# Navy Round 6 Wiki

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### DA M&A

#### Tech giants will expand into the finance – that’s key to drive a revolution in FinTech

Jones and Ozcan 21 – Head of Finance, Strategy and Planning at retirement FinTech; Smart, headquartered in London, Professor of Entrepreneurship and Innovation at Saïd Business School, Oxford University

Ryan Jones and Pinar Ozcan, "Rise of BigTech platforms in banking," Saïd Business School at the University of Oxford, Industry Paper 1, 2021, https://www.sbs.ox.ac.uk/sites/default/files/2021-02/Rise%20of%20BigTech%20Platforms%20in%20Banking%20-%20Oxford%20White%20Paper%20Final%20%28002%29.pdf

Banks, and in particular current accounts, can be viewed in many ways as a platform model of the 20th century. Incumbents, who provide free current account services to consumers, have long boasted of their number of products per customer (PPC) – quoted as high as 6 for premier account customers of leading UK banks. This has been fostered by a relationship built around the current account platform from which additional services are bundled to create both economies of scale and scope. This in turn has **become the expectation** of consumers who want a **one-stopshop** for financial needs, creating a barrier for new entrants. This barrier has proven hard to navigate for FinTechs whose innovation focuses in one area of the banking ecosystem.

While all informants agree that the traditional disruptive path is significantly constrained and reshaped by the regulatory context, it is also clear that a platform business model is particularly suitable for financial services.

Having seen the impact of BigTech in other industries, the banking industry is understandably keeping an eye on the **potential for BigTech** to deploy their platforms in banking. Amongst our informants, some saw this as a matter of time, whilst others doubted it would happen at all, with the cost of regulation commonly cited as the largest barrier. Interestingly, even among those who saw entry as a certainty, **none considered that it was already happening** – this is supported by the fact that no BigTech company has yet acquired a full banking license in the UK. However, **this should not fool anyone**. Over recent years there has been **significant activity** from BigTech players in **banking-related services**, resurfacing and reiterating the question of where banking **starts and ends.**

As shown in the table above, BigTech are **actively broadening** their platforms into a **number of areas** of the financial ecosystem, in particular payments. This may partly be due to the lower regulatory burden of payments; as one insider put it – e-money license holders can ‘zip around like bugs’ compared with more heavily regulated deposit-takers. Another potential reason is datafication. Access to the payments network provides a vast amount of new data on consumer preferences and buying habits, which can be coupled with existing platform data to enrich BigTech’s understanding of its customers and create new opportunities for monetisation and lock-in.

As well as acquiring new sources of data, activity in financial services to date is also offering BigTech the opportunity to **further monetise** their existing data stacks. Amazon’s extension of credit to businesses on the platform via Amazon Lending, launched in the US in 2012 and in the UK in 2015, is a prime example. Amazon already has **unrivalled access to data** on its seller community. As the sole source distributor for many of its merchants, Amazon already knows product type, quantity and, importantly, revenue generation of each seller per month. This information can be used to profile sellers’ ability to pay and extend credit on a targeted basis, **far better** than a bank could without access to similar data. From this advantage, Amazon can begin to use this data to learn more about risk modelling and other core areas of banking. The same dynamics are true of Facebook and the social media platforms, who capture **swathes of data** on individuals that can be collated with payments and other financial data to create new and innovative bankingproducts.

Entry into these, perhaps peripheral, areas of the banking bundle could be the extent of BigTech’s ambitions in banking. However, they appear to be the start of a **broader envelopment**. While troubled in its execution, Facebook’s closed libra ecosystem has the mission to ‘enable a simple global payment system and financial infrastructure that empowers billions of people’3 . It has since attracted a significant amount of debate and regulatory attention from both the Federal Reserve Bank and the Bank of England, among others. Similarly, Google has announced it ambitions to enter the US ‘checking account’ market with an anticipated consumer launch during 2021. This **gradual participation** in banking services in many ways **mirrors the classic disruptive path** described by the innovator’s dilemma (Christensen, 2003). BigTech’s acquisition of elements of the banks’ bundle could represent a **similar path to market domination**. Ceding markets that they previously dominated may leave incumbents open to a fuller platform envelopment by BigTech in their most profitable services, such as mortgages and consumer credit. This trend is also evident in the table above by the number of lending and credit services already offered by BigTech.

#### Antitrust scrutiny deters investment in finance---wards away big tech

Pedersen 20 – Brendan Pedersen covers federal bank regulation and fintech policy for American Banker

Brendan Pedersen, "Congress's scrutiny of tech giants could be blessing and curse for banks," American Banker, 10-13-2020, https://www.americanbanker.com/news/congresss-scrutiny-of-amazon-google-could-be-blessing-curse-for-banks

WASHINGTON — A Democratic proposal to reform antitrust law to limit the reach of the largest technology firms may hearten banks, but analysts say the financial services sector is not immune from a revived focus on breaking up megacompanies.

In the sweeping 400-page report by the House Judiciary Committee’s antitrust law subcommittee, lawmakers laid out a sweeping case for reforming laws that allow the colossal growth of just a handful of tech giants: Amazon, Apple, Facebook and Google.

“To put it simply, companies that once were scrappy, underdog startups that challenged the status quo have become the kinds of monopolies we last saw in the era of oil barons and railroad tycoons,” the report said, adding later that “the totality of the evidence produced during this investigation demonstrates the pressing need for legislative action and reform.”

The U.S. banking industry has long worried about the financial ambitions of leading tech firms and even the possibility that one of the four Big Tech giants could charter or acquire a bank with significant competitive advantages at the expense of traditional financial services firms. While none of the four companies have applied for banking powers, past reports have circulated of Google and Amazon being among those having engaged with bank regulators.

The report authored by subcommittee staff did not specifically focus on the tech giants' financial services aims, but rather on how their global reach and impact on sectors like the news media could threaten democratic norms.

But observers said tighter restrictions on acquisitions by tech leaders could put them on more equal footing with banks and even discourage their potential interest in acquiring financial technology startups. The report also appears to validate the regulatory regime for bank parents as a potential model for reining in growth of the tech sector.

“A more aggressive antitrust stance would reduce the likelihood that those companies get even deeper into financial services, so it protects some turf for banks that don't have to compete with a Bank of Amazon or an Apple Bank,” said Jeremy Kress, an associate professor of business law at the University of Michigan.

#### Blockchain key to prevent snap financial collapse

Furber 19 – Sophia Furber is a journalist with S&P Global Market Intelligence, where she leads EMEA fintech and banking tech reporting, citing Brian Behlendorf, executive director of Hyperledger

Sophia Furber, "Blockchain could prevent rerun of 2008 banking meltdown, says tech veteran," S&P Global Market Intelligence, 6-28-2019, https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/blockchain-could-prevent-rerun-of-2008-banking-meltdown-says-tech-veteran-52534233

The aftermath of the 2008 global financial crisis would have been considerably less chaotic if banks had used blockchain to keep track of complex derivative trades, according to technologist Brian Behlendorf, executive director of Hyperledger.

Hyperledger, a global cross-industry group that aims to advance the use of blockchain technologies, is an initiative of the The Linux Foundation and counts major global banks including Deutsche Bank AG, JPMorgan Chase & Co. and Citigroup Inc. among its members.

More than the crash in the U.S. housing market, it was what happened next with the vastquantity of credit derivatives that really tipped the financial system into crisis, Behlendorf said.

At the height of the global financial crisis in October 2008, the collapse of Lehman Brothers Holdings Inc. triggered hundreds of billions in credit default swap, or CDS, protection payouts, but because the derivative instruments had been bought and sold **so many times**, it was **difficult to** know who was liable to pay out.

'A crisis of paperwork'

"This was not a crisis of over-exuberance. It was a crisis of paperwork," Behlendorf said in an interview. "It showed the fallibility of [banks'] digital systems. There was not an automated systematic record of who owned what, and banks were slow to respond."

Using blockchain would have meant that banks had a common system of record for instruments such as swaps, which could have resulted in a more "orderly unwinding" of contracts, he said.

There is a strong case for using blockchain in the parts of a bank that deal with settlements, clearing and trading, as this could help to prevent a re-runof the events of 2008, he said.

Until February this year, Hyperledger had been chaired by Blythe Masters, the JP Morgan banker widely credited with inventing the credit default swap in the 1990s. Following her career in banking, Masters has emerged in recent years one of the most vocal advocates for the use of blockchain in the world of finance and spent four years as CEO of blockchain services firm Digital Asset Holdings, LLC before stepping down in February this year, citing personal reasons.

Masters has taken a step back from Hyperledger for the time being for health reasons, according to Behlendorf.

The global CDS market has shrunk considerably since the days of the global financial crisis: outstanding notional amounts of CDS contracts stood at $8 trillion at the end of the first half of 2018, compared with $61.2 trillion at the end of 2007, according to the Bank for International Settlements.

But beyond the infamous CDSs, the global derivatives market is still vast — and growing. The notional outstanding value of over-the-counter derivatives stood at $595 trillion as of end-June 2018, up from $532 trillion at end-2017, according to the BIS.

**Sparks global war---intervening action fails to stop financial collapse**

**Sundaram and Popov 19** – former economics professor, was United Nations Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007; former senior economics researcher in the Soviet Union, Russia and the United Nations Secretariat, is now Research Director at the Dialogue of Civilizations Research Institute in Berlin

Jomo Kwame Sundaram and Vladimir Popov, "Economic Crisis Can Trigger World War," Inter Press Service, 2-12-2019, http://www.ipsnews.net/2019/02/economic-crisis-can-trigger-world-war/

KUALA LUMPUR and BERLIN, Feb 12 2019 (IPS) - Economic recovery efforts since the 2008-2009 global financial crisis have mainly depended on unconventional monetary policies. As fears rise of yet another **international financial crisis**, there are **growing concerns** about the increased possibility of **large-scale military conflict.**

More worryingly, in the current political landscape, **prolonged economic crisis**, combined with rising economic inequality, chauvinistic ethno-populism as well as aggressive jingoist rhetoric, including threats, could **easily spin out of control** and ‘morph’ into **military conflict**, and worse, **world war**.

Crisis responses limited

The 2008-2009 global financial crisis almost ‘**bankrupted’ governments** and caused **systemic collapse**. Policymakers managed to pull the world economy **from the brink**, but soon switched from counter-cyclical fiscal efforts to **unconventional monetary measures**, primarily ‘quantitative easing’ and very low, if not negative real interest rates.

But while these monetary interventions averted realization of the worst fears at the time by turning the US economy around, they did little to address **underlying economic weaknesses**, largely due to the ascendance of finance in recent decades at the expense of the real economy. Since then, despite promising to do so, policymakers have not seriously pursued, let alone achieved, such needed reforms.

Instead, ostensible structural reformers have taken advantage of the crisis to pursue largely irrelevant efforts to further ‘casualize’ labour markets. This **lack of structural reform** has meant that the **unprecedented liquidity** central banks **injected into economies** has not been well allocated to **stimulate resurgence of the real economy**.

From bust to bubble

Instead, easy credit raised asset prices to levels even higher than those prevailing before 2008. US house prices are now 8% more than at the peak of the property bubble in 2006, while its price-to-earnings ratio in late 2018 was even higher than in 2008 and in 1929, when the Wall Street Crash precipitated the Great Depression.

As monetary tightening checks asset price bubbles, **another economic crisis** — possibly **more severe** than the last, as the economy has become **less responsive** to such blunt **monetary interventions** — is **considered likely**. A decade of such unconventional monetary policies, with very low interest rates, has **greatly depleted their ability to revive the economy**.

**Strong financial markets are key to maintaining the dollar’s reserve status---critical to maintain US treasury bonds**

**Best 21** – Financial writer and Consultant to the Financial Service Industry

Richard Best, "How the U.S. Dollar Became the World's Reserve Currency," Investopedia, 5-29-2021, https://www.investopedia.com/articles/forex-currencies/092316/how-us-dollar-became-worlds-reserve-currency.asp

Standing on Its Own as the World’s Reserve Currency

As a result of the Bretton Woods Agreement, the U.S dollar was **officially crowned** the world’s reserve currency and was backed by the world’s largest gold reserves. Instead of gold reserves, other countries accumulated reserves of U.S. dollars. Needing a place to store their dollars, countries began buying U.S. Treasury securities, which they considered to be a **safe store of money**.

The demand for Treasury securities—coupled with the deficit spending needed to finance the Vietnam War and the Great Society domestic programs—caused the United States to flood the market with paper money. With growing concerns over the stability of the dollar, the countries began to convert dollar reserves into gold.

The demand for gold was such that President Richard Nixon was forced to intervene and de-link the dollar from gold, which led to the **floating exchange rates** that exist today. Although there have been periods of stagflation, which is defined as high inflation and high unemployment, the U.S. dollar has remained the **world’s reserve currency**.

Present Day

Today, more than **61%** of all **foreign bank reserves** are denominated in U.S. dollars, according to the International Monetary Fund (IMF). Many of the reserves are in cash or U.S bonds, such as **U.S. Treasuries**. Also, approximately **40%** of the **world's debt** is denominated in dollars.

The **reserve status is based largely** on the **size** and **strength** of the U.S. economy **and the dominance of the U.S. financial markets**. Despite large deficit spending, trillions of dollars in debt, and the unbridled printing of U.S. dollars, **U.S. Treasury securities** remain the **safest store** of money. The **trust and confidence** that the world has in the ability of the United States to **pay its debts** have kept the dollar as the **most redeemable currency** for facilitating **world commerce**.

#### Dollar heg is the lynchpin of the global order and outweighs alt causes—more important to heg than military power

**Thomas et al, 17**

Costigan, Drew Cottle—Senior lecturer in Politics at the University of Western Sydney, Angela Keys—PhD candidate with the Centre for Rural Social Research at Charles Sturt University, "THE US DOLLAR AS THE GLOBAL RESERVE CURRENCY: Implications for Us Hegemony," World Review of Political Economy 8(1), p. 104-122 Spring

As the global reserve currency since the end of World War II, the US dollar has been intrinsic to the functioning of the world economy. The US dollar is so fundamental to the global financial system that the political and economic ramifications of the dollar's reserve currency status are rarely considered. The US dollar as the global reserve currency is a subject of critical importance, both to the understanding of the international financial system, and the wider political and economic ramifications of the status accorded to the dollar. As F. William Engdahl has explained,

Maintaining the role of the US dollar as world reserve currency has been the foremost pillar of the American Century since 1945, **related to but more strategic even than US military superiority**. How that dollar primacy has been maintained to now encompassed the history of countless postwar wars, financial warfare, debt crises, and threats of nuclear war to the present. (Engdahl 2008)

This article contends that the dollar as the global reserve currency **has been crucial to the operations of US hegemony** during the post-World War II period. To investigate this issue, the theoretical perspective of World-Systems Analysis expounded by Immanuel Wallerstein (2011) is employed. The article also draws upon the theoretical work of Henry C.K. Liu who developed the term "US dollar hegemony" (Liu 2002). In this article, we argue that US planners from the Council on Foreign Relations (CFR) in conjunction with State Department officials pursued a deliberate plan to **make the United States a global hegemonic power** (Shoup and Minter 1977) and the dollar was the central currency of that hegemony (Engdahl 2008, 213). We demonstrate how the dollar evolved into a petro-currency through Nixon's Saudi decision of 1973. The dollar was placed on the trajectory that it would follow for decades and became the source of conflict against the United States by its geo-political competitors (Durden 2014). We conclude by arguing that newly emerging strategic competitors to US hegemony such as China, Russia and Iran are growing dissatisfied with the current oil trading arrangements. We do not argue that any of these nations are remotely in contention to replace the United States as world hegemon. However, we suggest **that a significant blow could be dealt to the ability of the United States to maintain its hegemonic status** **should oil trading be carried out in currencies other than the dollar** (Koenig 2015). If this were to occur to a large enough extent, **the ability of the United States to exercise its foreign policy would be** severely curtailed (National Intelligence Council [NIC] 2012). It would also demonstrate the critical importance of the US dollar in the exercise of US hegemony. In this article, we would like to move the dollar to the forefront of debate in understating how US hegemony in the postWorld War II period is constructed and maintained and **its critical importance** **in a** hegemonic US global agenda.

