# Navy Round 2 Wiki

## 1NC

### 1NC – T Per Se

#### 1. Interpretation – prohibit means to forbid a given practice – that’s distinct from restrictions

Kennard 93 – Judge, California Supreme Court

Joyce L. Kennard, THEODORE R. HOWARD et al., Plaintiffs and Appellants, v. GEORGE H. BABCOCK et al., Defendants and Respondents. No. S027061., Supreme Court of California, 1993, https://law.justia.com/cases/california/supreme-court/4th/6/409.html

As I pointed out earlier, the majority's conclusion is at odds with the great weight of authority. Also, in determining reasonableness based on the relationship between or among attorneys, the majority gives little regard to the relationship between the attorney and the client. Moreover, the majority fails to recognize that restrictive covenants are intended to and do restrict the practice of law. Rule 1-500 proscribes agreements that "restrict" the practice of law, not just those that prohibit "altogether" the practice of law. (Contra, Haight, Brown & Bonesteel v. Superior Court (1991) 234 Cal.App.3d 963, 969 [285 Cal.Rptr. 845] [rule 1-500 "simply provides that an attorney may not enter into an agreement to refrain altogether from the practice of law"].) To "restrict" means to restrain, to confine within bounds. (Webster's New Collegiate Dict. (9th ed. 1988) p. 1006.) To "prohibit" means to prevent, to [\*\*164] [\*\*\*94] forbid. (Id. at p. 940.) The terms are not synonymous.

#### 2. “Expand the scope” means broadening the range of claims that can be brought – the plan merely makes it easier to bring claims under current statutes.

Barrera 96 – J.D., Wayne State University Law School

Lise A. Barrera, “Is the Courtroom the New Front for the Resolution of Publishing Disputes?,” The Wayne Law Review, Vol. 42, Summer 1996, LexisNexis

It is important to note the distinction between the expansion of the scope of section 43(a) and the standard that courts apply in granting relief to claims under this section. The scope of section 43(a) allows plaintiffs to claim the section provides them with protection and thus should grant them relief. The expansion of the scope allows a much broader range of claims to be brought legitimately under section 43(a). Once the scope of the statute allows the claim to be brought, the courts apply a standard to the claim in order to determine whether a plaintiff should be granted relief.22 The standard applied is also the product of years of judicial interpretation. While the scope of section 43(a) is expanding, however, the standard for relief seems to be becoming higher and harder to meet.

#### That’s a voter for limits and ground – allowing exemptions on the rule of reason lets the aff straight turn core topic DAs and get advantages based off clarifying vague statutes

### 1NC – T FTCA

#### Interpretation: 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.

#### The plan expands the FTCA NOT the core antitrust laws

#### That’s a voter for limits and ground – they justify FTC Act affs which have tons of advantages and get rid of the Section 5 or enforcement counterplan

### 1NC – K Antidomination

#### The affirmatives drive toward antitrust intervention adopts neoliberal assumptions of politics and economics which concentrates power in the hands of a few

Vaheesan 18 – Policy Counsel at the Open Markets Institute. Former regulations counsel at the Consumer Financial Protections Bureau

Sandeep Vaheesan, “The Twilight of the Technocrats’ Monopoly on Antitrust?,” The Yale Law Journal Forum, 6/4/18, <https://www.yalelawjournal.org/pdf/Vaheesan_ir9dchg8.pdf>.

Over the past forty years, technocrats have dominated antitrust law.44 Leadership at the Department of Justice and Federal Trade Commission as well as Supreme Court Justices have rewritten much of antitrust law.45 They have ignored or distorted the legislative histories of the antitrust laws and have even overridden Congress’s legislative judgments.46 By restricting private antitrust enforcement, the Supreme Court has also limited the ability of ordinary Ameri- cans to influence the content of antitrust law.47

While the antitrust technocrats have been on the march, Congress has been dormant. Its antitrust activities have been confined to secondary issues.48 This combination of technocratic hyperactivism and legislative lethargy has created, in the words of Harry First and Spencer Waller, “an antitrust system captured by lawyers and economists advancing their own self-referential goals, free of political control and economic accountability.”49 Although proponents of technocratic antitrust may characterize it as “pure” or “scientific,” the reality is quite different as big business interests and their representatives dominate debate within this cloistered enterprise.50

#### Elite capture locks in civilizational collapse, but it’s not inevitable. Try or die for putting political and economic power in the hands of the citizenry, and reorienting government decision-making toward the public good.

MacKay 18 – Professor of Sociology, Mohawk College

Kevin MacKay, also a union activist & executive director of a sustainable community development cooperative, The Ecological Crisis is a Political Crisis, 2018, https://www.resilience.org/stories/2018-09-25/the-ecological-crisis-is-a-political-crisis/

With each passing day, reports on global climate change become increasingly bleak. Recent research has affirmed that the glaciers are melting faster than anticipated1, and that acidification, with its catastrophic effect on ocean ecosystems, is also proceeding faster than feared2. As the concentration of atmospheric carbon continues to rise, so does the likelihood we’ve passed the tipping point for irreversible climate change.3

When one looks at other critical earth ecosystems, the danger is equally apparent. Soil is being destroyed.4 Fresh water shortages are wracking several continents and leaving billions of people without reliable access to clean drinking water.5 Fish stocks are plummeting.6 Oceans are clogged with plastic garbage.7 Biodiversity is disappearing at an alarming rate.8 In the face of this full-spectrum ecological assault, a growing number of scientists have been saying that the collapse of civilization is now unavoidable.9

Stopping the destructive effects of industrial, capitalist civilization has now become the defining challenge of our age. If we don’t radically change our society’s course within the next 30 years, then a deep collapse and protracted Dark Age are all but assured. In order to confront this challenge, we need to understand what is causing civilization’s crisis, and most importantly, how the crisis can be resolved. At stake is nothing less than a viable future on this planet.

The Five Horsemen of the Modern Day Apocalypse

In my book, Radical Transformation: Oligarchy, Collapse, and the Crisis of Civilization, I argue that industrial civilization is being driven toward collapse by five key forces – related to terminal dysfunction within its ecological, economic, socio-cultural, and political sub-systems:

Dissociation: globalized production and distribution systems disrupt people’s ability to put their own actions, and the actions of elites, into a coherent causal and ethical framework. Actions by individuals, institutions, and systems of governance are therefore disconnected from their effect on the natural world and on other peoples. Without this critical feedback, even well-intentioned actors can’t make rational and ethical choices regarding their behaviour.

Complexity: the world-spanning nature of industrial capitalist civilization, and the massive number of interrelationships it represents, make predicting the effect of any given change on the system as a whole devilishly difficult. Disastrous tipping points loom in several of civilization’s systems – from the collapse of ocean ecology to the threat of nuclear war. In addition, because the crisis cannot be contained in one part of the globe, the dysfunctions can’t be dealt with in isolation.

Stratification: a profoundly unequal distribution of wealth – both globally and within nations – leads to mass human poverty, displacement, and to premature death through disease and continuous warfare. Stratification also leads to political instability, eroding a society’s social cohesion and undermining decision-making structures.

Overshoot: the economic practices of industrial capitalism are exceeding ecological limits. Our civilization is critically degrading the biosphere, burning through non-renewable energy sources, and shifting the entire climatic balance.

Oligarchy: in states worldwide, political decision-making is controlled by a numerically small, wealthy elite. This form of government serves to lock in patterns of conflict, oppression, and ecological destruction.

Societies as Decision-Making Systems

Each of the horsemen presents a significant threat to civilization’s viability. However, oligarchy is particularly important as it deals with a society’s decision-making systems. In his 2005 book Collapse: How Societies Choose to Fail or to Succeed, geographer Jared Diamond argued that many past civilizations have collapsed due to their inability to make correct decisions in the face of existential threats.10 Diamond drew on the work of archaeologist Joseph Tainter, who in his 1998 book The Collapse of Complex Societies, argued that civilizations fail due to a constellation of factors.11

To Tainter, the ultimate mistake failed civilizations made was to continually solve problems by adding social complexity, and as a result, increasing the society’s energy needs. Eventually, Tainter argued that civilizations encounter a “thermodynamic crisis” in which they are unable to sustain an energy-intensive level of complexity. The result is collapse – ecological devastation, political upheaval, and mass population die-off.

The tendency for societies to collapse under excessive energy demands is an important insight. However, what Tainter and Diamond failed to appreciate is how oligarchy is an even more fundamental cause of civilization collapse.

Oligarchic control compromises a society’s ability to make correct decisions in the face of existential threats. This explains a seeming paradox in which past civilizations have collapsed despite possessing the cultural and technological know-how needed to resolve their crises. The problem wasn’t that they didn’t understand the source of the threat or the way to avert it. The problem was that societal elites benefitted from the system’s dysfunctions and prevented available solutions.

Oligarchic Control in “Democratic” States

Citizens in countries such as Canada, the United States, Australia, or the Eurozone members, would generally consider themselves to be living in democratic societies. However, when the political systems of Western democracies are scrutinized, clear and pervasive signs of oligarchy emerge.

A 2014 study by American political scientists Martin Gilens and Benjamin Page revealed that the great majority of political decisions made in the United States reflect the interests of elites. After studying nearly 1,800 policy decisions passed between 1981 and 2002, the researchers argued that “both individual economic elites and organized interest groups (including corporations, largely owned and controlled by wealthy elites) play a substantial part in affecting public policy, but the general public has little or no independent influence.”12

Today, oligarchic control over decision-making, and its catastrophic ecological effects, have never been clearer. In the U.S., Donald Trump and his billionaire-dominated cabinet are seeking to dismantle the Environmental Protection Agency13, to question climate science14, and to pursue a policy of “American energy dominance” that will dramatically expand production of fossil fuels.15

U.S. energy companies are also having a profound impact on domestic energy policy by accelerating the development of hard-to-access fuel sources through hydraulic fracturing, deep-sea oil drilling, and mountain-top removal coal mining.16 At the same time, fossil fuel oligarchs are working overtime to dismantle green energy initiatives, such as the Koch brothers’ war on the solar industry in Florida, and in other cities across the continent.17

In Canada, often thought of as more progressive than its southern neighbor, the situation hasn’t been much different. Under prime minister Stephen Harper’s two terms, the Canadian state became an unapologetic cheerleader for extracting some of the world’s dirtiest oil –Tar Sands bitumen. Harper accelerated Tar Sands production, leading to the clear-cutting of thousands of acres of boreal forest, the diversion of millions of gallons of freshwater, and the creation of miles of toxic tailings ponds, filled with water contaminated by the bitumen extraction process.18

Like the Trump administration, the Harper government silenced federal climate scientists.19 The government also targeted environmental charities and non-profits, using funding cuts and the threat of audits to undermine climate advocacy.20 When a movement of national outrage swept Harper from power in 2015, Canadians were hopeful that climate change would once more be taken seriously. However, the new government of Justin Trudeau, while embracing the international discourse on global warming, has shown a continued allegiance to the fossil-fuel oligarchy by committing over $7 billion in federal funds to purchase the failing Kinder-Morgan Trans Mountain pipeline.21

What is To Be Done?

To create a sustainable future, we must first learn the lessons of the past, and what archaeological research shows is that throughout history, civilizations that have been captive to the interests of an oligarchic elite have all collapsed.22 Today’s industrial, capitalist civilization is trapped in this same deadly cycle.

As long as a self-interested elite controls decision-making in modern states, we will be far too late to avoid the effects of steadily contracting ecological limits. In addition, we will be unable to avert the downward spiral of economic crisis, conflict, and warfare that will result as oligarchs scramble to maintain their wealth and power in the face of dwindling resources and mounting crisis.23

Breaking free from this destructive pattern will require us to take political and economic power back from the 1% and return it to the hands of citizens. This means that advocates for ecological sustainability must move far beyond individual actions, lobbying, or reform of existing political and economic institutions. If we are to have a chance, we must ensure that governments make decisions based on the public good, not on private profit.

Radically transforming industrial, capitalist civilization won’t be easy. It will require movements for environmental sustainability, social justice, and economic fairness to come together, and to realize their common interest in dismantling the system of oligarchy and building a democratic, eco-socialist society.24 This “movement of movements” must put aside sectarian squabbles, and finally realize that the goals of economic justice, human rights, and ecological sustainability are all intrinsically linked.

Such changes may seem like a tall order, but hope can be found in the deepening struggle being waged to protect our fragile ecosystems. First Nations groups are leading this charge and beginning to win some important victories. The inspiring Water Protectors of Standing Rock were able to disrupt the Dakota Access Pipeline in the face of intense government oppression.25 In Canada, Several British Columbia First Nations recently won an impressive court victory in their opposition to the Trans Mountain pipeline.26

If successful grassroots struggles can be linked with equally hopeful movements for real political change, then there is hope for the future. However, if we continue on with “business as usual” – hoping that change will come from lifestyle choices and the interchangeable representatives of elite political parties, then the future looks grim indeed.

### 1NC – Exemption DA

**The aff’s application of antitrust to a previously exempted area causes future limitations in immunities---courts perceive shifts in legislative opinion and adapt accordingly**

**Pearlstein 20** – former business and economics columnist for The Washington Post and the Robinson professor of public affairs at George Mason University

Steven Pearlstein, "Facebook and Google cases are our last chance to save the economy from monopolization," The Washington Post, 12-18-2020, <https://www.washingtonpost.com/business/2020/12/18/google-facebook-antitrust-lawsuit/>

**Keeping a close eye** on both the antitrust cases and the legislative debate will be the members of the Supreme Court, including six conservative justices who have a well-documented hostility to government regulation of business. The century-old Sherman and Clayton acts are remarkably spare and concise statutes, which has meant that most antitrust law has been judge-made, based on the precedents laid down in individual cases**. Any antitrust reform that might come out of Congress**, however, is certain to be much more detailed and prescriptive than those earlier laws. Not only would such legislation **erode** the **power** and **discretion** of the court, but it **would also likely overturn a number of recent precedents** that have made it much **more difficul**t for regulators to **limit** the **size** and **business practices** of dominant firms.

All that could well be playing out in Congress just as the court considers the inevitable appeals in the cases of U.S. v. Google and FTC v. Facebook. And it would hardly be unprecedented if some members of the Supreme Court were to consider the **political and legislative consequences** as they decide the fate of two companies with whom most Americans interact on a daily basis.

A similar dilemma faced Judge Learned Hand of the U.S. Court of Appeals in 1945 as he considered U.S. v. Alcoa. After the longest federal trial in history — two years — a district court judge had ruled against the government’s request to break up Alcoa, declaring that the company had legally obtained its 90 percent share of the aluminum market. Hand himself was an antitrust skeptic. But in a memo to his fellow appeals court judges, Hand recognized that the public would not accept a highly technical ruling that any such monopoly was benign.

“If we hold that [Alcoa] is not a monopoly, deliberately planned and maintained,” Hand wrote, “everyone who does not get entangled in the legal niceties … will quite rightly, I think, write us down as asses.”

In the end, the appeals court ruled that Alcoa had illegally monopolized the market for aluminum, and Hand’s opinion **became one of the most influential**, and controversial, **in the history of antitrust**. The cases against Google and Facebook will be no less consequential or contentious.

**Specifically spills over to limit implied immunity---that disrupts the stability of IPO regulation and discourages going public**

**Denniston 7** – Independent contractor reporter covering the Supreme Court for fifty-eight years

Lyle Denniston, "Analysis: Antitrust "mistakes" and the IPO process," SCOTUSblog, 6-18-2007, https://www.scotusblog.com/2007/06/analysis-antitrust-mistakes-and-the-ipo-process/

Federal officials who regulate the stock markets do not have to fret that antitrust law will get in their way as they oversee the process of bringing new stocks to the public exchanges. The Supreme Court, worried that judges and juries sitting in antitrust cases lack the sophistication about the markets necessary to avoid making “unusually serious mistakes,” opted on Monday to exempt much — though perhaps not all — of the “initial public offering” (IPO) process from federal antitrust laws. The Court was even unwilling to accept a suggestion by U.S. Solicitor General Paul D. Clement that would have salvaged some role for antitrust.

Although Justice Stephen G. Breyer’s opinion for the majority in the 7-1 decision stressed that it was confined to “the conduct alleged in this case,” the language and rationale of the ruling was broad enough to immunize syndicates bringing new shares to market from many and probably most potential antitrust complaints by investors. It thus appears that the Securities and Exchange Commission will mainly have the duty of monitoring what is allowed or prohibited in IPOs.

Here is the specific assignment the Court said it was leaving to the SEC: the task, using its securities expertise, of drawing a “complex, sinuous line separating securities-permitted from securities-forbidden conduct” so as to assure that the process of bringing new stocks to market by underwriting syndicates continues to function quite freely. (A “sinuous line” would be one that is wavering.)

The decision was a very broad victory for 16 of the nation’s largest underwriters of stock — the major investment banking houses that were challenging a Second Circuit Court decision that had cleared the way for a trial of the antitrust claims of 60 investors joined in two class-action lawsuits. The investors had sued under the Sherman Act, Clayton Act and state antitrust laws, claiming that the investment banking houses had joined in syndicates to control the initial issuance and post-IPO trading in the stocks of several hundred high-tech companies.

The lawsuits complained of a pact among the underwriters not to sell shares of popular tech stocks unless a buyer agreed to buy added shares of that securities in the after-market at higher prices — so-called “laddering”; to pay very high commissions on later stock purchases from the underwriters, or to buy from those underwriters other, less desirable stocks (so-called “tying.”

The targeted activity of joint underwriters’ promotion and sale of new securities, Justice Breyer wrote on Monday, “is central to the proper functioning of well-regulated capital markets.” The antitrust complaints, he went on, “concern practices that lie at the very heart of the securities marketing enterprise.”

In the end, the Court reversed the Second Circuit, concluding that “the securities laws are clearly incompatible with the application of the antitrust laws in this context.” Justice John Paul Stevens joined in the result only, concluding that the challenged conduct did not violate the antitrust laws; he did not join, he said, in a “holding that Congress has implicitly granted [the underwriters] immunity from those laws.” Justice Clarence Thomas dissented alone, relying on “savings clauses” in federal securities laws “that preserve rights and remedies existing outside of the securities laws.”

The Court’s main opinion did not specifically declare that each of the challenged practices was, in fact, legal under securities laws. “In the present context,” Breyer wrote, there is “only a fine, complex, detailed line” that separates activity that the SEC permits or encourages from activity that the SEC “must (and inevitably will) forbid” — the latter being the very kind of activity that the investors here were trying to attack under antitrust laws.

Exploring further the perceived difficulty in such line-drawing, Breyer said that “evidence tending to show unlawful antitrust activity and evidence tending to show unlawful securities marketing activity may overlap, or prove identical.”

But, in sentiment as well as in logic, much of the reasoning of the Court in reaching its conclusions against a joint securities-antitrust regulatory regime could be attributed to its perceptions about the inability of antitrust lawsuits to avoid serious disruption of the securities markets. “The factors we have mentioned make mistakes unusually likely” in the antitrust regime, Breyer said. “Antitrust plaintiffs may bring lawsuits throughout the Nation in dozens of different courts with different nonexpert judges and different nonexpert juries…[T]here is no practical way to confine antitrust suits so that they challenge only activity of the kind the investors seek to target, activity that is presently unlawful and will likely remain unlawful under the securities law. Rather, these factors suggest that antitrust courts are likely to make unusually serious mistakes in this respect.”

**A robust and secure IPO process for young companies is critical to productivity growth**

**Wu 11** – Stern School of Business, New York University

Geraldine A. Wu, "The Effect of Going Public on Innovative Productivity and Exploratory Search," Organization Science, Vol. 23, No. 4, pp. 928-950, 7-27-2011, https://www.jstor.org/stable/23252442?seq=1#metadata\_info\_tab\_contents

Introduction

The rapid pace of innovation in high-technology firms has been an important determinant of economic growth and productivity. Good ideas by themselves, however, cannot ensure continued success at innovation. A critical component of corporate research and development (R&D) efforts is access to funding, particularly for the resource-constrained entrepreneurial ventures that have proved to be vital sources of innovation in technology based industries. Yet the financing events that are crucial to continued innovation may subsequently shape the very innovative activities they are funding. These transactions are not merely short-term events that infuse capital into firms with promising innovations; rather, they delineate distinct stages in the evolution of high tech ventures. Funding events like venture capital (VC) investments, minority equity investments, and initial public offerings (IPOs) are often imbued with broader meanings that affect subsequent access to resources and involve significant governance changes—being a VC backed company, having an affiliation with an established firm in the industry, and being a publicly traded entity imply certain levels of success. Therefore, they can have long-term effects, not only on organizational structures, but also on organizational processes, most notably the search processes that drive technological innovation. This paper focuses on the IPO context to explore the inherent tension between financing and innovation: flows of funds to firms that are intended to support R&D shape subsequent innovation efforts.

An IPO is a milestone event in the life cycle of a business organization. The impetus for going public is typically a desire to build a platform for continued growth. By going public, firms can improve their access to financial capital and their ability to attract other resources that contribute to growth, such as high-quality employees and alliance partners. In addition, the concomitant increase in the liquidity of firm equity enhances the ability to pursue acquisitions, mergers, and licensing agreements (Brau and Fawcett 2006). Alongside these benefits, however, come potential drawbacks and substantial organizational change; in particular, the transition to public ownership subjects firms to a multitude of new requirements that leads to decreased management flexibility and an increased need to manage shareholders' earnings expectations. The short-term bias of public markets and its implications for firm innovation were highlighted in Google's well-publicized IPO prospectus from August 2004, in which the founders wrote, "As a private company, we have concentrated on the long term, and this has served us well. As a public company, we will do the same. In our opinion, outside pressures too often tempt companies to sacrifice long-term opportunities to meet quarterly market expectations We will not shy away from high-risk, high-reward projects because of short-term earnings pressure" (Google Inc. 2004, pp. 27-28). Although there has been substantial anecdotal evidence of entrepreneurs being considered about how taking their companies public might affect long-term innovation, this paper is, to my knowledge, the first to empirically investigate the impact of going public on firm innovation. The importance of understanding these potential consequences is underscored by the critical role that IPOs have played in the growth of young ventures in high-tech industries and by the fact that these firms' innovative capabilities are their most valuable assets and key sources of competitive advantage.

**Floundering productivity causes great power conflict**

**Baru 9**

(Sanjaya, Visiting Professor at the Lee Kuan Yew School of Public Policy in Singapore Geopolitical Implications of the Current Global Financial Crisis, Strategic Analysis, Volume 33, Issue 2 March 2009 , pages 163 – 168)

The management of the economy, and of the treasury, has been a vital aspect of statecraft from time immemorial. Kautilya’s Arthashastra says, ‘From the strength of the treasury the army is born. …men without wealth do not attain their objectives even after hundreds of trials… Only through wealth can material gains be acquired, as elephants (wild) can be captured only by elephants (tamed)… A state with depleted resources, even if acquired, becomes only a liability.’4 Hence, economic policies and performance do have strategic consequences.5 In the modern era, the idea that strong economic performance is the foundation of power was argued most persuasively by historian Paul Kennedy. ‘Victory (in war),’ Kennedy claimed, ‘has repeatedly gone to the side with more flourishing productive base.’6 **Drawing attention to the interrelationships between economic wealth, technological innovation**, and the ability of states to efficiently mobilize economic and technological resources for power projection and national defence, Kennedy argued that nations that were able to better combine military and economic strength scored over others. ‘The fact remains,’ Kennedy argued, ‘that all of the **major shifts in the world’s military-power balance have followed alterations in the productive balances**; and further, that the rising and falling of the various empires and states in the international system has been confirmed by the outcomes of the major **Great Power wars**, where victory has always gone to the side with the greatest material resources.

### 1NC – Banking DA

#### 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.

#### Immediately expanding scope of antitrust liability brings that to a halt—undermines dynamism and 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.

#### 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.

#### Failure to beat China in tech incentivizes escalatory nuclear postures that make extinction inevitable

Kroenig and Gopalaswamy 18 – Associate Professor of Government and Foreign Service at Georgetown University and Deputy Director for Strategy in the Scowcroft Center for Strategy and Security at the Atlantic Council; Director of the South Asia Center at the Atlantic Council

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

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

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

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

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

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

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

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

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

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

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

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

**Independently, merger frenzy is necessary to preserve rural hospitals, but antitrust expansion deters and prevents it**

**Kaufman 20** – chair of Kaufman, Hall & Associates LLC

Ken Kaufman, "Removing Antitrust Barriers to Solve the Rural Health Care Crisis," Morning Consult, 1-2-2020, https://morningconsult.com/opinions/removing-antitrust-barriers-solve-rural-health-care-crisis/

Almost 120 rural hospitals have closed since 2010, and an estimated **21 percent** of rural hospitals are at **high risk of closure**.

The high number of financially stressed hospitals is creating a **crisis of access** for rural communities and a potential **crisis of quality** and patient safety, as these hospitals **struggle to secure** **sufficient** clinical and technological **resources**. These struggles can be even more difficult in towns that could once support two hospitals but can **no longer do so**.

A **solution** to the rural health crisis that promotes **partnerships** with larger health systems addresses two critical needs. First, it enables a **rational, equitable approach** to a fundamental restructuring of rural health care resources. Second, it provides **access to sufficient financial resources** to ensure that rural communities are able to benefit from the same resources available elsewhere.

Antitrust impediments to a system-based approach

Current **antitrust law makes it difficult** for individual hospitals or health systems to **collaborate on efforts** to restructure delivery of essential services within a rural health care market. These efforts can, however, be pursued among facilities owned by a **single health system**, enabling a rational and equitable distribution of services across the health system’s network of facilities and the communities they serve.

The Federal Trade Commission and Department of Justice have themselves acknowledged the **value** of a **system-based approach** to rural health. In their 1996 “Statements of Antitrust Enforcement Policy in Health Care,” the agencies created a **safe zone** for mergers of certain hospitals with a low bed size and low patient census with other hospitals.

The agencies recognized that these hospitals often “will be the only hospital in the relevant market” and that “mergers involving such hospitals are **unlikely** to **reduce competition substantially**.” They also recognized that “rural hospitals … are unlikely to achieve the efficiencies that larger hospitals enjoy. Some of these cost-saving **efficiencies** may be **realized** … **through a merger**.”

The situation becomes **more difficult** when a community has two hospitals that do not fall within the safe zone and it can **no longer support both**. Such markets will be considered highly concentrated, and an attempt to merge the hospitals **likely will be challenged** by the federal agencies.

Several states have tried to overcome the likelihood of an antitrust challenge by granting certificates of public advantage to health systems that want to come together to more effectively pool resources and rationalize services within a rural market. But these efforts also are being challenged by the federal agencies.

The **threat** of **antitrust enforcement** actions **throws a chill** over health system-led efforts to make the **rural health care** delivery system **more rational**, economically viable and equitable. For example, the systems that combined to form Ballad Health went through a two-year process to secure the COPA that ultimately allowed their merger.

They willingly accepted state oversight of their efforts to rationalize health care delivery. Yet, they now face an order by the FTC to provide extensive information for a study on the impact of COPAs, even though long-term benefits will not be apparent just a year after the merger. The effort and **ongoing scrutiny** these systems take on certainly might **dissuade other health systems** from pursuing a **similar route**.

Rethinking competition in rural health care markets

The FTC and DOJ must revisit an approach that prioritizes competition over access to care and the quality and financial sustainability of the rural health care delivery system. The agencies have themselves acknowledged that competition among hospitals may not be a **practical reality** in rural communities.

The rural health care crisis is **happening now**; there is not time for multiyear studies of the impact of efforts to rationalize and improve rural health care. Health systems that **understand** and **are willing** to take on the challenges of rural health care markets should be **given the opportunity** to do so.

**Rural hospital closures cause massive food spikes**

**Alemian 16** – President & CEO of Alemian & Associates

David Alemian, "Rural Healthcare Is a Matter of National Security," HCPLive, 11-8-2016, https://www.hcplive.com/view/rural-healthcare-is-a-matter-of-national-security

Rural health organizations are already struggling with enormous turnover rates and costs that run up into the millions of dollars each year. The additional financial burden of penalties from Medicare and Medicaid will put many rural health organizations at risk of going out of business. If **too many** rural health organizations go **out of business**, it then becomes a matter of **national security** and here’s why:

In most rural communities, the healthcare organization is the **largest employer**. When the largest employer goes out of business, the **community collapses** and **people move away**. What was once a thriving community then **becomes a ghost town**. Rural America **produces the food** that feeds the rest of the country.

What will happen when our **amber waves of grain turn to desert wastelands** because there is **no one to work our great farmlands**? As the source of food dries up, and store shelves empty, the price of food will go **through the roof**. As food prices go up, hyperinflation will become a reality, and our printed money will **become worthless**. Almost **overnight**, Americans will **begin to go hungry** because they won’t be able to afford to put food on the table.

**Food insecurity causes conflict and war – continued US leadership is key and no one fills the vacuum**

**Flowers**, director of the Global Food Security Project and the Humanitarian Agenda at the Center for Strategic and International Studies (CSIS), **‘18**

(Kimberly, “Keeping it Stable: The Connection Between Hunger and Conflict,” January 31, <https://www.georgetownjournalofinternationalaffairs.org/online-edition/2018/1/31/keeping-it-stable-the-connection-between-hunger-and-conflict)>

Although achieving this SDG’s targets in totality is unlikely, a global focus on reducing poverty, malnutrition, and hunger around the world **remains essential** both as a universal moral value in a world of inequalities, and as an important contributor to economic growth and **national security**. The United States has been a **global leader** in **addressing the root causes** of hunger and poverty through **agricultural development**, including President Obama’s leadership role in creating the L’Aquila Initiative at the 2009 G8 summit in Italy. The initiative emerged in **response to a food price crisis** and resulted in a promise by donors to provide $22 billion in agricultural development assistance over three years.

It is **more critical now than ever** for leaders within the Trump administration to continue to leverage that progress, starting with gaining a better understanding of the complexity of global food insecurity and its inherent connection with conflict. As food insecurity is both a cause and a consequence of conflict, addressing food insecurity goes well beyond a moral obligation; **it is a national security imperative.**

A lack of access to food can **spark unrest** among civilian populations, particularly when triggered by food **price spikes**. Hungry populations are more likely to express their discontent with unresponsive or corrupt leadership, perpetuating a **cycle of political instability** and further undermining long-term economic development. In addition, governments and non-state actors alike can **use food as a strategic instrument of war**, as witnessed in instances spanning from Sudan’s civil conflict in the 1990s to President Bashar al-Assad’s war-torn Syria today. In Syria, all sides have used food as a tool to **control** and **expel** populations. ISIS has used food resources as both a source of **funding** and a lure for **recruitment**. Food **weaponization** further **underscores the importance of United States** action to protect food security abroad and recognize strategies employed to transform a basic necessity into a military tool.

Today, between 1.2 and 1.5 billion people live in fragile, conflict-ridden states. These conflicts have pushed over 56 million people into crisis and emergency levels of food insecurity. The U.N. estimates that 65 million people are internally displaced within their own countries or are refugees in other countries. These numbers continue to rise as conflicts and violence **escalate across the world,** in countries like **Yemen**, South **Sudan**, and **Syria**, causing social and economic devastation. Meanwhile, the number of people dependent on humanitarian assistance has mushroomed. Projections indicate that by 2030, more than two-thirds of the world’s poor could be living in fragile countries.

The international community is increasingly recognizing the **linkages** between **food insecurity** and **political instability.** Sharp rises in global food prices in 2007 and 2008 sparked riots and street demonstrations in more than 40 countries across the world. Since political leaders started paying attention to this connection, there has been notable progress in increasing international attention and funding to address the root causes of hunger and poverty. The United States has dedicated roughly $1 billion to agricultural development since 2010 through its global food security programs. Thanks to the bipartisan Global Food Security Act that passed in July 2016, multiple U.S. agencies are implementing a global food security strategy that reduces poverty, bolsters resilience, and improves nutrition.

Even the U.S. intelligence community has noticed food security challenges. In November 2015, the National Intelligence Council released an assessment that linked food insecurity to political instability and conflict. The report states that the overall risk of food insecurity in many countries, **compounded** by demographic shifts and constraints on key resources such as land and water, **will increase** during the next decade. The assessment concludes that in some countries, declining food security will contribute to social disruptions and **large-scale political instability** or conflict. The intelligence community’s highlighting of the importance of food security as a diplomacy tool and security strategy broadens the number of stakeholders who are tracking, responding to, and mitigating food insecurity. It is no longer solely a focus for policymakers in the development space.

After nearly a decade of progress, global hunger is again on the rise. A U.N. report on food security and nutrition released last year estimates that 815 million people, or 11 percent of the global population, are chronically malnourished, an increase of nearly 40 million people over the previous year. Conflict and climate change are the two primary causes of this reversed trend. More than half of those experiencing extreme hunger live in countries affected by protracted conflict. Droughts and natural disasters also pose a serious threat to food security, particularly to smallholder farmers vulnerable to a volatile climate.

The 2017 State of Food and Agriculture report explains that conflict and climate change are responsible for rising global hunger levels. Smallholder farmers around the world will be forced to adjust to changing rainfall patterns and severe droughts and floods, which will directly impact their crops and incomes. Many weeds, pests, and pathogens are influenced by climate and thrive in warm conditions. Severe floods can wipe out fields and block market transportation routes, reducing smallholders’ abilities to maintain a sustainable income. Researchers, including those at the National Academies of Science, conclude that human-induced climate change and drought is one of the root causes of Syria’s conflict. Climate change thus places an added burden on countries with limited resources already struggling to feed their populations, as declining agricultural growth and incomes can create displacement and heighten hunger.

Food insecurity and climate change are not the sole cause of the conflict in Syria, but their contribution to the country’s instability cannot be ignored. Investing in international development programs and humanitarian **assistance** that fosters agricultural-led growth and **strengthens the resilience** of vulnerable people can **create peace**, improve lives, and **reduce conflict.** U.S. foreign policy priorities should include strengthening the health and prosperity of those less fortunate before a crisis occurs because our investments can help prevent a crisis in the first place. As Former Secretary of Defense Robert M. Gates said, “Development is a lot cheaper than sending soldiers.”

### 1NC – CP FCC

#### Text: The United States federal government should, through the Federal Communications Commmision:

#### -reclassify broadband as a telecommunications service

#### -promulgate regulations to increase broadband competition

#### -raise speed requirements for broadband

#### The United States federal government should substantially increase the budget of the Federal Communications Commission.

#### FCC already has authority to do the plan if they reclassify telecommunications—better than FTC and involves *no* antitrust expansion

Sara Collins, FCC vs. FTC: A Primer on Broadband Privacy Oversight, 11/21/21, <https://publicknowledge.org/fcc-vs-ftc-a-primer-on-broadband-privacy-oversight/>

The Federal Trade Commission recently published its report on the privacy practices of the six major Internet Service Providers and three advertising affiliates associated with the major ISPs.

The FTC observed that:

Many of the ISPs… amass large pools of sensitive consumer data.

Many of the ISPs… gather and use data in ways consumers do not expect and could cause them harm.

Although many of the ISPs… purport to offer consumers choices, these choices are often illusory.

Many ISPs can be at least as privacy-intrusive as large advertising platforms.

These observations may sound shocking, but if you have been following ISP privacy for any length of time, this may give you déjà vu. In 2016 the Center for Digital Democracy issued a report about the growing practice of ISPs expanding their data collection practices to engage in targeted advertising. That very same year Public Knowledge filed complaints with both the Federal Communications Commission and the Federal Trade Commission about cable services using data from set-top boxes, as well as data they collected in their capacity as an ISP to deliver targeted ads to users. While it is good that the FTC engaged in this study and released this report, it ultimately shows how many steps backwards we have taken over the last four years when it comes to broadband privacy. So why is the FTC releasing a report instead of engaging in enforcement action? And why is the FTC working on ISP privacy issues, rather than the FCC? In order to answer those questions, a brief primer on privacy and broadband is needed.

The FCC has subject matter jurisdiction over “communications by wire and radio,” but its power to protect privacy depends on the technology used, and how a service is legally classified.

The FCC has a great deal of regulatory authority over services like telecommunications (telephone service) and cable TV. The law already imposes privacy requirements on them. If you are a telecommunications service provider, you have a duty to protect your customers’ “proprietary information.” In practice this restricts the sharing and use of customer data (i.e. the CPNI rules). Cable operators have their own privacy requirements under the Cable Communications Policy Act of 1984. The FCC issues regulations that apply specific statutory requirements to different services. In 2015, when the FCC decided that broadband was “telecommunications,” it began the process of crafting specific privacy rules for broadband providers (i.e. the Broadband Privacy rules).

Unfortunately, with the change in administration the ISPs found a sympathetic ear in the Republican-led Congress, which in 2017 blocked the FCC’s privacy rules from taking effect by repealing those rules under the Congressional Review Act. Then, in 2018, the FCC chose to reclassify ISPs as “information services,” rather than “telecommunications.” “Information services” are defined in the Communications Act, but they are not just one of the various services the FCC regulates — rather, it’s a catchall category of services the FCC does not have direct statutory authority over. This left the FTC, as a general purpose consumer protection agency, as the last agency standing. This is because the FTC Act itself does not have jurisdiction over “common carriers” such as telecommunications services. Thus, when the FCC properly regulates broadband as a telecommunications service, the FTC does not have authority over it.

Opponents of Title II classification and the FCC’s ISP privacy rules in 2016 argued that continued FCC authority would ‘deprive’ Americans of FTC privacy protection over ISPs (while simultaneously arguing that ISPs should have the same freedom to exploit that data as digital platforms). Indeed, in 2017, then FCC Chair Ajit Pai and then FTC Chair Maureen Ohlhausen boasted that reclassifying broadband as an information service and eliminating FCC oversight of the ISP industry would “restore” FTC privacy protection to ISPs. As the FTC Report clearly shows, the arguments of Public Knowledge and other privacy advocates that this was pro-industry privacy invasive nonsense were 100% correct. Rather than enhance consumer privacy protection, the FTC report finds an ISP race to the bottom with data collection, retention, and use practices — with the added insult that U.S. broadband subscribers must pay some of the highest subscription prices in the developed world while also enjoying the worst privacy protections for their internet usage. At the same time, as Public Knowledge repeatedly warned, the FTC appears unable to actually do anything about it.

The harm that comes from a lack of privacy rules is not theoretical. From 2018-2019 a flood of reporting chronicled wireless ISP providers selling real time location data that could be accessed by everyone from car salesmen to property managers, from bail bondsmen to bounty hunters. This free flow of location data even allowed stalkers to more easily track their victims. Ultimately, wireless carriers went too far even for the Trump FCC by selling hyper-accurate geolocation data collected for 911 responders. Since the 911 system is part of the telephone system, that data remained protected by the CPNI rules. But without those rules Americans go from being internet users to marketing data.

That doesn’t mean nothing can be done. But as the FTC report, as well as Chairwoman Lina Khan’s statement, makes clear, the FCC remains the agency best positioned to protect consumer privacy at the physical layer of the broadband network. Even today, the FCC retains authority under the Cable Privacy Act and Section 606 of the Telecommunications Act to investigate at least some of the privacy violations the report describes. Longer term, the FCC must move swiftly to reclassify broadband as a Title II telecommunications service. This will not restore the 2016 ISP privacy rules, as the Congressional Review Act prevents those rules or “substantially similar” rules from being reinstated. But reclassifying broadband as a Title II telecommunications service would restore the FCC’s statutory authority over ISP privacy policies and impose statutory obligations to protect user data. Indeed, the Republican repeal of the 2016 ISP Privacy Rules may turn out to be a blessing in disguise. For all that the ISP Privacy Rules were a major accomplishment at the time, they are weak tea by today’s standards. The FCC is free to adopt the much more consumer-friendly rules Public Knowledge and other advocates urged in 2016 — rules which abandon the sensitive/non-sensitive dichotomy and required an opt-in framework for marketing and prohibited the sale of personal information.

### 1NC – Precision Ag

#### Tons of alt causes to broadband they can’t solve

BlinQ 20 – pioneer manufacturer of CBRS-certified fixed access and mobile broadband wireless equipment.

Blinq, 2020, “Why is Rural Internet So Bad?” https://blinqnetworks.com/why-is-rural-internet-so-bad/

So why is high-speed broadband so scarce in rural areas?

Well, there are a variety of reasons.

1. Building broadband networks is incredibly expensive and difficult.

Installing fiber, which is the main contender in the broadband scene, is pricey.

It’s also logistically difficult in areas that have harsh weather conditions or uneven terrains to put the cables in the ground.

2. There aren’t enough potential customers in rural areas to entice Internet Service Providers (ISPs) to invest in building those networks.

Major ISPs are always concerned with maximizing their profit. So they overlook more sparsely populated locations.

Even when rural customers do reach out to ISPs, they offer them cellular options such as LTE Sticks and MiFi, which usually means limited data at higher prices.

3. Internet service mapping policies by government agencies are unclear and inaccurate.

The FCC requires a form to be submitted by service providers to report on coverage areas and speeds. However, these forms aren’t double checked and usually paint the situation in a better light than it actually is. For example, ISPs declare that an area is fully served with broadband even if just one home in a census block has service.9

Having such a dissonance between data and reality makes it difficult to allocate resources to the places and people that need them most.

4. Laws and regulations make it difficult for independent and local efforts in network building to work.

While communities and towns have tried to overcome these obstacles by building and deploying their own networks, the FCC claims that community broadband poses a threat to free speech.

So, they support laws that hinder these efforts. The FCC sides with ISP lobbyists, offering them subsidies and tax breaks, which are usually framed as an incentive to develop networks in remote and lower-income areas, but that’s never stipulated explicitly.

5. Available rural internet options are riddled with problems of reliability, price, and throttling.

DSL, Satellite, dial-up, and hotspots are the main alternatives for rural internet users. However, those services usually frustrate customers and are barely serviceable since they are slow, expensive, and spotty.

#### Plan can’t shift the economy away from coal emission fast enough to solve warming – negative growth is required

Barth et. Al. 19 – Timothée Parrique, Centre for Studies and Research in International Development (CERDI), University of Clermont Auvergne, France; Stockholm Resilience Centre (SRC), Stockholm University, Sweden Jonathan Barth, ZOE.Institute for Future-Fit Economies, Bonn, Germany François Briens, Independent, Informal Research Centre for Human Emancipation (IRCHE) Christian Kerschner, Department of Sustainability, Governance, and Methods, MODUL University Vienna, Austria; Department of Environmental Studies, Masaryk University, Brno, Czech Republic Alejo Kraus-Polk, University of California, Davis, USA Anna Kuokkanen, Lappeenranta-Lahti University of Technology, Lahti, Finland Joachim H. Spangenberg, Sustainable Europe Research Institute (SERI Germany), Cologne, Germany.

Parrique T., Barth J., Briens F., C. Kerschner, Kraus-Polk A., Kuokkanen A., Spangenberg J.H, July 2019, “Decoupling Debunked,” European Environmental Bureau, https://eeb.org/wp-content/uploads/2019/07/Decoupling-Debunked.pdf

This report has sought to make a number of points. To begin with, scientific studies and political discussions about decoupling must be precise as to how they define the term (is it relative or absolute, dealing with resource use or impacts, global or local, and temporary or permanent?) and how it relates to existing environmental thresholds and political targets: Is it sufficient to achieve the target? Does it account for a fair distribution of burdens and benefits? In the second section, we have reviewed the empirical decoupling literature searching for evidence of the type of decoupling that would justify green growth as a political strategy. Our finding is clear: the decoupling literature is a haystack without a needle. Of all the studies reviewed, we have found no trace that would warrant the hopes currently invested into the decoupling strategy. Overall, the idea that green growth can effectively address the ongoing environmental crises is insufficiently supported by empirical foundations. Here, it is important to note that decoupling is neither a new nor a never-tried strategy. It has been the main sustainability plan, at least for the OECD and the European Commission, since 2001, and a key feature of many member states’ environmental and industrial policies since the 1990s. Decoupling is not an innovative strategy but rather the continuation of what has been done in the European Union in the last decades. The meagre achievements of the decoupling strategy until now reported in Section 2 cast serious doubt as to whether prospects for the short- to medium-term future are better. Considering the last two decades as a trial period, one must confront the fact that decoupling has failed to deliver the ecological sustainability it promised CONCLUSIONS: FAREWELL TO GREEN GROWTH 58 At last, we claimed that there were several reasons to be sceptical about the occurrence of decoupling in the future. (1) Rising energy expenditure, (2) rebound effects, (3) problem shifting, (4) the underestimated impact of services, (5) limited potential of recycling, (6) insufficient and inappropriate technological progress, and (7) cost shifting can, each individually, and even more all together, compromise or even dismiss the possibility of “green growth.” The insight here is not that efficiency improvements are unnecessary (and in that sense, we support most of the decoupling-targeted policies advocated by UNEP in their 2014a report), but instead that it is theoretically and empirically unrealistic to expect those to absolutely, globally, and permanently delink a constantly growing economic metabolism from its biophysical base. Given the historical correlation of GDP and environmental pressures as well as the required technological improvements needed for a sufficiently large and fast reduction in resource use and environmental degradation, relying on decoupling alone to solve environmental problems appears to be an extremely risky and irresponsible bet. Framing issues of social-ecological justice with the concept of decoupling is like trying to cut a tree with a spoon: it is likely to be a long attempt and most likely to fail in the end. As Daly (1977, p. 115) already argued 40 years ago, the bet we are facing is similar to Pascal’s Wager. Either we hope that somehow these seven problems will solve themselves, continue growth-as-usual and risk a social and environmental collapse; or we acknowledge that decoupling is likely to fail with irreversible consequences on the environment, and follow a precautionary principle approach, moving away from a risky green growth strategy and directly reducing the problematic forms of production and consumption today. In light of what this report shows, prudence alone warrants the abandonment of decoupling and green growth as a sole strategy for sustainability. Because extraordinary claims require extraordinary evidence, the burden of proof should fall upon advocates of decoupling. As we have argued in Section 3, any claim for decoupling must address a series of arguments. This is the challenge for any policy attempting to follow the IPCC 1.5°C mitigation scenario and implement the Sustainable Development Goals. So far, the green growth literature on the topic is either silent or unconvincing regarding any of these seven arguments we have listed in this report. Reflecting on these findings, our recommendation is the following: policymaker have to acknowledge the fact that addressing the climate and biodiversity crises (which are only two of several environmental crises) may require a direct downscaling of economic production and consumption in the wealthiest countries. In other words, we advocate a shift in priorities from efficiency to sufficiency, with the latter being put before the former. The decoupling strategy takes consumption levels as granted and relies on the hope that further economic growth will provide the means to (over) compensate for its own environmental impacts. It is indeed an appealing approach to policymakers in that it requires only minimal changes in economic and social structure. However, this focus on supply appears counter-intuitive and now outdated. The obsession with decoupling in European politics shows a problematic lack of political creativity and ambition, as well as an inability from policymakers to imagine the economy differently than in its current form.

#### No conflict impact to food insecurity – best models.

Buhaug et al, PhDs, 15

(Halvard, Political Science from NTNU, Tor A Benjaminsen, Human Geography from Roskilde, Espen Sjaastad, Resource Economics from NMBU, and Ole Magnus Theisen, Political Science from NTNU, Climate variability, food production shocks, and violent conflict in Sub-Saharan Africa, Environmental Research Letters 10(12)) BW

Across all models, we find relatively weak and insignificant effects for domestic food production and we also note that the sign of the coefficients shifts between outcome types. In this sense, table 1 implicitly contrasts both claims that political violence is more prevalent when basic needs are met (Salehyan and Hendrix 2014) and claims that agricultural income shocks increase civil conflict risk (von Uexkull 2014). The results are consistent with Koubi et al (2012) and van Weezel (2015), however, who conclude that rainfall—a significant determinant of yields in SSA—has little impact on conflict either directly or through economic performance. The covariate that best and most consistently explains temporal variation in political violence is the time-lagged conflict incidence indicator. Models 1–2 show that a new civil conflict is unlikely to break out if another one is already ongoing in the same country whereas Models 3–6, which capture the occurrence of less organized conflict, demonstrate that violence begets violence. Coups d’état (Models 7–8) exhibit a comparatively weak temporal correlation pattern in our data and are generally regarded as a highly unpredictable phenomenon (Luttwak 1979). Next, we estimate the same set of models on a subsample of 14 countries in SSA where rainfall has a large and significant positive effect on food production (figure 2(b); see supplementary information, section B for details). To better capture the influence of climate variability and reduce concerns with endogeneity, we further replace the standard OLS model with twostage instrumental variable regression. The first stage in this model estimates the joint influence of annual rainfall (linear and squared terms) and temperature (linear) on contemporaneous food production. This effect then constitutes the exogenous instrument for food production in the second stage. The results are reported in table 2. Mirroring the results presented above, we fail to uncover a robust signal for agricultural performance, although the sign of the coefficient for food production now remains negative in seven of the eight specifications. Food production shocks may have different consequences depending on the socioeconomic context, so next we consider a series of interactive relationships. Specifically, we investigate the joint effect of food production and (i) low level of development, (ii) extent of discriminatory political system, and (iii) economic dependence on agriculture; three conditions whereby loss of income from agriculture might constitute a particular challenge to society. To model these interactions, we include time-varying regressors instead of country-fixed effects where (i) is represented by infant mortality rate (IMR; World Bank 2014), (ii) is captured using the Ethnic Power Relations v.1.1 data (Cederman et al 2010), while (iii) uses an index of agricultural contribution to GDP (World Bank 2014). Moreover, to preserve focus on temporal dynamics, food production is now operationalized as yearly deviation from the country mean, 1961–2009. We use additive inverse deviation values to ensure theoretical consistency among the components in the interaction terms. All models control for (ln) population size, conflict history, and a common time trend, and models without IMR and agricultural dependence additionally control for (ln) GDP per capita. The results are presented in table 3. Again, we are unsuccessful in establishing a consistent covariation pattern between agricultural performance and political violence. Interpreting the combined effect of interaction terms with continuous parameters is inherently difficult but figure 4 shows that food production is insignificantly related to all conflict outcomes across levels of socioeconomic development for all three interaction terms. The sole exception is the result in Model 24, where lower food production in highly discriminatory societies is negatively associated with non-state conflict. This result would seem to contradict the standard scarcity thesis (Homer-Dixon 1999) although it is consistent with observations that conflict is more prevalent during surplus years (Witsenburg and Adano 2009, Salehyan and Hendrix 2014). Mirroring earlier research, ethnopolitical exclusion is strongly related to higher civil conflict risk, but not necessarily to other forms of political violence. Infant mortality rate and economic dependence on agriculture appear largely irrelevant. While this may come as a surprise, recall that most countries in SSA are characterized by underdevelopment and a large agricultural sector, implying that the variation in values on these indicators is modest. Large parameter uncertainties and p-values above the conventional significance threshold (5%) may disguise substantively important effects (Ward et al 2010). Accordingly, as a final assessment, we conduct a set of out-of-sample simulations and compare predictions for models with and without food production. The models are estimated on a subset of the full sample, in this case all years before 2000, and the estimated effects are then used to predict conflict outcomes out of sample, i.e., the 2000–09 period. Figure 5 shows the predicted values from four pairs of models that are specified similarly to Models 17, 20, 23, and 26, except for the shorter time period and the fact that one model in each pair drops the food production deviation variable. For civil conflict and social unrest, the models generate very similar predictions, signaling that agricultural performance adds little to the models’ predictive power. There is more spread in the predictions for the remaining two outcome categories. Puzzlingly, the model without food production performs better in both cases—i.e., the Receiver Operating Characteristics curves have higher ‘Area Under the Curve’ scores. We hesitate to put too much emphasis on the ROC tests, given the rareness of the outcomes(notably Models 17 and 26) and the relatively small training samples (Models 20 and 23), but nonetheless the patterns observed in the out-of-sample simulations substantiate the regression results reported above; fluctuations in agricultural output explain little of the observed variation in political violence in post-colonial Sub-Saharan Africa. 5. Concluding remarks Emerging evidence suggests that food price shocks are associated with an increase in social unrest (Smith 2014, Bellemare 2015, Hendrix and Haggard 2015, Weinberg and Bakker 2015). Yet, the robust ‘non-finding’ presented here implies that so-called ‘food riots’ play out largely isolated from climate-sensitive production dynamics in the affected countries. Likewise, claims that adverse weather and harvest failure drive contemporary violence in Africa (e.g., Hsiang et al 2013, IFPRI 2015) are not supported by our analysis. Instead, social protest and rebellion during times of food price spikes may be better understood as reactions to poor and unjust government policies, corruption, repression, and market failure (e.g., Bush 2010, Buhaug and Urdal 2013, Sneyd et al 2013, Chenoweth and Ulfelder 2015).

#### Ag sustainable – warming impact is exaggerated

Wade, Professor of Global Political Economy at the Department of International Development, London School of Economics, ‘21

(Robert H., “What is the Harm in Forecasting Catastrophe due to Man-Made Global Warming?” July 22, <https://www.globalpolicyjournal.com/blog/22/07/2021/what-harm-forecasting-catastrophe-due-man-made-global-warming>)

When parts of western Germany, Belgium and Netherlands have just experienced catastrophic floods and the Pacific northwest has recently broken heat records, it is counter-intuitive to challenge the prevailing pessimism about global warming – captured for example by the Financial Times columnist Martin Wolf who says, “Given this signal failure [to vaccinate against Covid in line with the global interest], it is impossible to imagine we will do much more than fiddle while the planet burns.”

The danger of this mindset is that it encourages inflation of the threat-language far beyond the credible science, so that the future cannot be discussed except in terms of a choice between “disaster”, “catastrophe”, “planetary extinction” on the one hand or impossibly fast reforms to how humanity lives, works and governs, on the other.

Every sensible person agrees that (1) global warming has been happening over most of the second half of the twentieth century and on into the twenty first, and (2) most of it to date is due to greenhouse gas emissions. What could be called the “mainstream view” of climate change goes much further, onto uncertain epistemological ground: (3) man-made global warming is the main cause of all kinds of disagreeable events – including extreme weather, rising seas, and much more; (4) humanity faces impending catastrophe unless we undertake far-reaching changes to how we live, work and govern in order to cut CO2 emissions and dematerialize economies (“net zero by 2050”).

This essay identifies some of the weaknesses in the evidence presented in support of the mainstream view, including weaknesses in the claim that 97% of climate scientists believe in anthropogenic global warming, in the claim that global temperatures will rise much faster than they have been rising, and in the (implicit) claim that the horrifying worst-case scenario presented by the Intergovernmental Panel on Climate Change represents the likely scenario to 2100 in the absence of radical actions starting now. It identifies the incentive mechanisms that produce the exaggerations and sustain wide credence in them. At the end it considers the question: does highlighting the doomsday exaggerations serve to reduce the political and public pressures for necessary ameliorative action, in a world where powerful fossil lobbies seek to block or delay such action for reasons independent of “evidence”? To what extent must mass publics be “panicked” in order to induce enough collective political, business and family action to substantially slow the growth of greenhouse gas emissions?

Policy Recommendations

Every sensible person agrees that (1) global warming has been happening over most of the second half of the twentieth century and on into the twenty first, and (2) most of it to date is due to greenhouse gas emissions.

But too much policy discussion about global warming is polarized and locked into a “syndrome of exaggeration”. The mainstream view talks of coming disaster, catastrophe, even extinction, short of urgent and massive action on a global scale. But it is easy to question the empirical basis of this forecast – not least the long history of repeated wild exaggerations of disaster relative to what later transpired. In response an active but small “sceptical” community exaggerates its scepticism. The two sides make a syndrome in that the behaviour of each confirms the negative expectations of the other.

What is now strangely urgent is to calm down the present climate hysteria so that safety-first resource allocation and consumption decisions can be made without “climate” being the touchstone of the very future of humanity, the current idol of the ancient human longing for Salvation in anxious times, the pathway for all the ingredients of a better world.

The essay suggests changes in the budget and mandate of the Intergovernmental Panel on Climate Change; more action by learned societies in calling to account the wild exaggerators; beefing up the Loss and Damage pillar of the Paris Agreement; boosting investment in “clean coal” technologies as well as renewables, and linking coal-power retirement to the coming on stream of attractive alternatives; creating central planning capacity at national and international levels (eg in multilateral development banks) to integrate investment decisions in energy, transport, buildings, industry and agriculture; and last but not least, respecting the principle of free speech while maintaining the standards of civil discourse.

Every sensible person agrees that (1) global warming has been happening over most of the second half of the twentieth century and on into the twenty first, and (2) most of it to date is due to greenhouse gas emissions. Many go on to say that (3) global warming is the cause of all kinds of disagreeable events – including extreme weather, rising seas, and much more; and that (4) humanity faces impending catastrophe short of far-reaching changes to how we live, work and govern in order to cut CO2 emissions and dematerialize economies. This could now be described – with only a little exaggeration – as the mainstream view.

The Impending Catastrophe

Here are examples of people and organizations claiming that catastrophe for humanity and the biosphere lies ahead if the people of developed and developing countries alike do not make radical changes soon.

The New York Times reported after the G7 Summit in June 2021 that “Mr Biden was once again part of a unanimous consensus that the world needs to take drastic action to prevent a climate disaster”. The report explains that “… the world needs to urgently cut emissions if it has any chance of keeping average global temperatures from rising above 1.5C compared with preindustrial levels. That’s the threshold beyond which experts say the planet will experience catastrophic, irreversible damage.”

US climate envoy John Kerry delivered a dire warning on 12 May 2021 on “the mounting costs … of global warming and of a more volatile climate”. 2020’s tally of “22 hurricanes, floods, droughts and wildfires shattered the previous annual record of 16 such events, and that was set only 4 years ago…. You don’t have to be a scientist to begin to feel that we’re looking at a trend line.”

Christiana Figueres, former executive secretary of the UN Framework Convention on Climate Change and pivotal figure in the Paris Agreement, declared in 2020, “It is only over the next 10 years from here to 2030 that we can influence what is going to happen. The scary thing is that after 2030 it basically doesn’t really matter what humans do. We will be in danger of those tipping points having a domino effect on each other and we will lose total control.” (1)

Some more examples:

Kevin Drun, 2019: “[The Green New Deal] would only change the dates for planetary suicide by a decade or so. It’s nowhere near enough even if we do it ”.

Professor Frank Fenner, microbiologist, ANU, 2010: “We’re going to become extinct. Whatever we do now is too late”

John Davies, geophysicist, senior researcher at the Cold Climate Housing Research Center, 2014: “With business as usual life on earth is largely doomed”.

James Hansen, former Director, NASA Goddard Institute for Space Studies, testifying at a Congressional hearing on global warming in 2008: “We’re toast if we don’t get on to a very different path. This is the last chance” to avoid mass extinctions, ecosystem collapse and dramatic sea level rises. “We [scientists] see a tipping point occurring right before our eyes. The Arctic is the first tipping point and it’s occurring exactly the way we said it would.” In five to 10 years [by 2013-2018], the Arctic will be free of ice in the summer.

James Hansen, testimony at Congressional hearing, 1988: “world's leading climate expert [Hansen] predicts lower Manhattan underwater by 2018”

Dr Michael Mann, Penn State: “We’re talking about literally giving up on our coastal cities of the world and moving inland”

United Nations Environment Programme, 2005: “Fifty million climate refugees by 2010.” (2)

United Nations Environment Programme, 2011: “60 million environmental refugees by 2020”

The Guardian carried a front-page story in 2004 headlined, “Now the Pentagon tells Bush: climate change will destroy us”. The by-line reads: “Secret report warns of rioting and nuclear war. Britain will be ‘Siberian’ in less than 20 years. Threat to the world is greater than terrorism”. The text continues, “A secret report, suppressed by US defence chiefs…, warns that major European cities will be sunk beneath rising seas as Britain is plunged into a ‘Siberian’ climate by 2020. Nuclear conflict, mega-droughts, famine and widespread rioting will erupt across the world.” (Emphases added).

Remember that in the 1960s and 1970s many experts forecast an immanent Ice Age. For example, 1970: “Ice age by 2000”. 1971: “New Ice Age coming by 2020 or 2030.” 1976: “Scientific consensus planet cooling famines imminent”. 1978: “No end in sight to 30 year cooling trend”.

The Climate Change Consensus

The diagnoses and prescriptions in the above statements express an underlying consensus.

Human actions (mainly burning fossil fuels and changing land use) are causing rising concentration of atmospheric CO2 (and other greenhouse gases, GHG),

Rises in man-made GHG are causing rising global temperatures in atmosphere and seas, and

This temperature rise poses not just a serious threat to humanity and the whole biosphere, but an existential threat.

In other words, the existence of humans and many other species is at stake if we do not succeed in drastically cutting CO2 emissions as the way to reduce the atmospheric concentration of GHG and thereby slow or reverse the rise in global temperature. In the oft used phrase, humanity faces an “existential crisis” induced by climate change caused by human actions. Implied but not normally stated, there are no benefits from higher concentrations of CO2 or higher temperature to be weighed against costs. Also implied but not normally stated, we must act to stop climate change regardless of cost, because the costs might include deep disruption of human civilization or even extinction.

We have to think of avoiding climate change as the global equivalent of avoiding explosions at nuclear power plants (Chernobyl, Fukushima). We invest heavily in safety-first measures in order to reduce the probability of a nuclear explosion to a very low level because the costs of a nuclear explosion are so huge. The same logic applies at the level of climate, in terms of the costs of average temperature rising by more than ~ 1.5 C from “pre-industrial”.

This is the Anthropogenic Global Warming Consensus, or Climate Change Consensus (CCC) for short. I use “consensus” in the same sense as “the Washington Consensus” about best policy for developing countries, the phrase coined by John Williamson in 1990.

The CCC is now well anchored into international agreements (such as the Paris Declaration), national policy, and increasingly corporate strategy too. The periodic Assessment Reports of the Intergovernmental Panel on Climate Change (IPCC) reaffirm it, particularly in the Summary for Policymakers. Financial Times journalist Pilita Clark observed, “The world has rarely seen any environmental idea take off like the push to cut greenhouse gas emissions to net zero. A fringe concept six years ago, it has gone mainstream so quickly that more than 60 percent of countries now have some sort of net zero goal, along with investors managing nearly $37tn and at least 20 percent of the 2,000 largest publicly listed companies. The International Energy Agency [IEA] warns in a striking net zero report today that all new oil, gas and coal projects and exploration must stop if global warming is to stay below 1.5C.”

Scientific support comes from the fact that 97% of climate scientists agree that man-made greenhouse gases have been responsible for “most” of the warming of the Earth’s average temperature over the second half of the twentieth century. The 3% who are sceptical are not highly regarded scientists and some are in the pay of fossil fuel interests.

In the face of this scientific, interstate, and corporate agreement about the necessity of a global Big Push to cut CO2 emissions fast, developing countries and China carry a heavy responsibility, because they are the major source of global CO2 emissions, mainly from their consumption of fossil fuels. They must quickly follow the developed countries in investing on a massive scale in sources of renewable energy, whose prices are falling fast. Developed countries will offer large-scale financing and technical assistance for them to make the switch – in the developed countries’ self-interest.

It is true that developed countries put up most of the stock of greenhouse gases now in the atmosphere as they used fossil fuels to power their ascent to the top of the global hierarchy of income and wealth over the past two centuries. But that gives developing countries, even though they remain well down the income hierarchy, no justification for saying that they therefore have the right to carbon space for powering their economic development – because continuing to use relatively accessible, cheap and reliable fossil-fuel energy to power their growth pushes all humanity and the biosphere towards ruin.

Do Virtually all Climate Scientists Agree with the CCC?

It is widely cited that “97% of climate scientists agree warming is man-made”; or more exactly, “97% of science papers taking a position on climate change say it is man-made”. The conclusion is frequently amped up to “a 97% consensus that ‘humans are causing a global warming crisis’”.

Note that this last statement – with “crisis” – is not the same as the previous two, but all three statements tend to be conflated, so that people agreeing with “most recent warming is man-made” tend to be scored as agreeing that global warming is a crisis, which commonly gets inflated into agreeing that it is an existential crisis or the existential crisis.

Note that these statements of “consensus” do not specify the time period.

Note also that “high consensus” in science is only a weak criterion of “truth” in science – but the 97% figure is often deployed as evidence of the “truth” that warming is man-made. Of course, it is worth knowing to what extent there are “widely accepted truths” in any field. But problems come when the “fact” of consensus is established in a clearly tendentious way.

A standard source of the claim that 97% of climate scientists agree that global warming is man-made is the study by John Cook et al. (2013). The study rated about 12,000 abstracts of peer-reviewed papers published between 1991 and 2011. The rating was done by 12 volunteers, each abstract was rated by two people, making 24,000 ratings. The ratings were in three categories: (1) implicit or explicit endorsement of human-caused global warming; (2) no opinion; (3) implicit or explicit rejection or minimization of the human influence. About 4,000 abstracts took a position on the cause of global warming, 97.1% of which endorsed human-caused global warming.

Notice that this should not be, but commonly is translated as “97% of climate scientists endorse …”. Notice too that the abstracts were not rated as to whether they stressed greenhouse gases or man-made changes in land use and land cover; the implicit assumption is, man-made greenhouse gases are the cause of warming. Finally, notice that the abstracts were not rated as to whether they endorsed the idea of a global warming crisis or catastrophe; only as to whether they endorsed the idea of human causes of global warming.

A Wikipedia essay describes the study as “a landmark climate research paper [which] found that 97.1% of climate scientists supported the hypothesis of anthropogenic global warming (AGW). As of March 2021, the paper has received at least 1,270,076 downloads.”

There is an obvious question. Does “endorsement of human-caused global warming” mean warming caused 100% by human actions, or 75%, or 50%, or 25%? Any of these may be consistent with “climate change is man-made”. By leaving the degree of causation by humans open, thumbs can be put on the scales to yield the conclusion that virtually all well-qualified scientists believe that global warming of the past several decades is caused almost entirely by human action (would not be occurring in the absence of that action).

Professor Mike Hulme, professor of Human Geography at the University of Cambridge, concludes: “The ‘97% consensus’ article is poorly conceived, poorly designed and poorly executed.” Analysis by David Legates et al (2015) found that only 0.3% of the sampled papers “endorsed the standard definition of consensus: that most warming since 1950 is anthropogenic”. Research physicist Nicola Scafetta: “Cook et al (2013) is based on a straw man argument because it does not correctly define the IPCC AGW [anthropogenic global warming ] theory, which is NOT that human emissions have contributed 50%+ of the global warming since 1900 but that almost 90-100% of the observed global warming was induced by human emission”. (3)

It is testimony to the apocalyptic emotion behind people’s response to “climate change” and “global warming” that the Cook et al. paper, and others with similar methods, have commanded such credence in the face of evident flaws – notably (1) in fudging the distinction between agreeing that human actions have some role in global warming and agreeing that human actions explain most global warming; (2) in not asking whether – extent to which -- the scientists’ papers identified global warming as a problem, a crisis, an existential crisis, over what time period. (4)

By keeping it vague what the “consensus” agrees on, authors and users of the studies have given the impression that endorsement of “humans are causing global warming” means endorsement that “humans’ enhancement of the greenhouse effect will be dangerous enough to be ‘catastrophic’”, and therefore also means endorsement of the imperative for urgent, radical action on a global scale by governments, firms and families.

It is testimony to the pervasive anxiety of the zeitgeist that such surveys are routinely cited as demonstrating a near-unanimous scientific consensus in favor of radical, far-reaching climate policy (including for energy, food and materials), when the surveys do not even ask the question as to whether the respondent considers that (a) the anthropogenic component of recent warming is dangerous, and (b) dangerous enough to require a global climate policy. The surveys are almost valueless scientifically, but valuable politically.

Upward Bias in Temperature Forecasting Models

The prospect of a coming catastrophe for humanity and the biosphere rests heavily on outputs of climate forecasting models. But as David Legates and co-authors argue, these models “exhibit a strong exaggeration in their results even when narrowly adopting atmospheric carbon dioxide as the sole driver of climate responses…. [General circulation models, such as those of the IPCC, the Intergovernmental Panel on Climate Change] have consistently overestimated the climate sensitivity to rising atmospheric carbon dioxide.”

Ross McKitrick (2020) begins his assessment, “Two new peer-reviewed papers from independent teams confirm that climate models overstate atmospheric warming, and the problem [of overstatement] has gotten worse over time, not better”. One of the papers (by McKitrick and John Christy) examined 38 models, the other, 48 models, used by the Intergovernmental Panel on Climate Change (IPCC), the various US “National Assessments”, the EPA’s “Endangerment Finding”, and more.

McKitrick continues, “Both papers looked at ‘hindcasts’, which are reconstructions of recent historical temperatures in response to observed greenhouse gas emissions and other changes (eg aerosols and solar forcing). Across the two papers it emerges that the models overshoot historical warming from the near-surface through the upper troposphere, in the tropics and globally.” The study based on 48 models for 1998 to 2014 found that they warm on average 4 to 5 times faster than the observations.

McKitrick concludes, “modelling the climate is incredibly difficult, and no one faults the scientific community for finding it a tough problem to solve. But we are all living with the consequences of climate modelers stubbornly using generation after generation of models that exhibit too much surface and tropospheric warming, in addition to running grossly exaggerated forcing scenarios (eg RCP8.5).

“[W]hen the models get the tropical troposphere wrong, it drives potential errors in many other features of the model atmosphere. Even if the original problem was confined to excess warming in the tropical mid-troposphere, it has now expanded into a more pervasive warm bias throughout the global troposphere.

“If the discrepancies in the troposphere were evenly split across models between excess warming and cooling we could chalk it up to noise and uncertainty. But that is not the case: it’s all excess warming…. That’s bias, not uncertainty, and until the modelling community finds a way to fix it, the economics and policy making community are justified in assuming future warming projects are overstated, potentially by a great deal….”

The strong upward bias in temperature forecasts relative to observations compromise the models’ forecasting impacts on ecosystems, including agriculture, by exaggerating the probability of catastrophic effects.

The IPCC makes projections of future global temperatures to the end of century based on various models. They range from a low of 1.4 C to a high of 5.6 C over pre-industrial temperature (roughly 1900). The wide range makes them almost meaningless. The IPCC explains that the wide range results from uncertainty about the magnitude of the feedback between warming and increased rates of evaporation – and David Seckler adds, also about the effects of evaporation on clouds and precipitation. (5)

It is astonishing to learn that the climate models miss a critical component of the climate system -- the hydrological cycle, and specifically clouds, which the IPCC calls the “wild card” in the climate system.

The IPCC’s Worst Case Scenario is commonly used as the Business as Usual without a Radical Policy Action’ Scenario

The IPCC’s Assessment Report 5 (AR5), published in 2014, presented a range of forecasts of global climate out to 2050 and 2100, based on different assumptions about radiative forcing (a measure of how much of the sun’s energy the atmosphere traps). The most extreme – the worst case – was called Representative Concentration Pathway (RCP) 8.5. It assumes ominous reversals in several basic, long-standing trends, all heading in the extremely wrong direction to 2100:

high population growth to reach more than 12 billion people

slow technology development

coal consumption increases by 500 % between 2005 and 2100 (no account taken of supply constraints)

slow GDP growth

fast rise in world poverty

high energy use

high GHG emissions.

temperature forecast: 5 C rise between 2005 and 2100.

RCP 8.5’s vision is horrifying, as worst-case scenarios should be.

A whole wave of literature, in peer-reviewed journals as well as in media, even by IPCC authors, has since presented this worst-case as either “the most likely case” or “the baseline case – business as usual without policy action”. This misleading assumption provoked a recent paper in Nature subtitled: “Stop using the worst-case scenario for climate warming as the most likely outcome” (see also, Chrobak, 2020).

The Politics: How has the CCC become so Dominant

How can we understand the present dominance of the CCC in public and political opinion around the world, despite repeated evidence -- over decades -- of wildly exaggerated forecasts of doom when compared against measured outcomes, and despite the real uncertainties (“known unknowns”) in knowledge about basic mechanisms?

We can identify several mutually reinforcing reasons.

1. The public demand for negatively-inflected news, especially on climate

News that fits the CCC plays into a more general logic of “If it bleeds, it leads”, meaning that the media tend to deliver negativity – about climate, health, almost anything – because readers and viewers want negatively-inflected stories. Recent research finds that across all types of articles the most popular stories have high negative content. Surprisingly, politics matters little: there is no difference between conservative and liberal outlets in propensity to deliver negativity. Rather, the difference is between media outlets by size and influence: the bigger and more influential the media brand, the stronger the bias towards the negative – showing how good they are at delivering what people want. According to Matthew Yglesias, several recent research studies find that “the kind of stories people like to consume are compulsive rather than satisfying …. You’re clicking and sharing stories about terrible things and raising alarms and listening to the alarms that are being raised by others, and it all feels very compelling precisely because it’s gloomy and alarming …. People like to get mad, then share the content so that peers can share their outrage.”

Climate lends itself well to this negativity bias. Richard Betts, then the head of climate impacts at the Met Office, explained the demand for negative climate stories (BBC News Channel, 11 January 2010, emphasis added ):

“The focus on climate change is now so huge that everybody seems to need to have some link to climate change if they are to attract attention and funding. Hence the increasing tendency to link everything to climate change – whether scientifically proven or not …. I have quite literally had journalists phone me up during an unusually warm spell of weather and ask ‘is this a result of global warming?’ When I say ‘no, not really, it is just weather’, they’ve thanked me very much and then phoned somebody else, and kept trying until they got someone to say yes it was. Talking up of the problem then gives easy ammunition to those who wish to discredit the science.”

Holman Jenkins, in The Wall St Journal (2018), describes the other side of the exaggeration incentive: “Over the past 15 or 20 years the climate beat has been handed over to reporter-activists who’ve decided that climate science is impenetrable but at least nobody ever got fired for exaggerating the risks of climate change.”

Climate scientist Judith Curry identifies a similar logic in the frequent conflation of extreme weather events and “global warming”. “In 2005 [following Hurricane Katrina] the public found it very hard to care about 1 degree or even 4 degrees of warming – heck, the temperatures varied by that much on a day-to-day basis.… However, arguments that a relatively small amount of global warming (order 1 C) could result in more intense hurricanes, well that got their attention…. The activists now had a new weapon in their arsenal – attributing extreme weather events to manmade climate change. The ‘will to act’ seemed tied to alarmism about extreme weather events. Which provides a key political role for unsupported ‘storylines’ about extreme weather events.” The “heat dome” over the Pacific northwest of the US and Canada in June 2021 was generally treated as yet more evidence of “climate change. You would not know it from the coverage, but in Washington and Oregon, the number of days per decade with temperature above 99 F shows no upward trend from 1911-20 to 2011-20. For example, the number of days above 99 F in 1971-80 was more than in 2011-20. Across the US the 1930s was arguably the hottest decade on record; the time of the deadly “Dust Bowl”, summer 1936, was the hottest summer on record between 1895 and 2020.

An attempt to push the distinction between “weather” and “climate” is unwelcome in this context, because it weakens the motivating, mobilising force of “climate” as the boundless enemy that could destroy humanity, like the Biblical Flood. The Climate Apocalypse is imminent, is the motivational message (also see Adler, 2019).

This is the deeper story behind the wild exaggerations of the forecasts and the continued high credibility of those who make them. The exaggerations express the apocalyptic thinking about climate now sweeping the world, including the financial and corporate world. They express a story of humans damaging Nature, and Nature destroying humans in return. These stories themselves express ancient de-creation stories of humans misbehaving in the eyes of God, and God punishing them. The Biblical flood occurred because God decided the people had become wicked, had stopped respecting God and Nature, so He resolved to wipe life off the face of the earth, saving only a breeding pair of each species in order to recreate the world in His image. Much the same story appeared in Sumerian culture long before the Bible, and later in the Quran, expressing a desperate human wish for Salvation.

In our more secular age, apocalyptic theology can rely on Nature in place of God -- Nature invested with God-like powers of punishment and reward.

2. The “political” science of the IPCC

The IPCC was established to provide a properly scientific center of gravity for discussions about climate, and issue regular balanced assessments of the state of scientific climate knowledge. But there are at least two basic problems with the IPCC process. One is that the mandate of the IPCC says that it is “to assess … the scientific, technical and socio-economic information relevant to understanding the scientific basis of risk of human-induced climate change, its potential impacts and options for adaptation and mitigation” (emphasis added). (6) The mandate does not mention to assess the interaction between human and natural causes. It is as though natural causes do not exist. The IPCC’s whole body of work consequently is slanted towards exaggerating human causes of given climate changes, marginalizing the role of natural causes interacting with human causes. Which among other effects leads it to give undue weight to “mitigating” climate change (by changing human actions) relative to “adapting” to climate changes partly induced by natural forces.

The common justification given by IPCC defenders is: natural causes operate only very slowly; the climate is changing fast; therefore the climate changes must be driven by humans, and humans can change their behaviour fast – when forced and sufficiently motivated to do so ( using all the techniques of Machiavelli). This justification underplays the point that some natural causes – eg the Atlantic Multidecadal Oscillation – do change fairly quickly, over decades, with far reaching effects (eg Atlantic Multidecadal Oscillation and its impacts on the Greenland ice sheet).

The second IPCC problem is that this bias to doomsday forecasts – therefore to urgent and far-reaching action -- is intensified in the process of translating from the technical reports to the summaries for policy makers. The translation – done mostly by non-scientists -- tends to downplay uncertainties and up-play certainties in an alarming, even catastrophizing direction. Hence the tendency to treat worst-case scenarios as likely scenarios. Recall the subtitle to the Nature paper, “Stop using the worst-case scenario for climate warming as the most likely outcome” (2020).

3. Logic of decision-making and logic of mobilization

The tendency to treat worst-case scenarios as likely scenarios “in the absence of radical changes to how we live, work and govern” can be understood in terms of the distinction between the logic of decision-making and the logic of mobilization or action. To make the best decision about what to do, one needs to explore a range of possible alternative courses of action, weigh up the pros and cons of each, then decide which is best. But having exposed many people to a range of options, there may be action-sapping disagreement as to which is best. To get a great mass of people to move all in one direction one needs to present them with only two alternatives, one of which is crazy, and pretend to be entirely confident of the two outcomes. (7) If they can be convinced that there are only two alternatives and one is crazy, they will follow.

The Climate Change Consensus expresses the logic of mobilization. It presents two alternatives. “Do nothing (or little)”, which leads to catastrophe, extinction, the planet becomes ungovernable, coastal cities must be abandoned, lower Manhattan will be underwater by 2018. Or else, quickly decarbonize the world economy and push towards a broader dematerialization of lifeways. No prizes for guessing which wins. This is how you mobilize people on a vast scale to do what you think must be done. Or as a US senator from the West once put it, “Managing politicians is like herding wild horses. To get them running in the same direction you have to stampede them.” (8)

4. Left and right politics

While the demand for negatively-inflected news cuts across the political spectrum, political ideology certainly shapes people’s beliefs about climate. Climate change “scepticism” is almost a talisman of the center-right and right, and is strongly promoted by fossil fuel interests. Climate “alarmism” is more pronounced on the center-left and left of the ideological spectrum. It is promoted as a sacred unifying mission by a great global phalanx of left-green civic action organizations (Extinction Rebellion is prominent).

A Guardian article describes the right-wing “sceptical” tactic. “Vested interests have long realized [that people-at-large trust climate scientists on the subject of global warming] and have engaged in a campaign to misinform the public about the scientific consensus. For example, a memo from communications strategist Frank Luntz leaked in 2002 advised Republicans, ‘Should the public come to believe that the scientific issues are settled, their views about global warming will change accordingly. Therefore, you need to continue to make the lack of scientific certainty a primary issue in the debate’. This campaign has been successful… The media has assisted in this public misconception, with most climate stories ‘balanced’ with a ‘sceptic’ perspective. However, this results in making the 2-3% seem like 50%... As a result, people believe scientists are still split about what’s causing global warming, and therefore there is not nearly enough public support or motivation to solve the problem.”

Both sides accuse the other of abusing “the science”. Both sides generate expansive pressures to describe more and more trends, issue more and more prescriptions, without ambiguity and shading, and judge more and more of the other’s claims pre-emptively. Individual issues (eg extreme weather) are not discussed in terms of their own evidence but are packaged together in ideological visions, the better to establish clear moral battle lines, disagreement being moral heresy.

This is the playing out of a larger process of polarization common when scientific disagreements become public. As described by sociologist of science Robert K. Merton, each group then responds to stereotyped versions of the other. “They see in the other’s work primarily what the hostile stereotype has alerted them to see, and then promptly mistake the part for the whole. In this process, each group … becomes less and less motivated to study the work of the other, since there is manifestly little point in doing so. They scan the out-group’s writings just enough to find ammunition for new fusillades.” (9)

The result is a “syndrome of exaggeration”: each side exaggerates evidence in its favour and downplays evidence against, which justifies the other in exaggerating evidence in its favour and downplaying evidence against; and back again. It is a syndrome in that the behaviour of each side confirms the negative expectations of the other. They often go at each other ad hominem, like adolescent school boys, including people who regard themselves as serious scientists. In the digital era members of both sides are able to quickly find one another and the enemy. (10)

Yet to talk of “two sides” is misleading, because the side championing the CCC is by far the dominant. Recall the Financial Times journalist Pilita Clark: “The world has rarely seen any environmental idea take off like the push to cut greenhouse gas emissions to net zero.” For political leaders and increasingly business leaders, being seen to give high value to protecting the public against all the ills attributed to “climate change” – including by pledging big changes to be made long after they leave office -- is a way to show foresight, statesmanship, leading on the front foot. Many right-wing politicians and business leaders now wish to present themselves as fighters against climate change, even as they continue to support fossil-fuel industries.

5. Finance and business interests

There are now powerful industrial interest groups promoting climate alarmism for profit-seeking reasons, including those invested in the switch from fossil fuels to renewables and those invested in the switch from combustion to electrical engines. The CEO of the electric vehicle car company Lucid (a former Tesla engineer) said recently that the transition to an EV world will happen faster than anyone expects, driven by the environmental imperative. He said, “The environment is in crisis. The world needs millions of electric cars tomorrow”. He did not suggest where all the electricity will come from.

Many big players in finance see opportunities for speculative profits by playing up climate dangers. Goldman-Sachs in 2005 authored the firm’s environmental policy, which said “voluntary action alone cannot solve the climate change problem”, from a firm that has consistently opposed government regulation. It and other financial firms supported what Matt Taibbi called “a new commodities bubble disguised as an ‘environmental plan’” – a carbon credit market in the form of cap-and-trade. Coal plants, utilities, natural gas distributors and some other industries are assigned carbon emission limits. To exceed the limits they must buy credits from those who emit less than their limit. As of 2010, the volume of the market in the US was estimated as $1 trillion annually. Goldman and the others were making themselves central actors in the market. The best thing about it is that the emission limits keep being lowered, implying that the price is guaranteed to keep rising, to the benefit of the intermediaries.

On top of all this, the whole “sustainable investing” movement provides opportunities for big profits at the intersection of the already thick alphabet soup of sustainability disclosure regulations (TCFD, SASB, GRI, CDSB among others, in the case of the EU) and the lack of meaningful, reliable data. “At the moment, the risk is that it is ‘garbage in, garbage out’”, says the head of sustainable finance at S&P Global Ratings.

So the fact that the financial sector is “worried” about climate change could be taken to be part of the problem, underlining the need for public authorities to take charge and frame parameters within which private operations produce public benefits. (11)

Conclusion

I have argued that the “plausible” risks of climate change are commonly exaggerated within the climate community. Recall for example, Christiana Figueres, 2020, “The scary thing is that after 2030 it basically doesn’t really matter what humans do”; Kevin Drum, 2019, “[The Green New Deal] would only change the dates for planetary suicide by a decade or so”; Frank Fenner, 2010, “We’re going to become extinct. Whatever we do now is too late.” Many more in the same doomsday vein.

We have seen that the standard global warming models have a powerful built-in bias to exaggerate the rate of future temperature rise, as seen in (most of) them “hindcasting” temperature rises several times faster than actually observed. We have seen that forecasters commonly take “worst-case scenarios” as “likely scenarios in the absence of radical action” (eg reaching net zero carbon emissions by 2050), to the point where Nature recently published a paper sub-titled, “Stop using the worst-case scenario for climate warming as the most likely outcome”.

The dismaying thing is that scientists and advocates have been making catastrophising global warming forecasts of this kind for decades past, normally dated some 10 to 30 years into the future. The due date comes without catastrophe, but never a retrospective holding to account. Rather, on to the next catastrophising forecast another 10 to 30 years ahead. Scientists-writers-activists know the catastrophe forecasts get the attention, the clicks, the research funding. We saw the exaggeration mechanism spelled out by Richard Betts of the BBC, Holman Jenkins of the Wall St Journal, and climate scientist Judith Curry.

The built-in exaggeration of the costs of climate change blunts the parallel with nuclear power plants. We know with high certainty the costs of nuclear explosions. We know the costs of global temperature going above 1.5 C above “pre-industrial” much less certainly, and we can see the mechanisms by which the likely costs are being systematically exaggerated.

On the other hand, there is abundant evidence that even without the doomsday exaggerations the plausible risks of climate change could be very serious, in particular because of the inherent political economy difficulty of getting needed global or regional cooperation when political action is mostly at the level of sovereign nation states (see the G20).

Coal power generation is the single biggest source of GHG emissions, and emissions from coal consumption will probably not fall fast, whatever the promises. First, coal is cheap, accessible and generates reliable power for many developing countries; in Asia, coal alone generates 40 percent of energy consumption, much higher than the world average of 29 percent. (12) Second, developing countries, including China, assert a strong claim on carbon space to power their economic development. They see it partly as a matter of fundamental justice, since developed countries emitted most of the CO2 that is already in the atmosphere and seas as the necessary condition for them becoming developed. Developed countries promise finance and technical assistance on a massive scale to accelerate the energy transition in developing countries – and have a long track record of leaving promises as promises. (See the global distribution of Covid vaccines. See the results of vaunted “voting reform” in the World Bank, leaving the US with 17% and China with 6%.) What is more, the Japanese government plans up to 22 new coal power plants, as it closes nuclear plants in the wake of Fukushima.

Then comes a question: does drawing attention to the doomsday exaggerations of the CCC – “disaster”, “catastrophe”, “extinction”, “fiddling while the planet burns” - serve to reduce the political and public pressures for necessary ameliorative action, in a world where powerful fossil lobbies seek to block or delay such action for reasons independent of “evidence”? Should “Third Way” essays like this one not be published, because “give them (deniers, sceptics) an inch and they will take a mile”? To what extent must mass publics be “panicked” in order to induce enough collective political and business action – national, international – to substantially slow the growth of GHG emissions? If we can sustain emission- and temperature-curbing action only by holding up the certainty of disaster, catastrophe, extinction, then better to let the doomsday exaggerations continue as the necessary condition for that ameliorative action. What is the harm, when the alternative is ruin for humanity and the biosphere?

The danger is that the repeated wild exaggerations produce a public backlash, a discrediting, and a strengthening of the many “deniers” who see “leftists, governments, and the United Nations” as the source of malevolence in the world. A more accurate accounting of the evidence would (hopefully) produce a more calibrated and sustained public and business response.

What to do? (13)

The IPCC should allocate some 10% of its budget to a Red Team, dedicated to independent scrutiny of its evidence and conclusions (especially the Summary for Policymakers). (14) The IPCC should revise its mandate to require it explicitly to focus on interactions between natural forces and human actions, as it is now almost required not to, biassing its assessment of the state of scientific knowledge towards “man-made global warming” as an almost separate system.

Learned societies should more actively seek to understand and publicize the reasons for repeated large-scale discrepancies between “hindcasts” and “forecasts” on the one hand and actual observations on the other, discrepancies strongly biased towards “disaster”.

It is particularly important that the knee-jerk attribution of extreme weather events to global warming be challenged with reference to evidence. Judith Curry explained – quoted earlier -- why CCC advocates have a powerful incentive to attribute cases of extreme weather to global warming, tout court. She has recently written, “Apart from the reduced frequency of the coldest temperatures, the signal of global warming in the statistics of extreme weather events remains much smaller than that from natural climate variability, and is expected to remain so at least until the second half of the 21rst century.” She goes on to amplify a point made earlier about the limits of the climate models used for the IPCC assessment reports: they are driven mainly by predictions of future GHG emissions. They do not include predictions of natural climate variability arising from solar output, volcanic eruptions or evolution of large-scale multi-decadal ocean circulations. They do a particularly poor job of simulating regional and decadal-scale climate variability. (15)

Participants on both sides have to learn the art of respecting the principle of free speech while maintaining the standards of civil discourse.

While I have stressed the CCC’s support for urgent and radical changes to the way we live, work and govern, some CCC champions argue that the world economy could continue on a largely unchanged growth trajectory provided that we switch fast from fossil fuels to renewables. Indeed, this switch is beginning to happen fast, with coal and nuclear energy production unable to compete without subsidies in areas where natural gas, wind and solar resources are readily available.

But to say that life can continue as before provided we substitute renewables for fossil fuels obscures the huge difficulties for many developing countries of getting out of fossil fuels while growing fast enough to reduce the income gap with developed countries.

We must give high priority to investments in “clean coal” technologies, such as carbon capture, storage and use, to make the dirtier coal cleaner in existing and new coal-power plants; and link coal-power retirement to the coming on-stream of attractive alternatives. The multilateral development banks have recently or will soon announce bans on coal power. The G7 leaders meeting in mid 2021 promised to stop using government funds to finance new international coal power plants by the end of 2021. China’s Belt and Road Initiative should increase its pressure on host countries to cut back on dirty coal and boost clean coal and renewables.

A high and immediate priority is to build a robust financing and technical assistance mechanism for help from developed to developing countries. The Paris Agreement instituted a Mitigation pillar and an Adaptation pillar. Intense debate took place around the third, Loss and Damage, the name of a mechanism to compensate for the destruction that Mitigation and Adaptation cannot prevent. Developed countries by and large have sought to marginalize the Loss and Damage pillar, as they have long sought to marginalize Special and Differential Treatment for developing countries in trade and investment agreements. “Finance is something that really rich countries, particularly the US, have made sure that there is no progress and not even discussion on”, remarked Harjeet Singh, senior advisor at Climate Action Network International. (16)

My “forecast” is that in the next two to three decades to midcentury we will make rapid progress in scientific knowledge about weather and climate, helped by longer and more accurate satellite and ocean records and by a new generation of climate models that operate at one to ten kilometers scale (as distinct from the current models’ 50 kilometer scale). We will probably continue to make rapid progress in decoupling GHG from GDP growth, with a combination of state direction-setting and private innovation focused on transformations in energy, transport, buildings, industry and agriculture, using incentives like research and development subsidies and tax credits for technology investment, and penalties for carbon-intensive activities. (17) In transport, this entails coordination across urban planning decisions, public transport investment, future of remote working, infrastructures for electric charging and hydrogen loading. (18) Transformations in these systems are already underway, and the prospect of vast new green investments, supported and under-written by the state, will intensify them. These green investments will open productive investment opportunities previously limited by stagnant wages and rising debt, which have driven investment into increasingly speculative ventures. If by two or three decades ahead it looks as though the second half of this century could well experience globally extreme climate and ocean events, we will be much more knowledgeable about what to do than we are today. (19)

### 1NC – China

#### China’s inevitably doomed and can’t out innovate America – maintaining our capacity in the next 10 years is critical

Pei 21 – Minxin Pei is a Chinese-American political scientist and expert on governance in China, U.S.-Asia relations, and democratization in developing nations.

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 US retains a plethora of advantages in multiple areas of global leadership in spite of Trump

--Trump sucks but fundamental pillars of grand strategy remain

--Strong economy, tech innovation, geographical distance, alliances, etc all remain

Schake 19

Kori Schake, Deputy Director General of the International Institute for Strategic Studies and the author Of Safe Passage: The Transition From British to American Hegemony. She served on the National Security Council and in the U.S. State Department in the George W. Bush administration, “Back to Basics: How to Make Right What Trump Gets Wrong,” Foreign Affairs, May/June 2019, accessed through Georgetown libraries

U.S. President Donald Trump's sharp-elbowed nationalism, opposition to multilateralism and international institutions, and desire to shift costs onto U.S. allies reflect the American public's understandable weariness with acting as the global order's defender and custodian. Over the last three decades, post—Cold War triumph- alism led to hubris and clouded strategic thinking. After the 9/11 attacks, Wash- ington stumbled badly in Afghanistan and Iraq; more recently, Russia has reasserted itself in eastern Europe and the Middle East, and China's economic and military power have significantly expanded. Even among Trump's oppo- nents, these developments have led many to conclude that the only solution is a fundamental rethinking of U.S. strategy.

This is an overreaction. In truth, the pillars of U.S. strategy for the past 70 years—committing to the defense of countries that share U.S. values or interests, expanding trade, upholding rules-based institutions, and fostering liberal values internationally—have achieved remarkable successes and will continue to serve the country well going forward. Although some changes are certainly necessary, the biggest risk now is that the United States will in the process of making those changes scrap what is best about its foreign policy.

In his blunt and often crude way, Trump has proved brilliant at poking holes in pieties and asking pointed questions about long-standing principles. His answers to those questions, however, have been self-defeating at best and dangerous at worst. By revealing what happens when U.S. strategy becomes untethered from the ideas that built the American-led order, Trump's time in offce should serve as a wake-up call—but not as a cause for fundamental change. On the contrary: as the costs of an "America first" approach become clear, advocates of a more traditional, global- minded American leadership will get another hearing. They should seize the opportunity by offering a vision of a reformed and updated U.S. foreign policy. But a new vision of the U.S. role in the world should reaffrm some core principles—namely, that the United States can best achieve its objectives through mutually beneficial outcomes that reduce the need for enforcement and encourage like-minded countries to share burdens.

YOU NEVER HAD IT SO GOOD

For all the panic and self-doubt that the political turmoil of recent years has brought, the current crisis is hardly without precedent. In fact, for most of its history, the United States faced more formidable challenges and had fewer resources than it does today. George Washington would have loved to negoti- ate a multilateral trade deal from a position of economic strength rather than having to bring a fledgling nation into being amid hostility from much stronger states. Abraham Lincoln would have considered banding allies together to counter a rising China an easy day's work compared with passing the 13th Amendment or preventing international recognition of the Confederacy. Franklin Roosevelt would have been right to see managing a glut of capital as less compli- cated than resuscitating the entire U.S. economy.

The United States has the most propitious geopolitical environment any country could hope for: surrounded by oceans and peaceful, cooperative neighbors. The U.S. economy generates jobs and drives technological innovation. The country's hegemony in the global balance-of-payments system is so secure that investors are indifferent to its indebtedness and Washington can impose sanctions on foreign entities and governments with impunity. The United States is a dominant power that other strong states voluntarily work to support rather than diminish—a historical anomaly. Its military is so capable that its adversaries have to operate on the margins of the conflict spectrum, in the realm of insurgency or information warfare. The country's cultural products are appealing and accessible, and its language serves as the lingua franca for international transactions.

#### Grid is resilient

Niiler 19 – Science and technology writer for Wired and National Geographic.

Eric Niiler, “The Grid Might Survive an Electromagnetic Pulse Just Fine,” *Wired*, 30 April 2019, https://www.wired.com/story/the-grid-might-survive-an-electromagnetic-pulse-just-fine/.

OVER THE PAST few years, speculation has risen around whether North Korea or any other nation could detonate a nuclear weapon over the United States that would create an electromagnetic pulse and knock out all electricity for weeks or months. This doomsday hypothesis has been promoted by a former CIA director, a commission set up by Congress, and a book by newsman Ted Koppel. But a sober new engineering study by industry experts finds that key equipment on the grid can be protected from any such EMP. Even if it could happen, the resulting blackouts would affect a few states but wouldn't turn the US into a backdrop for The Walking Dead.

The study, by the Electric Power Research Institute, a utility-funded research organization, finds that existing technology can protect various components of the electric grid to buffer it from the effects of solar flares, lightning strikes, and an EMP from a nuclear blast all at the same time: a three-for-one surge protector. “We have a strong technical basis for what the impacts [of an EMP] might be,” says Randy Horton, EPRI project manager and author of the report being released today. “That is one thing that didn’t exist before.”

Horton says that EPRI technicians worked with experts at the Department of Energy labs at Los Alamos and Sandia to simulate some effects of an EMP on substations and distribution systems. They also did real-world testing of electrical equipment at an EPRI laboratory in Charlotte, North Carolina. The study, which took three years to complete, looks at the effects of three kinds of energy spawned by a nuclear detonation.

The first high-energy wave occurs in just a few nanoseconds and is called an E1. The second wave, called an E2, lasts up to a second and can fry electric systems the way a lightning strike does, unless they are properly grounded. Effects of an E2 wave on the grid are expected to be minimal. The third kind of wave can last for tens of seconds and is similar to what utility operators might expect from a low-frequency, long-duration solar flare or geomagnetic storm. The report says that the combination of an E1 and E3 would cause the most damage over the widest area.

Horton says simulations and testing by EPRI contradicts earlier findings that an EMP would wipe out the US grid. “You could have a regional voltage collapse, but you wouldn’t damage a large number of bulk power transformers immediately,” Horton says. “That was the difference in our finding. There were some studies that said you could damage hundreds of transformers. We just didn’t find it.”

Some members of an EMP commission have argued for the past decade that an attack would destroy the electric grid, and kill 90 percent of the US population through disease or starvation. That panel shut down in 2017 after the Department of Homeland Security did not request more funds from Congress to keep it going.

Apart from the electric power industry, the Pentagon has been conducting its own classified tests about potential effects from such an event on military installations. A group of experts is meeting this week at Maxwell Air Force Base in Montgomery, Alabama, says Air Force lieutenant-general Steven Kwast, who is coordinating the event.

Kwast says the threat is much more real than the public believes. “You don’t need to have a nuclear detonation in space to do this,” he said. “You could have a hot-air balloon rising above a city with a tactical electromagnetic weapon. You could do one over an airfield of F-35s or one Army post so none of the tanks work or over a shipyard so that none of the ships sail. Our enemy is clever and adaptive. They see our soft underbelly is our electricity.”

But other nuclear weapons experts say the technical study by EPRI brings scientific rigor to a field that has been dominated by hype and fearmongering. “When you are doing documented research on physical systems, it is still solid evidence, no matter who paid for it,” says Sharon Burke, a senior adviser at the Foundation for a New America and a former assistant secretary of defense for operational energy in the Obama administration. “This is not someone’s opinion.”

## 2NC

### T FTCA

#### Judicial Consensus

Raphael 16 – Litigation partner in the San Francisco office of Munger, Tolles & Olson

Justin P. Raphael, Motion to Dismiss and Memorandum in Support filed by Defendant, Thompson, et al. v. 1-800 Contracts, Inc., et al., US District Court for the District of Utah, November 2016, LexisNexis

The FTC administrative action was not brought “to prevent, restrain, or punish violations of any of the antitrust laws.” Rather, it was brought under Section 5 of the FTC Act, 15 U.S.C. § 45. The term “antitrust laws” is defined in the Clayton Act to encompass a specific list of federal antitrust statutes, 15 U.S.C. § 12(a), which the Supreme Court has held is exclusive. Nashville Milk Co. v. Carnation Co., 355 U.S. 373, 376 (1958) (“[T]he definition contained in § 1 of the Clayton Act is exclusive. Therefore it is of no moment that [a statute not listed therein] may be colloquially described as an ‘antitrust’ statute.”). That definition does not include Section 5 of the FTC Act, and multiple courts have acknowledged that the FTC Act is not an “antitrust law.” See Pool Water Prods. v. Olin Corp., 258 F.3d 1024, 1031 n.4 (9th Cir. 2001) (analyzing “prima facie” weight provision of Clayton Act, 15 U.S.C. § 16(a), and noting that “prima facie weight is given only to violations of the ‘antitrust laws’ as defined by the Clayton Act,” which “does not include violations of the FTC Act”); Yamaha Motor Co. v. FTC, 657 F.2d 971, 982 (8th Cir. 1981) (noting that Section 5 of the FTC Act is not “one of the ‘antitrust laws’ within the meaning of Sections [16(a) and 16(i)] of the Clayton Act”).

#### The FTC Act is not an antitrust law.

Oberdorfer 95 – United States District Judge of the United States District Court for the District of Columbia

Louis F. Oberdorfer, FTC v. Onkyo U.S.A Corp., 1995 U.S. Dist. LEXIS 21222, United States District Court for the District of Columbia, August 1995, LexisNexis

We note that the Antitrust Procedures and Penalties Act ("Tunney Act"), 15 U.S.C. § 16(b)-(h), to which the government's proposed consent decree in Microsoft was subject, requires that any proposal for a "consent judgment" submitted by the United States in a civil case filed "under the antitrust laws" be filed with the court at least 60 days in advance of its effective date, published in the Federal Register and a newspaper for public comment, and reviewed by the court for the purpose of determining whether it is in the public interest. The FTC Act is not an "antitrust law" within the meaning of the Clayton Act, 15 U.S.C. § 12(a). Accordingly, it is well settled that any action brought pursuant to the FTC Act for the recovery of civil penalties is not subject to the requirements of the Tunney Act. Even in procedures involving the assessment of civil penalties under Section 11(1) of the Clayton Act, 15 U.S.C. § 21(1), for violation of Federal Trade Commission orders, the courts have not required use of Tunney Act procedures in cases involving only the payment of civil penalties. Indeed, this Court has consistently entered consent judgments for civil penalties under the Hart-Scott-Rodino Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a, without employing Tunney Act procedures. See, e.g., United States v. Harold A. Honickman, 1992 U.S. Dist. LEXIS 18148, 1992-2 Trade Cas. (CCH) P17,018 (D.D.C.); United States v. Beazer, plc, 1992 U.S. Dist. LEXIS 12755, 1992-2 Trade Cas. (CCH) P62,923 (D.D.C.); and United States v. Atlantic Richfield Company, 1992 U.S. Dist. LEXIS 738, 1992-1 Trade Cas. (CCH) P69,695 (D.D.C.).

#### Intent to define and exclude – the FTC act is secondary to core antitrust laws

Felsenfeld 93 – Professor of Law, Fordham University School of Law

Carl Felsenfeld, “The Bank Holding Company Act: Has It Lived Its Life?,” Villanova Law Review, Vol. 38, January 1993, LexisNexis

It is well established that, despite the "extensive blanket of state and federal regulation of commercial banking, much of which is aimed at limiting competition,"480 the United States' core antitrust statutes (the Sherman and Clayton Acts) apply to banks.481 There is respectable opinion that "existing antitrust laws are fully adequate to guard against anticompetitive mergers or acquisitions, or other anticompetitive activity, in the banking industry."482 A proposal to remove the BHCA, however, is not a suggestion that only the Sherman and Clayton Acts would impose antitrust limitations on banks. The other bank laws and regulations would continue in effect.483

Whether the antitrust laws are sufficient to curb bank abuse that is otherwise dealt with by the BHCA has been disputed. One relatively early opinion suggested that illicit bank behavior is "almost impossible to detect and prove in a court of law" and, consequently, explicit legislation, like the BHCA, which foreclosed banks from other fields was desirable. 484 In contrast, a former Deputy Assistant Attorney General for Antitrust later opined that bank antitrust problems within the BHCA sphere are simply traditional antitrust issues that can be dealt with by those laws.485 He was countered by a then current Attorney General for Antitrust who believed the BHCA was essential to keep banks separate from commerce.486 Because these last two views were expressed in 1969 and 1970, one must assess current antitrust laws to analyze what view is valid today.487

There is a high degree of flexibility in the antitrust laws. One of the functions of the antitrust laws is to adapt their application to the particular industry under consideration and to the particular markets within which the industry operates.488 The general approach of the antitrust laws towards a merger or consolidation of the sort that currently requires preapproval under the BHCA is to accept the industry in its existing form as the norm and then to establish the effects of the merger or acquisition in terms of its effects on that norm. The net effect is the antitrust laws' disposition in favor of the existing structure.

The Justice Department has the power under existing law to challenge banking mergers and acquisitions for violation of the antitrust laws even when the Fed has first found the BHCA's antitrust tests satisfied.489 For example, in December 1990, the Justice Department challenged the acquisition of First Interstate of Hawaii, Inc. by First Hawaiian, Inc. under the BHCA even though the Fed had approved the transaction. The suit was settled by the agreement of the parties to a divestiture plan proposed by the Justice Department.490 In July 1991, the Justice Department challenged an acquisition by Fleet/Norstar of assets from the FDIC after the transaction was approved by the Fed under the Bank Merger Act.491 As these two cases show, the Justice Department has sufficient regulatory authority to police the antitrust aspects of bank acquisitions effectively without the BHCA statutory protections.

2. Federal Trade Commission Act

Secondary to the core antitrust laws, and of more potential than experiential significance in regulating bank holding company behavior in the absence of the BHCA, is the Federal Trade Commission Act (FTC Act). \492 In its broad scope the FTC Act is inapplicable to banks. 493 The FTC, however, may require banks to produce documentary evidence required during agency investigations. 494 The FTC Act's basic function is the prevention of precisely the type of activity that banks and their nonbank affiliates were accused of in the initial drafting of and amendments to the BHCA 495 - the perpetration of "unfair methods of competition." 496

#### FTC agreement – the former FTC commissioner acknowledges that The FTC Act is not an antitrust law

Leibowitz 06 – FTC Commissioner

Jon Leibowitz, “In the Matter of Rambus, Inc.,” Federal Trade Commission, 2006, LexisNexis

It would be equally apt, though, to characterize Rambus's conduct as an "unfair method of competition" in violation of Section 5 of the FTC Act. Section 5 was intended from its inception to reach conduct that violates not only the antitrust laws themselves, but also the policies that those laws were intended to promote. [FOOTNOTE 1 STARTS] 15 U.S.C. § 12 (a) (2006). The antitrust laws include the Sherman Act and the Clayton Act (as modified by the Robinson-Patman Act). The FTC Act is not an antitrust law. [FOOTNOTE 1 ENDS] At least three of these policies are at issue here. From the FTC's earliest days, deceitful conduct has fallen within Section 5's province for its effects on competition, as well as on consumers. Innovation -- clearly at issue in this case -- is indisputably a matter of critical antitrust interest. In addition, joint standard-setting by rivals has long been an "object[] of antitrust scrutiny" for its anticompetitive uses, notwithstanding its great potential also to yield efficiencies. In this case, Rambus's deceptive conduct distorted joint standard-setting decisions and innovation investments in ways that seriously injured the operations of the competitive market to the detriment of consumers; it thereby transgressed the policies and spirit of the antitrust laws in all three respects. While respondent's behavior before JEDEC might well have been challenged solely as a pure Section 5 violation, Complaint Counsel did not litigate this theory before the administrative law judge. Thus, I write separately to discuss and reemphasize the broad reach and unique role of Section 5.

I also address the scope of Section 5 because some commentators have misperceived the Commission's authority to challenge "unfair methods of competition," incorrectly viewing it as limited, with perhaps a few exceptions, to violations of the Sherman and Clayton Acts. Others are unclear just how far Section 5 can reach beyond the antitrust laws. Regardless of the reasons for these cramped or confused views, a review of Section 5's legislative history, statutory language, and Supreme Court interpretations reveals a Congressional purpose that is unambiguous and an Agency mandate that is broader than many realize.

#### Congressional consensus – the Clayton Act does NOT list the FTC Act as a core antitrust law

Whyte 07 – Judge, United States District Court, California Northern

Ronald M. Whyte, Hynix Semiconductor Inc. v. Rambus Inc., 2008 U.S. Dist. LEXIS 53220, United States District Court for the Northern District of California, San Jose Division, January 2008, LexisNexis

Section 5(a) accords prima facie weight to a final judgment brought "under the antitrust laws." The Clayton Act specifically defines the phrase "antitrust laws." See 15 U.S.C. § 12(a). The definition includes the Sherman Act and the Clayton Act, but it does not list the Federal Trade Commission Act (15 U.S.C. §§ 41, et seq). This exclusion accords with the final sentence of section 5(a), which distinguishes "the antitrust laws" from "section 45." 2

The Federal Trade Commission brought its proceeding against Rambus pursuant to Section 45, which is also known as Section 5 of the FTC Act. See In re Rambus, Administrative Complaint, Docket No. 9302, at 1, 31-33 (FTC June 18, 2002). 3 The FTC's final order found that "Rambus's acts of deception constituted exclusionary conduct under Section 2 of the Sherman Act, and that Rambus unlawfully monopolized the markets for four technologies incorporated into the JEDEC standards in violation of Section 5 of the FTC Act." In re [\*12] Rambus, Opinion of the Commission, Docket No. 9302, at 3 (FTC August 2, 2006). HN4 Section 5 of the FTC Act incorporates various standards from the antitrust laws and also forbids practices the FTC deems against public policy for other reasons. FTC v. Indiana Federation of Dentists, 476 U.S. 447, 454, 106 S. Ct. 2009, 90 L. Ed. 2d 445 (1986). Although the FTC found that Rambus violated the Sherman Act, the FTC's order was in a proceeding under Section 5 of the FTC Act.

#### Independently, FTC interpretation cannot expand the scope of statutes.

Cook 95 – Judge, Illinois Appeals Court, Fourth District

Robert W. Cook, Springwood Assocs. v. Health Facilities Planning Bd., 269 Ill. App. 3d 944, Appellate Court of Illinois, Fourth District, March 1995, LexisNexis

With regard to the Board's position, we note that the regulations must control in the event of a conflict between the regulations and the application instructions. The regulations have the force and effect of law ( Union Electric, 136 Ill. 2d at 391, 556 N.E.2d at 239); the application and instructions do not. The application and instructions merely represent the Board's interpretation of the information which it needs in order to determine the need for a proposed project. While such an interpretation is entitled to some deference, it is not binding on a court. Further, an agency interpretation cannot expand or limit the scope of the relevant statute. ( Van's Material Co. v. Department of Revenue (1989), 131 Ill. 2d 196, 202-03, 545 N.E.2d 695, 699, 137 Ill. Dec. 42.) The regulation in question here required "market studies of the area indicating the characteristics of the population to be served." ( 77 Ill. Adm. Code § 1110.230(a)(1) (1992-93).) This is not the same as a memo of the facility's own internal experiences. Other interested parties cannot easily question the facility's own internal reports. The fact that many of a facility's present patients are from a given area does not necessarily predict the future population of the facility.

### CP FCC

#### And the perm causes congressional backlash with ruins solvency

Alison Jones, Professor of Law at King's and a solicitor at Freshfields Bruckhaus Deringer LLP, and William E. Kovacic, George Mason University Foundation Professor at the George Mason University School of Law, former FTC Commissioner, 2020, Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy, The Antitrust Bulletin 2020, Vol. 65(2) 227-255

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

Imagine, for a moment, that the DOJ and the FTC launch monopolization cases against each of the GAFA giants. Among other grounds, these cases might be premised on the theory that the firms used mergers to accumulate and protect positions of dominance. The GAFA firms have received unfavorable scrutiny from legislators from both political parties over the past few years, but the current wave of political opprobrium is unlikely to discourage the firms from bringing their formidable lobbying resources to bear upon the Congress. It would be hazardous for the enforcement agencies to assume that a sustained, well-financed lobbying campaign will be ineffective. At a minimum, the agencies would need to consider how many battles they can fight at one time, and how to foster a countervailing coalition of business interests to oppose the defendants.

#### Antitrust and regulation are different things.

Lambert 17 – Wall Chair in Corporate Law and Governance and Professor of Law, University of Missouri

Thomas A. Lambert, “How to Regulate: A Guide for Policymakers,” Cambridge University Press, August 2017

Available Remedies and Their Implementation Difficulties and Side Effects

Treatments for the market power disease fall into two general categories. One consists of the body of law called antitrust, a set of somewhat amorphous standards that are aimed at preventing competition-reducing business practices and whose precise prohibitions are determined on a case-by-case basis. Sometimes dubbed the “residual regulator” of market power, antitrust governs potentially anticompetitive business practices unless it is displaced by some more tailored form of regulation. The second category of market power remedies, then, consists of direct regulation – i.e., industry-specific, ex ante rules (as opposed to antitrust’s general, ex post standards3) designed to assure that producers do not reduce their output below, or raise prices above, the levels that would prevail in a competitive market.

#### Links to the aff just as much as the CP – the FTC is an open door for regulatory interests

Rick Claypool is a research director for Public Citizen’s President’s Office, 2019, The FTC’s Big Tech Revolving Door Problem, Public Citizen, https://www.citizen.org/article/ftc-big-tech-revolving-door-problem-report/

Revolving door conflicts are rampant at the U.S. Federal Trade Commission, where most top officials become lobbyists and lawyers representing major technology companies when they leave – or bring Big Tech conflicts with them when they arrive to work at the agency.

Public Citizen found that just over 75 percent of top FTC officials (31 out of 41) over the past two decades have either left the agency to serve corporate interests confronting FTC issues, joined the agency after serving corporate interests on these issues, or both. More than 60 percent of the officials studied (26 out of 41) have revolving door conflicts of interest involving work on behalf of the technology sector.

This report examines revolving door conflicts among current and former FTC commissioners and directors of its Bureau of Consumer Protection and its Bureau of Competition for the past two decades. The regulatory revolving door conflicts described here are defined broadly as instances when individuals employed defending corporate interests from regulatory enforcement become regulatory enforcement officials, or when regulatory enforcement officials leave public service and become employed as defenders of corporate interests.

These endemic conflicts may help explain the FTC’s chronic reluctance to strictly enforce consumer protection and antitrust laws, and should serve as a call to arms for supporters of strong, independent consumer protections and enforcement against corporate monopolists and wrongdoers.

The revolving door conflicts are not evenly distributed across the agency’s leadership. Of the 25 FTC commissioners, including chairs, who have served over the past two decades, two-thirds (17) have corporate revolving door conflicts. More than half (13) have tech sector revolving door conflicts, while others have represented or were hired by companies facing FTC investigations, including Amway, Herbalife, Proctor & Gamble and Teva Pharmaceutical Industries. (See Tables 1 and 2.)

Six of the ten Democratic commissioners who served during the past two decades have revolving door conflicts involving the technology sector, as do seven of the 14 Republican commissioners. Three additional Republican and one independent commissioner all have non-tech corporate revolving door conflicts.

Remarkably, all nine officials who have served as a director of the Bureau of Competition since the late 1990s have revolving door conflicts with the technology sector. (See Table 3.) At the Bureau of Consumer Protection, six of the seven officials who served over the same time period have corporate revolving door conflicts, four of which include technology sector clients. (See Table 4.)

The revolving door is one of the most pernicious influence-peddling tools abused by corporations and wealthy special interests. It undermines the integrity of the governmental process in three ways:

Business and special interest groups may “capture” a federal regulatory agency by getting their own personnel appointed to key government posts.

Public officials may be influenced in official actions by the implicit or explicit promise of a lucrative job

in the private sector with an entity seeking to shape public policy, or, more subtly by the prospect of future employment.

Public officials-turned-lobbyists will have access to lawmakers and regulatory officials that is not available to others, access that can be sold to the highest bidder among industries seeking to lobby.

Conflicts involving the FTC and the technology sector are particularly concerning given the FTC’s jurisdiction over the industry and light approach to regulation on privacy, consumer protection issues and antitrust issues involving tech firms.

Since 2010, several major technology sector firms have recently been subject to FTC investigations over antitrust, consumer protection and especially data privacy concerns, including Facebook, Google, Apple and Uber. In February, the FTC’s Bureau of Competition announced the creation of a new task force to monitor competition in technology markets. In March, the FTC’s Bureau of Consumer Protection launched an investigation into the privacy practices of major Internet broadband service providers, including AT&T, Comcast, Google, T-Mobile and Verizon.

The FTC’s failure to effectively police the technology sector is clear. The transfer of 87 million Facebook user records to Cambridge Analytica while Facebook was operating under a consent order with the FTC evidences the failure of the agency to prevent abuses. The FTC failed to enforce its consent order against Google even after then-FTC chair Jon Leibowitz warned that Google’s consolidation of Internet services would be bad for consumers. Uber was found twice in violation of a consent order and the FTC imposed no fines. On the antitrust front, the FTC failed to block mergers that stifled competition and innovation, including Google’s acquisition of DoubleClick and Nest Labs­ and Facebook’s acquisition of WhatsApp and Instagram.

The revolving door conflicts and the FTC’s history of deference to industry are an important backdrop as Congress considers new proposals to regulate the tech sector and protect consumer privacy. Enhanced FTC rulemaking and enforcement powers will not be enough to curb technology company abuses if pervasive revolving door conflicts create an agency culture that is solicitous of the tech sector.

#### Regulations are able to make sure that prices are fair and reasonable + they have authority to impose penalties

Kobayashi & Wright 20 – Paige V. and Henry N. Butler Chair in Law and Economics at the Antonin Scalia Law School at George Mason; University Professor and the Executive Director of the Global Antitrust Institute at Scalia Law School at George Mason University, holds a courtesy appointment in the Department of Economics, former Commissioner at the Federal Trade Commission

Bruce H. Kobayashi, Joshua D. Wright, “Antitrust and Ex-Ante Sector Regulation,” Report on the Digital Economy, Section III, Global Antitrust Institute, 2020, https://gaidigitalreport.com/2020/10/04/ex-ante-regulation-versus-ex-post-antitrust-enforcement/#\_ftn29

Because detailed and specific knowledge is required to engage in price setting through regulation, such tasks are generally allocated to specialist sector regulators administering sector specific regulations.[44] The historical use of sector regulation and sector regulators to administer price setting and duties to deal is consistent with an ex-ante choice of regulation over antitrust based on comparative advantage.[45] Because of this focus, regulatory regimes have often focused on network industries that exhibit economies of scale and issues relating to access rights and interconnection duties. While such sector specific regulatory regimes may be better suited to regulating price and interconnection duties in theory, in practice these regimes are imperfectly carried out and have often proven to be costly and ineffective. The use of industry specific regulators can result in the regulators being captured by the agencies,[46] and legislation to enact a regulatory regime often reflects the preferences of those being regulated rather than an attempt to maximize consumer welfare.[47] The result of ineffective sector regulation has often been deregulation,[48] and a return to the market and the protection of the competitive process through antitrust law.[49]

#### The FCC has the capacity to also impose financial penalties on broadband providers that harm competition but do so WITHOUT antitrust laws

FCC no date – Federal Communications Commission.

“Enforcement Primer, » https://www.fcc.gov/general/enforcement-primer

If an investigation reveals that a party has violated a legal requirement that the Commission enforces, the Commission may take several different actions. The agency may propose a penalty through issuing a Notice of Apparent Liability for Forfeiture, or NAL, which advises the party how it has violated the law and the amount of the proposed penalty. The party has an opportunity to file a response, which the Commission will evaluate and address a subsequent order. The Communications Act establishes the maximum amount that the Commission may impose for a penalty against a particular violator, and the factors it must consider in determining the appropriate penalty. The Commission's rules include more information about how the agency may exercise its discretion under the statute. If a party wishes to resolve a potential violation outside of the NAL process, it may engage in settlement discussions with Commission staff; if successful, these discussions generally result in a Consent Decree, which include as core elements a compliance plan that is designed to prevent recurrence of the violation that led to the enforcement action, as well as an appropriate voluntary financial contribution to the U.S. Treasury.  
  
The Commission can also impose a forfeiture through a hearing process, or take a number of other enforcement actions that do not include a financial penalty or contribution. Subject to certain exceptions, the Commission cannot issue a forfeiture to a party who is not a conventional regulatee of the Commission (i.e., a party other than a broadcaster, cable operator, or telecommunications carrier), unless the agency has previously issued a citation to the party about its violation, and the party subsequently engages in the same conduct. Examples of other non-monetary enforcement tools available to the Commission include admonishments, Notices of Violation (NOVs), cease and desist orders, and, in extreme cases, license revocations.

### Precision Ag

#### Lack of people, demographic issues, legal barriers and more make expansion of broadband impossible

Dawson 21 – Doug Dawson has worked in the telecom industry since 1978 and has both a consulting and an operational background.

Doug Dawson, September 8 2021, “Multiple Barriers Can Hinder Rural Broadband Deployment,” Benton Institute, https://www.benton.org/headlines/multiple-barriers-can-hinder-rural-broadband-deployment

A. Most of the issues of bringing fast broadband to rural areas are a direct result of the low density of housing in most rural areas. Low housing density translates into high cost for any land-based broadband technology. This means that finding funding is almost always the biggest challenge in funding a rural broadband network. But there are numerous other kinds of challenges: • Companies that have never sold in a competitive environment often have problems with marketing and selling broadband. There are also demographic issues that affect the ability to sell, such as the age and income of the customer base. • Operational risks arise from ISPs that don’t execute the original business plan well. Operational risks can vary widely and include issues such as bundling the launch of products, cost overruns, losing the faith of the public, or encountering external issues such as problems in the supply chain. Page 5 of 95 • Competitive risks arise as the result of the reaction of competitors. Competitors can cut prices or try to lock customers into long-term contracts. Competitors can also react by upgrading technologies to offer faster broadband. • Finally, there are political risks. While rare, we’ve seen state governments change the laws to block a municipal broadband launch. Laws and ordinances can change at any time that can negatively impact an ISP. For example, local governments may refuse to grant franchises or rights-of-way.

#### Cost is the largest barrier which competitive markets make worse by creating wasteful infrastructure

Wood 15 – