bork, president of the Washington-based Antitrust Education Project, “Biden's antitrust demagoguery will drive inflation, not cure it,” 9/8/21, https://thehill.com/opinion/finance/571009-bidens-antitrust-demagoguery-will-drive-inflation-not-cure-it

The Biden administration, finally beginning to worry about the political impact of the rising cost of food, fuel and other basic consumer necessities, is neatly dovetailing its push for aggressive antitrust enforcement by blaming inflation on big business and market concentration.

Politically speaking, it is a neat fix. It drives one of the central policies of the Biden administration — to shift antitrust enforcement from the consumer welfare standard of the past 45 years back to an earlier era’s more nebulous standard against “bigness.” And it deflects blame for inflation.

President Biden lacks the theatrical flourish of a Huey Long, but he is nevertheless trying out his best version of the Kingfisher routine. “I’ve directed my administration to crack down on what some major players are doing in the economy that are keeping prices higher than they need be,” Biden said in August. The cause of higher prices, he argued, is greedy big business and its stranglehold on the American consumer.

It is clear what drives White House anxiety. Food prices have risen about 3.4 percent from last year. After years of low gasoline prices, Americans now pay above $3 a gallon in most parts of the country. Biden is tasking Federal Trade Commission Chair Lina Khan with targeting Big Ag and Big Oil for antitrust action to drive down prices for consumers.

If left unchallenged, the Biden administration may succeed in diverting some heat over rising inflation. Large corporations are not in good order with voters on both the left and right. The president cannot be allowed, however, to use a political diversionary tactic that would perversely do the opposite of what he claims to do: Biden’s antitrust policies would raise the prices of basic needs for consumers.

Let’s start with food prices and Big Ag.

Two University of Idaho economics professors, Philip Watson and Jason Winfree, wrote in The Idaho Statesman that larger farms and agricultural companies, which have the capital to invest in expensive technology and economies of scale, actually have been making food steadily more affordable. It is precisely because of these economies of scale that the cost of food, until the disruption of the pandemic, was taking less out of household budgets. The professors conclude that “breaking up Big Ag could have the disastrous effect of raising food prices, which would likely have a disproportionate impact on poorer households.”

If the Biden approach to agriculture and food is demagogic, its approach to oil and gas is risible. The current increase in gasoline prices results from the supply chain disruption caused by the pandemic, exacerbated by recent hurricanes and storms. It also may be partly because of the unrelenting hostility of the Biden administration to American energy, putting public lands off limits, killing the Keystone XL pipeline and using regulation to harass the fracking industry, despite the fact that cleaner-burning natural gas has helped reduce America’s greenhouse gas emissions. Technological advances led the United States to surpass Saudi Arabia and Russia in 2018 to become the world’s leading producer of oil. Biden’s antitrust policy also may be contributing to the sudden reversal of this energy glut. It was out of antitrust concerns that Berkshire Hathaway pulled out of a major natural gas pipeline deal earlier this year.

What has been the Biden administration’s response to recent shortages? It has not been to stimulate production at home or to help clear pipeline bottlenecks. Instead, national security adviser Jake Sullivan issued a statement pleading with OPEC and Russia to come to our rescue. OPEC demurred and Russian President Vladimir Putin used Sullivan’s entreaty to issue a humiliating “nyet.”

The real cause of inflation, of course, is recovery from a pandemic and the temporary economic depression it caused. It also might be driven by the reckless spending by presidents and Congresses of both parties. Our national debt is now 125 percent of our gross domestic product — higher than the previous high in 1946, when we won a victory over Germany and Japan rather than losing a war to the Taliban.

Blaming Big Ag and Big Oil for high prices will be popular. It also will be perverse. The abandonment of the consumer welfare standard will, if anything, lead to higher prices in both food and fuel for those least able to pay for it.

#### Inflation is contained now, but rising prices cause the Federal Reserve to hike interest rates – that quickly destroys the economy

Cox 21 – Jeff Cox, finance editor for CNBC.com where he manages coverage of the financial markets and Wall Street, “The Fed can fight inflation, but it may come at the cost of future growth,” 3/20/21, https://www.cnbc.com/2021/03/20/the-fed-can-fight-inflation-but-it-may-come-at-a-cost.html

One of the main reasons Federal Reserve officials don’t fear inflation these days is the belief that they have tools to deploy should it become a problem.

Those tools, however, come with a cost, and can be deadly to the kinds of economic growth periods the U.S. is experiencing.

Hiking interest rates is the most common way the Fed controls inflation. It’s not the only weapon in the central bank’s arsenal, with adjustments to asset purchases and strong policy guidance also at its disposal, but it is the most potent.

It’s also a very effective way of stopping a growing economy in its tracks.

The late Rudi Dornbusch, a noted MIT economist, once said that none of the expansions in the second half of the 20th century “died in bed of old age. Every one was murdered by the Federal Reserve.”

In the first part of the 21st century, worries are growing that the central bank might become the culprit again, particularly if the Fed’s easy policy approach spurs the kind of inflation that might force it to step on the brake abruptly in the future.

“The Fed made clear this week that it still has no plans to raise interest rates within the next three years. But that apparently rests on the belief that the strongest economic growth in nearly 40 years will generate almost no lasting inflationary pressure, which we suspect is a view that will eventually be proven wrong,” Andrew Hunter, senior U.S. economist at Capital Economics, said in a note Friday.

As it pledged to keep short-term borrowing rates anchored near zero and its monthly bond purchases humming at a minimum $120 billion a month, the Fed also raised its gross domestic product outlook for 2021 to 6.5%, which would be the highest yearly growth rate since 1984.

The Fed also ratcheted up its inflation projection to a still rather mundane 2.2%, but higher than the economy has seen since the central bank started targeting a specific rate a decade ago.

Competing factors

Most economists and market experts think the Fed’s low-inflation bet is a safe one – for now.

A litany of factors is keeping inflation in check. Among them are the inherently disinflationary pressures of a technology-led economy, a jobs market that continues to see nearly 10 million fewer employed Americans than a decade ago, and demographic trends that suggest a longer-term limit to productivity and price pressures.

“Those are pretty powerful forces, and I’d bet they win,” said Jim Paulsen, chief investment strategist at the Leuthold Group. “It may work out, but it’s a risk, because if it doesn’t work and inflation does get going, the bigger question is, what are you going to do to shut it down. You say you’ve got policy. What exactly is that going to be?”

The inflationary forces are pretty powerful in their own right.

An economy that the Atlanta Fed is tracking to grow 5.7% in the first quarter has just gotten a $1.9 trillion stimulus jolt from Congress.

Another package could be coming later this year in the form of an infrastructure bill that Goldman Sachs estimates could run to $4 trillion. Combine that with everything the Fed is doing plus substantial global supply chain issues causing a shortage of some goods and it becomes a recipe for inflation that, while delayed, could still pack a punch in 2022 and beyond.

The most daunting example of what happens when the Fed has to step in to stop inflation comes from the 1980s.

Runaway inflation began in the U.S. in the mid ’70s, with the pace of consumer price increases topping out at 13.5% in 1980. Then-Fed Chairman Paul Volcker was tasked with taming the inflation beast, and did so through a series of interest rate hikes that dragged the economy into a recession and made him one of the most unpopular public figures in America.

Of course, the U.S. came out pretty good on the other side, with a powerful growth spurt that lasted from late -1982 through the decade.

But the dynamics of the current landscape, in which the economic damage from the Covid-19 pandemic has been felt most acutely by lower earners and minorities, make this dance with inflation an especially dangerous one.

“If you have to prematurely abort this recovery because we’re going to have a kneejerk stop, we’re going to end up hurting most of the people that these policies were enacted to help the most,” Paulsen said. “It will be those same disenfranchised lower-comp less-skilled areas that get hit hardest in the next recession.”

The bond market has been flashing warning signs about possible inflation for much of 2021. Treasury yields, particularly at the longer maturities, have surged to pre-pandemic levels.

That action in turn has raised the question of whether the Fed again could become a victim of its own forecasting errors. The Jerome Powell-led Fed already has had to backtrack twice on sweeping proclamations about long-term policy intentions.

“Is it really going to be all temporary?”

In late-2018, Powell’s statements that the Fed would continue raising rates and shrinking its balance sheet with no end in sight was met with a history-making Christmas Eve stock market selloff. In late 2019, Powell said the Fed was done cutting rates for the foreseeable future, only to have to backtrack a few months later when the Covid crisis hit.

“What happens if the healing of the economy is more robust than even the revised projections from the Fed?” said Quincy Krosby, chief market strategist at Prudential Financial. “The question for the market is always, is it really going to be all temporary?’”

Krosby compared the Powell Fed to the Alan Greenspan version. Greenspan steered the U.S. through the “Great Moderation” of the 1990s and became known as “The Maestro.” However, that reputation became tarnished the following decade when the excesses of the subprime mortgage boom triggered wild risk-taking on Wall Street that led to the Great Recession.

Powell is staking his reputation on a staunch position that the Fed will not raise rates until inflation rises at least above 2% and the economy achieves full, inclusive employment, and will not use a timeline for when it will tighten.

“They called Alan Greenspan ‘The Maestro’ until he wasn’t,” Krosby said. Powell “is telling you there’s no timeline. The market is telling you it does not believe it.”

To be sure, the market has been through what Krosby described as “squalls” before. Bond investors can be fickle, and if they sense rates rising, they’ll sell first and ask questions later.

Michael Hartnett, the chief market strategist at Bank of America, pointed to multiple other bond market jolts through the decades, with only the 1987 episode in the weeks before the Oct. 19 Black Monday stock market crash having “major negative spillover effects.”

He doesn’t expect the 2021 selling to have a major impact either, though he cautions that things could change when the Fed finally does pivot.

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

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

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

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

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

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

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

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

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

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

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

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

### 1NR – AT: Biz Con Not Good Metric

#### Declining business confidence crushes the recovery – Delta puts it on the brink

Zandi 8/18 – Mark Zandi, writer for CNN Business Perspectives, “Here's what the Delta variant means for the economic recovery,” 8/18/21, https://www.cnn.com/2021/08/18/perspectives/economic-recovery-delta-variant/index.html

The US economy's immediate prospects appear inextricably tied to how the wave of infections and hospitalizations set off by the Delta variant of Covid-19 plays out. While it seems unlikely that the variant would become so disruptive that it undermines the recovery, there are mounting reasons to be worried that it may become a significant headwind to near-term economic growth.

Consumers are increasingly nervous about the variant, sparking concerns they will turn more skittish in their spending. Retail sales for July declined, while the University of Michigan's survey of consumer sentiment pulled back sharply in early August and is now lower than it was during the worst of the pandemic last spring. Spiking inflation isn't helping consumers' moods. The timing of the slump in sentiment and spending coincides with news stories of overwhelmed hospital systems in Florida and Texas, more serious illness among younger populations, and increasing breakthrough infections among those fully vaccinated.

Businesses have also suddenly become more nervous. According to Moody's Analytics weekly business confidence index, sentiment had significantly improved this spring when vaccinations ramped up and the pandemic was steadily winding down. But it has gone sideways since mid-June. Businesses' assessment of current conditions has turned particularly soft in the past few weeks, with more survey respondents saying conditions are weakening than those that say they are improving. This is the first time this has happened since the vaccines became widely available.

Businesses' expectations regarding the economy's prospects for the remainder of this year have also diminished significantly. The number of respondents that say the economy will continue to improve has declined from more than 60% to less than half, and those that say the economy will weaken has increased from near 30% to more than 40%. This hasn't impacted businesses' hiring and investment decisions yet, according to our survey, but it bears close watching, as the job market and broader economic recovery would be in jeopardy if businesses pull back on hiring and investments.

#### Key to jobs and recovery

Pawar 9/16 – Ameya Pawar, Fellow at Open Society Foundations, “The recovery will be weak if small businesses can’t get the credit they need and deserve,” 9/16/21, https://www.marketwatch.com/story/the-recovery-will-be-weak-if-small-businesses-cant-get-the-credit-they-need-and-deserve-11631722738

If small businesses do not recover from the coronavirus pandemic, the rest of the economy won’t either.

Across America, in big cities and small towns, the auto mechanic shops, restaurants, mom-and-pop retailers, and small industrial firms create two-thirds of all net new jobs. Moreover, the money that people spend in these businesses tends to stay local and accounts for 44% of all economic activity.

### 1NR – AT: Thumpers

#### No major antitrust actions coming now – it’s all tinkering around the edges

Wright 21 – Joshua D. Wright, Executive Director of the Global Antitrust Institute at the Antonin Scalia Law School, former commissioner of the U.S. Federal Trade Commission from 2013 to 2015, interviewed by James Pethokoukis, senior fellow at AEI, “Will US antitrust law break up Big Tech? My long-read Q&A with Joshua D. Wright,” 2/9/21, <https://www.aei.org/economics/will-us-antitrust-law-break-up-big-tech-my-long-read-qa-with-joshua-d-wright/>

[Italics denote questions from Pethokoukis]

*Do you think that, if we have this conversation in four years, we will have seen any major action against any of the largest technology companies that involves them selling off a significant business?*

That’s a great question. I bet the under, and here’s why. The US antitrust doctrine is what it is right now, and we still have meaningful judicial review. And on the left and the right, you see all of the attention paid to legislative change — they’re not going to win in the court. The DOJ will bring its case against Google, the FTC has a Facebook case where they might be able to convince a court to spin off WhatsApp or Instagram. I’m skeptical that those are good cases, but neither of them are the big-breakup, affect-the-business-model case that proponents of a new antitrust are looking for. For what it’s worth, my money is that the government loses both of those cases, but those cases exist. But overall, I think that the hope for the antitrust reformers lies, not in the courts, but in Congress.

Maybe I’ve been in DC too long, but I always bet the under if someone tells me that the revolution is coming from Congress. I don’t think we’re going to see legislation that undoes the consumer welfare standard. I do think that you’ll see some antitrust legislation. You’ll get bigger budgets for the agencies, and maybe you’ll get tinkering around the margins with the presumption here or presumption there. But I don’t think that you’re going to see a regulatory antitrust revolution via Congress.

I think it’s going to have to be done through the courts, and I’m skeptical. My silver lining of hope when watching some of these discussions happen is that you’ve got to win in the Article III courts, and that means you’ve got to have proof, not just political grievances. I don’t think they’ve got that.

### AT: Prices---1NC

#### Antitrust doesn’t solve prices

Christine S. Wilson & David A. Hyman 20, Wilson is a commissioner of the Federal Trade Commission. Hyman is the Scott K. Ginsburg Professor of Health Law & Policy at Georgetown University School of Law and former commissioner of the Federal Trade Commission, 7-10-2020, "Pharma pricing is a problem, but antitrust isn't the (only) solution," The Hill, https://thehill.com/blogs/congress-blog/healthcare/506763-pharma-pricing-is-a-problem-but-antitrust-isnt-the-only?rl=1

As current and former FTC officials, we believe these proposals represent a flawed approach. The notion that the FTC should **prevent mergers absent evidence** of an **antitrust violation** is deeply misguided – and jeopardizes the FTC’s impressive winning streak based on the many cases it has brought. During the past five years, the Commission has challenged 14 pharmaceutical mergers and required companies to divest 131 drugs. Beyond mergers, in 2013 the FTC won a landmark victory at the Supreme Court in FTC V. Actavis, essentially eliminating anticompetitive patent litigation settlements. And in January, the FTC sued Vyera Pharmaceuticals and “pharma bro” Martin Shkreli. These efforts result in massive savings for consumers and taxpayers; just ending reverse payments in patent litigation settlements saves $3.5 billion each year.

Still, **drug prices continue to rise**, especially for new drugs debuting at prices once considered unimaginable. For example, Zolgensma, a gene therapy for treating spinal muscular atrophy, has a list price of $2.1 million. Cancer drugs are so expensive that oncologists talk about “financial toxicity” as a side effect of treatment.

This is a particularly knotty problem for the elderly who receive health care coverage through Medicare and have been hard hit by COVID-19. The government is **prohibited** from using competitive bidding or direct **negotiation** when sourcing drugs for **Medicare Part B** — those administered by medical professionals. So drugmakers name their price and the federal government **must pay**.

Medicare **Part D** operates under a different model – companies use formularies to push down prices for outpatient drugs. Even that model **falls short** for drugs that do not yet face competition, and Part D is projected to cost more than $88 billion in 2020. Market exclusivity on so-called biologics like vaccines and insulin often **outlasts patent protection**, given the technological **challenges in creating** bioequivalent **generics** known as biosimilars. Incumbents often compound this problem by **restrict**ing **distribution** and **withhold**ing samples from **potential competitors**.

We support **efforts** **to** address rising drug prices **while** maintaining strong incentives for innovation. Strategies **include** the new CREATES Act, which allows drug makers to **sue for** access to **drug samples**; expedited or automatic approval for biosimilars that have passed muster with the European Medicines Agency; and incentivizing innovation with prizes.

As this list indicates, many **causes of** breathtaking **pharma prices** **lie** beyond the reach of the antitrust **laws**. Notably, the structure of the U.S. health care system inhibits consumers’ ability and incentive to **choose** among different providers and products, including prescription drugs. Because insurers pick up much of the tab, patients have little incentive to compare the prices of potentially interchangeable drugs. Even if they were so inclined, the opacity of drug prices and dearth of data available to patients about quality and outcomes inhibits comparison shopping.

To fix the **root cause**s of high pharma prices, we should focus on the drivers of those prices rather than scrapping fundamental antitrust **doctrine**, including the requirement for evidence of an actual competitive problem.

## Innovation

### 1NC---!D---Disease

#### No extinction from disease.

Barratt 17, PhD in Pure Mathematics, Lecturer in Mathematics at Oxford, Research Associate at the Future of Humanity Institute. (Owen Cotton-Barratt et al, “Existential Risk: Diplomacy and Governance”, pg. 9, <https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf>)

1.1.3 Engineered pandemics

For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.38 None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic.

One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39

### 1NC---!D---ABR

#### ABR won’t get close to extinction, intervening actors solve it, their internal link can’t

Ed Cara 17, Science Writer for The Atlantic, Newsweek, and Vocativ, 1/27/17, “The Attack Of The Superbugs,” http://www.vocativ.com/394419/attack-of-the-superbugs/

Antibiotic-resistant infections kill at least 700,000 people worldwide a year right now, according to an exhaustive report commissioned by the UK in 2014, and without any substantial medical breakthroughs or policy changes that slow down resistance, they may claim some 10 million deaths annually by 2050 — eclipsing cancer in general as a leading cause. These deaths largely won’t come from pan-resistant infections, just tougher ones. A preventable death there, a preventable death here.

Leaving that aside, antibiotics, along with proper sanitation and nutrition, gird our entire way of living. Most every invasive surgery, pregnancy, organ transplant and chemotherapy session we go through will become riskier. Other diseases like HIV, malaria or influenza will become deadlier, since bacteria often exploit the opening in our immune system they leave behind. And already precarious populations like those living with cystic fibrosis, prisoners, and the poor will lose years off their lives.

For all the warranted gloom, though, Farewell does think there are reasons to be hopeful. “I don’t think we are doing enough, but the scientific community along with many governmental and private foundations are very actively involved in finding not only new antibiotics, but new solutions to this problem,” she said. There’s been a noticeable change in attitude and increased urgency surrounding antibiotic resistance, she said, one that she hadn’t seen even five years ago, let alone twenty.

Until recently, that attitude change could be seen from places as high up as the U.S. federal government. In 2014, former President Obama issued an executive order aimed at addressing antibiotic resistance, the first real acknowledgement of the problem from an administration, devoting funding and outlining a national action for combatting resistance. Through its federal agencies, the administration pushed to reduce antibiotic use on farms and encouraged doctors to stop using them in excess.

“There has been a lot of work done the last couple of years, much of it spurned by [Obama’s] National Action Plan,” said Dr. David Hyun, a senior officer for Pew Charitable Trusts’ Antibiotic Resistance Project. The CDC, in particular, has used its funding to open up regional labs that allow them to better detect and respond to antibiotic-resistant outbreaks like the Nevada case, he said. They ultimately hope to create an expansive surveillance system that can easily keep track of resistance rates on a national, state and regional level. A parallel system also exists for monitoring resistance in the food chain, shepherded by the CDC and the U.S. Department of Agriculture.

In fact, it was this sort of cooperation between national and local health agencies that enabled Nevada doctors to stop the worst from happening, said Dr. Lei Chen. The swift identification of a possible CRE strain by the hospital, coupled with the woman’s medical history, led to a precautionary quarantine, while also prompting Chen’s public health department and eventually the CDC into action. And it may help prevent future cases from spilling into the public. According to Chen, the CDC has allocated funding this year to all of Nevada’s state public health departments so they can better detect CRE and other dangerous resistant strains.

#### Finish the Card

Under the Trump administration, there’s no telling how these small victories will hold up or whether they will advance. All references to antibiotics once found on the Whitehouse.gov site have been removed, including a link to the Obama administration’s national action plan, and the fact that they’re already tried to bar USDA scientists from discussing their work with the public while stripping funding from other public health agencies isn’t encouraging.

Even with the best public policy, however, there’s no clear light at the end of the tunnel. Antibiotic resistance has gradually been worsening, even within the last 15 to 20 years, when superbugs like methicillin-resistant Staphylococcus aureus (MRSA) first became widely known, said Hyun. The effort needed to develop new drugs has been in short supply, hamstrung by pharmaceutical companies’ inability to recoup the costs of bringing new antibiotics to market. That’s because, unlike the latest heart medication, any new antibiotics will have to be treated like the last drops of water during a drought, used as little as possible — the exact opposite way to make money off a new product. Yet, much like climate change, the financial toll of not doing anything will total in the trillions years down the road. And it already numbers in the billions now, according to the CDC.

Of course, we need bacteria to survive. And most need or pay no mind to us in return. Even pan-resistant bacteria don’t really mean harm. Some have been found in perfectly healthy people, a fact that’ll either comfort you or keep you awake at night, only causing problems when our immune system wavers. There’s no army of sentient E. coli that will rise up and someday overthrow the human race.

But barring the calvary showing up, a new fear of ours will learn to settle in, almost unnoticed. It’ll creep in when we pick our heads up from a nasty fall that scrapes our skin open or breaks our bones; when we wave goodbye to our loved ones before they enter an operating room, or when we cradle our newborns into a world teeming with the living infinitesimal, wishing there was still a way to shield them from it as our parents once could for us. A fear of naked vulnerability.

The antibiotic apocalypse will be gentle, if it fully arrives, but it won’t be any less devastating to the human spirit.

#### ABR is gradual, slow, and will be addressed---reject scary-sounding headlines

Smith 16, PhD molecular biologist, former R&D director at MicroPhage and SomaLogic. (Drew, 6-14-16, “The Myth Of The Post-Antibiotic Era”, <https://www.forbes.com/sites/quora/2016/06/14/the-myth-of-the-post-antibiotic-era/#db027696fa83>)

Right now, drug resistant infections are mainly a threat to those that are already sick and/or in medical facilities. But, if we continue down this path, mundane infections in the otherwise healthy could someday morph into life-threatening ordeals, and simple medical procedures and surgeries may be skipped to avoid risk of infection. However, while this threat is real, it’s important to keep in mind that this is an ongoing, gradual challenge; it’s extremely unlikely that a single event will herald with complete certainty the abrupt end of modern medicine as we know it. In this context, those scary headlines are inappropriate, if not numbing and counterproductive. In May, Ars wrote about some alarmist and inaccurate news stories dealing with a newly identified type of drug resistance—one that makes bacteria resistant to a last-resort antibiotic called colistin and can spread between bacteria easily. The headlines blared that it was the “first” time such a dastardly microbe had seeped into the US—which is not true. And they suggested that it would certainly mark the end of antibiotics—also not true. This week, scientists provided updates on tracking that type of resistance, and of course some alarmist headlines followed. Yet, the new data actually suggests that a tempering of concerns about this particular resistance may be in order. It turns out that this “dreaded,” “scary,” “nightmare” of a drug-resistant microbe has been in the US for more than a year and elsewhere in the world since as far back as 2005—it’s just that nobody noticed it. And nobody noticed it because so far it hasn’t been the dreaded, scary nightmare some have feared. “It’s not a huge cause for concern,” Mariana Castanheira, lead author of one of this week’s resistance updates, told Ars. Castanheira is the director for Molecular and Microbiology at JMI Laboratories, a private company that monitors drug resistance microbes in hospitals and medical settings. They and others are finding this new type of resistance now simply because they’re looking for it, she said. Castanheira explains that people initially started digging for this new type of drug resistance—a gene called mcr-1—out of concern that it makes bacteria resistant to the antibiotic colistin, which is a relatively toxic drug used only when nearly all others have failed against a multi-drug resistant infection. Bacteria have shown up with colistin resistance before—in fact, many times in the US and elsewhere around the world. But in those cases, the genes were embedded in the bacteria’s chromosomes and generally passed down through generations. The mcr-1 resistance gene, on the other hand, seems to always sit on a plasmid, a small loop of DNA that bacteria can readily pass around to neighbors. If colistin-resistant bacteria shared their mcr-1 plasmid with others that are already resistant to lots of antibiotics, they could create a long-feared invincible germ—a “pan-resistant” bacteria. “Doesn’t scare me” So far that doesn’t seem to be happening, though, Castanheira said. In more than a decade of skulking around, mcr-1 has made its way into bacteria in animals, people, and soil all over the world. Yet, all of the mcr-1 carrying microbes examined have been susceptible to at least one antibiotic—and often several.

## Access

#### Clarifying the scope and meaning of vague language doesn’t solve---courts ignore, Congress backs down, it’s already very clear.

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

This Article has shown that, historically, the judiciary has treated the antitrust statutes as broad delegations to the courts to create a pragmatic common law of competition, even when the statutes plainly said something more specifically prohibitory. What, then, are the strategies available to a reformist Congress seeking to rein in business power through remedial antitrust legislation?

The one strategy that does not seem especially promising is simply writing clearer statutes. The antitrust statutes that the courts wrote down in favor of big business did not suffer from a lack of clarity or, if they did, not in the textual implications the courts chose to ignore. Strikingly, the courts continue to insist that the antitrust statutes are indeterminate delegations of common-law power, even while admitting in candor that they have simply chosen to ignore the statutes’ plain meaning in favor of a common method of deciding antitrust cases. For instance, in Professional Engineers, Justice Stevens remarked for the Court that “the language of § 1 of the Sherman Act . . . cannot mean what it says” and therefore that Congress must not have intended “the text of the Sherman Act to delineate the full meaning of the statute or its application in concrete situations,” thus justifying the courts in shaping the “statute’s broad mandate by drawing on common-law tradition.”255 Given over a century’s tradition of interpreting antitrust statutes as invitations to continue a common-law process whatever else is suggested by the statute’s text, it is difficult to see how simply accumulating stern new language in new texts would lead to a different result.

### Mexico D---2NC

#### Alt causes to instability, but no impact.

Seelee and Shirt 10– **\***director of theMexicoInstitute at the Woodrow Wilson International Center for Scholars AND \*\* fellow at the center and an associate professor at the University of San Diego (Andrew Selee, David Shirk, 3/27/10, " Five myths about Mexico's drug war ", Washington Post, http://www.washingtonpost.com/wp-dyn/content/article/2010/03/26/AR2010032602226.html)

The country has certainly seen a big rise in drug violence, with cartels fighting for control of major narcotics shipment routes -- especially at the U.S. border and near major seaports and highways -- and branching into kidnapping, extortion and other illicit activities. Ciudad Juarez, in particular, has been the scene of major battles between two crime organizations and accounted for nearly a third of drug-linked deaths last year. But the violence is not as widespread or as random as it may appear. Though civilians with no evident ties to the drug trade have been killed in the crossfire and occasionally targeted, drug-related deaths are concentrated among the traffickers. (Deaths among military and police personnel are an estimated 7 percent of the total.) A major reshuffling of leaders and alliances is occurring among the top organized crime groups, and, partly because of government efforts to disrupt their activities, violence has jumped as former allies battle each other. The bloodshed is also geographically concentrated in key trafficking corridors, notably in the states of Sinaloa, Chihuahua and Tamaulipas. While the violence underscores weaknesses in the government's ability to maintain security in parts of the country, organized crime is not threatening to take over the federal government. Mexico is not turning into a failed state.

### A2: Heg/Readiness

#### No leadership impact---empirics.

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Like many believers, proponents of hegemonic stability theory base their view on faith alone.41 There is precious little evidence to suggest that the United States is responsible for the pacific trends that have swept across the system. In fact, the world remained equally peaceful, relatively speaking, while the United States cut its forces throughout the 1990s, as well as while it doubled its military spending in the first decade of the new century.42 Complex statistical methods should not be needed to demonstrate that levels of U.S. military spending have been essentially unrelated to global stability.

Hegemonic stability theory’s flaws go way beyond the absence of simple correlations to support them, however. The theory’s supporters have never been able to explain adequately how precisely 5 percent of the world’s population could force peace on the other 95 percent, unless, of course, the rest of the world was simply not intent on fighting. Most states are quite free to go to war without U.S. involvement but choose not to. The United States can be counted on, especially after Iraq, to steer well clear of most civil wars and ethnic conflicts. It took years, hundreds of thousands of casualties, and the use of chemical weapons to spur even limited interest in the events in Syria, for example; surely internal violence in, say, most of Africa would be unlikely to attract serious attention of the world’s policeman, much less intervention. The continent is, nevertheless, more peaceful today than at any other time in its history, something for which U.S. hegemony cannot take credit.43 Stability exists today in many such places to which U.S. hegemony simply does not extend.

#### No impact---retrenchment’s stabilizing and avoids their offense – prefer empirics

Christopher J. Fettweis 17. Associate Professor of Political Science at Tulane University, Ph.D. from the University of Maryland, College Park, “Unipolarity, Hegemony, and the New Peace,” Security Studies 26:3, 423-451, CMR

Overall, if either version is correct and global stability is provided by US hegemony, then maintaining that stability through a grand strategy based on either primacy (to neoconservatives) or “deep engagement” (to liberals) is clearly a wise choice.75 If, however, US actions are only tangentially related to the outbreak of the New Peace, or if any of the other proposed explanations are decisive, then the United States can retrench without fear of negative consequences. The grand strategy of the United States is therefore crucial to beliefs in hegemonic stability. Although few observers would agree on the details, most would probably acknowledge that post-Cold War grand strategies of American presidents have differed in some important ways. The four administrations are reasonable representations of the four ideal types outlined by Barry R. Posen and Andrew L. Ross in 1996.76 Under George H. W. Bush, the United States followed the path of “selective engagement,” which is sometimes referred to as “balance-of-power realism”; Bill Clinton’s grand strategy looks a great deal like what Posen and Ross call “cooperative security,” and others call “liberal internationalism”; George W. Bush, especially in his first term, forged a strategy that was as close to “primacy” as any president is likely to get; and Barack Obama, despite some early flirtation with liberalism, has followed a restrained realist path, which Posen and Ross label “neo-isolationism” but its proponents refer to as “strategic restraint.”77 In no case did the various anticipated disorders materialize. As Table 2 demonstrates, armed conflict levels fell steadily, irrespective of the grand strategic path Washington chose.

Text

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Neither the primacy of George W. Bush nor the restraint of Barack Obama had much effect on the level of global violence. Despite continued warnings (and the high-profile mess in Syria), the world has not experienced an increase in violence while the United States chose uninvolvement. If the grand strategy of the United States is responsible for the New Peace, it is leaving no trace in the evidence. Perhaps we should not expect a correlation to show up in this kind of analysis. While US behavior might have varied in the margins during this period, nether its relative advantage over its nearest rivals nor its commitments waivered in any important way. However, it is surely worth noting that if trends opposite to those discussed in the previous two sections had unfolded, if other states had reacted differently to fluctuations in either US military spending or grand strategy, then surely hegemonic stability theorists would argue that their expectations had been fulfilled. Many liberals were on the lookout for chaos while George W. Bush was in the White House, just as neoconservatives have been quick to identify apparent worldwide catastrophe under President Obama.78 If increases in violence would have been evidence for the wisdom of hegemonic strategies, then logical consistency demands that the lack thereof should at least pose a problem.

As it stands, the only evidence we have regarding the relationship between US power and international stability suggests that the two are unrelated. The rest of the world appears quite capable and willing to operate effectively without the presence of a global policeman. Those who think otherwise have precious little empirical support upon which to build their case. Hegemonic stability is a belief, in other words, rather than an established fact, and as such deserves a different kind of examination.

### A2: Bio-D Loss

#### No environmental collapse or extinction

Peter Kareiva 18, Ph.D. in ecology and applied mathematics from Cornell University, director of the Institute of the Environment and Sustainability at UCLA, Pritzker Distinguished Professor in Environment & Sustainability at UCLA, et al., September 2018, “Existential risk due to ecosystem collapse: Nature strikes back,” Futures, Vol. 102, p. 39-50

The interesting question is whether any of the planetary thresholds other than CO2 could also portend existential risks. Here the answer is not clear. One boundary often mentioned as a concern for the fate of global civilization is biodiversity (Ehrlich & Ehrlich, 2012), with the proposed safety threshold being a loss of greater than 0.001% per year (Rockström et al., 2009). There is little evidence that this particular 0.001% annual loss is a threshold—and it is hard to imagine any data that would allow one to identify where the threshold was (Brook, Ellis, Perring, Mackay, & Blomqvist, 2013; Lenton & Williams, 2013). A better question is whether one can imagine any scenario by which the loss of too many species leads to the collapse of societies and environmental disasters, even though one cannot know the absolute number of extinctions that would be required to create this dystopia. While there are data that relate local reductions in species richness to altered ecosystem function, these results do not point to substantial existential risks. The data are small-scale experiments in which plant productivity, or nutrient retention is reduced as species numbers decline locally (Vellend, 2017), or are local observations of increased variability in fisheries yield when stock diversity is lost (Schindler et al., 2010). Those are not existential risks. To make the link even more tenuous, there is little evidence that biodiversity is even declining at local scales (Vellend et al., 2013, 2017). Total planetary biodiversity may be in decline, but local and regional biodiversity is often staying the same because species from elsewhere replace local losses, albeit homogenizing the world in the process. Although the majority of conservation scientists are likely to flinch at this conclusion, there is growing skepticism regarding the strength of evidence linking trends in biodiversity loss to an existential risk for humans (Maier, 2012; Vellend, 2014). Obviously if all biodiversity disappeared civilization would end—but no one is forecasting the loss of all species. It seems plausible that the loss of 90% of the world’s species could also be apocalyptic, but not one is predicting that degree of biodiversity loss either. Tragic, but plausible is the possibility of our planet suffering a loss of as many as half of its species. If global biodiversity were halved, but at the same time locally the number of species stayed relatively stable, what would be the mechanism for an end-of-civilization or even end of human prosperity scenario? Extinctions and biodiversity loss are ethical and spiritual losses, but perhaps not an existential risk.