### DA Innovation

#### Frenzy of deals now because Biden’s antitrust push won’t be implemented for years

David French and Sierra Jackson, Reuters, July 12, 2021, Analysis: Dealmakers see M&A rush, then chills, in Biden's antitrust crackdown

Dealmakers expect a new wave of transformative U.S. mergers and acquisitions (M&A), as companies rush to complete deals before President Joe Biden's antitrust push takes shape, to be followed by a slowdown when regulators start cracking down.

Biden signed a sweeping executive order on Friday to bolster competition within the U.S. economy. This included a call for regulatory agencies to increase scrutiny of corporate tie-ups which have left major sectors such as technology and healthcare dominated by few players. read more

The order came amid an unprecedented M&A frenzy, as companies borrow cheaply and spend mountains of cash they have accumulated on transformative deals to reposition themselves for the post-pandemic world. Almost $700 billion worth of U.S. deals were announced in the second quarter, the highest on record.

The dealmaking bonanza is set to continue, as companies seek to take advantage of the time window during which regulators frame precise rules to implement Biden's order, advisers to the companies said. The M&A slowdown will come only when regulators implement the rule changes, possibly in two years or more, they added.

"The order itself will be less likely to have a chilling effect on strategic M&A than the potential chilling effect of a significant increase in the number of prolonged investigations and merger challenges brought by the agencies," said Michael Schaper, partner at law firm Debevoise & Plimpton.

Spokespeople for the White House and the two main antitrust regulators, the Federal Trade Commission (FTC) and the U.S. Department of Justice (DoJ), did not immediately respond to requests for comment.

Dealmakers were bracing for a tougher antitrust environment under Biden even before last week's executive order. Last month, the DoJ sued to stop insurance broker Aon's (AON.N) $30 billion acquisition of peer Willis Towers Watson (WTY.F). And Biden tapped Lina Khan, an antitrust researcher who has focused her work on Big Tech's immense market power, to chair the FTC.

#### Plan undermines dynamism and emerging deals – destroys global competitiveness

Thierer 21– Adam Thierer is a senior research fellow with the Mercatus Center at George Mason University. Author of several books on antitrust law; former president of the Progress & Freedom Foundation, director of Telecommunications Studies at the Cato Institute, and a senior fellow at the Heritage Foundation.

(Adam Thierer, 2-25-2021, "Open-ended antitrust is an innovation killer," TheHill, https://thehill.com/opinion/technology/540391-open-ended-antitrust-is-an-innovation-killer)

Antitrust reform is a hot bipartisan item today, with Democrats and Republicans floating proposals to significantly expand federal control over the marketplace. Much of this activity is driven by growing concern about some of the nation’s largest digital technology companies, including Facebook, Google, Amazon and Apple.

Unfortunately, the calls for more bureaucracy and regulation emanating from all corners of the political world could have an unintended consequence: discouraging the sort of vibrant innovation and consumer choice that made America’s tech companies household names across the globe.

Sen. Amy Klobuchar (D-Minn.) is leading one charge. Klobuchar, who chairs the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, recently introduced the “Competition and Antitrust Law Enforcement Reform Act.” This sweeping measure seeks to expand the powers and budgets of antitrust regulators at the Federal Trade Commission and the Department of Justice. It also includes new filing requirements and potentially hefty civil fines.

The most important feature is the proposed change to the legal standard by which regulators approve business deals. It would allow the government to stop any deal that creates an “appreciable risk of materially lessening competition,” and it also defines exclusionary behavior as, “conduct that materially disadvantages one or more actual or potential competitors.”

These may sound like simple, semantic tweaks, but – much like some of the other policy ideas currently circulating – they would upend decades of settled law and create a sea change in U.S. antitrust enforcement. This change could undermine business dynamism, innovation and investment in ways that inhibit the global competitiveness of U.S. businesses.

Critics of merger and acquisition (M&A) activity by large tech firms include not only Sen. Klobuchar but also Republicans such as Sen. Josh Hawley (R-Mo.). Hawley recent offered an amendment to a budget bill that would preemptively prohibit mergers and acquisitions by dominant online firms. Klobuchar and Hawley believe that M&A skews the market in favor of today’s largest firms, entrenching their market power and discouraging innovation.

History teaches a different lesson. Consider DirecTV and Skype, both once considered innovative market leaders in their respective fields of satellite TV and internet telephony. Both firms stumbled, however, and they might not even be with us today without creative business deals. DirecTV has been partially or fully controlled by Hughes Electronics, News Corp., Liberty Media and now AT&T. Skype has swapped hands multiple times, moving from eBay, to a private investment firm and now to Microsoft.

These were complex deals, and some didn’t work, leading to divestitures. But each was a learning experience that illustrated how dynamic media and technology markets can be with firms constantly searching for value-added arrangements that serve their customers and shareholders. If we make this type of activity presumptively illegal, we’re imagining that government bureaucrats are better suited to make these calls than businesspeople and the consumers who choose whether or not to buy the product.

Worse yet, legal tests like those Klobuchar proposes – “conduct that materially disadvantages potential competitors” – are remarkably open-ended and could be easily abused. The system will be gamed by opponents of deals for business reasons. They will claim that their own failure to attract investors or customers must all be the fault of more creative rivals. That’s a recipe for cronyism and economic stagnation.

Those who worry about today’s largest tech giants becoming supposedly unassailable monopolies should consider how similar fears were expressed not so long ago about other tech titans, many of which we laugh about today. Just 14 years ago, headlines proclaimed that “MySpace Is a Natural Monopoly,” and asked, “Will MySpace Ever Lose Its Monopoly?” We all know how that “monopoly” ceased to exist.

At the same time, pundits insisted “Apple should pull the plug on the iPhone,” since “there is no likelihood that Apple can be successful in a business this competitive.” The smartphone market of that era was viewed as completely under the control of BlackBerry, Palm, Motorola and Nokia. A few years prior to that, critics lambasted the merger of AOL and TimeWarner as a new corporate “Big Brother” that would decimate digital diversity and online competition.

GOP divided over bills targeting tech giants

Today, we know these tales of the apocalypse ended up instead becoming case studies in the continuing power of “creative destruction.” New innovations and players emerged from many unexpected quarters, decimating whatever dreams of continued domination the old giants once had.

Today’s biggest players face similar pressures, and it’s better to let rivalry and innovation emerge organically, not through the wrecking ball of heavy-handed antitrust regulation.

#### And, big tech giant are key to drive next-gen AI – data and cloud capability can only be accessed at scale – turns the aff

Tucker 20 – Technology editor for Defense One

Patrick Tucker, “Busting Up Big Tech is Popular, But Here’s what the US May Lose,” Defense One, July 2020, https://www.defenseone.com/technology/2020/07/busting-big-tech-popular-heres-what-us-may-lose/167326/

From the Pentagon’s perspective, American tech giants do offer a unique technological resource, one that does produce innovation and that arguably would not exist if they were broken up. Consider the Pentagon’s JEDI cloud program. Smaller cloud providers complained that the program’s requirements were tilted toward Amazon, the only company that many believed could meet them. Part of the reason that the JEDI contract came down to a race between Microsoft and Amazon (after Google pulled out) is because those are the companies with the largest cloud offerings, able to provide the highest level of security. It was only after visiting them that former Defense Secretary James Mattis realized that what American’s private big tech firms were doing with cloud computing was decades ahead of what the government was doing with smaller, patchwork capabilities. He also realized that cloud computing at enterprise scale was essential to real innovation in AI.

The size of that cloud capability and the amount of data available plays a big role in a company’s ability to develop next-generation AI products. Google’s compute power, and access to a massive dataset of online video footage via YouTube, was vital to the development of deep learning technologies. Facebook’s compute power and its access to billions of biometric facial records — pictures of faces — allowed it to create unique facial recognition technology to rival the human brain.

These companies developed the world’s largest compute capabilities in order to become the world’s largest companies. Busting them up could eliminate something that doesn’t exist anywhere else and actually is a driver for innovation, one that arguably requires more regulation and oversight but also that can’t be replicated at a smaller scale.

#### Internal link goes one way—large-firm dynamism is the only way to maintain tech leadership vis-à-vis china—key to competitiveness and AI

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### CP Advantage

#### The United States federal government should pass the Consumer Protection and Recovery Act and adequately fund enforcement by the Federal Trade Commission.

#### Solves the second advantage – their author

1AC Mermin, 21

(Executive Director Center for Consumer Law & Economic Justice UC Berkeley School of Law. Before the United States House of Representatives Committee on Energy & Commerce Subcommittee on Consumer Protection and Commerce Hearing on “The Consumer Protection and Recovery Act: Returning Money to Defrauded Consumers” accessed 2-18-2022, https://docs.house.gov/meetings/IF/IF17/20210427/112501/HHRG-117-IF17-Wstate-MerminT-20210427.pdf)

10. Trust the FTC. This final step informs all the others. There can be no doubt that there is more work to do protecting consumers than the FTC currently has the tools or resources to accomplish. There is also no doubt that the FTC has been trammeled in ways that its sister agencies, federal and state, have not. Whatever the reason, it is high time to retire the “zombie ideas” about the FTC – that the Commission is unnecessary, or overreaching, or heavy-handed, or inefficient.23 It is time, as one commissioner stated in Senate testimony last week, to “turn the page on the FTC’s perceived powerlessness.”24 For an American public eager for greater – not lesser – protection from increasingly sophisticated scam artists, deceptive advertisers, and privacy violating tech companies, building an effective FTC is an easy decision. It can and should be for this committee as well. IV. Conclusion This subcommittee meets at a remarkable historical moment, when the COVID-19 pandemic has revealed the profound need for a robust Federal Trade Commission just days after the Supreme Court made action by Congress an absolute necessity. This is a perilous time, with the chief protector of American consumers rendered nearly powerless just when those consumers are experiencing a heightened threat resulting from a once-in-a-century pandemic. The Consumer Protection and Recovery Act provides a critical first step toward restoring authority and effectiveness to the nation’s leading consumer protection agency. Swift action to restore the FTC’s traditional 13(b) authority means that when constituents contact your office, and tell your staff that they have lost their life’s savings to a work-at-home scam, or their identity has been stolen and someone has opened accounts in their name, or they just spent their stimulus payment on a supposed cure for COVID for their grandmother who’s on a respirator – there will still be an agency to refer them to. No one wants that staffer to have to add: “Well, we could send you to the FTC, but they don’t actually have the power to get you your money back.” Inaction or delay will mean no recovery for millions of wronged American consumers. The time to pass the Consumer Protection and Recovery Act is now.

### CP LHPC

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

#### Regs are comparatively better than antitrust remedies – still solves platform harm, but avoids the link to the DAs

Rogerson and Shelanski 20, Charles E. and Emma H. Morrison Professor of Economics at

Northwestern University. He has previously served as Chief Economist of the Federal Communications Commission, and Shelanski, Professor of Law at Georgetown University and a member of the firm Davis Polk & Wardwell LLP. He has formerly served as Director of the Bureau of Economics at the Federal Trade Commission and as Chief Economist of the Federal Communications Commission, ‘

(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.

#### The core antitrust laws are only sections 1 and 2 of the Sherman Act and section 7 of the Clayton Act.

The Antitrust Division 07 – Law enforcement agency that enforces the U.S. antitrust laws

“Antitrust Division Statement Regarding the Release of the Antitrust Modernization Commission Report,” The Antitrust Division, Department of Justice, April 2007, https://www.justice.gov/archive/atr/public/press\_releases/2007/222344.htm

The AMC has made many specific recommendations in its report, and the Division is in the process of reviewing all of them. The Division commends the AMC for its three primary conclusions:

Free-market competition should remain the touchstone of United States' economic policy. The Commission's conclusion in this regard is a fundamental starting point for policy makers. Over a century of experience has shown that robust competition among businesses, each striving to be increasingly successful, leads to better quality products and services, lower prices, and higher levels of innovation.

The core antitrust laws—Sherman Act sections 1 and 2 and Clayton Act section 7—and their application by the courts and federal enforcement agencies are sound and appropriately safeguard the competitiveness of the U.S. economy.

New or different rules are not needed for industries in which innovation, intellectual property, and technological innovation are central features. Unlike some other areas of the law, the core antitrust laws are general in nature and have been applied to many different industries to protect free-market competition successfully over a long period of time despite changes in the economy and the increasing pace of technological advancement. One of the great benefits of the Sherman and Clayton Acts is their adaptability to new economic conditions without sacrificing their ability to protect competition.

#### Which makes the CP compete – modifications to the FTC authority do not count as modification to core antitrust laws

Bonder 18 – Partner at Alston & Bird

Teresa T. Bonder, Defendants’ Opposition to Federal Trade Commission’s Motion for Permission to Serve Nine Trial Subpoenas, Federal Trade Commission v. Actavis Inc., et al., US District Court for the Northern District of Georgia, April 2009, LexisNexis

The statute the FTC cites, 15 U.S.C. § 23, authorizes nationwide service of process only for claims “arising under the antitrust laws.” Id. “[A]ntitrust laws” is a defined term for purposes of the statute. And, as the FTC admits (Mot. at 6), that definition in 15 U.S.C. § 12(a) does not list the FTC Act—the basis for all of the FTC’s claims in this case. Thus, the nationwide service of process statute does not, by its plain language, apply to this case. That is the end of the matter. None of the FTC’s arguments for ignoring the statutory definition is convincing.

First, the FTC notes this case has been colloquially referred to as an “antitrust case” by the parties and the courts in a variety of contexts. But such colloquial references cannot trump the express definition of the term “antitrust laws” in the statute. The Supreme Court has specifically instructed that whether a statute “may be colloquially described as an antitrust [law]” is “of no moment” when interpreting Section 12. Nashville Milk Co. v. Carnation Co., 355 U.S. 373, 376 (1958). Instead, as the notes to 15 U.S.C. § 23 explain, “[t]he antitrust laws, referred to in text, are defined in section 12 of this title.” 15 U.S.C. § 23 note, attached as Ex. A. The Supreme Court has also said that the list in Section 12 “is exclusive.” Nashville Milk Co., 355 U.S. at 376. For this reason, courts maintain that “[t]he FTC Act is not an ‘antitrust law’ within the meaning of the Clayton Act, 15 U.S.C. § 12(a).” Fed. Trade Comm’n v. Onkyo U.S.A. Corp., 1995 WL 579811, at \*4 n.2 (D.D.C. Aug. 21, 1995).

### K

#### Theorizing the economy in terms of neoclassical mental models of narrow causality makes it impossible to solve a slew of wicked 21st century problems. Try or die for a mission-oriented approach—We should “ask what kind of markets we want, rather than what problem in the market needs to be fixed.”

Mazzucato 21 – Professor in the Economics of Innovation and Public Value, University College London

Mariana Mazzucato, Founding Director of the UCL Institute for Innovation & Public Purpose (IIPP), MISSION ECONOMY: A Moonshot Guide to Changing Capitalism, Penguin Publisher, 2021, <https://www.penguin.co.uk/books/315/315191/mission-economy/9780241419731.html>

This book encourages us to apply the same level of boldness and experimentation to the biggest problems of our time – from health challenges such as pandemics, to environmental challenges such as global warming, to educational challenges such as the divide in opportunity and achievement between students partly caused by unequal access to digital technology. These ‘wicked’ problems require not just technological, but also social, organizational and political innovations. They are huge, complex and resistant to simple solutions. We must solve them – not merely accommodate them – by focusing policymaking on outcomes. And this means getting the public and private sectors to truly collaborate on investing in solutions, having a long-run view, and governing the process to make sure it is done in the public interest.

The moon landing was a massive exercise in problem- solving, with the public sector in the driving seat and working closely with companies – small, medium and large – on hundreds of individual problems. It required collaboration between government and many different sectors, from computing and electrical equipment to nutrition and materials. Government used its purchasing power to develop procurement contracts that were short, clear and massively ambitious. When the private sector sometimes failed to deliver, NASA threw back the challenge and did not pay until the solution was right. If successful, companies could grow through serving the new markets that government purchases opened up and scale up through a purpose-driven strategy.

What integrated all these efforts and gave them direction was that they were part of a mission – a mission led by government and achieved by many. Today, a ‘mission- oriented’ approach - partnerships between the public and private sectors aimed at solving key societal problems – is desperately needed. Imagine, for example, using public- sector procurement policy to stimulate as much innovation as possible – social, organizational and technological – to solve problems as diverse as knife crime in cities or loneliness of the elderly at home.

Of course, lessons from the moon landing cannot just be cut and pasted onto any challenge. But they do highlight the need to resurrect ambition and vision in our everyday policymaking. This cannot just be about bold statements. We have to believe in the public sector and invest in its core capabilities, including the ability to interact with other value creators in society, and design contracts that work in the public interest. We must create more effective interfaces with innovations across the whole of society; rethink how policies are designed; change how intellectual property regimes are governed; and use R&D to distribute intelligence across academia, government, business and civil society. This means restoring public purpose in policies so that they are aimed at creating tangible benefits for citizens and setting goals that matter to people – driven by public-interest considerations rather than profit.5 It also means placing purpose at the core of corporate governance and considering the needs of all stakeholders, including workers and community institutions, as opposed to just shareholders (owners of stock in a company).

In this context, ‘moonshot’ thinking is about setting targets that are ambitious but also inspirational, able to catalyse innovation across multiple sectors and actors in the economy. It is about imagining a better future and organizing public and private investments to achieve that future. This, in the end, is what got a man on the moon and back.

But there is a catch.

Conventional wisdom continues to portray government as a clunky bureaucratic machine that cannot innovate: at best, its role is to fix, regulate, redistribute; it corrects markets when they go wrong. According to this view, civil servants are not as creative and risk-taking as the entrepreneurs of Silicon Valley, and government should simply level the playing field and then get out of the way – so the risk-takers in private business can play the game.

This book’s thesis is that we cannot move on from the key problems facing our economies until we abandon this narrow view. Mission thinking of the kind I outline here can help us restructure contemporary capitalism. The scale of the reinvention calls for a new narrative and new vocabulary for our political economy, using the idea of public purpose to guide policy and business activity.6 This requires ambition – making sure that the contracts, relationships and messaging result in a more sustainable and just society. And it requires a process that is as inclusive as possible, involving many value creators. Public purpose must lie at the centre of how wealth is created collectively to bring stronger alignment between value creation and value distribution. And the latter should not only be about redistribution (ex post) but also predistribution ex ante: a more symbiotic way for economic actors to relate, collaborate and share.

It is essential to link the micro properties of the system – such as how organizations are governed – to the macro patterns of the type of growth desired. By rethinking how the relationships between the public sector and private sector can be better governed around public purpose, we can create growth that is better balanced and resilient, with new capabilities and opportunities spread across the economy. But this means, at the start, replacing the fashionable, bland terminology of ‘partnership’ with clearer metrics as to what a symbiotic and mutualistic ecosystem looks like; that is, one in which risks and rewards are more equally shared. In our era, unfortunately, the relationship is often parasitic: public-health funding is structured so that publicly financed drugs are too expensive for citizens to buy.

I call this different way of doing things a mission-oriented approach. It means choosing directions for the economy and then putting the problems that need solving to get there at the centre of how we design our economic system. It means designing policies that catalyse investment, innovation and collaboration across a wide variety of actors in the economy, engaging both business and citizens. It means asking what kind of markets we want, rather than what problem in the market needs to be fixed. It means using instruments such as loans, grants and procurement to drive the most innovative solutions to tackle specific problems, whether those be getting plastic out of the ocean or narrowing the digital divide. The wrong question is: how much money is there and what can we do with it? The right question is: what needs doing and how can we structure budgets to meet those goals?

### Innovation Adv

#### The Big Four have increased innovation and *driven down* prices – no correlation between market power and innovation

**Litan 18** – B.S. in Economics, the Wharton School; J.D., Yale Law School; Ph.D., Yale University. Non-Resident Senior Fellow at the Brookings Institution; previously Vice President and Director of Economic Studies

(Robert Litan, “A Scalpel, Not an Axe: Updating Antitrust and Data Laws to Spur Competition and Innovation, September 2018, <https://www.progressivepolicy.org/wp-content/uploads/2018/09/PPI_AntitrustandDataLaws_2018.pdf>)

Nonetheless, fears have been expressed from across the political spectrum about the growing power of the major tech platforms – especially The Four – for stifling innovation. It is important in assessing any such claims to distinguish between the factors that have led to tech platform successes, and subsequent activities of certain platforms once they have gained some measure of market power or influence.

As for their success, there is no evidence – nor do I detect any serious argument – for the proposition that any of the major tech platforms earned their positions through anti-competitive means. Even when the Department of Justice twice sued Microsoft in the 1990s – initially for abusive licensing practices in 1994, which was settled by a consent decree, and then again in 1998 for unlawfully maintaining its Windows operating systems (OS) monopoly for personal computers, ending in certain restrictions on Microsoft’s behavior – the Department never argued that the company achieved its OS monopoly unlawfully. Likewise, each of The Four has achieved its success through superior products or services that consumers or users clearly want (shortly, I address arguments that the success of Facebook and Google is attributable, at least in part, to mergers that should not have been approved).

Moreover, in each of these cases, the tech platforms have taken advantage of economies of scale given the high fixed costs (but low to zero marginal costs) of serving additional users/ customers, or “network effects” arising from the fact that the value of their networks or platforms increases with the number of users, or both. Put differently, tech platform markets (for perfectly legitimate and well-understood reasons) tend toward monopoly – “winner take all” – or at least a high degree of market concentration.8

Competition has not somehow been “lessened” when successful platforms invent a product or service that did not previously exist. Furthermore, despite their dominance in one market or sector (which may not constitute a “relevant market” for antitrust purposes) – social media (Facebook), online commerce (Amazon), Internet search (Google), premium smartphones (Apple) – the platforms are invading each other’s turf and, in turn, creating new kinds of competition against each other. Witness Facebook’s competition with Google for online ads, which Apple is just joining. Likewise, while Google may dominate general Internet searches, its chief competitor for product searches is Amazon.

Speaking of Amazon, though businesses in various parts of the economy are fearful of that company’s business model, recent research documents that online commerce, which Amazon has pioneered, has kept consumer product inflation in check – and, in many cases, helped drive prices downward. This clearly benefits consumers.9 The Chairman of the Federal Reserve Board, Jerome Powell, has pointed to the “Amazon effect” as potentially a major reason the overall inflation rate has not accelerated even as the unemployment rate has fallen to historic lows.10 It is hard to square these developments with claims that competition has weakened in consumer product markets. All of this is good for consumers and workers since, other things being equal, less inflation at any given level of unemployment enables the Fed to permit the economy to run “hotter,” with less unemployment, than might otherwise be the case.

Amazon, Apple and Alphabet also have entered the entertainment business, joining another tech platform, Netflix, and the traditional Hollywood studios – in the process, providing much stronger competition in the content generation market. Significantly, the tech companies’ entry into content is de novo, or from scratch, rather than through acquisition of existing firms, except for Alphabet’s acquisition of YouTube – a content site Google (later Alphabet) beefed up after it was acquired.11

Each of the tech platforms already has entered (or is looking to enter) other lines of business – either creating new markets or adding to competition in existing ones. Examples include Alphabet’s Waymo division that is working hard to commercialize driverless vehicles, and Amazon’s apparent intention to enter the transportation market – not only to make the company independent of third-party transporters such as FedEx, UPS and the U.S. Postal Service, but eventually to compete directly against them, potentially bringing down transportation costs as Amazon has done in other markets it has entered.

#### Big tech acquisitions are good – incentivize investment in small startups – turns their internal links

**Manne 21** – Geoffrey Manne, JD UChicago Law, fellow at Northwestern University Center on Law, Business, and Economics, founder of the International Center for Law and Economics. Samuel Bowman, Director of Competition Policy at the International Center for Law and Economics. Dirk Auer, LLM from UChicago.

(Geoffrey A. Manne, Samuel Bowman & Dirk Auer, “Technology Mergers and the Market for Corporate Control,” Draft edition released August 4, 2021, forthcoming in Missouri Law Review (Fall 2021), <https://laweconcenter.org/wp-content/uploads/2021/08/SSRN-id3899524.pdf>)

We begin by assessing whether the evidence that anticompetitive conduct, especially in mergers, is impeding the ability of new firms to enter and compete with incumbents. This is the primary underlying theory of harm suggesting the need for invigorated enforcement to prevent such “kill zones.” A close look at the evidence suggests that, whatever the strength of these concerns in theory, they are not observed in practice.

First, the supposed “kill-zone” effect does not appear to have led to aggregate reductions in entrepreneurial activity, even if it may in principle lead to displacements. On the contrary, by most conventional measures, entrepreneurial activity in the tech sector has grown healthily in the presence of increasing M&A activity by large incumbents. Indeed, these may be related.

Startups generally have two methods for achieving liquidity for their shareholders: IPOs or acquisitions. According to the latest data from Orrick and Crunchbase, between 2010 and 2018 there were 21,844 acquisitions of tech startups for a total deal value of $1.193 trillion.46 By comparison, according to data compiled by Jay R. Ritter, a professor at the University of Florida, there were 331 tech IPOs for a total market capitalization of $649.6 billion over the same period.47 As venture capitalist Scott Kupor said in his testimony during the FTC’s hearings on “Competition and Consumer Protection in the 21st Century,” “these large players play a significant role as acquirers of venture-backed startup companies, which is an important part of the overall health of the venture ecosystem.” 48

Moreover, acquisitions by large incumbents are known to provide a crucial channel for liquidity in the venture capital and startup communities: While at one time the source of the “liquidity events” required to yield sufficient returns to fuel venture capital was evenly divided between IPOs and mergers, “[t]oday that math is closer to about 80 percent M&A and about 20 percent IPOs—[with important implications for any] potential actions that [antitrust enforcers] might be considering with respect to the large platform players in this industry.” 49 As investor and serial entrepreneur Leonard Speiser said recently, “if the DOJ starts going after tech companies for making acquisitions, venture investors will be much less likely to invest in new startups, thereby reducing competition in a far more harmful way.” 50

Thus, regulatory intervention that reduces the likelihood of reaching a profitable exit could reduce the incentive for venture capitalists to invest in startups and may inhibit new business formation.

A research paper by Gordon Phillips and Alexei Zhdanov analyzed data on venture capital investments and mergers and acquisitions activity in 48 countries to study this relationship rigorously:

Our evidence shows increases in VC [i.e., venture capital] activity after protakeover laws. VC activity grows by about 40-50% more from pre-law periods to post-law periods in countries that enact pro-takeover laws versus those that do not. . . . This evidence provides support for our hypothesis that M&A and VC markets are connected and improvements in M&A legislation spill over to VC markets by creating more viable exit opportunities for VC firms.”

Across the United States, “the number of [VC] deals scaled by the number of public firms in the state declines by about 27% in post antitakeover years in states that enact an antitakeover law relative to those that do not enact such a law.” 52 The authors conclude by noting that “[a]s many start-ups rely on VC funding and venture capitalists rely on acquisitions for subsequent exits, our results suggest that an active M&A market is important for encouraging venture capital investments, entrepreneurship and growth.” 53

While venture capital may be relatively small in total size—$130.9 billion in 201854—the market punches above its weight in terms of its effect on the broader economy. According to the National Venture Capital Association, “venture capital investments amounted to less than 0.2% of U.S. GDP in 2010,” but “revenues from venture-backed companies accounted for 21% of U.S. GDP and 11% of private sector employment.” 55 In recent years, about 60% of all IPOs were VC-backed companies.56 A research paper from Stanford University found that “public companies with venture capital backing employ four million people and account for one-fifth of the market capitalization and 44% of the research and development spending of U.S. public companies.” 57

Changing competition standards with the intention of reducing the number of tech acquisitions would therefore risk disabling the mechanism that currently provides roughly two-thirds of the liquidity for startups and one-fifth of GDP. Perhaps some other set of market conditions might provide a more optimal set of incentives for entrepreneurs, but advocates of changes have yet to compellingly demonstrate why their preferred vision for the economy is superior to the status quo.

Further, targeted advertising on large platforms also enables startups in other sectors of the economy via efficient customer acquisition: It’s the existence of these platforms that in many ways explains the significant growth we’ve seen in the last seven to ten years in consumer startup and VC financing activity. Simply put, the math works. Companies can experiment with customer acquisition via these channels and fund their marketing companies iteratively based on which yields the highest return on capital. Without these platforms, I would venture that the economics of customer acquisition might be cost prohibitive for most startups and, thus, that the venture capital economy would shift its investment into other more costeffective areas.58

#### The Squos fine – the U.S. outpaces China in investment, hiring, patents, skill development and deep learning for AI – only we have issue specific evidence

Knoema 21 – Knoema Corporation is a privately owned New York-based data technology company launched in 2014, founded in 2011.

Knoema, May 11 2021, “US-China AI Competition | Who is Winning?” https://knoema.com/infographics/sxovfdc/us-china-ai-competition-who-is-winning

(5 May 2021) According to the latest [Artificial Intelligence (AI) Index Report](https://hai.stanford.edu/research/ai-index-2021) by Stanford University, in 2020 for the first time ever China surpassed the USA in the share of AI journal citations worldwide. This is not surprising given the fact that China surpassed the US several years ago in the number of AI journal papers published each year. Another fact from the UN: due to rapid economic expansion and information and communications technology (ICT) investment growth in recent decades, [China's ICT](https://knoema.com/tlnbmw/china-has-built-up-its-digital-muscles) sector today is almost as big as the ICT sector in the US. The question that is raised by these trends is — where is China in the AI race with the US?

Why AI? AI, as the core component of the modern economy based on digital platforms, is becoming the key factor of global competitiveness. The more efficient the AI component, the more added value a digital platform can generate.

Besides AI journal publications and citations, the US still outpaces China in all other AI-development-related indicators. For example, the annual US AI investment exceeds AI investment in China by 138%.

In a broader context, the R&D (research and development) investment in the digital sector by US companies exceeds China's R&D investment in the digital sector by 237%. And today there are only two Chinese companies, compared with seven US companies, among the companies worldwide that invest more than $6 billion in the digital sector each year.

Given its faster long-term economic growth, China has the potential to gradually change the balance of global AI power. However, it is highly unlikely that China or any other country will equal the US in AI potential in the near future.

Chart, radar chart

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#### No scenario for war – China isn’t irrational and knows it would face devastating sanctions

O’Hanlon 10/26 – Michael O’Hanlon, a [senior fellow](https://www.brookings.edu/experts/michael-e-ohanlon/) at the Brookings Institution, is author of "[The Art of War in an Age of Peace: U.S. Grand Strategy and Resolute Restraint](https://www.brookings.edu/books/the-art-of-war-in-an-age-of-peace-u-s-grand-strategy-and-resolute-restraint/)."

Michael O’Hanlon, October 26 2021, “China is definitely on the rise. But don't write off American dominance just yet.” USA Today, https://news.yahoo.com/china-definitely-rise-dont-write-130043143.html?guccounter=1

China is flexing its muscles more than preparing for war; this is not the equivalent of Europe in the late 1930s, given how much China depends on a stable international order for its continued success. We do need to stay vigilant, remember the art of war even in this age of (relative) peace, and expand our economic as well as military toolkit for crisis management. We need not and must not panic, however, because doing so could turn manageable crises into truly scary ones.

