# 1AC LHPC

### 1AC – Innovation

Advantage one is innovation

#### Scenario one is AI – dominant platforms stifle innovation via nascent acquisition and exclusion

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(Rebecca, “Antitrust’s High-Tech Exceptionalism,” 130 Yale L.J. 588)

American competition policy has a big problem. Actually, it has four big problems: Amazon, Apple, Facebook, and Google. What was once a dynamic pool of smaller start-ups, the high-tech sector has now coalesced around just four companies that together reported over $773 billion of revenue in 2019.1 Each reigns over its own segment of the high-tech marketplace: Amazon controls the retail sector, Apple dominates devices and apps, Facebook owns social media, and Google virtually governs the internet itself. To the extent Silicon Valley still churns out a steady stream of startups, it is more to feed these beasts by acquisition than to produce meaningful rivals to their empires.2

Of course, not everyone agrees that this state of affairs is a problem at all. To some, the size of these firms is merely a symptom of their success. Relentless innovation, a customer-is-king mentality, network effects that benefit consumers, and economies of scale have made these firms ever larger and their products ever better for American consumers. Some even contest the idea that they are large at all by arguing that in a properly defined market, each firm faces significant rivalry and thus lacks market power. Some think that American antitrust law should pat itself on the back for fostering the competitive conditions that let these innovative companies thrive.3

However, this view is increasingly unpopular, and for good reason. Each of these companies, in its own way, holds the keys to competitive entry in many important online markets. To bring an app to market, a developer must deal with Apple; to reach online shoppers, retailers must use Amazon, and so on. Without a meaningful choice between platforms, independent sellers, developers, and websites must pass through a privately maintained bottleneck often on unfavorable terms. These restrictions on competition harm consumers by reducing the output and raising prices for goods that must pass through the bottleneck, and by reducing firms’ incentives to innovate—if they know a large portion of their profits will be appropriated by the platform, they have less incentive to bring new products to market. And by controlling the throttle of technological innovation, each dominant firm can stave off the possibility that one of these nascent companies will build a rival network—a platform that can break the bottleneck itself.4 Long-term, stable platform dominance means consumers likely will not see the kind of Schumpterian innovation associated with great technological leaps forward.5 Rather, consumer welfare depends on these platforms’ internal incentives to innovate, which are weakened in the absence of true rivalry.6 In short, there is a growing recognition that as much as these companies have innovation to thank for their success, their current tactics are making it hard for the next generation of disruptive innovators to take over. If antitrust law continues to stand by, consumers will pay the price.

#### Only nascent firms foster transformative tech innovation

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(C. Scott, and Tim, “Nascent Competitors,” 168 U. Penn. L. Rev. 1879)

Over the last century and a half, small, innovative firms have played a particularly important role in the process of innovation and competition. This is not to discount the important history of innovation at big firms with large research laboratories, such as Bell Labs, Xerox PARC, and research labs at General Electric and Merck.30 However, over the same period, a significant number of disruptive innovations—those that transform industry—have come out of very small firms with new technologies unproven at the time: examples include the Bell Telephone Company, RCA, MCI, Genentech, Apple, Netscape, and dozens of others.31

There is a particular competitive significance of the big innovations at the smaller firms, for they also represent competitive entry, and sometimes completely transform the industry.32 New, unproven innovators are a key source of disruptive innovation.33 Consider that Bell’s telephone did not improve the telegraph, but replaced it, or the impact of Apple’s personal computer on the computing industry. As this suggests, nascent competitors can hold the promise of offering fresh competition for the market, not just in the market. They have the capacity to displace an incumbent through a paradigm shift—for example, a new platform for developing software or decoding a genome. Nascent competition tends to be important in industries marked by rapid innovation and technological change. Software, pharmaceuticals, mobile telephony, e-commerce, search, and social network services are leading examples.

Future potency. Second, a nascent competitor is relevant due to its promise of future innovation. Its potency is not yet fully developed and hence unproven. Whether that innovation will make a difference in the marketplace is subject to significant uncertainty. That is due to the unpredictable rate and direction of technological change. This uncertainty stems from the same forces of technological progress that make innovation so valuable. The nascent competitor may fail in various ways: the unproven cure, despite highest hopes, may flunk its clinical trials; the technologies thought to be the future might, in fact, be overrated. This uncertainty may not be a quantifiable risk, like the odds in a casino, but closer to Knightian true uncertainty—in other words, not readily susceptible to measurement.34 The unpredictable path of innovation often results in product plasticity, in which products evolve and are used for purposes different than the original. For example, in the 1990s, mobile telephones gained popularity as a complement to a wired telephone, as a means for making calls on the go.35 Today, they compete with land lines, cameras, computers, televisions, and credit cards. General purpose technologies such as computing and Internet connectivity act as powerful fuel for unpredictable change.36 Uncertainty about what products the incumbent and the nascent competitor will actually offer in the future has a further consequence—uncertainty about the degree to which those products will actually compete.

#### Key to out-compete China—targeted remedies are key

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(Tom, “Digital Competition With China Starts With Competition At Home,” <https://www.brookings.edu/wp-content/uploads/2020/04/FP_20200427_digital_competition_china_wheeler_v3.pdf>)

The United States and China are engaged in a technology-based conflict to determine 21st-century international economic leadership. China’s approach is to identify and support the research and development efforts of a handful of “national champion” companies. The dominant tech companies of the U.S. are de facto embracing this Chinese policy in their effort to maintain domestic marketplace control. Rather than embracing a China-like consecration of a select few companies, America’s digital competition with China should begin with meaningful competition at home and the allAmerican reality that competition drives innovation.

America’s dominant tech companies have seized upon the competition with China as a rationale for why their behavior should not be subject to regulatory oversight that would, among other things, promote competition. “China doesn’t regulate its companies” has become a go-to policy response. When coupled with “of course, we support regulation, but it must be responsible regulation,” it throws up a smokescreen that allows the dominant tech companies to make the rules governing their marketplace behavior.

At the heart of digital competition — both at home and abroad — is the capital asset of the 21st century: data. Initiatives such as machine learning and artificial intelligence are data-dependent, requiring a large data input to enable algorithms to reach a conclusion. China’s immense population of almost 1.5 billion gives it an advantage in this regard. By definition, a population that approaches five times the size of the U.S. population produces more data. The previously “backward” nature of the Chinese economy has resulted in another Chinese data advantage: New smartphone-based apps, created in place of the digital integration that China previously lacked, produce a richer collection of data. This bulk and richness of Chinese data creates an inherent digital advantage when compared to the United States.

If the United States will never out-bulk China in the quantity and quality of data, it must out-innovate China. Here, the United States has an advantage, should it choose to take it. The centralized control of the Chinese digital economy is an anti-entrepreneurial force. In contrast, innovation is the hallmark of a free and open market. But the domestic market must, indeed, be free, open, and competitive.

Currently, the American digital marketplace is not competitive. A handful of companies command the marketplace by hoarding the data asset others need to compete. As innovative as America’s tech giants may be, they represent a bottleneck that starves independent innovators of the mother’s milk of digital competition. If America is to out-innovate China, then American innovators need access to the essential data asset required for that innovation.

The nation’s response to Chinese competition must not be the adoption of China-like national champions, nor the “China doesn’t regulate its companies that way” smokescreen. American public policy should embrace the all-American concept of competition-driven innovation. This begins with breaking the bottleneck that withholds data from its competitive application. This does not necessarily mean breaking up the dominant companies, but it does mean breaking open their mercenary lock on the assets essential for competition-driven innovation.

#### China will overtake the U.S. in AI by 2030 – national policies to maintain our lead are key

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Graham Allison, “China Will Soon Lead the U.S. in Tech,” *The Wall Street Journal*, 7 December 2021, https://www.wsj.com/articles/china-will-soon-lead-the-us-in-tech-global-leader-semiconductors-5g-wireless-green-energy-11638915759.

Central Intelligence Agency Director Bill Burns announced in October that the agency is establishing two new major “mission centers,” one focusing on China and the other on frontier technologies. This action reflects his judgment that China is the “most important geopolitical threat we face in the 21st century” and that the “main arena for competition and rivalry” between China and the U.S. will be advanced technologies. The question Americans should be asking is: Could China win the technology race?

A new report on the “Great Technological Rivalry” from Harvard’s Belfer Center answers: Yes. The report isn’t alarmist but nonetheless concludes that China has made such extraordinary leaps that it is now a full-spectrum peer competitor. In each of the foundational technologies of the 21st century—artificial intelligence, semiconductors, 5G wireless, quantum information science, biotechnology and green energy—China could soon be the global leader. In some areas, it is already No. 1.

Last year China produced 50% of the world’s computers and mobile phones; the U.S. produced only 6%. China produces 70 solar panels for each one produced in the U.S., sells four times the number of electric vehicles, and has nine times as many 5G base stations, with network speeds five times as fast as American equivalents.

In the advanced technology likely to have the greatest effect on economics and security in the coming decade—artificial intelligence—China is ahead of the U.S. in crucial areas. A spring 2021 report from the National Security Commission on AI warned that China is poised to overtake the U.S. as the global leader in AI by 2030. U.S.-born students are earning roughly as many doctorates each year in AI-related fields as in 1990, while China is on track to graduate twice as many science, technology engineering and mathematics Ph.D.s as the U.S. by 2025. The Harvard report adds that China now clearly tops the U.S. in practical AI applications, including facial recognition, voice recognition and fintech.

The U.S. still has a dominant position in the semiconductor industry, which it has held for almost half a century. But China may soon catch up in two important arenas: semiconductor fabrication and chip design. China’s production of semiconductors has surpassed America’s, with its share of global production rising to 15% from less than 1% in 1990, while the U.S. share has fallen from 37% to 12%.

In 5G, the Pentagon’s Defense Innovation Board reports that China is on track to replicate the economic and military advantages America gained from being the global leader in 4G. China has installed 950,000 base stations to America’s 100,000. By the end of last year, 150 million Chinese were using 5G mobile phones with average speeds of 300 megabits a second, while only six million Americans had access to 5G with speeds of 60 megabits a second. America’s 5G service providers have put more focus on advertising their capabilities than on building infrastructure.

The Chinese Communist Party has made no secret of its ambitions: China intends to become the global leader in the technologies that will shape the decades ahead. The party’s 2013 economic reform plan highlighted technological innovation as the way to avoid the trap of getting stuck as a middle-income country. The celebrated “Made in China 2025” program aims to dominate domestic production of 10 emerging technologies, including 5G, AI and electric vehicles.

China also plans to extend its lead in robotics to sustain its position as the manufacturing workshop of the world. In May, Xi Jinping clearly stated his judgment that “technological innovation has become the main battleground of the global playing field, and competition for tech dominance will grow unprecedentedly fierce.” It is striking how successful China has been in meeting its ambitious technology targets.

In sum, although the U.S. remains the global leader in many important races, including aeronautics, medicine and nanotechnology, China has emerged as a serious competitor. Fortunately, Americans are beginning to wake up to this reality. In June the Senate passed the Innovation and Competition Act with bipartisan support, authorizing $250 billion of investment in science and technology over the next five years. Unfortunately, that legislation has stalled in the House and faces an uncertain future as part of the annual defense bill.

More recent congressional spending proposals, such as the $1.2 trillion infrastructure bill and the $1.7 trillion social-spending package, have included investments in research and development in areas like green technologies and energy storage. While these investments are greatly needed, it will take more attention and investment in strategic technologies to compete with China. Unless the U.S. can organize a national response analogous to the mobilization that created the technologies that won World War II, China could soon dominate the technologies of the future and the opportunities they will create.

#### Maintaining our innovative lead solves nuclear war

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Matthew Kroenig and Bharath Gopalaswamy, "Will disruptive technology cause nuclear war?," Bulletin of the Atomic Scientists, 11-12-2018, <https://thebulletin.org/2018/11/will-disruptive-technology-cause-nuclear-war/>

Rather, we should think **more broadly** about how new technology might affect global politics, and, for this, it is helpful to turn to scholarly international relations theory. The dominant theory of the causes of war in the academy is the “bargaining model of war.” This theory identifies rapid shifts in the balance of power as a primary cause of conflict.

International politics often presents states with conflicts that they can settle through peaceful bargaining, but when bargaining breaks down, war results. Shifts in the balance of power are problematic because they undermine effective bargaining. After all, why agree to a deal today if your bargaining position will be stronger tomorrow? And, a clear understanding of the military balance of power can contribute to peace. (Why start a war you are likely to lose?) But shifts in the balance of power muddy understandings of which states have the advantage.

You may see where this is going. New technologies threaten to create potentially destabilizing shifts in the balance of power.

For decades, stability in Europe and Asia has been supported by US military power. In recent years, however, the balance of power in Asia has begun to shift, as China has increased its military capabilities. Already, Beijing has become more assertive in the region, claiming contested territory in the South China Sea. And the results of Russia’s military modernization have been on full displayin its ongoing intervention in Ukraine.

Moreover, China may have the lead over the United States in emerging technologies that could be decisive for the future of military acquisitions and warfare, including 3D printing, hypersonic missiles, quantum computing, 5G wireless connectivity, and artificial intelligence (AI). And Russian President Vladimir Putin is building new unmanned vehicles while ominously declaring, “Whoever leads in AI will rule the world.”

If China or Russia are able to incorporate new technologies into their militaries before the United States, then this could lead to the kind of rapid shift in the balance of power that often causes war.

If Beijing believes emerging technologies provide it with a newfound, local military advantage over the United States, for example, it may be more willing than previously to initiate conflict over Taiwan. And if Putin thinks new tech has strengthened his hand, he may be more tempted to launch a Ukraine-style invasion of a NATO member.

Either scenario could bring these nuclear powers into direct conflict with the United States, and once nuclear armed states are at war, there is an inherent risk of nuclear conflict through limited nuclear war strategies, nuclear brinkmanship, or simple accident or inadvertent escalation.

This framing of the problem leads to a different set of policy implications. The concern is not simply technologies that threaten to undermine nuclear second-strike capabilities directly, but, rather, any technologies that can result in a meaningful shift in the broader balance of power. And the solution is not to preserve second-strike capabilities, but to preserve prevailing power balances more broadly.

When it comes to new technology, this means that the United States should seek to maintain an innovation edge. Washington should also work with other states, including its nuclear-armed rivals, to develop a new set of arms control and nonproliferation agreements and export controls to deny these newer and potentially destabilizing technologies to potentially hostile states.

These are no easy tasks, but the consequences of Washington losing the race for technological superiority to its autocratic challengers just might mean nuclear Armageddon.

#### Scenario two is FinTech – Fintech’s disruptive startups have been squashed by large financial institutions

Loo ’18 – Associate Professor at BU Law [Rory Van; Associate Professor, Boston University School of Law and Affiliated Fellow, Yale Law School Information Society Project; 2018; "Making Innovation More Competitive: The Case of Fintech"; UCLA Law Review; https://heinonline.org/HOL/Page?handle=hein.journals/uclalr65&div=7&g\_sent=1&casa\_token=&collection=journals; accessed 8-18-2021]

Fintechs can be of any size. Four of the ten largest U.S. companies, Google, Apple, Amazon, and Facebook, all have built payment systems and made other inroads into finance.36 Despite the participation of large technology companies, the main drivers of fintech innovation have been the thousands of startups attracting billions of dollars in investment each year. Startup business models are novel, diverse, and shifting. One of the earliest fintech areas was peer-topeer lending, in which companies link individuals who have money to those who want it.37 Most of the original peer-to-peer companies have already grown beyond their origins and now engage in more familiar "marketplace lending."38 They receive money from banks to lend to individuals, and their innovations have spread to other areas, such as sophisticated analytic tools for estimating borrowers' creditworthiness.39

Unlike the other categories of consumer fintechs, advisory fintechs do not need to directly receive any money from consumers to offer their basic product. The goal of Credit Karma, NerdWallet, Mint, and other advisory fintechs is to help people make all of their financial decisions through a single app.4" These companies learn about users-with permission-by accessing personal bank accounts, credit scores, credit card records, tax returns, and other similar sources of financial information. Users then receive recommendations about credit cards or mortgages with lower fees, savings accounts that pay higher rates, and other products that better meet their needs.41

While the term "fintech" is used here to exclude traditional banks, all major financial institutions have become highly technological. The leading banks are each purchasing fintech startups, forming strategic partnerships, or internally building whiz teams to design new products.42 JP Morgan Chase's Intelligent Solutions Group has over 200 analysts and data scientists and produced about fifty technologies in 2015 alone.43 Goldman Sachs, which has more engineers than Facebook or Twitter, is launching an online lender.44 In light of Wall Street's increasing launch of digital products and adoption of artificial intelligence,45 regulating fintech amounts to regulating the future of finance.

B. Private Sector Institutional Dynamics

Fintechs could in theory pose a threat to traditional banks. Almost threequarters of millennials say they would prefer to receive their financial services from technology companies such as Google and Amazon, rather than big banks.46 Convenience, trust, and price all could play important roles in driving customer switching. Individual users, including small businesses, increasingly find dealing with big banks to be time-consuming and frustrating compared to the ease of tailored startup apps.47 In recent years, consumers have grown distrustful of large financial institutions, whose reputations have been battered by subprime mortgage lending, the financial crisis, the LIBOR scandal, and Wells Fargo opening millions of fake accounts in customers' names. 48

Innovation helps explain why publicly traded companies are disappearing at a faster rate today than ever before-six times as fast as forty years ago.49 Online startups have even thrived in other heavily regulated industries, such as transportation and gambling." Convenience and lower costs have driven some of this success, and many fintechs offer similar advantages.51 Furthermore, unlike some industries that Silicon Valley has invaded, finance lacks a meaningful physical component. This makes the base products inherently vulnerable to digital competition. Traditional banks' infrastructures-including their legacy information systems and physical branches-inhibit their ability to rapidly respond to disruption.

Since Dimon's 2015 warning, however, the dynamics between fintech and traditional firms appear to have shifted. Entrepreneurs who started out wanting to do to banks what Amazon did to retail have wound up licensing their technology to banks.52 As one industry observer puts it: "What was once perhaps an adversarial relationship has warmed .... Many no longer see an existential threat in fintech. Instead, they believe that "[i]t is most likely that the small fintech companies will be subsumed" by large financial institutions. 4

Ii. The Competition Shortcomings

A given fintech's decision of whether to challenge or join banks will depend in part on whether regulations and market dynamics give it a real chance to compete. Competition is extremely difficult to measure, and economic models inadequately consider important factors, such as innovation.5 To assess the hypothesis that a lack of competition inhibits fintech, this Part surveys the evidence related to entry barriers, customer switching, anticompetitive prices, and the relative pace of U.S. innovation.

A. Entry Barriers

When firms face excessive barriers to entering a market, competition can stagnate, raising prices and lowering innovation. 6 Although part of the problem is simply the large amount of regulation, 7 fintech has faced two further entry barriers: traditional firms' ability to block market access and the difficulty in obtaining a federal bank license.

Legacy financial institutions can limit some fintechs' operations through control of data. Most notably, advisory fintechs rely on access to both personal and general product data. 8 Some banks' response has been to block or limit fintechs' access to customer accounts, thereby making it harder for fintechs to provide tailored advice. 9 Legacy institutions can also block fintechs from collecting online product information by using laws never intended for such a purpose, including trespass to chattel, the Digital Millennium Copyright Act,6 " and the Computer Fraud and Abuse Act.61 As a result, advisory fintechs cannot on their own provide comprehensive financial advice to their users. In order to access crucial data, fintechs may need to prioritize big banks' interests over helping consumers switch.

Some legacy firms can also limit market access through their dominant market positions. Over 99 percent of all credit card transactions run through the Visa, American Express, Mastercard, and Discover networks.62 Many commentators have documented credit card companies' ability to engage in exclusionary conduct, such as vertical restraint clauses that prevent merchants from using other payment methods.63 Although credit card companies may not be able to use those same tactics against payment fintechs, their strong market positions could enable them to deploy other tactics. They have, for instance, instituted "Honor All Cards" rules requiring merchants to accept their contactless payments as a condition of accepting plastic cards. These rules arguably "foreclose entry to those digital wallets that.., do not use the credit card networks for payments. 64

#### That means US fintech will lose to international competitors.

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C. International Competitiveness

Less efficient and innovative U.S. financial services are problematic not only in isolation, but also from an international perspective. Scholars and regulators have inconclusively debated whether banks need to be big to maintain their international competitiveness. 12' Less well-recognized is how a lack of domestic competition may undermine U.S. financial firms' global competitiveness. Foreign financial firms may gain an edge by being subject to greater competition in their home markets, thereby being forced to innovate more and operate leanly. This creates two potential problems. First, reduced domestic competitiveness may make the United States less able to enter foreign markets. The U.S. economy has benefited in recent years from billions of dollars in revenues earned abroad by Google and other leading digital companies. 126 Given the growing portion of the global economy taken up by finance, the fintech lag could constitute a large-scale missed opportunity for U.S. firms to strengthen the economy by bringing in revenues earned abroad.

Second, in the long term, American financial firms may become more vulnerable to international competition even in domestic markets. Although U.S. licenses can shield banks from foreign fintech challengers today, distributed ledger technologies may change this. Americans are already increasingly using Bitcoin, Ethereum, and other unregulated virtual currencies based on blockchain technology.127 Much is unknown about how such technologies will develop, and the trust offered by a governmentally overseen financial system may prove difficult to replicate. 128 If, however, an era of wide-open global finance arrives, U.S. financial institutions could find themselves suddenly exposed to international competition as never before. Without U.S. regulators to insulate them, U.S. financial institutions made soft by lesser competition would be more prone to lose significant market share to foreign financial institutions than they would be if domestic markets were more competitive.

#### Fintech innovation is key to the effectiveness of U.S. economic sanctions

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Peter E. Harrell and Elizabeth Rosenberg, “Economic Dominance, Financial Technology, and the Future of U.S. Economic Coercion,” *Center for a New American Security*, 2019, pp. 25-26, http://files.cnas.org.s3.amazonaws.com/documents/CNAS-Report-Economic\_Dominance-final.pdf.

Developments in financial technology also have the potential to affect the availability and strength of coercive economic measures over the longer term. The movement to develop blockchain-based, decentralized payments platforms and new digital currencies or tokenized assets that feature anonymity can undermine the strength of coercive economic measures. However, financial technology developments, such as the development of artificial intelligence/machine learning (AI/ML) compliance technologies, also present potential means to better detect and stop evaders and avoiders of U.S. economic coercion throughout global chains of financial interconnectivity.

Financial technologies are not themselves the drivers of potential future changes to the sources of coercive economic leverage. However, they may enable foreign governments to develop better tools to insulate transactions from U.S. jurisdiction. And, regardless of the actions of foreign governments as they spread commercially, they may help evaders duck U.S. coercive economic power in limited but meaningful ways. Conversely, new AI/ML or other technologies may help U.S. policymakers implementing economic coercion to better do their job.

Financial technology can be a facilitator of rapid transformation in the financial services sector. Importantly, financial technology developments will not happen just in the United States; a number of other countries, from China to Singapore to Switzerland, are promoting themselves as financial technology leaders. There is no guarantee that financial technology innovators and investors will be centered in the United States in the future—which represents a vulnerability to U.S. economic prominence.

Maintaining U.S. Leverage

The extent to which the United States will maintain coercive economic leverage in a world where financial technology disrupts aspects of the traditional financial architecture will depend to a significant degree on the extent to which U.S. firms, and large global firms, continue to play a dominant role in the development of the technology. To put it bluntly, a blockchain-based clearing mechanism that enables trade between foreign countries without financial transactions touching the dollar would likely undermine U.S. leverage if the technology were developed and operated by a foreign company that had no need to adhere to U.S. law. The United States would maintain at least some leverage if the technology were developed or operated by a U.S. company obliged to adhere to U.S. sanctions, technology-export restrictions, and other relevant laws, or a foreign company with significant U.S. exposure.

#### Iran’s an emerging global hub for Bitcoin mining. Absent our internal link, they’ll obviate the role of financial institutions and effectiveness of sanctions.

**Erdbrink 19** --- Dutch journalist who is the Northern Europe bureau chief for The New York Times

Thomas, 1-29-2019, "How Bitcoin Could Help Iran Undermine U.S. Sanctions,” New York Times, https://www.nytimes.com/2019/01/29/world/middleeast/bitcoin-iran-sanctions.html

Iran’s economy has been hobbled by banking sanctions that effectively stop foreign companies from doing business in the country. But transactions in Bitcoin, difficult to trace, could allow Iranians to make international payments while bypassing the American restrictions on banks.

In the past, the threat of United States sanctions has been enough to squelch most business with Iran, but the anonymous payments made in Bitcoin could change that. While Washington could still monitor and intimidate major companies, countless small and midsize companies could exploit Bitcoin and other cryptocurrencies to conduct business under American radar.

The United States Treasury, well aware of the threat, is attempting to bring Bitcoin and the others into line. In recent weeks, in response to an internet fraud case originating from Iran, the Treasury imposed sanctions on two Iranians and the Bitcoin addresses, or ‘‘wallets,’’ they had used for trading in the currency.

The Treasury also has warned digital marketplaces that buy and sell Bitcoin and companies that sell computers used to process Bitcoin transactions that they should not provide services to Iranians. Several well-known trading sites are now blocking buyers and sellers from Iran. Some have confiscated money belonging to clients based in Iran.

“Treasury will aggressively pursue Iran and other rogue regimes attempting to exploit digital currencies,” the department said in a statement.

But by their nature, cryptocurrencies are uncontrolled by any person or entity. At best, efforts to regulate or monitor trade in them are episodic, whack-a-mole affairs. With Bitcoin and other cryptocurrencies, there is simply no way to duplicate the banking sanctions that have proved so damaging to the Iranian economy.

Bitcoin transactions are recorded on a digital ledger or database known as the blockchain, maintained communally by many independent computers. The system is designed explicitly to avoid central banks and large financial institutions. Like emails delivered without going through a central postal service, the computer network maintaining Bitcoin records enables the movement of money without going through any central authority.

The Iranian government has been slow to recognize the potential sanctions-evading possibilities of Bitcoin. But it is now considering the establishment of exchanges to facilitate trading, one official, Abdolhassan Firouzabadi, said recently. Despite the failure of Venezuela’s state-backed cryptocurrency, the Petro, Iran’s central bank said recently that it was seriously considering creation of something similar, possibly called the Crypto-Rial, named after the national currency, the rial.

Still, Iran’s venture into Bitcoin pales in comparison to what has been happening the former Soviet republic of Georgia, where thousands of people have jumped into the cryptocurrency business.

At the computerized processing operation in the Iranian desert, no one seemed particularly concerned with the geopolitical implications of Bitcoin.

The operation consisted of 2,800 computers from China, fitted into eight containers, which when linked are called a farm. It makes intense mathematical calculations, known as mining, needed to confirm Bitcoin transactions. Miners collect fees in Bitcoin for their services.

Ignoring the rain, the European visitor used the calculator on his mobile phone to determine how much money could be made from this particular farm, multiplying computer power and deducting electricity and operational costs.

He estimated about five Bitcoins a month, which at roughly $4,000 per Bitcoin at current price levels, would be about $20,000.

“Not too bad,” he said.

The currency fluctuates like any other, though it has proved particularly volatile, sinking to slightly less than $4,000 a unit from nearly $20,000 about a year ago.

“We’ll have two engineers on site to keep everything running, that’s it,” said Behzad, the chief executive of IranAsic, the company running the site. He, like the European investor, did not want to provide his family name, out of fear of penalties from the United States.

The Chinese computers, called Antminer V9s, were regarded as outdated by the European visitor. Still, he said, “I guess this is the last place on earth where they are still profitable.”

That helps explain why Iran seems to be taking its first baby steps toward becoming a global center for mining Bitcoins. Because of generous government subsidies, electricity — the energy for the computers needed to process cryptocurrency transactions — costs little in Iran. It goes for about six-tenths of a cent per kilowatt-hour, compared with an average of 12 cents in the United States and 35 cents in Germany.

In recent months, dozens of foreign investors from Europe, Russia and Asia have considered moving their mining operations to Iran and other low-cost countries like Georgia. “We have to be flexible in this industry and go where prices are the lowest in order to survive,” said the European investor.

#### Tracking solves Iranian evasion – US lead key.

**Robinson 21** --- Ph.D., Co-founder and Chief Scientist discusses cryptocurrency forensics, investigations, compliance, and sanctions.

Tom, "How Iran Uses Bitcoin Mining to Evade Sanctions and “Export” Millions of Barrels of Oil," Elliptic, <https://www.elliptic.co/blog/how-iran-uses-bitcoin-mining-to-evade-sanctions>

The Iranian state is therefore effectively selling its energy reserves on the global markets, using the Bitcoin mining process to bypass trade embargoes. Iran-based miners are paid directly in Bitcoin, which can then be used to pay for imports - allowing sanctions on payments through Iranian financial institutions to be circumvented.

This has become all but an official policy, with a think tank attached to the Iranian president’s office recently publishing a report highlighting the use of cryptoassets to avoid sanctions.

Many of those making the Bitcoin transactions and paying the fees to Iran-based miners will be located in the United States - the very country spearheading the sanctions. As the US government considers whether to lift some sanctions on Iran in exchange for a return to a nuclear deal, it will need to consider the role that Bitcoin mining plays in enabling Iran to monetise its natural resources and access financial services such as payments.

In the meantime, financial institutions should consider the sanctions risk they are exposed to due to Iranian Bitcoin mining - particularly those that are beginning to offer cryptoasset services. If 4.5% of Bitcoin mining is based in Iran, then there is a 4.5% chance that any Bitcoin transaction will involve the sender paying a transaction fee to a Bitcoin miner in Iran. Financial institutions should also be on the lookout for crypto deposits originating from Iranian miners that are seeking to cash-out their earnings.

Solutions for Sanctions Risks

However as we discuss in more detail our new sanctions guide, solutions to these challenges exist and are already used by financial institutions engaging in cryptoasset activity.

For example, blockchain analytics solutions such as those provided by Elliptic can be used by regulated financial institutions to detect and block cryptoasset deposits from Iran-based entities including miners. Techniques can also be employed to ensure that transaction fees are not paid to miners in high risk jurisdictions.

#### Effective sanctions key to prevent Iranian nuclear acquisition.

**Morrison 21** --- Master of Arts of Political Science, University of Waterloo.

Kallen, 2021, “Economic Sanctions and Nuclear Non-proliferation: A Comparative Study of North Korea and Iran, “University of Waterloo, Fulfilment of the thesis requirement for the degree of Master of Arts, https://uwspace.uwaterloo.ca/bitstream/handle/10012/16666/Morrison\_Kallen%20.pdf?sequence=3

Economic sanctions have been successful in stopping Iran from pursuing their nuclear program thus far. Iran has conceded multiple times to the United States and the international community to halt the enrichment of uranium and the advancement of their nuclear program. The most notable example of Iran’s concessions has been the signing of the Joint Comprehensive Plan of Action in which Iran agreed to halt and greatly reduce their nuclear program in return for substantial easing of economic sanctions. The second criteria has been met as Iran’s economy has significantly worsened due to continued economic pressure from the United States and the international community. Iran’s economy has significantly worsened due to continued economic pressure from the United States and the international community. Continued economic pressure has been paramount to bringing Iran to the negotiating table. While the United States and its regional allies do pose a military threat to Iran, that is unlikely a sufficient factor in dissuading Iran.

We have established that the level of political contestation in the targeted countries, their economic and security vulnerabilities, and the degree of international cooperation are important factors in determining if economic sanctions are effective at limiting nuclear proliferation. In Iran’s case the regime, while authoritarian, allows for limited political contestation. The general public gets to elect the president (even if candidates are handpicked by the supreme leader). Iranians have been able to protest against the government. One goal of economic sanctions is to galvanize the general public against the government and their policy decisions. Iranians have indeed been frustrated by the sanctions and voiced their discontent with the government policies targeted by the sanctions.

Iran’s international environment is also conductive for economic sanctions to be effective. Iran is a regional power with an impressive arsenal of missiles and extensive network of proxy forces. Therefore, nuclear weapons are not imperative for Iran’s defence. On the other end, Iran’s economy is largely based on oil and gas exports. Integration into the global market is very important for Iranians and a vital source of revenue for the government. Economic sanctions have hurt the Iranian economy and therefore have hurt Iranians. The economic squeeze has brought Iran to the negotiating table in the past and will likely do so in the future. The international approach to Iran has been encompassing with the European Union and the United Kingdom taking a common stand with the United States in preventing Iran from acquiring nuclear weapons. Even after the United States left the JCPOA the EU and UK have attempted to develop mechanisms to provide Iran with economic incentives to keep Iran abiding to the JCPOA. Even though China has given Iran an economic lifeline there is tension within Iran over concerns of becoming too economically dependent on China.

#### Israel would preempt before the nukes come online. Sparks a wider regional conflict that draws in all the major powers.

Scheinman 18 – Security Studies Chair, Nat’l War College; Nuclear Nonprolif Rep. for Obama

Adam M. Scheinman, What if Iran leaves the NPT?, 8 June 2018, <https://thebulletin.org/2018/06/what-if-iran-leaves-the-npt/>

Not to diminish the immensity of North Korea’s nuclear challenge, but Iran’s withdrawal from the NPT carries weightier risks. It would likely mean that Iran’s Supreme Leader had given the green light to an Iranian nuclear weapon, opening the floodgates to NPT withdrawals by other Arab states—Saudi Arabia, the UAE, and Egypt head that list. These and possibly other Sunni governments, none of whom can rely on a major power for defense, may conclude that they require their own nuclear weapon to check Iran’s rise. The Saudis are very clear and public on this point.

More immediately, Israel may feel compelled to strike Iranian nuclear facilities before they become fully operational. This raises the specter of a regional war that may draw in several of the nuclear weapon states—the United States, the UK, France, and Russia—and reshape the Middle East in ways we cannot predict. Whether the NPT could survive such a shock is another unknown.

#### Can’t stay contained—multiple pathways to global nuclear war.

Avery 13 – Lektor Emeritus & Associate Professor, U of Copenhagen

John Scales Avery, Lektor Emeritus, Associate Professor, at the Department of Chemistry, University of Copenhagen, since 1990 he has been the Contact Person in Denmark for Pugwash Conferences on Science and World Affairs, An Attack On Iran Could Escalate Into Global Nuclear War, 11/6/13, http://www.countercurrents.org/avery061113.htm

Despite the willingness of Iran's new President, Hassan Rouhani to make all reasonable concessions to US demands, Israeli pressure groups in Washington continue to demand an attack on Iran. But such an attack might escalate into a global nuclear war, with catastrophic consequences. As we approach the 100th anniversary World War I, we should remember that this colossal disaster escalated uncontrollably from what was intended to be a minor conflict. There is a danger that an attack on Iran would escalate into a large-scale war in the Middle East, entirely destabilizing a region that is already deep in problems. The unstable government of Pakistan might be overthrown, and the revolutionary Pakistani government might enter the war on the side of Iran, thus introducing nuclear weapons into the conflict. Russia and China, firm allies of Iran, might also be drawn into a general war in the Middle East. Since much of the world's oil comes from the region, such a war would certainly cause the price of oil to reach unheard-of heights, with catastrophic effects on the global economy. In the dangerous situation that could potentially result from an attack on Iran, there is a risk that nuclear weapons would be used, either intentionally, or by accident or miscalculation. Recent research has shown that besides making large areas of the world uninhabitable through long-lasting radioactive contamination, a nuclear war would damage global agriculture to such an extent that a global famine of previously unknown proportions would result. Thus, nuclear war is the ultimate ecological catastrophe. It could destroy human civilization and much of the biosphere. To risk such a war would be an unforgivable offense against the lives and future of all the peoples of the world, US citizens included.

#### Saudi will follow them across the nuclear threshold---nuclear war.

Robb et. al 12 (Senator Charles S. – Virginia, General Charles Wald – Former Deputy Commander of U.S. European Command, Dr. Daniel Ahn – Senior Economist and Head of Portfolio Strategy for CitiBank New York, John Hannah – Former Assistant for National Security Affairs to the Vice President, Stephen Rademaker – Former Assistant Secretary of State for Arms Control and Nonproliferation, Christopher Carney – former U.S. Representative from Pennsylvania, Ed Husain – Senior Fellow for Middle Eastern Studies at the Council on Foreign Relations, Ambassador Dennis Ross – Counselor for the Washington Institute for Near East Policy, Ambassador Eric Edelman – Former Under Secretary of Defense for Policy, Reuben Jeffrey III – Former U. S. Under Secretary of State for Economic, Business, and Agricultural Affairs, John Tanner – Former U.S. Representative from Tennessee, Secretary Dan Glickman – Senior Fellow at the Bipartisan Policy Center, Admiral Gregory Johnson – Former Commander of U.S. Naval Forces, Europe, Mortimer Zuckerman – CEO and Chairman of the Board of Directors for Boston Properties, Inc., Larry Goldsetin – Founder of Energy Policy Research Foundation, Inc., and General Ron Keys – Former Commander of the Air Combat Command, The Price of Inaction: Analysis of Energy and Economic Effects of a Nuclear Iran, Bipartisan Policy Center, p. 24)

Saudi Arabia would be very likely to try to follow Iran across the nuclear threshold. Should it do so, the world would face the possibility of an Iran-Saudi nuclear exchange—a catastrophic humanitarian event that would threaten the entirety of Gulf oil exports for an extended period of time. In early 2008, the Senate Foreign Relations Committee concluded: “If Iran obtains a nuclear weapon, it will place tremendous pressure on Saudi Arabia to follow suit.”19 By 2012, some experts believe it has already begun to do so. Two main factors could drive Saudi Arabia to pursue a nuclear weapon: (1) a decades-long Saudi-Iran cold war waged along sectarian, religious, ethnic, and geopolitical lines and (2) a deep-seated competition over the energy policies that form the lifeblood of both regimes. The Sunni Saudi monarchy and Shiite Iranian theocracy each claim leadership of the Islamic world. This sectarian competition for primacy is reinforced by ethnic differences: Saudi Arabia is the largest and most populous Arab country astride the Gulf, but it is dwarfed by Iran’s much larger Persian-majority population. These competing claims have pitted the two countries in an enduring cold war and proxy conflict spanning from Lebanon to Iraq and the Arabian Peninsula. Iran—under both the Shah and the ayatollahs—has routinely sought to use its conventional military capabilities, large population, geostrategic position, expansive resources, and ties to armed groups to shift the balance of power in the Persian Gulf in its favor and at the expense of its Sunni Arab neighbors.20 As a result, Saudi Arabia has made it clear it views a nuclear-capable Iran as an existential threat. In 2008, King Abdullah urged the United States to “cut off the head of the snake,” one instance of his “frequent exhortations [to] the United States to attack Iran to put an end to its nuclear weapons program,” according to U.S. diplomatic cables revealed by Wikileaks.21 With uncertain prospects for a halt to Iran’s nuclear program—peaceful or otherwise—in 2009, the King informed a senior American official, “If [Iran] gets nuclear weapons, we will get nuclear weapons.” This year, senior Saudi officials reiterated that “it would be completely unacceptable to have Iran with a nuclear capability and not the kingdom [of Saudi Arabia].”22 Rather than lose time developing an indigenous nuclear program, it is likely the Saudi kingdom would seek to obtain a nuclear warhead from Pakistan ready to mount on its CSS-2 ballistic missiles. Close Saudi-Pakistani security ties date back to shared Cold War–era interests, and it is widely believed that Riyadh bankrolled Islamabad’s nuclear weapons program with the stipulation that Pakistan would sell nuclear devices to Saudi Arabia in an emergency; in the words of a senior Saudi official, “within weeks.”23 Pakistan would benefit by receiving much-needed cash and could demand in return dual-key authority over missile launches, both to control Saudi policy and to bolster its own secondstrike capability against India. At best, this would create a nuclear-armed standoff between the two most powerful and mutually antagonistic countries in the Persian Gulf. At worst, it could devolve into atomic warfare. Iran’s and Saudi Arabia’s small arsenals, lack of durable communication channels, poor civilian oversight of command-and-control systems, erratic intelligence, proximity to each other, religious ardor, and sectarian divide would all distinguish this scenario from the Cold War balance between the United States and the Soviet Union. Any such conflict would likely be extremely devastating. Each country would have natural incentives to cripple its opponent’s oil facilities in any nuclear conflict. Crudeoil exports are both regimes’ political and economic lifeblood, and thus the basis for their military power. Also, each country’s oil infrastructure and export terminals are concentrated along the Gulf, within range of the other’s nuclear-weapons delivery vehicles. Moreover, a nuclear war in this region would likely not only destroy a large portion of the Gulf’s oil infrastructure but also render the entire Gulf unavailable to shipping for some period of time. This could come directly through radioactive fallout, atmospheric pollution, and environmental destruction, or indirectly through prohibitively high insurance rates and other risk factors for tankers transiting the region.24 Therefore, even if a nuclear exchange did not spread into a region-wide war, the transit of Hormuz-bound oil exports would be halted by such a conflict.

### 1AC – Conduct

Advantage two is conduct

#### Scenario 1 is SMEs – Google uses self-preferencing to erode local businesses

Pat **Garofalo 20** [director of state and local policy at the American Economic Liberties Project; former reporter at U.S. News and World Report], 8-30-2020, "Close to Home: How the Power of Facebook and Google Affects Local Communities," American Economic Liberties Project, https://www.economicliberties.us/our-work/close-to-home-how-the-power-of-facebook-and-google-affects-local-communities/#

Google Undermines Local Businesses:

For a local business to operate and be successful, local residents must be able to find it. There’s a long history of enabling such matchmaking between customers and businesses through newspapers, radio, TV, directories, and local advertising channels. Today, one of the key mechanisms filling this critical function is local search. Local search is the single largest category of search on Google, the world’s dominant search engine. In 2018, Google said local search grew by 50 percent over the year before, outpacing the overall search market.[18] More than 80 percent of cell phone users report searching for businesses “near me.”[19]

And yet, Google’s search properties, either general search or via its Maps subsidiary, often hurt local businesses and residents by allowing scammers to infiltrate its listings. For instance, Florida locksmith Rafael Martorell explained that the name of his business, A-Atlantic Lock and Key, was stolen by scammers on Google who pretended to be him and would charge customers five or six times what he normally charged. “One of the scammers put the name of my company, and the address that he put was my own house,” he said, alleging that such practices are an epidemic in the locksmith industry.[20]

“90 percent of our advertising, most of that for years was the Yellow Pages,” Martorell said. “Then suddenly Google came, without us noticing. And then we figured it out, we knew we had to go to Google and that is when the issues began. Because the local listings, most of them are fraudulent. Completely phony, fraudulent.”[21] The Wall Street Journal noted several other sectors in which similar scams have occurred.[22]

Since Google is so dominant in search, merchants have little alternative to battling the corporation endlessly, trying to buy ads for which they can’t ascertain the true value – and where a substantial amount of clicks can be fraudulent[23] – or simply vanishing from the vast majority of internet searches when they are either not listed or when their listing has incorrect information. (Facebook can create similar issues for small businesses via fraud, driving up costs for businesses running ads and opaque algorithm changes that limit small businesses ability to ensure their customers actually see their content.)[24][25]

Google’s size and scale leads to neglect of local needs. The corporation has eight products with more than a billion users, so the ability of a top executive to focus on any one town, or even a major city, is virtually nil. Google is slow to correct misinformation and has allowed whole neighborhoods to be renamed thanks to user mistakes. In other instances, Google has decided that an entire sector of the economy, such as third-party tech repair shops, is simply too difficult to validate, so it excludes them from search results entirely.[26]

Google’s power is immense, and in some ways, more significant than that of the government. As one businessperson told the Wall Street Journal, “if Google suspends my listings, I’m out of a job. Google could make me homeless.”[27]

Poor-quality results can even be profitable for Google. Legitimate businesses often pay for ads on Google in order to rise back above fraudulent listings. Martorell, for instance, spent $115,000 on Google ads between 2008 and 2015, before giving up on the platform and relying on local referrals.[28]

Local search is not an inherently concentrated business. There are competitors, such as Yelp, TripAdvisor, and other specialized vertical search engines that can compete over quality. And yet Google is a virtual monopoly. That’s because dominance didn’t occur naturally or through differentiating based on quality. It happened through the exercise of power and capital.

For example, Google pays to be the default search option on Safari on the iPhone. Google also provides its Android operating system and its app store Google Play to cell phone makers for free so that they make Google search the default on Android phones.[29]

This search dominance also allows Google to preference its own products providing local information over those of its competitors, even when its own organic search results indicate that Google content is of worse quality.[30]

Google’s search results have evolved over time. While the company once simply provided a list of hyperlinks to other websites, saying that it’s goal was to get consumers into Google and then out to their preferred web destination as quickly as possible, it now provides answers to specific queries and makes suggestions for content that can be accessed through Google directly, through its use of information boxes.

These include answers to factual questions, like offering that Thomas Jefferson was the third president without having to send the user to an online encyclopedia. But these boxes also allow Google to make a judgment call to preference its own content and products in harmful ways.

For example, a search for a local Thai restaurant will provide links to restaurant websites, but above the hyperlinked search results Google provides direct links to restaurants on Google Maps and Google’s restaurant reviews, as shown below:

Placement on a Google results page is critical because more than a quarter of users click the very first result of a search, while just 2.5 percent click on the tenth. Barely any users venture onto the second page of results.[31] As of 2019, less than half of Google searches result in a user clicking away from Google.[32]

Google’s ability to exclude competitors leads to the quality degradation in results, and so users end up more susceptible to fraudulent listings than they would otherwise, undermining the relationship between local businesses and local customers.

As one study on Google’s self-preferencing noted, “The easy and widely disseminated argument that Google’s universal search always serves users and merchants is demonstrably false.”[33] The European Union in 2017 fined Google €2.4 billion euros for similar self-preferencing of its Google comparison shopping products, which it placed above those of other third-party sales platforms or direct vendors.[34]

According to at least two studies, users prefer the content that Google’s algorithm would naturally show them to that shown when Google circumvents its algorithm to preference its own content. In 2015, Michael Luca, Tim Wu, Sebastian Couvidat, and Daniel Frank found that users are 40 percent more likely to engage with local search content produced by Google’s organic algorithm than they are with the content Google instead preferences in local search. (Yelp, a Google competitor, provided funding for the study.)

“Google is degrading its own search results by excluding its competitors at the expense of its users,” they wrote. “In the largest category of search (local intent-based), Google appears to be strategically deploying universal search in a way that degrades the product so as to slow and exclude challengers to its dominant search paradigm.”[35]

In a 2018 paper, Luca and Hyunjin Kim also found that users preferred organic search results to Google’s preferenced results. Furthermore, they found that other, more specialized search engines saw a fall in traffic as a result of Google’s actions tying its reviews product to its search engine.[36] “Our findings suggest early evidence that dominant platforms may, at times, be degrading products for strategic purposes, such as excluding competitors in adjacent markets that they are looking to enter or grow in,” they wrote.

The Federal Trade Commission in 2013 concluded that such behavior was anti-competitive, though it closed the investigation without action. According to documents from that investigation that were accidentally leaked to the Wall Street Journal, Google engaged in this conduct because it feared competition from specific search verticals such as Yelp and TripAdvisor. One executive in an email explicitly pointed to the threat such specific verticals posed to Google’s traffic, and therefore revenue.[37]

An inability for customers and local businesses to find each other, whether because there are too many scam listings to wade through or because Google is pushing an inferior product, hurts local economies – first, by potentially driving legitimate businesses under via depriving them of customers, and second by exposing customers to fraudulent businesses charging excessive rates. Changing Google’s business model so that it doesn’t have incentives to self-deal or tolerate scam artists will begin to rectify these problems.

#### Determines SMEs growth.

**Graef 19** --- Assistant Professor at Tilburg University, affiliated to the Tilburg Law and Economics Center (TILEC) and the Tilburg Institute for Law

Inge, 11-12-2019, "Differentiated Treatment in Platform-to-Business Relations: EU Competition Law and Economic Dependence," OUP Academic, https://academic.oup.com/yel/article/doi/10.1093/yel/yez008/5622729

The relationship between platforms and businesses is at the core of various ongoing competition investigations. Online platforms provide significant benefits to businesses by enabling them to target a wide audience that typically exceeds the territory of individual Member States and even beyond. In the absence of platforms which act as intermediaries between business users and consumers, small and medium-sized enterprises (SMEs) in particular would not have had equally effective opportunity to reach consumers. In this regard, platforms often constitute the main entry points for businesses to access certain markets. At the same time, platforms rely on the presence of businesses in order to create value for consumers. Even though platforms and businesses are thus dependent on each other in order to operate their respective services, platforms typically have a superior bargaining position in relation to their business users. This may result in an imbalance between the interests of platforms and businesses, potentially leading to unfair practices. The scope for such issues is particularly present when platforms both act as intermediaries by facilitating market access for businesses and compete with these businesses by offering their own products to consumers on their marketplaces.1

#### SMEs are key to rural economies – current recovery is inequitable and dominated by large-firm growth

Ajilore 20 – Senior economist at the Center for American Progress.

Olugbenga Ajilore, “Economic Recovery and Business Dynamism in Rural America,” *Center for American Progress*, 20 February 2020, pp. 4-8, https://cf.americanprogress.org/wp-content/uploads/2020/02/DynamismRural-brief.pdf?\_ga=2.241357442.1697020435.1644933424-2121460371.1644933424.

Small businesses, especially in the South as well as Rural Middle America, have been struggling to survive in the current economic environment, particularly due to the trends of consolidation and growing market concentration. This increasing concentration, especially in rural communities, has led to the rise of the modern company town, where a community is dominated by a single firm.9 In the agricultural sector, the number of federally inspected slaughterhouses declined 36 percent from 1990 to 2016.10 This rise in concentration has allowed these larger firms to exert market power on smaller firms and on their own employees—a trend that has been especially prevalent in the corn and soybean seed markets: The shares of the four largest firms in each of these two markets have risen to more than 85 percent and more than 76 percent, respectively.11 This increased concentration in rural communities may be a factor in limiting startup activity.

The ACP classification system shows that not all rural communities have experienced negative firm growth: Graying America, Hispanic Centers, and Latter-day Saints Enclaves saw an increase in net establishment growth since the Great Recession, although this growth may not be evenly distributed within these communities. Figure 3 maps this trend to show which parts of the country are experiencing significant growth. It specifically maps establishment growth in the counties represented by Graying America, Hispanic Centers, and Latter-day Saints Enclaves.

The counties highlighted in dark blue areas show large establishment growth. Many of these communities, especially among Graying America, are recreation-dependent. Research by Meghan Lawson for Headwaters Economics found that recreation counties attract new residents and are experiencing earnings growth.12 In the Hispanic Centers, on the other hand, several of the counties are mining-dependent, primarily in the oil and gas industry. Figure 3 illustrates that it is difficult to apply lessons learned and strategies used in the growing communities to other, more stagnant areas that are not rich in amenities or that lack abundant resources.

Immigration can help spur growth in rural areas

One lesson that may be applied to all rural communities is the importance of fostering population growth. Data from a 2019 CAP brief show that many nonmetro counties have been experiencing population loss,13 which an EIG report found has adverse impacts on housing markets, government finance, and business dynamism.14 On that last point, communities that are losing population see a decrease in the demand for goods and services and therefore experience greater firm deaths. Figure 4 shows that many of the nonmetro communities that have been experiencing population loss following the Great Recession are in the Southern and Midwestern regions.

Many communities have tried to reverse the trend of depopulation through welcoming immigrants, a strategy that can be successful.15 Figure 5 confirms a positive relationship between the net international migration rate and population change over the post-Great Recession period.

There are numerous examples of places throughout the country where immigrants have revitalized and benefited rural communities—not just in the agriculture sector but also in manufacturing, health care, tourism, and startups.16 Nebraska, for example, has seen a long influx of Mexican immigrants who are employed at Tyson meatpacking plant, thereby increasing the state’s population and in turn creating a demand for small businesses.17 Certain policies, such as the Heartland Visa, can encourage immigration targeted toward areas experiencing depopulation.18 Communities can also employ certain strategies to create social infrastructure to help immigrants thrive.19 For example, providing English as a second language (ESL) classes or other communication programs for migrants and their children to facilitate dialogue between new migrants and other community members is helpful.

Conclusion

Since the Great Recession, business growth nationwide has faltered relative to recoveries from previous recessions. Metropolitan counties have recovered in terms of establishment growth, but that recovery has been concentrated in the largest cities.20 In rural communities, the counties that had positive establishment growth were confined to recreation-dependent counties located in Florida and Texas and in the Central Valley of California, as well as communities rich in certain resources.

Many rural communities are taking steps to support local businesses through community development corporations and cooperatives, but there may be a role at the federal level to expand the capacity of these organizations. Policymakers need to create a better climate for small businesses to thrive and grow. This is important for all regions but vital for rural communities, as they are also struggling with other problems—such as higher rates of opioid use,21 hospital closures,22 and job loss23—that harm their viability. Until there are efforts at all levels of government to foster small-business growth and rural entrepreneurship, these communities will continue to fall behind the rest of the country.

#### Reinvigorating rural economies solves populism

Wilkinson 19 – Vice president for research at the Niskanen Center. Former politics correspondent for The Economist and research fellow at the Cato Institute.

Will Wilkinson, “The Density Divide: Urbanization, Polarization, and Populist Backlash,” *Niskanen Center*, June 2019, pp. 10-12, https://www.niskanencenter.org/wp-content/uploads/2019/09/Wilkinson-Density-Divide-Final.pdf.

Economic Output and Party Vote Share

The economic dimension of the divide is equally stark. The 472 Clinton counties also accounted for 64 percent of GDP – nearly twice the combined economic output of the 2,548 counties that favored Trump. This represents a dramatic shift since 2000, when the 659 counties that went for Gore produced 54 percent of GDP, compared to 46 percent generated by the 2,397 Bush counties. Economic productivity has become increasingly correlated with both education and population density.

The transition to the information economy has widened the productivity gap between workers with more and less education and between places with more or less dense agglomerations of those workers. As smaller, less-educated cities and towns languish, their best-schooled daughters and sons decamp to the metropolis, further widening the big city/small town productivity and employment gap.17

There has been, in the words of Mark Muro and Jacob Whiton of the Brookings Institution, “a truly eye-popping divergence of big-, medium-, small-sized communities’ growth progress – one that’s getting worse.” They report:

[T]he 53 very largest metro areas (those with populations over one million residents) have accounted for fully 93.3 percent of the nation’s population growth since the crisis, but an incredible 96.4 percent of it since 2014 (though they account for just 56 percent of the overall population). Even more significantly, the biggest metros generated fully two-thirds of output growth on the economic front and 73 percent of employment gains between 2010 and 2016.19

This concentration of growth and opportunity, they note, has recently intensified. Since 2014, millions-plus metros produced a whopping 72 percent of American output growth and 74 percent of the country’s employment gains.

Over generations, the escalating incentives to seek education and move to the city has filtered those most responsive to these inducements, and least wary of urban diversity, out of lower-density America. This has left the places they’ve fled poorer and less educated, and has left the people who remain in them almost uniformly white, averse to dynamic, multicultural cities, alarmed by the prospect of a majority-minority America, and receptive to pandering, demagogic explanations of their relative decline.

#### Populism causes extinction – causes war and destroys effective government response to crises

**Forthomme 18** – Economist, 25 years at the UN ending as Regional Rep. for Europe

Claude Forthomme, Seniore Editor of Impakter, graduate of Columbia University, Why Populism is Dangerous: The Propensity for War, 2018, https://impakter.com/populism-dangerous-propensity-war/

Populism is dangerous and has shown overtime an irresistible propensity for war. Public safety, health and the economy are at risk. But populist propaganda is hard to resist. Populist politicians thrive on fake news: it is so much easier to fuel people’s emotions if you feed them fabricated news of imaginary crises. And if you divert their attention from real economic problems with the irresistible lure of national identity politics and blaming foreigners**.** Previous articles have addressed the issue of austerity (here), the public health crisis (here) and the false “migrant crisis” (here). Here we take a look at populism’s propensity for war. Historically, populist leaders have been warmongers, Hitler first among them, for waging war across national borders and Pol Pot within borders. Nowadays, exhibit A is Putin’s invasion of Ukraine’s Crimea in 2014, diverting Russians’ attention from a deepening recession. Exhibit B is Trump’s rising militarism that has just jumped to the next level with John Bolton’s visit to Moscow this week to tell Putin the U.S. will withdraw from the I.N.F. Treaty. Mikhail Gorbachev, former president of the Soviet Union, has no doubts: A new nuclear arms race has begun, he writes in an opinion piece for the New York Times. He should know what he’s talking about. He is the man who signed with President Reagan in 1987 the I.N.F. treaty, one of the major arms non-proliferation treaties. For Europe, it is the most important since it aims at eliminating the arsenal of intermediate and shorter-range missiles. Back then, Gorbachev was at the helm of a dying Soviet Union shaken by the fall of the Berlin Wall, and he, more than anyone, believed in a new age of peace and international cooperation. He famously talked of a “Common European Home” and hoped to bring Russia inside Europe as an equal partner. That did not happen and the rise of Putin put paid to those hopes. In that article, Gorbachev reminds us that the I.N.F. treaty was followed by two more important ones, the Strategic Arms Reduction Treaty (a.k.a. Start 1, signed in 1991 by George H.W. Bush) and the New Start Treaty (2010 signed by Obama). By 2015, The US and Russia were able to report at the United Nations Nuclear Nonproliferation Review Conference that 85% of the arms had been retired and mostly destroyed. An amazing success that Trump, another Republican President, is about to reverse. Predictably, Russia is accused of violations, the standard way to break off treaties. And yet, the Republican party was not always the party of the military-industrial complex, a notion another Republican President warned America against: It was Eisenhower, in his farewell address in 1961, who identified the threat and famously coined that phrase. In the Trump era of America First, it’s hard to remember that just three decades ago, in the 1980s, there were politicians who had genuine liberal, progressive ideas – even in the Soviet Union that after 70 years of dictatorship looked like a hopeless case. Especially in the Soviet Union which, as events showed with Gorbachev’s Perestroika, was ready for a dramatic change, putting its Communist past and the Cold War in the dustbin of History. Now, History’s dustbin is about to be emptied on the world stage, bringing the Cold War back. Firebrand John Bolton, Trump’s National Security adviser (appointed last April) is having his moment of glory. A former U.S.Ambassador to the United Nations (under Bush), Bolton has always hated international treaties in general and the United Nations in particular. His fondest memory, he recalls in his 2007 memoir, was to pull the U.S. out of the International Criminal Court treaty. No matter the Court presented no particular danger to American sovereignty and that it was a major step forward for international law and justice. Bolton is an uncompromising hawk. For him the world is a jungle, justice is for sissies and the U.S. needs to be top dog. Now he is pushing Trump to withdraw from all international treaties – including further blocking the ICC and even moving out of some minor treaties like the Universal Postal Union, a 144 year-old postal treaty run by the United Nations, accusing it of letting China ship goods at an unfair discount. That was done last week. The fact that the ICC, as per its mandate, cannot prosecute any American without the consent of an American court is not mentioned by John Bolton or anyone in the Trump administration. They all prefer to present the ICC as illegitimate and a threat to American sovereignty. They do not accept the simple fact that the ICC is a UN body and therefore not illegitimate; and that it is never a threat to a country that respects international law and justice. And America used to be a paladin of justice but with populists in power, that has changed. Trump’s priority now is moving out of nuclear arms treaties – and that fits in nicely with his military build-up strategy. Let’s tick off the ways Trump has gone about re-militarizing the U.S.: Pumping up the defense budget to a historic high of $717 billion, even though America has always spent more than the rest of the world combined on military expenditures; of special note: $21.9 billion for the Department of Energy’s nuclear weapons programs that includes research and testing; Getting out of the 2015 deal to limit Iran’s nuclear activities; And now systematically pulling out of all remaining non-proliferation arms deals. To be fair to Trump, the U.S. had already pulled out of the Antiballistic Missile Treaty in 2002. That was done by the Bush administration without a good explanation, much to the dismay of the Federation of American Scientists, an association created in 1945 by the scientists who built the first atomic bomb. Their 2001 letter of protest to Congress ended with the following words that apply equally well to all the treaties that Trump is seeking to undo: “America has always sought to lead the world by example. Yet if other countries were to follow the example we have just set, the framework of international law would disintegrate. President Bush has just released NMD’s first shot, and it has landed squarely in the heart of American security.” Bolton’s trip this week in Russia was clearly intended to lay the ground to kill off the I.N.F. arms treaty, much to Putin’s barely concealed amusement. Watch him smile: This is exactly what makes Putin happy: He gets a green light from Trump to go ahead with building up his military arsenal, and takes none of the blame. The military build-up is entirely Trump’s. Bolton’s visit was relatively “friendly” and ended with an invitation to Putin to visit Washington in “early” 2019. Before then, Trump and Putin will see each other in Paris on 11 November, on the sidelines of the 100-year anniversary of World War I armistice. But Bolton stood his ground and warned Russia “not to mess with American elections”, threatening more sanctions to address Russia’s interference in its elections and its annexation of Crimea. What we get here is the American side of the story. But what is interesting is to look at the Russian side. Putin lays bare his thoughts, detailing the danger for Europe in the course of a recent press conference (25 October – Italian Prime Minister Conte was on a state visit). Putin’s candor is extreme: Should Europe worry? Judge for yourself. Putin puts it in very clear terms: The question is, he says, what will the Americans do with the new missiles they plan to build? Deliver them to Europe? If they do so, Russia will have no choice but to enter the arms race…Then he makes it even clearer: The European countries that agree to host American missiles need to realize that “they put their own territories under the threat of a strike response”. No matter how you interpret Putin’s statement or Trump’s breaking off arms treaties, there is little doubt that the Cold War will soon be back. Whether it will be as cold as the original one remains to be seen. But one thing is certain, populism’s obsession with national sovereignty is a source of tension, if not of out-and-out war. At least not yet.

Turns European cohesion.

Kendall-Taylor 19 – Senior Fellow and Director, Transatlantic Security Program – CNAS

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Europe’s populists seem set to pull off a major win in the European parliamentary elections this week. But populism’s real challenge to European democracy goes far deeper than its ability to force ideas long regarded as extremist or unsavory into the political agenda. Populist parties, even when not in the majority, are splintering the political party system, making governing more difficult. If support for populism and anti-establishment parties continues to grow, European democracies will remain on a trajectory toward an era of paralysis, unable to deliver results to an increasingly frustrated public.

Europeans, like many Americans, have grown disenchanted with politics as usual. In Europe, the financial crisis of 2008 and especially the refugee crisis of 2015 dealt a major blow to centrist parties that advocated for open markets and open borders. Greeks resented the economic austerity measures imposed on them by the European Union. Germans never got to vote on Chancellor Angela Merkel’s decision to allow more than 1 million refugees into their country. As a result, a growing swath of Europeans no longer view mainstream political parties as representing their interests. Far-right populist parties have been the biggest beneficiaries of this growing resentment. Today far-right parties have a presence in 23 out of 28 European parliaments.

As these parties gain a foothold in national parliaments, coalition-building—the bedrock of effective governance in parliamentary systems—is becoming increasingly difficult. More and more European citizens find themselves ruled by “weak coalition” governments, the results of political parties scrambling to form legislative majorities to keep the populists out.

Such coalitions typically take months of horse-trading to form. In Sweden, the surge in support for the far-right Sweden Democrats in last fall’s elections meant that the center-left and center-right parties fell short of a majority. It took the government 130 days to form a minority government to shut the far right out. After Germany’s 2017 federal elections, there was an unusually prolonged period of nail-biting negotiations until the Christian Democrats (CDU) and the Social Democrats (SPD) formed a grand coalition that excluded the far-right Alternative for Germany (AfD). Regardless of the strategy pursued by centrists, the outcome is the same: a government that is too weak and mired in disagreements to deliver results.

But the problem is much bigger than the immediate spike in support for the far right. The rise of new parties across the political spectrum is splintering party systems throughout Europe. In Spain, for example, the creation of new parties on the far right (Vox) and far left (Podemos) in 2014 transformed the country’s political system from a two-party system to one with five. Similarly, in Germany, the emergence of the far-right AfD in 2013 and the far-left Die Linke in 2007 contributed to the diffusion of power across seven national parties in the Bundestag. The Netherlands now has 13 parties in its parliament.

Because politics at the European level reflect national-level politics, populist-fueled fragmentation is coming to the European parliament as well. The center-right (EPP) and the center-left (S&D) parliamentary groups are likely to lose their narrow combined majority. In Italy, Matteo Salvini’s party, the League, received only 6 percent in the previous elections five years ago, but will probably sweep to first place this year to lead the far-right opposition together with France’s Marine Le Pen. While Le Pen’s rebranded National Rally party is running neck and neck with President Emmanuel Macron’s En Marche, she and Salvini have announced a plan to join forces in a Europe of Nations and Freedom (ENF) group. With En Marche expected to forgo joining the centrist bloc in favor of the liberal coalition (ALDE), the center-left faction will split. And as Britain brings an anti-European Union Brexit party to the parliament, one thing is certain: This European parliament will be the most divided in the union’s history.

The populist-fueled fracturing of politics is bad news for democracy. Not only does such fragmentation make it difficult to form a government, but it also impedes the ability to unite around a common vision or reach consensus. Recent elections suggest that Europe is just at the beginning of a growing trend toward fragmentation. As the number of conflicting interests grows, it will become more difficult for European governments to effectively address complex challenges such as sluggish economic growth, immigration and ineffective armies. In other words, populist-fueled fragmentation will produce political stasis that will make it difficult for democracy to deliver.

Democracies are, by design, competitive and thus often messy. But the kind of political fragmentation taking place in Europe today is pushing the boundaries of useful debate and deliberation. As voters become increasingly frustrated with a lack of results, they will look to “more effective” strongman models of the type embodied by Russia and China. As the competition between democracy and authoritarianism intensifies, democracies must be able to deliver. Unfortunately, populist-fueled fragmentation will make that harder. At the end of the day, people may be willing to forgo some of their freedoms in exchange for governments they view as capable of delivering results.

#### Scenario 2 is misinformation – platform dominance destroys local news sources – misinformation fills in the vacuum

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Pat Garofalo, “Close to Home: How the Power of Facebook and Google Affects Local Communities,” *American Economic Liberties Project*, August 2020, pp. 11-15, https://www.economicliberties.us/wp-content/uploads/2020/08/Working-Paper-Series-on-Corporate-Power\_6.pdf.

Facebook and Google Undermine Local News: According to the Save Journalism Project, 32,000 newsroom employees have been laid off in the last 10 years. 1,300 communities have lost local news coverage in the last 15 years. 60 percent of U.S. counties have no daily newspaper and 171 counties have no newspaper coverage at all.38 Significant outlets such as the Denver Post, the Columbus Dispatch, or the Fayetteville Observer, along with many others, have been acquired by financiers who gut newsrooms and consolidate publications in order to squeeze whatever remaining capital there might be out of the newspaper business.

This decline in news coverage has had several deleterious effects on local governance and commerce. First, it lowers democratic participation, as regular newspaper readers are more likely to vote.39 Areas that lose their daily newspapers see fewer candidates run for office, have incumbents win more often, and see voter turnout decrease.40 One study found that staff cuts at local newspapers are correlated with less competitive mayoral races, fewer candidates entering races and more incumbent-only races.41 Residents of areas with less local news coverage aren’t as likely to know the name of their member of Congress – and those members aren’t as responsive to their districts, bringing less federal money back.42

Lack of local news coverage also makes local financing more expensive. According to a 2018 study, municipalities that experience a newspaper closure have higher borrowing costs in the following years, with the average bond issue costing the municipality an extra $650,000.43 “Our evidence suggests that there is not a sufficient degree of substitutability between local newspapers and alternative information intermediaries for evaluating the quality of public projects and local governments,” the researchers wrote. Essentially, the lack of local news coverage led to the belief that officials would be worse stewards of the public dollar, so investors demanded higher interest rates.

This newsroom cataclysm occurred because Google and Facebook monopolized the digital ad market, hoovering up the revenue that used to support the journalism ecosystem. Currently, Google and Facebook receive 60 percent of digital ad revenue. Amazon and several other companies account for another 15 percent. That means every news publication in the country is fighting over, at best, 25 percent of the available ad revenue. In recent years, Google and Facebook have gained nearly all of the digital ad growth.44

Here is a quick look at how the two companies have used their monopolies to decimate the news industry:

GOOGLE

The key mechanism underlying Google’s ability to dominate the digital ad market is that it largely controls how digital ads are bought and sold, inserting itself into the middle of transactions between advertisers and publishers and taking a cut that would otherwise go to those publishers.45 Starting with its 2008 acquisition of DoubleClick, the corporation has rolledup of much of the underlying infrastructure for buying and selling display ads. As Professor Fiona Scott Morton and David Dinielli put it, “Google has made it nearly impossible for publishers and advertisers to do business with each other except through Google.”46

Google ties its ad software to search data generated by the Google homepage and YouTube content – which is a must-have property for advertisers due to high engagement levels – plus the analytics systems that supposedly provide insights into how successful an ad campaign is. Its pricing is opaque, so publishers are not certain how large a cut Google is taking from them, other than that it’s significant, and advertisers are not certain that their ads are reaching the audience Google says they are.47

Google also directly competes against those publishers, since it too sells digital ad space. But it can use inside information gleaned from its ownership of the ad market infrastructure to front-run orders and to steer advertisers toward Google-owned properties such as YouTube.48,49 Publishers have little choice but to continue using Google’s services, because there are few other places to turn, and because Google’s data collection is so vast, and thus its targeting capabilities so extensive.

Google not only dominates the ad market, but also uses its dominance of search to directly hurt legitimate news outlets. For example, it demanded that news outlets adopt Accelerated Mobile Pages (AMP), under threat of exclusion from mobile search results, which it now loads for users rather than directing them to publishers’ websites. This keeps users within the Google ecosystem and hurts publishers’ ability to build an audience.50 Publishers report lower ad revenue and lower traffic from AMP.51

Through its Google News and Google Discover apps, Google is also a news aggregator in its own right, providing sufficient content based off AMP pages that users often don’t have to leave for publishers’ sites, having gleaned the high points of the story they’re reading straight from Google.52 (As noted above, fewer than half of Google queries now result in a click away from Google.)53

Finally, Google search is using news content in several ways that keep users in its ecosystem, such as providing “snippets” of articles in response to search queries that are sufficient enough information that users won’t move to the publishers’ site, or linking product review articles to its own Google sales platforms, so users can see the key parts of those reviews without leaving Google.54 Those moves deprive publishers of traffic and insights into their audiences, which hurt their ability to build or monetize those audiences or generate higher traffic numbers in order to charge higher ad rates. 47 Ibid. 48 Srinivasan, Dina, “Why Google Dominates Ad

FACEBOOK

The Facebook undermines the news industry via its own propensity for spreading misinformation and literal fake news – stories concocted out of thin air by those hoping to profit from them. It serves as a breeding ground for local conspiracies, such as one falsely claiming Syrian refugees committed a rape in a small Idaho town (which had no Syrian refugees in it).55 Against that content, it sells targeted advertising – collecting the revenue that could be keeping local news outlets, with editorial judgment and a wall between the content creators and advertising sales teams, in business.

Facebook’s business model is based, first, on its reach. It has more than 1.7 billion daily users worldwide, and also controls other key social network tools such as Instagram and WhatsApp that it acquired through mergers.56 Facebook properties account for 75 percent of user time on social networks.57

Facebook gained that network using two methods. First, Facebook won more users than early competitors such as MySpace by pledging a safe space to both users and partners, promising it wouldn’t engage in the sort of data collection practices it currently employs across the web. Second, the corporation engaged in a merger spree to acquire competitors, most notably Instagram and WhatsApp.58 Facebook, today, uses exclusionary practices, such as prohibiting interoperability with rival social media platforms, locking in users and enabling the corporation to exclude competitors from taking advantage of its networked scale. Switching from Facebook is only useful if your entire network of friends, family, and business and personal contacts move at the same time. As a result, the cost of switching away from Facebook to another network is high.

Facebook’s dominance enables it to collect significant amounts of personal data from both individuals and publishing partners. It can then target users with personalized ads, outcompeting publishers by using their own audience data to enrich its ad targeting.

In 2018, the Pew Research Center reported that social media had surpassed local newspapers as a news source for Americans.59 But Facebook’s newsfeed is designed to serve up sensational and rumor-laden content that encourages users to keep coming back for more – allowing Facebook to collect ever larger amounts of data, which it then uses to sell ever more targeted ads. By one estimate, Facebook controls 50 percent of available display ad space in the ad market.60 Newspapers simply cannot achieve the reach or targeting capabilities for advertisers that Facebook can.

Then, adding insult to injury, Google and Facebook give a fraction of the money they’ve siphoned away from new outlets back to them in the form of grants that can never make up for what was lost.61,62

That dynamic leaves readers with fewer and fewer sources of real information able to sustain themselves, leaving local residents with less quality journalism on which to base their economic and democratic choices. Into that void have stepped hundreds of hyperpartisan sites pretending to be local news sources63 – which, of course, have a large presence on Facebook.64

#### Platforms maintain dominance in news via anticompetitive practices – self-preferencing in news competition drives traditional publishers out of business

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Sally Hubbard, “Fake News is A Real Antitrust Problem,” *CPI Antitrust Chronicle*, December 2017, pp. 3-4, https://www.competitionpolicyinternational.com/wp-content/uploads/2017/12/CPI-Hubbard.pdf.

IV. CASE STUDY: FACEBOOK INSTANT ARTICLES

A look at Facebook Instant Articles (“FBIA”) sheds light on the ways tech platforms can pull technological levers to disadvantage their publishing rivals in the contest for user eyeballs. In Facebook’s early days, publishers and Facebook made a bargain: Publishers would fuel Facebook’s platform with free high-quality content, and in return Facebook would provide publishers with user traffic. Over time, Facebook has adjusted its product design to keep more and more of that traffic for itself.

Facebook has implemented product changes that deter users from clicking away from its platform and onto publishers’ sites. In 2014, Facebook defaulted users to an in-app browser for clicking on external links, rather than sending users to an external browser. But the in-app browser is slow. On iOS, for example, Facebook does not use the fastest in-app browser that Apple makes available. In a test by The Capitol Forum, Facebook’s in-app browser on iOS loaded on average three seconds slower than regular Safari.14 A study by Google shows that 53 percent of mobile users abandon websites that take more than three seconds to load.15

As publishers grew frustrated by slow load times, Facebook presented FBIA as a purported solution. Facebook claims that Instant Articles are not prioritized in the news feed, but their faster load times increase engagement and thus bring prioritization. According to Facebook, users click on Instant Articles 20 percent more than other articles, and they share Instant Articles 30 percent more than mobile web articles on average.16

Prioritizing content that is either native to Facebook’s platform or that does not require clicks to publishers’ sites resembles conduct at issue in the European Commission’s Google Shopping decision. The EC determined that Google abused its dominance in search by prioritizing its own comparison shopping service in its search results, to the detriment of rival shopping services. The EC fined Google 2.4 billion euro and required Google to treat its competitors equally as it treats its own shopping services. Because Instant Articles are housed on Facebook’s platform, publishers that adopt the format lose the web traffic that supports their advertising revenue. The granular user data publishers collect via cookies on their sites will cede to whatever basic data Facebook chooses to provide. Publishers further cannot verify the accuracy of the data Facebook does provide them. Indeed, Facebook has reported several times in recent months that its metrics were wrong.17

Antitrust enforcers are beginning to understand that data confers competitive advantage. At a September 9, 2016, data ethics event on Data as Power, EC Commissioner Margethe Vestager stated that it is important to “keep a close eye on whether companies control unique data, which no one else can get hold of, and can use it to shut their rivals out of the market,” adding, “That could mean, for example, data that’s been collected through a monopoly.”

As for advertising, Facebook promises to give publishers 70 percent of ad revenue served up in Instant Articles through the Facebook Audience Network. But if publishers widely adopt the format and users grow accustomed to it, Facebook easily could change that split in its favor in the future. Once dependent on a dominant tech platform, publishers lack bargaining power to protest changes because they cannot credibly threaten to abandon the platform.

In contrast to the impact on legitimate news publishers, Facebook’s tactics to keep users on its platform do not financially impair fake news purveyors because fake news costs very little or nothing to produce. If a fake news article generates 100,000 “likes” on Facebook and only 50 users manage to venture off of Facebook to the fake news website, its creator has made a profit. In contrast, if 100,000 people “like” a New York Times article on Facebook but only 50 visit NYTimes.com, the New York Times has not recouped the money it paid to journalists to write and research the piece.

And because the New York Times article is not incendiary or outrageous, it may not lead to 100,000 “likes” on Facebook. With less engagement, Facebook will not make as much money from the New York Times article as it would from the article claiming the Pope had endorsed Donald Trump, and hence its algorithm will give the New York Times article lower priority.

FBIA is just one example of the ways that tech platform business models conflict with those of legitimate news publishers. Google has also been accused of “nativizing” content, which means taking publishers’ and other creators’ content and rendering it native to Google’s search pages. Getty Images has filed complaints in the EU accusing Google of nativizing Getty’s photos within its digital walls,18 an accusation Google denies. Both Facebook and Google give priority placement to nativized content in their search results and news feeds, respectively, lessoning consumers’ interactions with publishers’ websites.

#### Competition solves – creates an incentive to eliminate fake news, but anticompetitive practices insulate dominant firms from market signals

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Allen Grunes, “Is ‘Fake News’ A Competitive Problem,” *CPI Antitrust Chronicle*, December 2017, pp. 6-7, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3093547.

IV. FAKE NEWS AND MARKET POWER

But there is another side to the story, which is captured very well in a recent observation by Professor Yochai Benkler about the persistence of fake news on Facebook: “Facebook has become so central to how people communicate, and it has so much market power, that it’s essentially immune to market signals.”32

Market power here is not about price. It is about non-price effects. Economists and antitrust agencies recognize that market power can be manifested in non-price terms and conditions that adversely affect customers, including reduced product quality, reduced product variety, reduced service, or diminished innovation. As the 2010 Horizontal Merger Guidelines suggest, “Such non-price effects may coexist with price effects, or can arise in their absence.”33 In other words, there can be market power even when something is “free.” It can arise in dimensions such as quality. Leaving aside the shoppers who happily pay for the National Enquirer and similar tabloids, fake news can be thought of as news with zero – or even negative – quality.

There are both technical and economic reasons why fake news is a persistent problem. In an article in the The Atlantic called “Google and Facebook Failed Us,” staff writer Alexis Madrigal focuses on how the fake news problem continues to persist at both Google and Facebook and discusses some of the technical issues associated with allowing algorithms to be responsible for screening news.34 It appears that algorithms do better with more data and worse when something new pops up and there is little to go on. Madrigal illustrates with an example. Shortly after the recent Las Vegas shootings took place, a group called “Las Vegas Shooting/Massacre” appeared on Facebook purporting to be a source of investigative journalism:

The group is run by Jonathan Lee Riches, who gained notoriety by filing 3,000 frivolous lawsuits while serving a 10 year prison sentence after being convicted for stealing money by impersonating people whose bank credentials had been phished. Now, he calls himself an “investigative journalist” with Infowars, though there is no indication he’s been published on the site, and given that he also lists himself as a former male underwear model at Victoria’s Secret, a former nuclear scientist at Chernobyl, and a former bodyguard at Buckingham Palace, his work history may not be reliable.35

As Madrigal points out, the problems with surfacing this man’s group to Facebook users “is obvious to literally any human. But to Facebook’s algorithms, it’s just a fast-growing group with an engaged community.”36 He continues:

Imagine a newspaper posting unverified rumors about a shooter from a bunch of readers who had been known to perpetuate hoaxes. There would be hell to pay—and for good reason.37

There is a competitive dimension here. Competitive pressure acts as an external check on the distribution of fake news by the major traditional news outlets. If a major news organization repeatedly published deliberately false news reports or unverified rumors, there would be significant reputational damage which likely would also result in financial loss. Some number of consumers would likely shift to other competitively close alternatives. In this respect, a small but significant decrease in quality is conceptually similar to a small but significant increase in price.

But these competitive pressures do not seem to be constraining the major online news intermediaries. In this environment, “market signals” do not appear to be working. If you want to switch away from the dominant social media services, which is where about two-thirds of Americans are reportedly getting at least some of their news,38 where do you go? To be fair, it is not that the online social media and search giants do not care at all about information quality. They undoubtedly take steps both before and after the fact to prevent bad actors from gaming them. Without competitive pressure, however, the market is not forcing their hand. In antitrust terms, as Benkler says, this may be evidence of significant market power.

One would probably want to test the market power hypothesis by looking for other evidence. For example, one might look at the bargaining between online firms and traditional news organizations. One might look at the consumer response to repeated instances of exposure to fake news.

Assuming the market power hypothesis holds up (and I suspect it will), it is reasonable to conclude that there may be a competition problem. Fake news would be a competition problem if most consumers don’t want it but media markets provide it anyway. In that situation, a purveyor must have market power, at least to disseminate fake news repeatedly. Otherwise, most of its customers would leave. Technically, the firm would have the ability to reduce quality below the competitive level without losing so many sales that its conduct (the fake news) is unprofitable.

However, merely being in possession of market power is not an antitrust violation in the U.S. So the additional question needs to be asked whether the market power arose, was maintained, or was enhanced as a result of anticompetitive conduct such as a prior anticompetitive merger.

So is fake news an antitrust problem? Not to date, so far as we can tell. But it could be, and there we need to be vigilant.

Professors Emily Bell and Taylor Owen have suggested that “[U]niversal access to accurate information is at the heart of a well-functioning democracy, and that access is now shaped by the enormously powerful and largely unaccountable technology companies of Silicon Valley.”39 For better or worse, that seems to be a reasonable conclusion. One consequence may be that we need to think about online firms not only as technology companies but also as news and information media and do more careful scrutiny of their mergers and conduct because of their importance to the “marketplace of ideas.” This is an idea that Maurice Stucke and I developed in the context of traditional media mergers.40 Given the importance of data to the success of online advertising, we may need to think somewhat differently about mergers and conduct than we are accustomed to.

#### Misinformation outweighs extinction – guarantees infinite perpetual suffering

Di Minardi 20, The grim fate that could be ‘worse than extinction,’ BBC, October 15, , https://www.bbc.com/future/article/20201014-totalitarian-world-in-chains-artificial-intelligence

What would totalitarian governments of the past have looked like if they were never defeated? The Nazis operated with 20th Century technology and it still took a world war to stop them. How much more powerful – and permanent – could the Nazis have been if they had beat the US to the atomic bomb? Controlling the most advanced technology of the time could have solidified Nazi power and changed the course of history.

When we think of existential risks, events like nuclear war or asteroid impacts often come to mind. Yet there’s one future threat that is less well known – and while it doesn’t involve the extinction of our species, it could be just as bad.

It’s called the “world in chains” scenario, where, like the preceding thought experiment, a global totalitarian government uses a novel technology to lock a majority of the world into perpetual suffering. If it sounds grim, you’d be right. But is it likely? Researchers and philosophers are beginning to ponder how it might come about – and, more importantly, what we can do to avoid it.

Existential risks (x-risks) are disastrous because they lock humanity into a single fate, like the permanent collapse of civilisation or the extinction of our species. These catastrophes can have natural causes, like an asteroid impact or a supervolcano, or be human-made from sources like nuclear war or climate change. Allowing one to happen would be “an abject end to the human story" and would let down the hundreds of generations that came before us, says Haydn Belfield, academic project manager at the Centre for the Study of Existential Risk at the University of Cambridge.

Toby Ord, a senior research fellow at the Future of Humanity Institute (FHI) at Oxford University, believes that the odds of an existential catastrophe happening this century from natural causes are less than one in 2,000, because humans have survived for 2,000 centuries without one. However, when he adds the probability of human-made disasters, Ord believes the chances increase to a startling one in six. He refers to this century as “the precipice” because the risk of losing our future has never been so high.

Researchers at the Center on Long-Term Risk, a non-profit research institute in London, have expanded upon x-risks with the even-more-chilling prospect of suffering risks. These “s-risks” are defined as “suffering on an astronomical scale, vastly exceeding all suffering that has existed on Earth so far.” In these scenarios, life continues for billions of people, but the quality is so low and the outlook so bleak that dying out would be preferable. In short: a future with negative value is worse than one with no value at all.

This is where the “world in chains” scenario comes in. If a malevolent group or government suddenly gained world-dominating power through technology, and there was nothing to stand in its way, it could lead to an extended period of abject suffering and subjugation. A 2017 report on existential risks from the Global Priorities Project, in conjunction with FHI and the Ministry for Foreign Affairs of Finland, warned that “a long future under a particularly brutal global totalitarian state could arguably be worse than complete extinction”.

Singleton hypothesis

Though global totalitarianism is still a niche topic of study, researchers in the field of existential risk are increasingly turning their attention to its most likely cause: artificial intelligence.

In his “singleton hypothesis”, Nick Bostrom, director at Oxford’s FHI, has explained how a global government could form with AI or other powerful technologies – and why it might be impossible to overthrow. He writes that a world with “a single decision-making agency at the highest level” could occur if that agency “obtains a decisive lead through a technological breakthrough in artificial intelligence or molecular nanotechnology”. Once in charge, it would control advances in technology that prevent internal challenges, like surveillance or autonomous weapons, and, with this monopoly, remain perpetually stable.

If the singleton is totalitarian, life would be bleak. Even in the countries with the strictest regimes, news leaks in and out from other countries and people can escape. A global totalitarian rule would eliminate even these small seeds of hope. To be worse than extinction, “that would mean we feel absolutely no freedom, no privacy, no hope of escaping, no agency to control our lives at all", says Tucker Davey, a writer at the Future of Life Institute in Massachusetts, which focuses on existential risk research.

“In totalitarian regimes of the past, [there was] so much paranoia and psychological suffering because you just have no idea if you're going to get killed for saying the wrong thing,” he continues. “And now imagine that there's not even a question, every single thing you say is being reported and being analysed.”

“We may not yet have the technologies to do this,” Ord said in a recent interview, “but it looks like the kinds of technologies we’re developing make that easier and easier. And it seems plausible that this may become possible at some time in the next 100 years.”

AI and authoritarianism

Though life under a global totalitarian government is still an unlikely and far-future scenario, AI is already enabling authoritarianism in some countries and strengthening infrastructure that could be seized by an opportunistic despot in others.

“We've seen sort of a reckoning with the shift from very utopian visions of what technology might bring to much more sobering realities that are, in some respects, already quite dystopian,” says Elsa Kania, an adjunct senior fellow at the Center for New American Security, a bipartisan non-profit that develops national security and defence policies.

In the past, surveillance required hundreds of thousands of people – one in every 100 citizens in East Germany was an informant – but now it can be done by technology. In the United States, the National Security Agency (NSA) collected hundreds of millions of American call and text records before they stopped domestic surveillance in 2019, and there are an estimated four to six million CCTV cameras across the United Kingdom. Eighteen of the 20 most surveilled cities in the world are in China, but London is the third. The difference between them lies less in the tech that the countries employ and more in how they use it.

What if the definition of what is illegal in the US and the UK expanded to include criticising the government or practising certain religions? The infrastructure is already in place to enforce it, and AI – which the NSA has already begun experimenting with – would enable agencies to search through our data faster than ever before.

In addition to enhancing surveillance, AI also underpins the growth of online misinformation, which is another tool of the authoritarian. AI-powered deep fakes, which can spread fabricated political messages, and algorithmic micro-targeting on social media are making propaganda more persuasive. This undermines our epistemic security – the ability to determine what is true and act on it – that democracies depend on.

“Over the last few years, we've seen the rise of filter bubbles and people getting shunted by various algorithms into believing various conspiracy theories, or even if they’re not conspiracy theories, into believing only parts of the truth,” says Belfield. “You can imagine things getting much worse, especially with deep fakes and things like that, until it's increasingly harder for us to, as a society, decide these are the facts of the matter, this is what we have to do about it, and then take collective action.”

#### Independently, dark patterns ensure mass disinformation—That’s an existential threat—BUT the plan’s regulations solve without harming innovation.

Kornbluh 20 – Senior Fellow & Director of the Digital Innovation and Democracy Initiative, The Marshall Fund

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Even before a global pandemic hit, the Bulletin of Atomic Scientists announced that the Doomsday Clock had advanced for the first time ever to 100 seconds before midnight.

The Bulletin cited “information warfare” as a “threat multiplier” that is reducing trust and corrupting the information ecosystem needed for democratic debate. Now the World Health Organization is warning of an “infodemic” of widespread conspiracy theories about the coronavirus, and disinformation has already been evident in the lead-up to the 2020 presidential election. Despite a clear and present danger, it is evident that our institutions are not nearly ready—neither for foreign nor domestic disinformation campaigns.

While U.S. intelligence officials have repeatedly warned lawmakers that foreign interference in U.S. elections will continue, the giant platforms that have become the new media gatekeepers—Facebook/Instagram, Twitter, and Google/YouTube—have largely been left to choose their own paths. And though the platforms say they want to address election disinformation, their own rules are inconsistently applied and underenforced, leaving it to fact-checkers, journalists, and researchers to expose rule breaking as best they can. According to our research with NewsGuard, among outlets that repeatedly share false content, eight of the top 10 most engaged-with sites are running coronavirus stories.

Individual platforms allow disinformation campaigns to leverage “dark patterns,” or manipulative user interfaces, to deceive users. This opaque design makes it easy to like and share a planted story, but hard to verify a faked video.2 Disinformation campaigns thereby overwhelm the “signal” of actual news with “noise,” eroding the trust in news necessary for democracy to work. The tools of disinformation campaigners include:

Trojan horse outlets that deceive users about the source of disinformation by disguising themselves as independent journalism while eschewing its practices (for example, bylines, mastheads, verification, corrections, community service principles) and leveraging platform design to boost conspiracies. Meanwhile, real news generation atrophies because platforms have absorbed the revenue of local independent journalism.

Spending on personalized political propaganda—which is likely to top $1 billion in 2020, three times such spending in 2016—obscures the true sponsors of online ads from the public.3 The platforms each have different and weak procedures for labeling and how much targeting they allow for political ads. Both Google and Facebook’s ad libraries malfunctioned, failing to provide real disclosure in the days before the last U.K. election.

Networks of “amplifiers” flood the zone with disinformation. Fake accounts, influencers, and true believers game algorithmic recommendations to fill trending lists and search engines with visual memes or video.

Digital Astro-turf campaigns that look like organic grassroots movements use secret groups, encrypted messaging, and fringe sites linking to the main platforms to target vulnerable populations through disinformation and harassment.

Platform black box moderation that applies rules inconsistently and without transparency, create loopholes for cross-platform disinformation operations. The self-regulatory model of negotiations with civil society appears broken; civil rights groups working on an audit have protested the platforms’ lack of cooperation.

Too often, the only alternative proposed to today’s laissez-faire approach would increase government control over content. This false choice—between allowing platforms or government to act as censor—has hobbled the policy debate. A new approach should empower users. Our approach is rooted in an understanding that digital information platforms are our new media gatekeepers yet have none of the obligations developed over time for our old gatekeepers: obligations to minimize user manipulation, boost public interest journalism, and promote democratic debate.

The new digital media policy roadmap we layout would steer clear of vague rules that empower governments to define “good” or “bad” content and would instead focus on updating offline protections, fostering user choice, amplifying the signal of independent news, supporting civic information, and holding platforms accountable for shared, unambiguous, and transparent rules. This policy package—tailored with input from stakeholders and sufficiently agile to account for evolving technology—would close the loopholes that allow bad actors to engage in online information warfare using the largest platforms, and it would do so without restricting free expression or stymieing innovation.

#### Scenario 3 is privacy – dominant platforms’ control over data undermines user privacy

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Gregory Day and Abbey Stemler, “Infracompetitive Privacy,” *Iowa Law Review*, vol. 105, 2019, pp. 80-86, https://ilr.law.uiowa.edu/assets/Uploads/ILR-105-1-Day-Stemler.pdf.

1. Harms from Collecting Information

Platforms collect data from individuals from an incomprehensible number of sources. Amazon, for instance, gathers data from all companies using its cloud storage service, Amazon Web Services (“AWS”), which drives some of the world’s largest platforms including Netflix, Airbnb, Adobe, and Slack.103 Similarly, Facebook harvests locational data even when users are not using the app so as to help advertisers target them.104

To avoid surveillance, some consumers expend significant resources from the purchasing of webcam covers, installing software and browser extensions such as tracker blockers and ad blockers to the building of a virtual private network, known as a “VPN.”105 It is, however, unlikely that these efforts can obstruct all monitoring.106 Users may even suffer indirect costs, especially related to employment opportunities—e.g., if a job requires Adobe or Slack, one will inevitably be surveilled.

Nevertheless, despite the recent spate of high-profile breaches, evidence suggests that most consumers have yet to spend additional time or resources to protect their privacy.107 This is partially because platforms bewilder consumers with complex privacy policies found in contracts of adhesion.108 Coupling this with the power of network effects, consumers lack a meaningfully secure alternative; after all, regardless of one’s dissatisfaction with Uber, few would prefer a rival ride-share app with robust privacy protections but no cars. Individuals are, likewise, unlikely to search with the privacy-bastion DuckDuckGo, a tiny competitor (with 0.36% of the market share) which is presumed to lack Google’s quality (with 76.06% of the market).109

2. Harms from Analyzing Information

A step beyond data harvesting is analyzing the resulting information for insights about users. Consider that platforms such as Snapchat employ mapping technology from one’s smartphone to advertise businesses located in a close vicinity to that individual.110 Users are even tracked in stores via Bluetooth technology to tailor offers within the store’s own mobile app.111 In fact, Uber received a patent on technology designed to predict when a user is intoxicated based on typos, walking speed, as well as whether the user’s phone is swaying or is being held at an odd angle.112

While observers might assume that these programs analyze anonymized data and thus, it is benign, recent reporting suggests otherwise.113 When platforms analyze general data to discover broad patterns and preferences, evidence suggests that users may experience deep unease and other psychological issues based on eroding privacy.114 Increased recognition of these “big brother” capabilities of platforms can alter behavior, again, at a cost.

3. Harms from Disseminating Information

The manner and scale in which platforms collect personal information raises the danger of unwanted dissemination, which is both common and costly. Over the last decade, the number of data breaches has risen sharply.115 From 2012 to 2017, Amazon, Facebook, Google, and Uber suffered a series of breaches impacting almost 100 million people.116 Even the Domino’s data breach exposed the personal information of over 100 million individuals worldwide.117 And since each victim of identity theft suffers an average loss of $1,000, the cumulative costs borne by consumers equate to billions of dollars each year.118

In fact, the prevalence of data breaches masks the ex ante costs incurred by consumers to guard against improper dissemination. Consider that a cottage industry of identity protection companies offers to prevent unwanted dissemination of data. Their services include the monitoring of the dark web, investigating of identity theft, and insuring against breaches.119 The cyber security market is, in turn, expected to eclipse $170 billion in revenue by 2022.120

Platforms may also pass their internal costs derived from appeasing hackers and regulators onto users. For example, in 2016, Uber paid hackers $100,000 in hush money to destroy the private information of over 57 million users.121 Similarly, in 2018, Amazon gave customers between $5 and $100 gift cards per complaint as an apology for exposing their email addresses.122 These numbers pale in comparisons, however, to the hundreds of millions of dollars platforms pay globally to regulatory bodies for data breaches.123

4. Harms from Manipulation Based on Information and Insights

In addition to direct outlays, a troubling aspect of data commercialization is the hidden dangers to decisional privacy.124 Buttressed by society’s poor understanding of the ways tech firms exploit data, consumers can unwittingly participate in experiments resulting in their augmented behavior.125 The Facebook Cambridge Analytica scandal of 2018 is an unfortunate example. Russian-American professor, Aleksandr Kogan, developed a personality quiz app in 2014.126 With it, he received permission from 270,000 Facebook users to mine their data for academic purposes.127 Unbeknownst to those users, Kogan gathered the personal data of their friends, including roughly 71 million Americans.128 Kogan then sold that personalized data to Cambridge Analytica, a political firm hired by the Trump Campaign.129 As stated by Marc Rotenberg, the President of the Electronic Privacy Information Center: “No one could have known that their friends were disclosing their personal data on their behalf. It’s entirely illogical . . . .”130 The uproar incited by this scandal prompted congressional inquiries and perhaps the future regulation of Facebook.131

As the public would soon learn, the sharing of data with app developers (one of the many sides of Facebook’s platform) was and is common practice.132 In fact, Facebook and other platforms have for years harvested data from users in surprising ways. For instance, Ars Technica reported that Facebook scraped call and text data from Android phones.133 Facebook has also confirmed that it collects data from non-Facebook users—a surprising admission to many, including the U.S. Congress.134

Moreover, developers may have little understanding of how data is captured and utilized. This ignorance is because machine learning fuels many of the algorithms that modulate consumer behavior. As Jon Kleinberg and Sendhil Mullainathan write:

We have, perhaps for the first time ever, built machines we do not understand. We programmed them, so we understand each of the individual steps. But a machine takes billions of these steps and produces behaviors . . . that are not evident from the architecture of the program we wrote. . . . [A]t some deep level we don’t even really understand how they’re producing the behavior we observe. This is the essence of their incomprehensibility.135

In important part, even though platform companies may exploit data to accrue market dominance, they have largely evaded antitrust scrutiny by giving away or selling their services at low costs.136 The next Part explains why privacy is omitted from antitrust’s framework, despite its potential link to anticompetitive conduct, as well as the reasons antitrust law should concern itself with the issues of data protection and privacy.

#### Competition solves – lack of consumer alternatives disincentivizes developing privacy measures

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Gregory Day and Abbey Stemler, “Infracompetitive Privacy,” *Iowa Law Review*, vol. 105, 2019, pp. 91-93, https://ilr.law.uiowa.edu/assets/Uploads/ILR-105-1-Day-Stemler.pdf.

C. COMPETITION, PRIVACY, AND MARKET FAILURE

Privacy injuries should incur antitrust scrutiny in markets where the costs spent by consumers to prevent or remedy a privacy breach are greater than what would have occurred if not for the anticompetitive behavior. Key to our stance is that inadequately protected data can derive from a lack of competition, and that more competition would help alleviate this harm. To make this case, notice that privacy injuries constitute a form of market failure.167 If a tech company could generate $10 of revenue from exploiting data, creating $8 of costs for the company and $15 of costs borne to the public, the company is likely to do the deal—despite the net level of societal harm—because enough costs are externalized to make the transaction profitable (for the company, that is). We think that, instead of externalizing privacy costs, platforms would increase spending on data protection if sufficient market forces existed. This is because added competition would (1) punish the culprits of a data breach, (2) disclose information about data collection and privacy breaches, and (3) provide consumers with products designed to protect privacy.

1. Punishment

To begin, if technology markets were competitive, consumers could respond to a company’s data breach by giving their business to a rival firm, punishing the offender. Currently, without competing options, monopolists are more capable of surviving a privacy breach—although some consumers may quit the platform, a lack of competition enables the platform to retain users who would otherwise switch to a rival. This is why, for example, Facebook’s stock price rallied to pre-Cambridge Analytica levels soon after the scandal.168 Consumers may even harbor the belief that the few firms in a monopolized market are all effectively the same. This dynamic is akin to monopoly pricing in a concentrated market; even though consumers may detect that the monopolist’s prices are abnormally high, they lack a meaningful alternative, causing them to patronize the monopolist anyway. As a result, increasing competition would not only enable consumers to boycott firms that improperly protect data, but it would also create incentives for platforms to protect their users’ personal information before a breach occurs.

2. Information

A chief problem explaining the prevalence of infracompetitive privacy is the lack of consumer awareness for the issue. Consider that many costs derived from privacy harms are unseen. In contrast to how consumers tend to overreact to slight increases in retail prices—e.g., the act of driving across town to purchase nominally cheaper gasoline or purchasing a modestly cheaper, yet more inconvenient, airplane ticket—consumers seem to underestimate the harms levied on their decisional privacy or even accept the monetary costs of privacy breaches. This is perhaps because users enjoy obvious short-run benefits in the form of zero-priced services while cognitively disassociated from speculative long-term costs.169 Consumers could also base their decisions on incomplete information in the sense that their ability to make a rational choice is limited by inadequate market signals. Consumers might further ignore information about the costs of infracompetitive privacy given their inability to punish offending firms.170

In light of this market failure, a chief benefit of increased competition is information. Since most platforms already offer zero-price or low-price services, and thus cannot further reduce prices, heightened competition would compel firms to distinguish themselves using non-price signals in the form of enhanced privacy. As firms vie for users, they would likely disseminate information about the value of privacy and the costs of failing to protect one’s information in order to promote their services. In this sense, concentrated markets have enabled tech firms to ignore privacy concerns as few rivals exist to shed light on the problems borne from their treatment of personal information. Increased competition would therefore cause firms to not only improve the quality of their services, but also to advertise this fact to consumers, raising the attention paid by users to privacy matters.171

#### Privacy circumvention increases the risk of cascading data breaches

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Maurice Stucke, “Here Are All the Reasons It’s a Bad Idea to Let a Few Tech Companies Monopolize Our Data,” *Harvard Business Review*, 27 March 2018, <https://hbr.org/2018/03/here-are-all-the-reasons-its-a-bad-idea-to-let-a-few-tech-companies-monopolize-our-data>.

Surveillance and security risks. In a monopolized market, personal data is concentrated in a few firms. Consumers have limited outside options that offer better privacy protection. This raises additional risks, including:

Government capture. The fewer the number of firms controlling the personal data, the greater the potential risk that a government will “capture” the firm. Companies need things from government; governments often want access to data. When there are only a few firms, this can increase the likelihood of companies secretly cooperating with the government to provide access to data. China, for example, relies on its data-opolies to better monitor its population.

Covert surveillance. Even if the government cannot capture a data-opoly, its rich data-trove increases a government’s incentive to circumvent the data-opoly’s privacy protections to tap into the personal data. Even if the government can’t strike a deal to access the data directly, it may be able to do so covertly.

Implications of a data policy violation/security breach. Data-opolies have greater incentives to prevent a breach than do typical firms. But with more personal data concentrated in fewer companies, hackers, marketers, political consultants, among others, have even greater incentives to find ways to circumvent or breach the dominant firm’s security measures. The concentration of data means that if one of them is breached, the harm done could be orders of magnitude greater than with a normal company. While consumers may be outraged, a dominant firm has less reason to worry of consumers’ switching to rivals.

#### Breaches collapse society

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1. Risk of data breaches. A security breach of any of the digital monopolies could result in Exabytes of users’ most vulnerable information being publicly exposed (7). Besides the risk of irreparable damage to people’s reputation, private lives, and identity (as in, e.g., the “Ashley Madison” case (8)), such a breach could result in unprecedented damage to our economy (as in, e.g., the “Sony Pictures” case (9)) and our political standing (as in, e.g., “Wikileaks Cablegate” (10)). Importantly, a security collapse of that nature might only be the start of a series of follow-up breaches. A hack of Google’s Gmail, for example, could allow the perpetrators to obtain a user’s bank account password through the “forgot password” functionality, and ultimately lead to a collapse of businesses and industries (e.g. banking, taxation, weapon silos, etc.). Compared to what was deemed a “too big to fail” state when a handful of banks collapsed in 2008, such a crisis could be unparalleled. Although the digital monopolies employ talented security teams to prevent such hacks, the public has no guarantee that a skillfully deployed attack (e.g., by another nation-state, powerful underground organization, or simply a disgruntled employee) would not be successful. Even with the best efforts of the digital monopolies—which often heavily depend on the priorities of high-ranking leaders in the organization—societies should hence operate under the assumption that the data held by the digital monopolies could be leaked at any point in time.

#### Ensures cyberattacks go nuclear

Sagan and Weiner ’21 – Stanford Professors [Scott D.; Caroline S.G. Monroe professor of political science and senior fellow at the Center for International Security and the Freeman Spogli Institute at Stanford University; Allen S.; senior lecturer in law and director of the program in international and comparative law at Stanford Law School; 7-9-2021; "The U.S. says it can answer cyberattacks with nuclear weapons. That’s lunacy."; The Washington Post; https://www.washingtonpost.com/outlook/2021/07/09/cyberattack-ransomware-nuclear-war/; accessed 8-15-2021]

Over the July 4 weekend, the Russian-based cybercriminal organization REvil claimed credit for hacking into as many as 1,500 companies in what has been called the largest ransomware attack to date. In May, another cybercriminal group, DarkSide, also apparently located mainly in Russia, shut down most of the operations of Colonial Pipeline, which supplies nearly half the diesel, gasoline and other fuels used on the East Coast — setting off a round of panic buying that ended only when the company handed over a ransom. These incidents were bad enough. But imagine a much worse cyberattack, one that not only disabled pipelines but turned off the power at hundreds of U.S. hospitals, wreaked havoc on air-traffic-control systems and shut down the electrical grid in major cities in the dead of winter. The grisly cost might be counted not just in lost dollars but in the deaths of many thousands of people.

Under current U.S. nuclear doctrine, developed during the Trump administration, the president would be given the military option to launch nuclear weapons at Russia, China or North Korea if that country was determined to be behind such an attack.

That’s because in 2018, the Trump administration expanded the role of nuclear weapons by declaring for the first time that the United States would consider nuclear retaliation in the case of “significant non-nuclear strategic attacks,” including “attacks on the U.S., allied, or partner civilian population or infrastructure.” The same principle could also be used to justify a nuclear response to a devastating biological weapons strike.

But our analysis suggests that using nuclear weapons in response to biological or cyberattacks would be illegal under international law in virtually all circumstances. Threatening an illegal nuclear response weakens deterrence because the threat lacks inherent credibility. Perversely, this policy could also wind up committing a president to a nuclear attack if deterrence fails. While the American public would indeed be likely to want vengeance after a destructive enemy assault, the law of armed conflict requires that some military options be taken off the table. Nuclear retaliation for “significant non-nuclear strategic attacks” is one of them.

The Biden administration is now conducting its own review of the U.S. nuclear posture. The 2018 Trump change is an urgent candidate for reevaluation, but people have generally ignored it up to now. As officials work on this process, they have the chance to take full account of what could be called the “nuclear law revolution” — a growing recognition that international-law restrictions on warfare, and especially those that protect civilians, apply even to nuclear war.

### 1AC – Solvency

#### The United States federal government should implement light handed procompetitive regulations increasing prohibitions on anticompetitive conduct by dominant platforms.

#### The plan leads to light handed, pro-competitive regulation—that solves targeted platform harms but maintains incentives for innovation—avoids inefficient ex post remedies and burdensome structural changes

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(William and Howard, “Antitrust Enforcement, Regulation, and Digital Platforms,” 168 U. Penn. L. Rev. 1911)

Both authors come to the topic of this Article with experience in regulatory agencies and with practical understanding of the difficulties and potential drawbacks of regulation. We nonetheless find three main reasons why, despite the challenges in getting regulation right, limited regulation might have advantages over traditional antitrust adjudication in the context of large-scale industries with network effects. First, and at the broadest level, the adjudicative model for antitrust enforcement and doctrinal development has been met with well-founded criticism. This does not mean that regulation is the right alternative, but it does provide a good reason to ask whether under some circumstances a different approach might lead to better outcomes. Second, traditional antitrust remedies might not effectively address the competitive challenges of digital platform markets. Neither structural remedies like break-up or divestiture, nor the limited kinds of conduct remedies that antitrust courts and agencies have been willing or able to implement, can effectively reduce barriers to competition without diminishing network benefits for consumers. In contrast, an expert agency can potentially bring the experience and resources required to make more granular, detailed decisions about the costs and benefits of certain types of commercial behavior. Third, because of network effects, conduct that courts ordinarily judge under antitrust law’s general rule of reason might have different presumptive effects, and therefore be better governed by a more specific set of standards, in digital platform industries. An expert agency might be particularly suited to determine when “outer-boundary” theories of harm that courts rightly disfavor for general application—theories of harm like predation, refusals-to-deal, or acquisition of nascent competitors— should apply in specific contexts.

Below, we discuss why certain forms of what we call “light handed procompetitive” (LHPC) regulation could increase levels of competition in markets served by digital platforms while helping to clarify the platforms’ obligations with respect to interrelated policy objectives, notably privacy and data security. Key categories of LHPC regulation could include interconnection/interoperability requirements (such as access to application programming interfaces (APIs)), limits on discrimination, both user-side and third-party-side data portability rules, and perhaps additional restrictions on certain business practices subject to rule of reason analysis under general antitrust statutes. These types of regulations would limit the ability of dominant digital platforms to leverage their market power into related markets or insulate their installed base from competition. In so doing, they would preserve incentives for innovation by firms in related markets, increase the competitive impact of existing competitors, and reduce barriers to entry for nascent firms.

The regulation we propose is “light handed” in that it largely avoids the burdens and difficulties of a regime—such as that found in public utility regulation—that regulates access terms and revenues based on firms’ costs, which the regulatory agency must in turn track and monitor. Although our proposed regulatory scheme would require a dominant digital platform to provide a baseline level of access (interconnection/interoperability) that the regulator determines is necessary to promote actual and potential competition, we believe that this could avoid most of the information and oversight costs of full-blown cost-based regulation, for reasons we will discuss below.14 The primary regulation applied to price or non-price access terms would be a nondiscrimination condition, which would require a dominant digital platform to offer the same terms to all users. Such regulation would not, like traditional rate regulation, attempt to tie the level or terms of access to a platform’s underlying costs, to regulate the company’s terms of service to end users, or to limit the incumbent platform’s profits or lines of business. Instead of imposing monopoly controls, LHPC regulation aims to protect and promote competitive access to the marketplace as the means of governing firms’ behavior. In other words, its primary goal is to increase the viability and incentives of actual and potential competitors. As we will discuss, the Federal Communication Commission’s (FCC) successful use of similar sorts of requirements on various telecommunications providers provides one model for this type of regulation.15

There are several possible sources for digital platform regulation. Congress could enact new legislation that creates an entirely new regulatory agency for digital platforms or could give new statutory authority to an existing agency. Alternatively, the FTC could promulgate competition rules under authority that it arguably already has under the FTC Act of 1914. Several commentators have argued that the FTC could use its existing statutory authority under the FTC Act to issue broad, antitrust rules that apply generally, to all industries.16 A much more limited, and perhaps less controversial, manner in which the FTC could begin to use this authority would be to pass narrower rules that apply only to specific kinds of conduct and only to digital platform industries. Calls to regulate digital platforms involve several issues that do not centrally fall within the purview of antitrust, notably privacy and control over certain kinds of harmful content.17 To the extent there could be trade-offs among regulatory goals—for example between a platform’s interconnecting with rivals but limiting those rivals’ access to user data, or between providing nondiscriminatory access to thirdparties but blocking those that spread harmful content—there could be economies of scope to having a single agency address those issues, or at least mandating that agencies coordinate inter-related rulemaking.

#### Expert regulation is comparatively better for addressing nascent acquisition and discrimination—ex post adjudication takes too long and is too burdensome

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(William and Howard, “Antitrust Enforcement, Regulation, and Digital Platforms,” 168 U. Penn. L. Rev. 1911)

This last category of restrictions involves other forms of conduct that antitrust law recognizes as double-edged: they could increase or maintain monopoly power, but also create efficiencies that benefit consumers. Antitrust law applies rule of reason analysis to such behaviors by attempting to weigh the potentially negative effects of the behavior against the positive effects, then prohibiting the behavior only if the net effect is likely to be negative.86 Of course, any quantitative measure of the net effect of a practice is uncertain, and therefore standards of proof and evidentiary burdens play a large role in determining the actual outcomes of cases.

The general point we wish to make in this Section is that, where digital platform markets are prone to tip to durable monopoly, the presumptions and burdens that courts ordinarily apply under antitrust law’s general rule of reason might fail to prevent anticompetitive harms or to provide useful industry guidance. Such settings could be better governed by a more specific and definitive set of standards implemented through an agency better able to understand and account for relevant industry details. To the extent such regulation could lead to fewer errors of either over- or under-enforcement against digital platforms, it could be welfare enhancing compared to traditional antitrust adjudication. For example, regulation might prohibit certain conduct under specified conditions where it will be predictably harmful, establish stronger presumptions about the harms from particular conduct when undertaken by digital platforms, or implement stricter requirements for the review of specific business activities.

One area of activity where regulation might have advantages over adjudication is acquisition of nascent competitors. Several commentators have advocated stricter prohibitions against such deals on grounds that large firms might, through acquisitions, buy up the very start-ups that today look so insignificant as to escape merger review but would later prove to be serious competitors.87 It is beyond the scope of this article to address the emerging work on acquisitions of start-ups. We note, however, that the question of nascent acquisitions poses a serious challenge for antitrust enforcement. Generalist courts seem poorly suited to deciding, case-by-case, whether a particular firm that might today have little market presence or infrastructure might later emerge as a competitor to its buyer, especially if the nascent firm is currently more of a complement than competitor to the acquiring firm. The technical, economic, and industry factors that make competitive-effect determinations difficult in any merger case are particularly important in a technologically dynamic industry where one of the merging firms is new and evolving. Moreover, the alternative of waiting to see the results of a particular merger so that courts have a record on which to review the transaction creates very substantial incentive and evidentiary problems. A successful merger is one in which the parties integrate in such a way that creates commercial growth,88 and therefore it will be very difficult to distinguish commercial success due to the merger from the counterfactual of success that would have resulted had the parties remained separate. Additionally, the prospect of post consummation review of a merger, with retroactive remedies or prohibitions, could deter the very investment in integration that helps ensure a successful merger.89 These concerns lead us to suggest that the process and criteria through which antitrust law applies to acquisitions of nascent competitors by large industry players might better lend itself to guidance and administration through a regulatory entity as opposed to the generalist adjudicatory process. While we do not think banning such acquisitions is a good idea, rules that specify which transactions the agency will review, what criteria and presumptions it will apply in a particular industry, and what kind of evidence it will find relevant could provide more certainty for businesses and better protections for consumers.