China won't take the risk

First, let’s remember America’s many strengths. Our[military budget](https://www.gao.gov/products/gao-21-415t)is about three times’ [China’s](https://www.csis.org/analysis/understanding-chinas-2021-defense-budget), and our allies in [Europe](https://www.globaltimes.cn/page/202107/1227808.shtml)and [East Asia](https://www.dw.com/en/japan-defense-ministry-seeks-budget-hike-amid-china-fears/a-59037717) together outspend China themselves (even if not all would fight in a war in the Pacific, admittedly).

The loose coalition of European nations and the USA also represents the consumer market of [more than a billion](https://www.worldometers.info/world-population/europe-population/) comparatively wealthy [individuals](https://www.pewresearch.org/global/2015/07/08/mapping-the-global-population-how-many-live-on-how-much-and-where/)whom China needs in order to sustain its still-[export-driven economy](https://www.cnbc.com/2021/04/13/exports-cant-help-china-grow-as-much-this-year.html). That means we have many tools of economic, as well as military, warfare if needed.

Since 1945, [seven Democratic and seven Republican U.S. presidents](https://www.whitehouse.gov/about-the-white-house/presidents/) have collectively upheld a rules-based international order that has established a very strong norm against interstate aggression, making any Chinese attack on Taiwan hugely problematic for President Xi Jinping and his fellow leaders in Beijing.

Chinese People's Liberation Army soldiers assemble on Jan. 4, 2021, during military training in the northwestern Xinjiang region.

The world’s response to an actual attack against Taiwan – and this is the scenario that is truly the most worrisome for its potential to shake world peace – would likely be rather unified and strong. China knows it. For this reason, I believe that U.S. Indo-Pacific Command and other parts of the government need to be careful and restrained with their rhetoric (as most but not all are). China may have growing capacity to attempt to seize Taiwan, but it knows that actually making the attempt would be a cosmic roll of the dice, to be attempted only under the most extreme of circumstances.

### FTC Adv

#### Circumvention—courts interpret the plan in the narrowest possible way to favor dominant industry

Crane, Frederick Paul Furth, Sr. Professor of Law, University of Michigan, ‘21

(Daniel A., “Antitrust Antitextualism,” 96 Notre Dame L. Rev. 1205)

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

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

#### The FTC is all-in on privacy regulations---proves enforcement is high and effective

Boggs 10-19 (Squire Patton Boggs, Lexology, Data Privacy and Cybersecurity FTC Priorities Going Forward, 10-19, <https://www.lexology.com/library/detail.aspx?g=f65502dd-d96e-44c3-a636-428f76def9e4>, y2k)

The Federal Trade Commission (FTC) has made it clear: data privacy and cybersecurity are now a priority, and will be for years to come. In the wake of PrivacyCon 2021, the FTC’s sixth annual privacy, cybersecurity and consumer protection summit, held this summer, the FTC finally took official and sweeping action on privacy and cybersecurity. In particular, the Commission recently designated eight key areas of focus for enforcement and regulatory action, three of which directly implicate privacy, cybersecurity, and consumer protection. Below, we discuss the FTC’s action and what it means for businesses, the three key areas of interest to consumer privacy that are now in the FTC’s spotlight, as well as their relation to state privacy legislation and their anticipated impact to civil litigation. Full details on PrivacyCon 2021 and the FTC’s resolutions following the summit can be found on the FTC’s website, linked here for your convenience.

The FTC’s Actions and Areas of Focus

In mid-September, the FTC voted to approve a series of resolutions, directed at key enforcement areas, including the following, each discussed in further detail below:

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

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

Deceptive and Manipulative Conduct on the Internet: This includes, but is not limited to, the “manipulation of user interfaces,” including but not limited to dark patterns, also the subject of a recent FTC workshop.

The approval of this series of resolutions will enable the Commission “to efficiently and expeditiously investigate conduct in core FTC priority areas. Through the passage of the resolutions, the FTC has now directed that all “compulsory processes” available to it be used in connection with COPPA enforcement. This omnibus resolution mobilizes the full force of the FTC for the next ten years and gives FTC staff full authority to conduct investigations and commence enforcement actions in pursuit of this goal. The FTC has offered very little elaboration on this front, however, regarding how it will use such “compulsory processes,” which include subpoenas, civil investigative demands, and other demands for documents or testimony.

What does seems clear, however, is that the FTC is buckling down on the enforceability of its own actions. Previous remarks by Chair Lina M. Khan before the House Energy and Commerce Committee expressed frustration at the frequent hamstringing of the agency at the hands of courts in its enforcement efforts in the past. With this declaration of renewed energy, the FTC is summoning all the power it can to do its job, and we should expect to see an energized FTC kick up its patrol efforts in the near future. Businesses that conduct activities that implicate these renewed areas should be aware of the FTC’s focus and penchant for investigations and enforcement in such areas.

#### Win rates are empirically high but don’t matter for credibility

Shapiro 21 (Carl Shapiro is a Professor at the University of California at Berkeley, Judicial Response to the 2010 Horizontal Merger Guidelines, <https://link.springer.com/content/pdf/10.1007/s11151-020-09802-x.pdf>, y2k)

Some observers regard the DOJ and FTC’s win/loss records as the ultimate test of whether the agencies’ approach to merger enforcement is being accepted or rejected by the courts. For the record, of the 19 merger cases that the DOJ and FTC litigated to a decision in federal court in the 10 years after the 2010 Guidelines were issued, they won 15: a 79% win rate.7 This is higher than their combined win rate in federal court over the previous decade—8 of 13, or 62%.8 Regardless of the numbers, we caution against making too much of the DOJ and FTC win/loss records. Only a tiny share of all proposed mergers are litigated, and litigation leads to a decision only if no settlement can be reached and the merging parties do not abandon the transaction in the face of a challenge. In this paper, we are less interested in the win rates and more interested in whether the courts have followed the analytical framework of the 2010 Guidelines—particularly in areas where the 2010 Guidelines difer from their predecessor.

#### Privacy scenario fails—no privacy rule uq, legal challenges kill it

David Uberti, WSJ, FTC’s Effort to Strengthen Online Privacy Protections Faces Hurdles, 11/1/21, <https://www.wsj.com/articles/ftcs-effort-to-strengthen-online-privacy-protections-faces-hurdles-11635845401>

The Federal Trade *C*ommission has outlined *a* far-reaching vision for protecting consumers’ privacy online, but the plan faces challenges including budget constraints, personnel changes and potential legal pushback.

Critics of big technology companies have praised the FTC’s effort, which comes after years of inaction in Congress on the issue, even as businesses have ramped up data collection. The FTC has pledged to go it alone by intensifying scrutiny of digital advertising and exploring new rules for how companies can collect and use consumers’ information.

The agency hasn’t announced the start of any broad rule-making process. But its new chairwoman, Lina Khan, a Democrat who has criticized big business, said in an October statement on the FTC’s data strategy that she intends to explore privacy standards as she probes emerging technologies, discriminatory data practices and companies’ amassing of consumer information to cement their market power.

Current and former FTC officials say budgetary wrangling in Congress will shape the agency’s ultimate impact on data privacy. Some observers also caution that writing broadly defined privacy rules under a rarely used authority known as Magnuson-Moss might lead the agency into legal gray areas that could result in successful industry lawsuits.

“For those who say that Congress hasn’t acted, so let’s have the FTC do it, it’s an uphill climb,” said Jessica Rich, who stepped down as director of the FTC’s Bureau of Consumer Protection in 2017 and now works for law firm Kelley Drye & Warren LLP.

The agency is reviewing piecemeal data regulations authorized in specific laws, issuing an update last week to a rule requiring financial institutions to secure customer data.

Some Democratic lawmakers have also urged the FTC to use its Magnuson-Moss authority, established in 1975, to write more general rules for data usage. Under that authority, the FTC could prohibit certain activity and potentially fine companies on the first offense.

To restrict a behavior under a rule created through Magnuson-Moss, the agency would have to argue it constitutes an unfair or deceptive practice that harms consumers, said Justin Brookman, a former FTC official who is now director of consumer privacy and technology policy for advocacy group Consumer Reports. There is little precedent for such arguments about privacy and they could be challenged in court, Mr. Brookman said: “We’re off the map here.”

Consumer advocates say the agency could use such power to restrict digital advertising, which relies on an opaque exchange of data among businesses to target users with content. Representatives for Facebook parent Meta Platforms Inc., Alphabet Inc.’s Google and Amazon.com Inc., which together control about 90% of the digital advertising market, didn’t respond to requests for comment.

Julie Brill, Microsoft Corp.’s chief privacy officer, said new privacy standards could improve trust in the technology sector by zeroing in on data brokers or “gatekeepers” that take potentially anticompetitive actions through measures aimed at security or privacy.

Ms. Brill, a former FTC commissioner, didn’t name particular companies. Google has drawn such criticism over its decision to end third-party cookies that rival companies use to target ads. Apple Inc.’s recent move to restrict how users are tracked on mobile devices has also come under fire from companies that say they have to spend a lot more money to find new customers. A representative for Apple didn’t respond to a request for comment.

While the Biden administration has promised to hold big tech companies accountable, broad rules could prevent businesses from making innovative use of consumer data in the future, said James Cooper, a former official in the FTC’s Bureau of Consumer Protection who is now an associate professor at the Antonin Scalia Law School at George Mason University. Such regulations could take several years to complete despite Democratic commissioners voting in July to streamline the Magnuson-Moss process, Mr. Cooper added.

Ms. Khan, who became FTC chairwoman in June, in her recent statement on the agency’s data strategy called for a shift away from the “notice-and-consent” framework for privacy, in which companies explain their data practices and ask for consumers’ permission to collect and use their information. Ms. Khan wrote that policing unfair or deceptive practices through that lens can sidestep “more fundamental questions about whether certain types of data collection and processing should be permitted in the first place.”

The agency told Congress that its inquiries into such behaviors would include more aggressive probes of digital platforms and enforcement of existing settlements with companies such as Facebook, now called Meta.

The FTC said the expansion would hinge on at least tripling the size of its Division of Privacy and Identity Protection, which has about 40 staffers.

Democratic lawmakers in September suggested creating a new FTC privacy bureau with $1 billion in funding from President Biden’s social-policy plan. But the administration last week pared down the sum to $500 million in its latest blueprint for the package.

Ms. Khan has introduced her approach amid a personnel shake-up that could influence potential rule-making, current and former officials said.

Two staffers who have overseen the FTC’s privacy work in recent years, the deputy director of the Consumer Protection Bureau and the associate director of the Division of Privacy and Identity Protection, left in October to join law firms. An agency spokeswoman didn’t respond to a request for comment on the departures.

Separately, President Biden nominated Alvaro Bedoya, a privacy scholar at Georgetown University, to an open seat on the commission. If approved by the Senate, Mr. Bedoya’s appointment would return Democrats to the majority of the five-member panel. The commission currently has two Democrats and two Republicans.

Noah Phillips, a GOP commissioner, said that differing views on FTC rules illustrate why Congress is best suited to define guardrails, rather than the panel on which he could soon be in the minority.

“The resolution of that question is much better had by elected officials than by, potentially, just three people,” he said.

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### CP LHPC

#### The core antitrust laws are only sections 1 and 2 of the Sherman Act and section 7 of the Clayton Act.

The Antitrust Division 07 – Law enforcement agency that enforces the U.S. antitrust laws

“Antitrust Division Statement Regarding the Release of the Antitrust Modernization Commission Report,” The Antitrust Division, Department of Justice, April 2007, https://www.justice.gov/archive/atr/public/press\_releases/2007/222344.htm

The AMC has made many specific recommendations in its report, and the Division is in the process of reviewing all of them. The Division commends the AMC for its three primary conclusions:

Free-market competition should remain the touchstone of United States' economic policy. The Commission's conclusion in this regard is a fundamental starting point for policy makers. Over a century of experience has shown that robust competition among businesses, each striving to be increasingly successful, leads to better quality products and services, lower prices, and higher levels of innovation.

The core antitrust laws—Sherman Act sections 1 and 2 and Clayton Act section 7—and their application by the courts and federal enforcement agencies are sound and appropriately safeguard the competitiveness of the U.S. economy.

New or different rules are not needed for industries in which innovation, intellectual property, and technological innovation are central features. Unlike some other areas of the law, the core antitrust laws are general in nature and have been applied to many different industries to protect free-market competition successfully over a long period of time despite changes in the economy and the increasing pace of technological advancement. One of the great benefits of the Sherman and Clayton Acts is their adaptability to new economic conditions without sacrificing their ability to protect competition.

#### Modifications to the FTC Act do not count as modification to core antitrust laws

Bonder 18 – Partner at Alston & Bird

Teresa T. Bonder, Defendants’ Opposition to Federal Trade Commission’s Motion for Permission to Serve Nine Trial Subpoenas, Federal Trade Commission v. Actavis Inc., et al., US District Court for the Northern District of Georgia, April 2009, LexisNexis

The statute the FTC cites, 15 U.S.C. § 23, authorizes nationwide service of process only for claims “arising under the antitrust laws.” Id. “[A]ntitrust laws” is a defined term for purposes of the statute. And, as the FTC admits (Mot. at 6), that definition in 15 U.S.C. § 12(a) does not list the FTC Act—the basis for all of the FTC’s claims in this case. Thus, the nationwide service of process statute does not, by its plain language, apply to this case. That is the end of the matter. None of the FTC’s arguments for ignoring the statutory definition is convincing.

First, the FTC notes this case has been colloquially referred to as an “antitrust case” by the parties and the courts in a variety of contexts. But such colloquial references cannot trump the express definition of the term “antitrust laws” in the statute. The Supreme Court has specifically instructed that whether a statute “may be colloquially described as an antitrust [law]” is “of no moment” when interpreting Section 12. Nashville Milk Co. v. Carnation Co., 355 U.S. 373, 376 (1958). Instead, as the notes to 15 U.S.C. § 23 explain, “[t]he antitrust laws, referred to in text, are defined in section 12 of this title.” 15 U.S.C. § 23 note, attached as Ex. A. The Supreme Court has also said that the list in Section 12 “is exclusive.” Nashville Milk Co., 355 U.S. at 376. For this reason, courts maintain that “[t]he FTC Act is not an ‘antitrust law’ within the meaning of the Clayton Act, 15 U.S.C. § 12(a).” Fed. Trade Comm’n v. Onkyo U.S.A. Corp., 1995 WL 579811, at \*4 n.2 (D.D.C. Aug. 21, 1995).

#### Private Action – its enshrined in the core of antitrust laws, but the CP doesn’t expand it

Saint-Antoine et al 19 – Partner and co-chair of the antitrust practice group at Drinker Biddle & Reath LLP. JD from Columbia Law.

Paul H. Saint-Antoine, Joanne C. Lewers, Lee Roach, Lucas B. Michelen, John S. Yi, and Amanda M. Pasquini, “Private antitrust litigation in the United States: overview,” *Westlaw*, 1 March 2019, https://content.next.westlaw.com/6-632-8692?\_\_lrTS=20210213235748824&transitionType=Default&contextData=(sc.Default)&firstPage=true.

he legal basis for commencing a private federal antitrust action is contained in the Clayton Act (15 U.S.C. § 15(a)) ("any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States…"). Additionally, the Attorneys General of individual states have statutory authority to commence federal antitrust actions on behalf of their citizens (15 U.S.C. § 15c).

#### Treble damages – expansion of the antitrust laws necessarily allows for private suits—CP is germane because it’s a distinct model

Kenneth Ewing, JD, Steptoe & Johnson LLP, Private anti-trust remedies under

US law, 2007, <https://www.steptoe.com/images/content/1/7/v1/1731/2804.pdf>

One of the most important features of anti-trust enforcement in the US is the large and complicated role played by private remedies. Unlike most jurisdictions around the world, in which only governmental enforcement must be considered, the US grants private parties (and all state governments, acting on behalf of their citizens) a wholly independent right to seek:

Monetary damages.

Court injunctions to order potentially far-reaching changes in anti-trust defendants’ conduct.

In addition, special rules, such as the automatic trebling of damages, award of attorneys’ fees and costs, and aggregation of hundreds to thousands or more claims within a single action on behalf of a class of similarly placed claimants, dramatically increase both the attractiveness of bringing private claims and the stakes for defendants.

#### “Prohibitions” aren’t regulations – a prohibition must be issued prior to and separate from administrative determinations regarding specific issues.

Sweet 03 – Judge, United States District Court, New York Southern

Robert W. Sweet, Am. Nat'l Fire Ins. Co. v. Mirasco, Inc., 249 F. Supp. 2d 303, United States District Court for the Southern District of New York, March 2003, LexisNexis

In any case, even if the word "embargo" does not stretch so far, there is no doubt that the restriction against the importation of all IBP goods constitutes a "prohibition" under Clause D. HN15 "Prohibition" is defined by Black's Law Dictionary to be "a law or order that forbids a certain action." Black's Law Dictionary 1228 (7th ed. 1999). The dictionary definition is similar: "a declaration or injunction forbidding some action." Webster's New International Dictionary, Unabridged 1978 (2d ed. 1944). The common understanding of the word "prohibition" has similar connotations, with one exception. As Mirasco points out, any governmental action -- including the rejection on which insurance coverage is based -- could potentially be deemed a prohibition under the definitions above as a declaration forbidding the entry of goods. Therefore, a prohibition must be qualitatively different from a rejection. That difference is that the prohibition occurs prior to the government's dealing with the specific cargo at issue and is of a more sweeping nature than the simple administrative function performed by customs officials determining whether or not goods should be permitted into the country. Decree # 6 is such a prohibition, in that it was a law or declaration -- issued prior to, separate from and broader than the Egyptian authorities' administrative determination of whether the M/V Spero cargo should be permitted entry -- that forbids the importation of IBP products.

#### The CPs use of FTC authority has NO risk of hurting innovation

Dagen 10 – Special Counsel to the Director, Bureau of Competition, Federal Trade Commission.

Richard Dagen, August 2010, “RAMBUS, INNOVATION EFFICIENCY, AND SECTION 5 OF THE FTC ACT,” Boston University Law Review, http://www.bu.edu/law/journals-archive/bulr/documents/dagen.pdf

Using Section 5 to relax the reliance requirement in the standard-setting context would not create significant disincentives to participate in standard setting. The standard-setting process typically involves most of the affected parties. Thus, conduct giving rise to equitable estoppel may cost a firm nearly all of its expected return. As a result, patent holders account for this possibility whether or not the FTC steps in. The decision whether to participate in standard-setting activities should not be materially affected by Section 5 enforcement. It seems even more unlikely that ex ante incentives to engage in R&D would be materially affected by the prospect that broader reliance interests are protected by the Commission than by the patent law.238 Laches, too, has several significant drawbacks as a private remedy in the SSO context. Laches does not prevent collection of future damages: once the lawsuit is filed, damages start to accrue.239 This limitation typically would not result in consumer harm as firms can switch to competing products because the typical patent does not confer market power.240 In the standard-setting context, however, market-wide lock-in is far more likely and thus switching is not readily available. Therefore, consumer harm is much more likely. Moreover, because those implementing the standard cannot easily stop infringing when given notice, the requirement of “economic harm” will be harder to establish.241 Section 5 could incorporate laches principles and reduce consumer harm with little risk to innovation.242

#### That’s especially true for pro-competitive conduct

Dagen 10 – Special Counsel to the Director, Bureau of Competition, Federal Trade Commission.

Richard Dagen, August 2010, “RAMBUS, INNOVATION EFFICIENCY, AND SECTION 5 OF THE FTC ACT,” Boston University Law Review, http://www.bu.edu/law/journals-archive/bulr/documents/dagen.pdf

Section 5 can play and has played a **central role** in gap filling and upholding the spirit of the antitrust laws. This is particularly true where the conduct at issue does not involve transactional necessities or core competitive values and where the conduct is already condemned under external norms. Under these circumstances, the FTC can craft a clear standard, and there is little risk of chilling procompetitive conduct. The Section 5 cases discussed in this article also easily fit within the limiting principles suggested in recent speeches by FTC officials as well as recent cases.298 The scope for Section 5 discussed here is not meant to set an outer boundary or universal standard for Section 5. Rather, the discussion here centers around what one might call the low-hanging fruit that the Sherman Act does not grab. Notably, since 1992, the FTC has issued numerous complaints and consent agreements based on Section 5 as a gap-filling statute. During the period between Dell and N-Data, there has been little uproar in the antitrust or business community. Some will answer that those were only consent agreements. But antitrust counseling takes into account consent agreements. And of course, Dell and N-Data themselves were consent agreements. Indeed, many fear that antitrust and other substantive law is made primarily by consent. So to denigrate the pure Section 5 actions between Dell and N-Data as consent agreements would be disingenuous. The hostility toward Section 5 is often phrased in terms of the horrible effects on innovation from vague standards.299 But **Section 2 is subject to this same criticism,**300 as are equitable estoppel and other patent defenses. In short, that claim can be, and likely has been, made with respect to any private or public action that could potentially diminish the incentive to innovate. In the ranking of potential harms to innovation, **Section 5 should likely be relatively low**. The acceptance of the post-1980s FTC consent agreements is more likely due to the fact that the underlying conduct has not involved transactional necessities or core competition components. For this same reason, these consent agreements would have stood a far better chance in the courts of appeals than the litigated cases of the 1980s. The post-1980s consent agreements are based on sound economic principles and avoid the pitfalls of prior cases. The sky did not fall, and **Section 2 and Section 5 have peacefully coexisted**.

#### That’s uniquely key to solve their internal links about mergers – agency adjudication is comparatively better for analyzing prospective mergers to determine which ones are anticompetitive

Rogerson and Shelanski 20, Charles E. and Emma H. Morrison Professor of Economics at

Northwestern University. He has previously served as Chief Economist of the Federal Communications Commission, and Shelanski, Professor of Law at Georgetown University and a member of the firm Davis Polk & Wardwell LLP. He has formerly served as Director of the Bureau of Economics at the Federal Trade Commission and as Chief Economist of the Federal Communications Commission, ‘20

(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.

#### You should massively privilege the proximate, intrinsic connection between our links, internal links, and impacts—Compared to theirs, which on-face flunk the test for proving the anticompetitive conduct they affect is the reverse-causal determinant of their terminal impacts.

Stout 19 – Director of Innovation Policy, International Center for Law & Economics

Kristian Stout, J.D., Ph.D., Fellow at the Internet Law & Policy Foundry, as well as the Eagleton Institute of Politics, former technology entrepreneur and a lecturer in the Computer Science Department at Rutgers University, Chair of the Asset Forfeiture Working Group for the NJ State Advisory Committee to the United States Commission on Civil Rights, served on the Broadband Deployment Advisory Committee for the Federal Communications Commission, graduated magna cum laude from the Rutgers University School of law, and served on the editorial board of the Rutgers Journal of Law and Public Policy, We Should Not Have Our Constitution Redesigned by Antitrust Lawyers, 30 December 2019, <https://truthonthemarket.com/2019/12/30/we-should-not-have-our-constitution-redesigned-by-antitrust-lawyers/>

The complicated problem with the big tech companies is that they indeed could be part of a broader set of social ills mentioned above. Its complicated because it’s highly unlikely that these platforms cause the problems in society, or that any convenient legal tool like antitrust will do much to actually remedy the problems we struggle with.

#### And, reversibility and cognitive discounting of hidden costs mean we should be very, very cautious.

Stout 19 – Director of Innovation Policy, International Center for Law & Economics

Kristian Stout, J.D., Ph.D., Fellow at the Internet Law & Policy Foundry, as well as the Eagleton Institute of Politics, former technology entrepreneur and a lecturer in the Computer Science Department at Rutgers University, Chair of the Asset Forfeiture Working Group for the NJ State Advisory Committee to the United States Commission on Civil Rights, served on the Broadband Deployment Advisory Committee for the Federal Communications Commission, graduated magna cum laude from the Rutgers University School of law, and served on the editorial board of the Rutgers Journal of Law and Public Policy, We Should Not Have Our Constitution Redesigned by Antitrust Lawyers, 30 December 2019, <https://truthonthemarket.com/2019/12/30/we-should-not-have-our-constitution-redesigned-by-antitrust-lawyers/>

Further, not only is every tool not equal in dealing with the harms these companies could cause, we must be mindful that, even when some harm occurs, these companies generate a huge amount of social welfare. Our policy approaches to dealing with misconduct, therefore, must be appropriately measured.

#### It’s literally likely to cause *net-harm*.

Schrepel 20 – Professor of Law, Utrecht & Professor of Sciences, Po Paris

Dr. Thibault Schrepel, Assistant Professor at Utrecht University School of Law, Associate Researcher at University of Paris Panthéon-Sorbonne and Invited Professor at Sciences Po Paris, ARTICLE: Antitrust Without Romance, 13 NYU J.L. & Liberty 326 (2020), Nexis Uni

The Legal Vagueness Surrounding Moral Concepts. The second risk created by the moralization of antitrust law is the creation of legal errors, whether type I or II. 250 More broadly, it risks the destabilization of all antitrust rules. Indeed, as I have argued above, antitrust law is ineffective and counterproductive when it does not pursue objectives that can be quantified and assessed. The same goes [\*392] when it is enforced to protect a morality whose outlines are necessarily drawn from personal experience. 251 In other words, moralizing antitrust law leads to more damage, through government failures, than it solves by addressing market failures, because such moralization prevents data from getting in the way of a good story. 252

#### Antitrust is already overdeterrent – additional expansions of liability will ultimately harm consumers

Nuechterlein, JD, partner and co-leader of Sidley's Telecom and Internet Competition practice, and Muris, George Mason University Foundation Professor of Law, served from 2000-2004 as Chairman of the Federal Trade Commission, ‘21

(Jon and Timothy J., “Private Antitrust Remedies: An Argument Against Further Stacking the Deck,” March, <https://instituteforlegalreform.com/wp-content/uploads/2021/03/March-2021-Antitrust-Paper-FINAL.pdf>)

Advocates of expanding private antitrust remedies begin with the premise that “private enforcement deters anticompetitive conduct” and conclude, in the words of the Report, that legal “obstacles” to recovery by “private antitrust plaintiffs” should be eliminated to maximize deterrence.24 But even if the premise is true,25 the conclusion would not follow. The Report appears to assume that the more deterrence the law provides, the better, and that any “obstacles” to private recovery should thus be removed.26 But that position ignores the consequences of overdeterrence, including the prospect that firms will respond to the threat of draconian penalties in ways that reduce the threat of liability but that ultimately harm consumers.

Overdeterrence is a particular concern in antitrust doctrine because the line separating lawful from unlawful conduct can be blurred and much of the conduct falling on the lawful side of the line is socially beneficial. As economists William Baumol and Alan Blinder explain: One problem that haunts most antitrust litigation is that vigorous competition may look very similar to acts that undermine competition …. The resulting danger is that courts will prohibit, or the antitrust authorities will prosecute, acts that appear to be anticompetitive but that really are the opposite. The difficulty occurs because effective competition by a firm is always tough on its rivals.27

For example, excessive antitrust remedies for predatory pricing may not only deter firms from engaging in conduct that would ultimately be deemed unlawful, but also induce them to keep prices well above their costs and, in effect, hold a price umbrella over smaller, potentially litigious rivals. Such a regime would result in less competition and higher prices for consumers—the very outcomes the antitrust laws are designed to prevent.

Proposals to slap another layer of deterrence on top of existing private remedies are particularly perverse because, as discussed above, the current U.S. regime is already overdeterrent, in that it subjects firms to unusually severe liability risks even for overt conduct subject to the rule of reason. If anything, Congress should consider aligning private antitrust remedies with remedies for analogous common law torts by, for example, limiting treble damages and one-way fee-shifting to cases involving hard-core violations that may elude detection, such as price-fixing cartels. In all events, Congress should not make a bad situation worse by ratcheting up the level of overdeterrence.

#### Every other nation does the CP which proves that public enforcement with SINGLE damages is sufficient

Juška, PhD candidate, Leiden Law School, Leiden University, Leiden, ‘18

(Žygimantas, “The Effectiveness of Antitrust Collective Litigation in the European Union: A Study of the Principle of Full Compensation,” IIC - International Review of Intellectual Property and Competition Law volume 49, pages63–93)

The deterrent function is pursued through the imposition of competition fines, which punish the infringer (in other words, specific deterrence). It also deters other persons from engaging in or continuing behaviour contrary to competition rules (in other words, general deterrence).Footnote9 According to the EU, public enforcement is considered to have sufficient means for achieving deterrence.Footnote10 In this respect, it must be borne in mind that EU competition law focuses exclusively on imposing fines on infringing businesses, but Member States are given space to introduce other types of penalties.Footnote11 In order to combat cartels, a majority of EU Member States have incorporated criminal sanctions on individuals (such as imprisonment or criminal fines) in their antitrust enforcement schemes.Footnote12 However, these sanctions have very rarely been imposed in practice.Footnote13 Therefore, public authorities in the EU jurisdictions have failed in setting an example for criminal penalties being effectively utilized in public enforcement.

Achieve Corrective Justice When the Infringement Has Taken Place

This goal can be pursued if two conditions are met.Footnote14 First, corrective justice is achieved if the monetary remedy deprives the wrongdoer of any benefit gained from illegal conduct. This measure may be used when public enforcers impose a sub-optimal fine. As such, the enforcement may be reinforced by imposing additional fines on the wrongdoer in order to fully remedy the anti-competitive situation. Second, corrective justice is achieved when victims are compensated for the harm suffered. According to the Directive on damages actions, the objective of compensation is fulfilled when victims effectively exercise the right to claim and to obtain full compensation for the harm suffered. However, this objective should not lead to overcompensation of the claimants, whether by means of punitive, multiple or other kinds of damages.Footnote15 For this reason, the enforcement of the first condition may not comply with the principle of full compensation, as additional fines (besides damages on fully compensating victims) may be required to ensure corrective justice. As a consequence, only the second condition will be further discussed in this paper.

#### Private litigation creates pro-defendant precedent that undermines government enforcement---turns case

Crane, Frederick Paul Furth Sr. Professor of Law, Michigan Law, ‘19

(Daniel A., “Toward a Realistic Comparative Assessment of Private Antitrust Enforcement,”

*In Reconciling Efficiency and Equity: A Global Challenge for Competition Policy*, edited by Damien Gerard, and Ioannis Lianos, 341-54. Cambridge: Cambridge University Press, 2019)

Even if public enforcement proceeds unabated by an increase in private enforcement, the efficacy of public enforcement may be hindered if an increasing amount of antitrust law is made in the context of private litigation and then applied wholesale to public enforcement. The US experience contains telling instances in which antitrust principles created in private litigation have been applied to defeat government claims in subsequent cases. Predatory pricing provides a case in point. After many years in which the government brought no predatory pricing cases but a very pro-defendant legal reform was occurring in scores of private predatory pricing cases, the Justice Department finally brought a predatory pricing case against American Airlines, which it then lost under the new predatory pricing case law.48 Something similar occurred as to “pay-for-delay” patent settlements, where the FTC was stuck for a decade with a very pro-defendant legal rule created in private litigation.

#### They have read OUR solvency advocate BACK AT US! They cut earlier parts of the article where they list out proposals, but the END conclusion that the authors support is REGULTIONS in lieu of antitrust

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

A number of commentators have advocated expanding competition enforcement through rulemaking. For example, Tim Wu advocates more regulation that he describes as “using industry-specific statutes, rulemakings, or other tools of the regulatory state to achieve the traditional competition goals associated with the antitrust laws.”50 Rohit Chopra contends that “[r]ulemaking would serve to advance clarity and certainty about what types of conduct constitute—or do not constitute—an ‘unfair method of competition.’”51 While the kind of regulation we suggest might fit within the frameworks of what other commentators have suggested, we propose something much more limited. We do not advocate the use of the entire toolkit of traditional utility regulation, nor do we suggest rulemaking for broader, general-purpose antitrust enforcement outside of particular contexts where agency expertise is most likely to have advantages over traditional adjudication. We focus on why regulation in the particular context of digital platforms has comparative advantages over adjudication. We focus on access rules, similar to those that regulators have used to promote competition in a variety of different industries.52 As we will discuss, the FCC has successfully used these types of regulations in various sectors of the telecommunications industry to deal with the same general sorts of competition issues that arise in digital markets.53

The kinds of regulation that one might consider for application to digital platforms include (1) interconnection and interoperability requirements and common standards, (2) limits on discrimination, (3) data portability requirements, (4) line-of-business restrictions, and (5) additional restrictions on certain business practices currently subject to rule of reason analysis under general antitrust statutes. We discuss each of these categories in more detail below. However, one issue that applies to all of the categories is worth discussing at the outset: whether the regulations should apply industrywide—namely, to all digital platforms—or only to dominant platforms. We think that in most cases it will only be necessary to apply these regulations to firms that the regulator determines are dominant. This means that a key part of the regulatory regime will be creating and applying standards to determine whether a firm is in fact a “dominant” digital provider. Note also that, in many cases, the obligations imposed on dominant digital providers will take the form of requiring the dominant provider to conform to various common standards, in order to reduce switching costs to users or to enable nondominant firms to interconnect or interoperate with dominant providers. In this case, although the standards will not be mandatory for non-dominant providers, those providers will nonetheless likely conform to the standards to take advantage of the protections offered by the regulation.

#### The CP solves the nuance warrant in the card BETTER than the plan, its static and can’t adapt to changing markets

Brennan 18 – Surrey Professor of Law, Harvard and Professor of Public Policy & Economics, UMD

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A. Better Options

In looking at whether antitrust should pursue other objectives in addition to economic efficiency, two factors need to be compared. One is the contribution antitrust enforcement could make toward achieving that objective. That contribution has to be assessed in light of whether other policy tools can achieve those goals. For most if not all of the alternative objectives that have been recently proposed, there are other, better-tailored policy tools. Moreover, those tools can be implemented in ways that cover society and the economy at large—they do not depend on whether a particular firm, person, or group of firms or persons may have violated the antitrust laws.

Innovation is a good example.28 There can be little doubt that innovation is crucial to economic well-being; whether it has only a lot to do with it or almost all is the range of the debate. For this reason, many have argued that antitrust enforcement should be constrained, lest it get in the way of the profits that spur innovation. Others have argued that competition complements innovation. Most likely is that sometimes competition complements innovation, and sometimes it does not. Only a fact-specific inquiry with relevant evidence, for example, documents saying that if a merger goes through innovation effort will be increased or decreased, can tell whether an innovation effect merits consideration.

However, the arguments here as to whether antitrust should focus on innovation is not whether one side or the other of the monopoly versus competition debate is right. Rather, it is that other policies are available, and are employed, to promote innovation. The list includes intellectual property law, investment tax credits, research and development subsidies, government institutes, laboratories and research programs, industry and public grants to universities, among others. Whether antitrust has anything significant to add to this, beyond looking for specific evidence of innovation promotion or reduction in a specific case, is doubtful. Notably, the application of these programs does not depend on the happenstance of an antitrust violation. If one thought, for example, that monopoly profits promote innovation, then perhaps industries should be told to form cartels regardless of whether they were so inclined.

The other crucial point is that antitrust is largely the primary if not only tool we have to promote static efficiency, by preventing agreements or practices that harm consumers by limiting competition. Debates continue, to be sure, on the conditions (if any) necessary for whether a particular agreement, practice, or merger reduces economic efficiency or harms consumers. Those will not be resolved here, but the overall point remains that if antitrust enforcement is to be guided by concerns other than static efficiency, innovation, or others in this list, there may be little left that can take its place.29

In sum, antitrust enforcement would likely have only a limited effect on other policy objectives in the presence of better designed and more broadly applicable policy tools. On the other hand, antitrust enforcement is our best and perhaps only policy tool to promote static economic efficiency. Combining these suggests that redirecting antitrust enforcement toward other goals is not likely to result in significant benefits in these other areas and may well reduce competition and efficiency. Such redirection should be advocated and approached with caution.

#### CP Can include grants of new legal authority via congress which solve any reasons why the FTC would fail now, but that’s still outside the purview of Antitrust

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

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.

#### Previous court rulings have given great weight to commission interpretations of section 5 – failed cases are because of a lack of evidence not incorrect interpretations

FTC Commission 21

July 9 2021, “STATEMENT OF THE COMMISSION On the Withdrawal of the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act,” Federal Trade Commission, https://www.ftc.gov/system/files/documents/public\_statements/1591706/p210100commnstmtwithdrawalsec5enforcement.pdf

At the heart of the statute was Section 5, which declares “unfair methods of competition” unlawful.16 By proscribing conduct using this new term, rather than codifying either the text or judicial interpretations of the Sherman Act, the plain language of the statute makes clear that Congress intended for Section 5 to reach beyond existing antitrust law. The structure of Section 5 also supports a reading that is **not limited** to an extension of the Sherman Act. Notably, the FTC Act’s remedial scheme differs significantly from the remedial structure of the other antitrust statutes. The Commission cannot pursue criminal penalties for violations of “unfair methods of competition,” and Section 5 provides no private right of action, shielding violators from private lawsuits and treble damages. In this way, the institutional design laid out in the FTC Act reflects a basic tradeoff: Section 5 grants the Commission extensive authority to shape doctrine and reach conduct not otherwise prohibited by the Sherman Act, but provides a more limited set of remedies.17 The legislative debate around the FTC Act makes clear that the text and structure of the statute were intentional. Lawmakers chose to leave it to the Commission to determine which practices fell into the category of “unfair methods of competition” rather than attempt to define through statute the various unlawful practices, given that “there were too many unfair practices to define, and after writing 20 of them into the law it would be quite possible to invent others.”18 Lawmakers were clear that Section 5 was designed to extend beyond the reach of the antitrust laws. 19 For example, Senator Cummins, one of the main sponsors of the FTC Act, stated that the purpose of Section 5 was “to make some things punishable, to prevent some things, that cannot be punished or prevented under the antitrust law.”20 The Supreme Court has **repeatedly affirmed this view** of the agency’s Section 5 authority, holding that the statute, by its plain text, does not limit unfair methods of competition to practices that violate other antitrust laws. 21 The Court, recognizing the Commission’s expertise in competition matters, has **given “deference”22 and “great weight**”23 to the Commission’s determination that a practice is unfair and should be condemned. Although the Commission suffered a few notable defeats under Section 5 in the early 1980s, those decisions in no way support the 2015 Statement’s decision to tether Section 5 to the Sherman and Clayton Acts. For example, in Boise Cascade, the Ninth Circuit ruled that the evidence did not support the Commission’s factual finding that the defendants’ conduct had an adverse effect on prices.24 In Ethyl, the Second Circuit explicitly held that the FTC’s Section 5 authority is broader than the Sherman or Clayton Acts, but it required the Commission to show that the challenged conduct is “collusive, coercive, predatory, or exclusionary,” or has an “anticompetitive purpose,” or “cannot be supported by an independent legitimate reason.”25 In short, these decisions confirm that **Section 5 empowers the Commission** to prohibit conduct that does not violate other antitrust laws, so long as it clearly explains why the practice is illegitimate and bases that ruling on substantial evidence.

#### Courts will defer even in the broad changes from Sherman and Clayton

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Justin, 2014, “Chevron and the Limits of Administrative Antitrust,” University of Pittsburgh Law Review, Vol. 76.

That Chevron applies to FTC constructions of Section 5 does not necessarily mean that the courts will defer to agency constructions of the statute. Actual deference in any specific case will turn on the Chevron step one and two inquiries concerning whether the statute is ambiguous and, if so, whether the agency’s interpretation is a permissible construction. Given the inherently and deliberately ambiguous nature of Section 5, it seems very likely that any agency action to regulate the conduct of a firm will satisfy Chevron’s step one inquiry, provided that it is arguably related to competition.

It is more difficult to consider whether an agency construction of Section 5 would pass Chevron step-two without knowing the specific construction in question. At this stage, the question is whether the specific construction is permissible. Here too, however, it seems likely that any agency construction would be deemed permissible. As discussed previously, there is substantial debate within the antitrust literature on what constitutes anticompetitive conduct,238 and it is a near certainty that a court would deem as permissible any FTC construction of Section 5 arguably in line with non-fringe understandings of what constitutes anticompetitive conduct under the Sherman or Clayton Acts. This conclusion would likely hold even where the FTC may disagree with judicial constructions of the Sherman and Clayton Acts.

That alone would greatly expand the scope of Section 5 vis-à-vis current understandings of antitrust law, but Section 5 is not constrained by the Sherman and Clayton Acts, and there is no reason to think that FTC interpretations of “unfair” would be constrained by economic logic. While the FTC’s separate unfair acts and practices authority is expressly constrained by a consumer welfare test, its unfair method of competition authority is not. The history of the FTCA offers a sufficient basis for courts to find almost any construction of an “unfair” method of competition permissible—even if that construction is based in supremely uneconomic logic. This history, moreover, offers little, if anything to suggest that such a construction is impermissible.239 Thus, it is likely that the FTC could construe any form of conduct (i.e., a “method”) that harms anyone (i.e., “unfair”) operating in the same product market as the entity engaging in that conduct (i.e., “competition”) to be an unfair method of competition

#### Case-by-case adjudication model locks in bad precedent

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

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

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

#### Regulations allow for enhanced clarity and adaptability to optimally deter conduct

Posner 10 – Judge in the U.S. Court of Appeals for the Seventh Circuit, Senior Lecturer at the University of Chicago Law School

Richard A. Posner, “Regulation (Agencies) versus Litigation (Courts): An Analytical Framework,” Regulation vs. Litigation: Perspectives from Economics and Law, National Bureau of Economic Research, Inc., 2010, https://ideas.repec.org/h/nbr/nberch/11956.htm

Ex ante: pros. The ex ante approach promotes clarity of legal obligation and therefore presumably better compliance (fewer inadvertent violations) by laying down rules in advance of the regulated activities. Ex ante regulation is activated before there is a loss, unlike a lawsuit; it can be centrally designed and imposed (for example, by a single agency such as the Food and Drug Administration, as opposed to a decentralized judicial system); and it is enforceable by means of light penalties, because the optimal penalty for creating a mere risk of injury is normally lighter than the optimal penalty for causing an actual injury. This means, however, that ex ante and ex post regulation actually are inseparable; because compliance with rules is never 100 percent, there must be a machinery for punishing violators, though the machinery may involve penalties meted out by the regulatory agency itself, with judicial involvement limited to judicial review of the penalty proceeding. But while rules involve heavy fixed costs (i.e., designing the rule in the first place), if they are very clear and carry heavy penalties compliance may be achieved without frequent enforcement proceedings, so marginal costs may be low. Rules are therefore attractive when the alternative would be vague standards, resulting in frequent actual or arguable violations and hence frequent enforcement proceedings.

As this discussion shows, ex ante regulation and rules have an affinity. Ex ante regulation enables exploitation of the economizing properties of rules as preventives. With vague standards, the regulatory emphasis shifts to seeking deterrence by proceedings to punish violators.

### FTC

#### New statutory instruction fails—courts brazenly misinterpret clear commands—1nc says that’s true empirically, and it’s inevitable

Crane, Frederick Paul Furth, Sr. Professor of Law, University of Michigan, ‘21

(Daniel A., “Antitrust Antitextualism,” 96 Notre Dame L. Rev. 1205)

This Article has shown that, historically, the judiciary has treated the antitrust statutes as broad delegations to the courts to create a pragmatic common law of competition, even when the statutes plainly said something more specifically prohibitory. What, then, are the strategies available to a reformist Congress seeking to rein in business power through remedial antitrust legislation?

The one strategy that does not seem especially promising is simply writing clearer statutes. The antitrust statutes that the courts wrote down in favor of big business did not suffer from a lack of clarity or, if they did, not in the textual implications the courts chose to ignore. Strikingly, the courts continue to insist that the antitrust statutes are indeterminate delegations of common-law power, even while admitting in candor that they have simply chosen to ignore the statutes’ plain meaning in favor of a common method of deciding antitrust cases. For instance, in Professional Engineers, Justice Stevens remarked for the Court that “the language of § 1 of the Sherman Act . . . cannot mean what it says” and therefore that Congress must not have intended “the text of the Sherman Act to delineate the full meaning of the statute or its application in concrete situations,” thus justifying the courts in shaping the “statute’s broad mandate by drawing on common-law tradition.”255 Given over a century’s tradition of interpreting antitrust statutes as invitations to continue a common-law process whatever else is suggested by the statute’s text, it is difficult to see how simply accumulating stern new language in new texts would lead to a different result.

#### Magnuson-Moss act ruins any durable data standards because the FTC lacks the authority to set rules

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Becky Chao, Eric Null, & Claire Park, November 20 2019, “Enforcing a New Privacy Law,” New America, https://www.newamerica.org/oti/reports/enforcing-new-privacy-law/the-ftc-is-currently-the-primary-privacy-enforcer-but-its-authority-is-limited

Third, the FTC has limited rulemaking authority under the Magnuson-Moss Act. The Act requires the FTC to show “substantial evidence in the rulemaking record” that a practice is prevalent or widespread before it can be declared an unfair and deceptive act or practice.6 Since Magnuson-Moss was enacted in 1975, the FTC has rarely issued regulations under its rulemaking authority. As Getachew explained, “the key ingredient [the FTC is] missing is rulemaking authority, particularly for areas of concern [like] data processing [and] data practices that harm [members of marginalized communities or general consumers]. We’ve seen the Section 5 unfair and deceptive [authority] extend to as much as it can, but without clear rules, without strong rules, it’s hard to really go further than that.”

#### Legal and resource barriers doom FTC action on data privacy cy

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Becky Chao, Eric Null, & Claire Park, November 20 2019, “Enforcing a New Privacy Law,” New America, https://www.newamerica.org/oti/reports/enforcing-new-privacy-law/the-ftc-is-currently-the-primary-privacy-enforcer-but-its-authority-is-limited

Despite these additional statutes, the FTC’s authority is limited and creates challenges in relying on the agency to protect privacy. Not only does the agency lack a strong record on enforcing privacy, but it also lacks sufficient capacity to do so. Congress could grant the agency more authority and resources to protect privacy, but it is unclear whether it would lead to stronger enforcement.

The FTC’s authority on privacy regulations is limited

The FTC has limited privacy authority. It is constrained as an enforcement agency that focuses primarily on interstate commerce and consumers. As Banker argued, “a lot of the criticism that the FTC is receiving about [its enforcement record] is not necessarily fair, because ... to date, it has not been given a clear mandate, a clear set of rules to work with, and the resources to go with it, in order to be that strong enforcer [on privacy].”2 The FTC’s core Section 5 authority does not define standards for unfairness and deception. Because its privacy enforcement must fit within this authority, the agency’s current jurisdiction does not allow it to sufficiently protect against myriad privacy threats that are not easily characterized as unfair or deceptive practices. Further, not only are there questions about whether FTC enforcement provides strong enough incentives for companies to avoid violating existing laws,

there are also questions about the extent to which the FTC’s enforcement actions under Section 5 actually protect consumers if they primarily seek to address companies’ disclosure and notice to consumers. In addition, it is not clear whether the FTC is best equipped to address privacy harms because it lacks capacity, especially on technological expertise. Its authority is further restricted by its limited rulemaking authority under Magnuson-Moss.

#### Culture is a much larger and better explanatory factor for populism than economics

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Yotam Maraglit, Fall 2019, “Economic Insecurity and the Causes of Populism, Reconsidered,” Journal of Economic Perspectives, https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.33.4.152

For example, people who worry about cultural homogeneity or changing ethnic composition of their communities are more likely to adopt the view that immigration has negative economic consequences (Sniderman and Hagendoorn 166 Journal of Economic Perspectives 2007; Brader, Valentino, and Suhay 2008). Similarly, individuals who are anxious about the cultural aspects of globalization are more likely to believe that trade is economically harmful (Margalit 2012; for findings consistent with this view, see O’Rourke and Sinnott 2001; Mansfield and Mutz 2009). Using an experiment, I sought to bring some evidence to bear on the direction of causality. I found that when individuals, particularly the less educated, were exposed to a set of four questions designed to trigger preoccupation with cultural change—for example, whether or not they agree with the statement “our traditional way of life is getting lost”—they expressed a substantially more negative view about the impact of trade than a control group that wasn’t exposed to the treatment. Other experimental work provides additional examples of ways in which cultural factors shape beliefs and attitudes about economic issues such as welfare, antipoverty policy, and health care (Gilens 2009; Tesler 2012). Sociological and ethnographic work looking at communities supportive of the populist right provides a more vivid illustration of this causal pathway. These ethnographies—of the French working-class town of Riems (Eribon 2013), of rural communities in Wisconsin (Cramer 2016) and Louisiana (Hochschild 2016), and of declining industrial enclaves in Britain (Dagenham) and the United States (Youngstown, Ohio) (Gest 2016)—document compellingly the ways in which perceived threats to social status play out politically. In doing so, they show how cultural distance and estrangement from the dominant groups in society are intertwined with people’s perception of being economically left behind. For example, these studies detail how people who live in rural areas often harbor deep cultural resentment toward political and economic elites for their perceived disregard, disrespect, or condescension. This resentment then often feeds certain beliefs about the economy, such as the idea that government resources are allocated unfairly, the notion that urban residents (and particularly minorities) get more than their fair share of resources, or the strong conviction that immigrants are a major drain on the government budget. Thus, while economic change can be a source of grievance expressed along cultural lines, in the form of antipathy toward a certain ethnic group, it is also the other way around: cultural changes generate discontent around economic issues. Consequently, when populist politicians address issues such as immigration, trade, or rural-urban disparities, they tap into public disaffection that goes beyond voters’ concern with the material impact of those issues.

## 1NR

### Innovation

#### China’s aging population structurally dooms their attempts to compete with the U.S.

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Minxin Pei, August 30 2021, “Minxin Pei on why China will not surpass the United States,” The Economist, https://www.economist.com/by-invitation/2021/08/30/minxin-pei-on-why-china-will-not-surpass-the-united-states

AMERICA’S CHAOTIC exit from Afghanistan must be seen by Chinese leaders as the latest proof of its irreversible decline. But their euphoria will be short-lived. As consummate realists, they know that President Joe Biden is taking the United States out of the “grave of empires” so that he can conserve America’s power to prevail against China in the next chapter of their contest for global supremacy.

In its essence, the United States-China “strategic competition” is less a confrontation between duelling ideologies than a familiar clash between a hegemonic power and its challenger. It seems reasonable to bet that although China will continue to narrow the gap in most dimensions of power in the coming two decades, it will ultimately fail to surpass America. This may elicit a sigh of relief in some quarters of Washington. But a China that has reached near-parity will nevertheless be a formidable geopolitical adversary.

America has adopted a strategy to thwart China’s rise. Framed as “economic decoupling”, this has featured a trade war to force global supply chains to relocate out of China and a tech war to choke off the flow of critical technologies and know-how to China. Few should doubt the efficacy of these measures—just witness how quickly American sanctions have crippled Huawei, the Chinese telecom giant that used to be the leader in 5G technology. But on its own this strategy will only slow down, not stop, China’s advance.

China still has relatively strong economic momentum in the coming decade. Its GDP is about 70% of America’s at market exchange rates (and is already larger than America’s at purchasing-power parity). Yet Chinese income per person, at slightly over $10,000 a year, is about one-sixth of Americans’ standard of living. This implies that China has a lot more room to grow, thanks to its huge internal market, its dynamic private sector and its vast pool of workers.

China will also make substantial, albeit slower, progress in the tech sector, despite American restrictions. Beijing has vowed to make huge investments in science and technology to reduce its vulnerability. To be sure, President Xi Jinping is unlikely to realise his ambition of full technological self-sufficiency. However, with millions of well-trained scientists and talented engineers, and trillions of dollars in R&D investment in the coming decade, China should be able to gain greater technological capabilities.

Even if China surpasses the United States as the world’s largest economy at market exchange rates in the next fifteen years (assuming its annual growth averages 4.75% compared with 2% for America) its GDP per person will still be about one-fourth that of America. A country four times as rich as its closest geopolitical foe has, in effect, more spare cash to invest in military forces and R&D. It should have the means to stay ahead of the game, assuming that American leaders can muster the necessary political will and unity.

What is more, China is ageing faster than America. The UN projects that in 2040 the median age in China will be 46.3 years, compared with 41.6 for the United States. As a result, China’s growth is expected to slow down significantly in the 2030s.

In other areas of power, America’s lead will prove insurmountable. It will continue to have the world’s best research universities, most innovative technology firms and most efficient financial markets.

Ironically, the ruling Chinese Communist Party (CCP) will be China’s biggest obstacle in its race with America. The party’s existential fear of losing control will impel it to maintain a tight grip on the economy, making it less efficient. Giant but ossified state-owned enterprises will continue to waste resources. The CCP’s arbitrary exercise of power—as exemplified by its sweeping crackdown on China’s most successful tech companies, such as Didi and Alibaba—will stifle the innovation and growth of its tech sector more effectively than America’s sanctions. Most alarmingly, as China descends further into personalistic rule, it will be less able to correct or reverse the questionable decisions made by its top leadership.

Factor in the capabilities of America’s allies, and the balance of power tilts further in America’s favour. Whereas China has no real allies, America is blessed with many. And whereas the United States has no big rivals in its region, China must contend with several powerful adversaries, notably India and Japan, in its immediate neighbourhood. China is far weaker than most people realise.

#### The U.S. is still beating China for the most foundational AI innovations

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Cung Vu, October 2021, “Technology and Innovation Race: US Losing Edge to China?” RSIS, https://www.rsis.edu.sg/wp-content/uploads/2021/10/CO21148.pdf

Ecosystems Ecosystems consist of factors such as education, venture capital, culture, legal infrastructure, diversified workforce, and these would allow technology/ideas to materialise into final products or real-life applications. For example, the US Silicon Valley ecosystems have allowed a small network of specialised electronic components manufacturers to grow into the most successful trillion-dollar corporations in the world. They include Intel, Cisco, Google, Yahoo, Facebook, Apple, Tesla, Uber, to name a few. A mirror of such successes in the US exists in China – Baidu, Alibaba, Tencent, Xiaomi, DiDi. Also, Huawei is the world’s leading supplier of 5G telecom equipment. These Chinese companies use artificial intelligence (AI) heavily to support their businesses. China has led the world in using AI for surveillance. SenseTime is well known in facial recognition. Hikvision and Dahua Technology control a third of the world’s security camera market. In this domain, the US is behind because of concerns over individual privacy rights. Regulations, Policy & Geopolitics Since technology and innovation are very critical to national security, both China and US governments have been investing in key technologies to strengthen their respective advantages vis-a-vis the other. AI is one of them. It will be the driver of future economic growth and resilience in national security systems. Media reports indicate that China has been using all means to obtain foreign technologies in advancing its own development. Accessing academic research, investing in start-ups worldwide, and attracting joint ventures into China have been intensive and extensive. Foreign firms go into joint ventures and willingly transfer technologies as they gained in productivity and profitability. In 2015, China launched “Made-in-China 2025” focusing on 10 industries, all built on AI to a certain extent, with the goal of dominating the global market by 2049. However, China’s biggest challenge is the dependence on US semiconductor technology. Every area of the Made-in-China 2025 plan relies on semiconductors, mainly from five US manufacturers: AMD, Intel, Micron, Nvidia and Qualcomm. US Plays Catch-Up The US under the Trump administration introduced regulations such as the Foreign Investment Risk Review Modernisation Act (2018), Export Control Reform Act (2018), and the National Defence Authorisation Act (2019) to ban the federal government from purchasing equipment from certain Chinese vendors or to export technology which has wide impact on industries. Specific industries, ranging from robotics, AI, and autonomous vehicles, as well as companies like Huawei, ZTE, Dahua Technology, Hytera, and Hikvision were all hit to different degrees of severity by these bans. Not to be outspent in research funding by China, the Biden administration has also pledged to more than double the amount of investment in science and technology, focusing on areas like AI and quantum computing. Federal spending on research and development is upped to 2% of GDP from about 0.7% presently. In June 2021, the US Senate passed the United States Innovation and Competition Act, a US$250 billion legislation designed to boost US semiconductor production, scientific research, development of AI, and space exploration in the face of growing competition from China. Recent Setbacks for China Companies There have been a number of recent setbacks for Chinese high-tech companies. Their reported use of a financial structure to raise money from foreign investors to bypass China’s foreign investment restrictions was declared foul. In February 2021, the State Council’s Anti-Monopoly Committee imposed anti-competition penalties on major firms like Alibaba and Tencent. The Cyberspace Administration of China accused DiDi of illegally collecting and using personal information, and punished DiDi for alleged violation, days after its initial public offering. DiDi’s share price fell by a quarter, losing some US$21.5 billion in market value. These crackdowns have rattled the market and wiped US$1 trillion off the value of overseas-listed Chinese tech stocks since February 2021, according to a report from Goldman Sachs. The pressure on Chinese companies is coming from the US regulators, too. The Holding Foreign Companies Account Act passed in December 2020 empowers the Securities and Exchange Commission (SEC) to require foreign companies to disclose shareholder information and auditing records. This is in direct conflict with the revised China Securities Law to prevent Chinese firms from releasing documents related to their securities outside of China without approval from China Securities Regulatory Commission. The combination of new regulatory pressure from both Beijing and Washington seems likely to force a significant number of Chinese companies to delist from US stock exchanges soon. Where They Stand Currently, China leads in vision, speech recognition, and natural language processing capability. But it still lags behind the US in core AI technologies to design and build algorithms to allow computers to function more like the human brain. China also lacks expertise in designing semiconductor chips that can support advanced AI systems. The US will continue the lead in technology and innovation if it recognises their critical role. In the circumstances, the US can be expected to provide adequate funding for research and development, and the ecosystems to attract talents from over the world so as to maintain its edge

### DA Blockchain

#### Perception—companies do not expect immediate statutory/legal changes—enforcement only affects a small slice of deals

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Brandon Zero, "Antitrust Deal Scrutiny More Storm Than Fury," Mergers & Acquisitions, 8-4-2021, <https://www.themiddlemarket.com/news-analysis/threat-of-antitrust-deal-scrutiny-seen-more-storm-than-fury>

What’s the forecast for regulatory scrutiny of deals so far this year? There may be more cloud cover than storms on the M&A horizon. New antitrust scrutiny and a longer review time are potential looming threats, but they lack the lightning needed to actually block deals.

Let’s look at these twin threats and the risks they pose to dealmaking. President Biden’s executive order has spurred the Department of Justice and Federal Trade Commission to increase scrutiny of deals in a move that, “if implemented by regulators and upheld by the courts…could lead to the most robust antitrust enforcement in decades,” writes Debevoise & Plimpton lawyers in a recent note. But that’s a big ‘if.’ The attorneys write that actually intensifying competition review standards would require acts of Congress and/or litigation. Both regulatory agencies have mixed records in courts. And it’s unclear if Democrats will defy the political gravity that has historically weighed down incumbent presidents’ party performance in midterm elections to win a mandate to rewrite antitrust laws.

What about the other lingering storm cloud on the periphery? A frenetic M&A pace has overwhelmed oversight body the Federal Trade Commission to the extent that it’s warned companies the expiration of the standard 30-day waiting period is no longer an implicit approval of a deal, Bloomberg reports. That creates a threat of enforcement even after deals have closed.

Amidst the merger deluge, a few high-profile deals have been challenged, but context is king: the handful of challenged deals represent a small slice of the year’s record value of announced transactions.

For starters, some of the highest profile deals challenged by the new administration’s antitrust regime represent merger dynamics that have always drawn intense scrutiny. Aon Plc’s proposed $30 billion takeover of Willis Towers Watson (Nasdaq: WLTW), announced only five years after Willis Group’s $18 billion merger with Towers Watson, was challenged by the DOJ as taking the industry from three competitors to two. So called “3 to 2” mergers have always been a bright line for regulators. And the insurance investment bankers I’ve spoken to for a decade about industry consolidation have long steered clear of attempts to marry those players or Marsh & McLennan (NYSE: MMC) out of fear of this precise outcome.

There are wild cards that could skew my forecast. It’s true that zealous enforcement of vertical merger review guidelines has created unexpected scrutiny of some sectors, and that agencies’ evolving theories of harm could disproportionately put tech deals at risk. But on the whole, the latest policy announcements may well be more thunder than lightning**.**

#### b. No lasting change even if administrative stuff implemented

Wright, JD, PhD, University Professor and the Executive Director, Global Antitrust

Institute, Scalia Law School at George Mason University, former FTC Commissioner, ‘21

(Joshua D., “Lina Khan Is Icarus at the FTC,” July 13, WSJ)

All that has been overshadowed by an executive order aimed at competition and loaded with goodies, good intentions, new regulatory regimes and a blissful ignorance of unintended consequences (“Joe Biden, 20th Century Trustbuster,” Review & Outlook, July 10). Some of its pronouncements, like occupational-licensing reform, are to the good. But the FTC’s competition authority is about to become a free-for-all for the Biden administration to reshape the economy. One wonders how the Republicans going along with all this to “get Big Tech” are feeling right now; I’m guessing “played.” If not, they’ll catch up soon enough.

Imagining the FTC as Icarus flying without the constraints of history, economics or law is a fun thought experiment, but we’ve been here before. Ms. Khan’s initial steps are indicative of a regulatory overreach that will end with the FTC’s wings melting in the courts. This path does not lead to incremental, much less radical, change. I predict early headlines that appease a rabid base, frustration for FTC staff and a new, volatile partisanship at the agency, but actual results that leave unsatisfied the progressives aching for radical change.

#### Action now throws the system into chaos---it’s a bolt out of the blue that firms weren’t expecting in the short-term, and signals a novel, economy-wide shift in governmental approach that fundamentally changes the game

**Tyler 21** – Senior Legal Analyst at Bloomberg Law

Eleanor Tyler, "ANALYSIS: The Very Purpose of Antitrust Law Is At Issue in 2022," Bloomberg Law, 11-1-2021, <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-the-very-purpose-of-antitrust-law-is-at-issue-in-2022>

**New Laws, Old Power Struggles**

While antitrust has become a hot topic in the past few years, this year saw big legislative pushes in a number of key jurisdictions to revise or reform antitrust/competition law itself. Behind those proposed changes is a **fundamental debate** about what the laws **should do** and **where the balance of power lies** between lawmakers, enforcers, and courts.

Laws applicable to tech platforms have occupied most of the antitrust news headlines this year, but the new measures that enforcers are considering—or, in some cases, implementing—will often apply **much more broadly** (including the proposed U.S. legislation). And more importantly, the changed approach to market regulation reflected in these laws has policy **implications for everyone**. **Antitrust is one of the few areas** in U.S. law that **talk openly about market power**; attitudes about the balance of power between consumers and enterprises, big and small businesses, and government and private businesses are **all involved** in the debate.

Some laws will make it through the legislative gauntlet, and they will **fundamentally shift investment patterns**, and may even shift entrenched power in a few big markets. The **long game of interpreting any new laws in the courts will begin shortly thereafter**. All of that means **uncertainty** for market participants and enforcers alike.

**New laws will specifically be manipulated and abused by agencies to justify widespread crackdown**

**Delrahim**, Assistant Attorney General, Antitrust Division, United States Department of Justice, **‘20**

(Makan, “The Future of Antitrust: New Challenges to the Consumer Welfare Paradigm and Legislative Proposals,” 69 Cath. U. L. Rev. 657)

What does the future hold for consumer welfare standard? That’s up to us. No policy, no matter how sound, is immune to calls for change. Throughout history, when reformers fail in the legislative arena, they will turn to existing laws and regulations and try to **manipulate them in ways never previously seen**. I won’t mention specific examples, but we have seen this playbook when federal courts **interpret** or, more accurately, **rewrite** the law in **head scratching ways** and when agencies issue new regulations that **strain the statutory text.** Some reformers now seek to **bring this playbook** to the domain of antitrust law, which, **if read broadly**, could wield **tremendous power over the economy**. Unbridled, this power could do significant damage to the economic impulses that drive **innovation**, gains, and efficiency, and other pro-competitive outcomes for consumers.

Antitrust law may be **particularly vulnerable to hasty change** given its **common law status** and evolution in light of advancements and economic thinking. We will see in our lifetimes **whether the pendulum will swing back** and unravel the progress the field has made. What can practitioners, academics, judges, and enforcers do if they want to preserve the consumer welfare standard? First and foremost, we should not be complacent. Many deride the latest reform movement as “hipster” antitrust because advocates for abandoning the consumer welfare standard invoked a decades-old trust-busting era that we now consider antiquated and economically misguided. Labeling one’s opponents only go so far.

Winning the economic debate goes further, but not far enough. The modern antitrust reform movement is less concerned about economic soundness **than it is about results**. That means we must demonstrate to observers that we will pursue effective results whenever we find anticompetitive conduct. We must be vigilant to ensure that the biggest companies are minding the guardrails of competition. If we don’t act swiftly and certainly, then we risk looking impotent **next to those who would punish monopolists just for being big**. That approach, of course, **is an axe where a scalpel is needed**. If we don’t use our scalpel, we shouldn’t be surprised to **see the reformers sharpening their axes**.

**COVID is a brink not a thumper – makes next decline destabilizing – destroys liquidity necessary to respond**

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

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

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

INTRODUCTION

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

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

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

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

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

METHODOLOGY

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

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

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

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

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

ECONOMY

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

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

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

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

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

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

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

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

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

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

ENVIRONMENTAL

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

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

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

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

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

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

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

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

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

GEOPOLITICAL

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

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

**Blockchain increases security, makes transactions transparent, and allows regulators to make better-informed economic decisions---but the technology needs more development**

**Sharma 18** – Blockchain Researcher, Developer & Consultant, part of the Forbes Asia 30 Under 30 Enterprise Tech List in 2018

Toshendra Kumar Sharma, "Blockchain – A Healing to Financial Crisis," Blockchain Council, 2018, <https://www.blockchain-council.org/blockchain/blockchain-healing-to-financial-crisis/>

\*\*edits denoted in brackets\*\*

How can Blockchain heal the Financial Crisis?

Well, to understand how blockchain can be helpful in healing or preventing the financial crisis we first need to analyze the key features of this technology which can prove to be helpful for the banks and other financial institutions. In 2008 the world witnessed the biggest bankruptcies **of all time**. Lehman Sachs declared bankruptcy, and it **spread like wildfire** across the globe. Most of the nation’s economy was disrupted leaving to the high rate of attrition and closure of companies. So, can blockchain help in preventing this? This is the biggest question that the companies might be eyeing at the moment.

Let’s admit the fact that one of the **primary reason[s**] for bankruptcy is **lack of transparency**. Since blockchain offers **transparency** and ea**sy traceability**, many banking, financial and auditing companies are looking forward to this technology. We all know that the financial crisis of 2008 had a huge impact on the economy of the world and one of the primary reason[s] for this was lack of transparency. Blockchain can prove to be **beneficial** in this aspect. Since this platform is **highly transparent**, it can help the authorities to **trace the cash flow** easily and also find out areas of **discrepancies** to avoid any problems.

What are the key features of Blockchain that can prove to be beneficial for financial institutions?

Before heading further, let’s understand the key areas on which the financial institutions and blockchain experts should start working to avoid repetition of the financial crisis of 2008 :

* Decentralization– This is the key aspect of blockchain and can prove to be beneficial for the people to skip the approval period of banking and financial institutions and transact directly.
* Transparency– We know that blockchain is a transparent system which allows the people in the network to **easily view** the entries in this ledger thus making **tracking and tracing easy**.
* Time Stamping– The information in the DLT or Distributed Ledger Technology is present in chronological[.] Thus, **any change** or alteration can be **easily deciphered**.

Let’s understand how these features can be explored on the ground level:

* Ensuring **financial security**– So this is the first area of interest for everyone, from an ordinary man to the banking authorities. If the authorities have a **clear picture** of the cash flow and they **know what is happening** in the system, they can easily **gauge any discrepancies** if there are any. Tracking of cash flow **ensures** that the authorities know if there are any **faulty policies** or operations functioning I[n] the system and thus they can work upon it. The authorities can also get to know if there is a need for a **monetary policy** that can improve the efficiency of the system. They will also get an insight into whether they should increase or decrease the **lending rate**.
* Prevention of fraud to **avoid financial crisis**- One of the most talked about feature of blockchain is cryptography. All the information present on blockchain is stored using cryptography. If someone wants to access this information they must have the key for the same. The fact of the matter is that the key is with the owner of the information. Even then, if the hacker tries to breach the system, then the person has to violate **the entire system** connected on the network since the data is distributed to the nodes. Thus, reducing the probability of hacking or alteration of information.
* Smart Contracts– This is yet another key aspect of the These are an electronic agreement between two parties which automatically executes when the pre-defined conditions are met. In the case of banking and financial institutions, they can use it to file a deal or agreement between the parties. Thus it reduces the need to gauge the entire process every time. Once the set conditions are met the payment will be released directly to the parties.

Secondly, the digital identities can be used to **avoid loan frauds**. The banking and financial institutions can introduce the digital identities to **check** if the customers are **trustworthy**. Moreover, with the information of the customer present on the ledger, the banks, and financial institutions can **directly see the track record** of the customer and based on it they can grant the loan.

Thus, we see that the blockchain offers **myriads of options** to make the banking and financial system **foolproof** and thus **avoiding the surge** **of the financial crisis** that has happened previously. However, an important point to note here is that these processes are **still at a nascent stage** and we need to work on Blockchain to improvise the areas of improvement.

**Big tech intervention in finance creates forces adoption of blockchain**

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Xavier Vives, "Digital Disruption in Banking and its Impact on Competition," Organisation for Economic Co-operation and Development, 2020, https://www.oecd.org/daf/competition/digital-disruption-in-banking-and-its-impact-on-competition-2020.pdf

The **digital disruption** of banking promises to lead to a general **increase in efficiency** and service by helping to overcome information asymmetries (using **big data** and **AI/ML techniques** and **blockchain** technology), providing a user-friendly consumer interface and a higher standard of service, and ultimately **replacing obsolete technology**. Banking will thus move to a customer-centric platform-based model. All these changes present **formidable challenges** to incumbents, since they will have to update their **technological platforms** (moving from relatively rigid mainframes to the more flexible cloud), reduce branch overcapacity in the current low-profitability environment (particularly in Europe and Japan, where there are still legacy assets to dispose of), and try to reach the new standard of service by competing with the new entrants that are encroaching on the most profitable lines of business. Incumbents will have to restructure, and consolidation will occur. Incumbents will also face heavy regulatory scrutiny and compliance duties and will have to overcome the tremendous damage to their reputation caused by the 2007-2009 financial crisis. They will face the dilemma of whether to compete head-to-head or cooperate with entrants. In the case of FinTech, this dilemma will be resolved by acquisition or partnership.

With BigTech firms, however, the challenge posed for incumbents is greater. The main threat to incumbents is that BigTech firms will try to control the consumer interface by using their superior data, acting as gatekeepers to the distribution of financial products. If this were to happen, incumbent banks would be relegated to product providers on platforms they do not control: Their businesses would be commoditised. Some banks have already perceived this threat and either are offering open platforms that may incorporate products from other financial providers or are forming partnerships with BigTech firms. In any case, incumbents have some strengths that they can leverage, such as customers’ trust that their data will be kept secure as well as accumulated knowledge on how to deal with complexity and intrusive regulatory environments. Incumbents that will perform well will have managed to transition **from the mainframe to the cloud**, be lean in bricks but heavy on human capital, and either **become digital platforms** to keep the interface with the client or have unique products to feed the platforms that will distribute the products to the customers.

**Big tech is key to bringing blockchain to finance---they are currently developing the tech, and can expand that into finance**

**Finance Magnates Staff 20**

Finance Magnates Staff, "Big Tech Is Making Cryptocurrency More Accessible Than Ever," Finance Magnates, 10-20-2020, https://www.financemagnates.com/thought-leadership/big-tech-is-making-cryptocurrency-more-accessible-than-ever/

Apple, Google, and Facebook have **all demonstrated** an interest in **blockchain technology** and its applications, but **only Amazon** has so far transitioned to the next step to **offer blockchain services**, with Amazon Managed Blockchain.

This is a platform that allows enterprise clients to easily launch their own blockchains on top of popular open-source frameworks, like Ethereum and IBM’s Hyperledger Fabric.

Amazon also offers its own **blockchain-like platform**, known as Amazon Quantum Ledger Database (QLDB), which is a cryptographically secure, albeit centralized database that can be applied to a **huge range** of use-cases, **including banking**, supply chain, and digital identity applications.

Despite launching just last year, Amazon QLDB is already being used by some big names, including the UK’s Driver and Vehicle Licensing Agency who are exploring how QLDB can be used for storing and processing public and private data registers, and Klarna — the Swedish bank that offers the popular Klarna buy now pay later services.

Though Amazon was the first to launch its own blockchain products, Facebook **also plans** to launch its own cryptocurrency project known as Libra, sometime in 2021. While Google has reportedly been **developing its own blockchain platform** since 2018, it has yet to release any substantial blockchain products.

**Repeat financial crisis under current conditions will cause nuclear great power war – only avoiding liquidity shocks can solve**

**Liu 18**

Qian Liu, Economist based in China, From Economic Crisis to World War III, 8 November 2018, <https://www.project-syndicate.org/commentary/economic-crisis-military-conflict-or-structural-reform-by-qian-liu-2018-11>

The next economic crisis is closer than you think. But what you should really worry about is what comes after: in the **current social, political, and technological landscape**, a **prolonged economic crisis**, combined with rising income inequality, could well **escalate** into a **major global military conflict**. The **2008-09** global financial crisis **almost** bankrupted governments and caused systemic collapse. Policymakers managed to pull the global economy **back from the brink**, using massive monetary stimulus, including **q**uantitative **e**asing and near-zero (or even negative) interest rates. But monetary stimulus is like an adrenaline shot to jump-start an arrested heart; it can revive the patient, but it does nothing to cure the disease. Treating a sick economy requires structural reforms, which can cover everything from financial and labor markets to tax systems, fertility patterns, and education policies.1 Policymakers have utterly failed to pursue such reforms, despite promising to do so. Instead, they have remained preoccupied with politics. From Italy to Germany, forming and sustaining governments now seems to take more time than actual governing. And Greece, for example, has relied on money from international creditors to keep its head (barely) above water, rather than genuinely reforming its pension system or improving its business environment. The lack of structural reform has meant that the **unprecedented excess liquidity** that central banks injected into their economies was not allocated to its most efficient uses. Instead, it **raised global asset prices** to levels **even higher** than those prevailing before 2008. In the **U**nited **S**tates, housing prices are now 8% higher than they were at the peak of the property bubble in 2006, according to the property website Zillow. The price-to-earnings (CAPE) ratio, which measures whether stock-market prices are within a reasonable range, is now higher than it was both in 2008 and at the start of the Great Depression in 1929. As monetary tightening reveals the vulnerabilities in the real economy, the **collapse** of **asset-price bubbles** will **trigger another economic crisis** – one that could be **even more severe than the last**, because we have built up a **tolerance** to our **strongest macroeconomic medications**. A decade of regular adrenaline shots, in the form of ultra-low interest rates and unconventional monetary policies, has **severely depleted their power to stabilize and stimulate the economy**. If history is any guide, the **consequences** of this mistake could extend far beyond the economy. According to Harvard’s Benjamin Friedman, **prolonged periods of economic distress** have been characterized also by public antipathy toward minority groups or foreign countries – attitudes that can help to **fuel** unrest, terrorism, or even **war**. For example, during the Great Depression, US President Herbert Hoover signed the 1930 Smoot-Hawley Tariff Act, intended to protect American workers and farmers from foreign competition. In the subsequent five years, global trade shrank by two-thirds. Within a decade, **World War II** had begun. To be sure, WWII, like World War I, was caused by a multitude of factors; there is no standard path to war. But there is reason to believe that high levels of inequality can play a significant role in stoking conflict.3 According to research by the economist Thomas Piketty, a spike in income inequality is often followed by a great crisis. Income inequality then declines for a while, before rising again, until a new peak – and a new disaster. Though causality has yet to be proven, given the limited number of data points, this correlation should not be taken lightly, especially with wealth and income inequality at historically high levels. This is all the more worrying in view of the numerous other factors stoking social unrest and diplomatic tension, including technological disruption, a record-breaking migration crisis, anxiety over globalization, political polarization, and rising nationalism. All are symptoms of failed policies that could turn out to be **trigger points** for a **future crisis**. Voters have good reason to be frustrated, but the emotionally appealing populists to whom they are increasingly giving their support are offering ill-advised solutions that will only make matters worse. For example, **despite** the world’s **unprecedented interconnectedness**, multilateralism is increasingly being eschewed, as countries – most notably, **Donald Trump**’s US – pursue unilateral, isolationist policies. Meanwhile, **proxy wars** are raging in Syria and Yemen. **Against this background**, we must take seriously the possibility that the **next economic crisis** could lead to a **large-scale military confrontation**. By the logic of the political scientist Samuel Huntington , considering such a scenario could help us **avoid** it, because it would force us to **take action**. In this case, the key will be for policymakers to pursue the **structural reforms** that they have long promised, while replacing finger-pointing and antagonism with a sensible and respectful global dialogue. The **alternative** may well be **global conflagration**.

#### Preeminent reserve currency now---BUT, global challengers are competing for dominance.

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Richard, 1-6-2020, "Assessing the Dollar's Status as a Reserve Currency in a Multipolar World," National Bureau of Asian Research (NBR), https://www.nbr.org/publication/assessing-the-dollars-status-as-a-reserve-currency-in-a-multipolar-world/

Conventional measures of the dollar as a reserve currency show little erosion of its preeminent status. Over 60% of global foreign exchange reserves held by foreign central banks and monetary authorities remain denominated in dollars, roughly 90% of global foreign exchange transactions involve a dollar leg, approximately 40% of global trade outside the United States is invoiced and settled in dollars, and almost 60% of U.S. dollar banknotes circulate internationally as a global store of value and medium of exchange. These measures have not changed substantially in recent years, and indeed in some cases they have increased.[1]

Notwithstanding the dollar’s ongoing dominance, the competitive environment is unmistakably intensifying as a result of economic, political, and technological factors. International competitors such as Russia and China routinely call for a new international financial order and work aggressively to displace the dollar as the apex of the current regime. The addition of the renminbi in 2016 to the basket of currencies that compose the International Monetary Fund’s special drawing rights represented an important global acknowledgment of the increasing international use of the Chinese currency and, perhaps even more importantly, of an evolving international monetary system.

Chinese authorities, however, are not content with mere acknowledgment of their country’s economic ascent but are working intentionally to craft a new financial order with the renminbi at its center. Noteworthy examples of this ambition include the Belt and Road Initiative to promote regional development through a vast network of infrastructure projects and economic zones designed in part to expand the international use of the renminbi; the Chiang-Mai Initiative to establish multilateral currency swap lines across regional central banks and monetary authorities; the development of the Cross-Border Interbank Payment System (CIPS) to offer clearing and settlement services to facilitate cross-border renminbi payments and trade; and the more recent announcement of China’s decision to issue a central bank digital currency. These actions should not be interpreted in isolation but rather as part of a coherent and integrated effort to displace the dollar as the anchor of the international financial system.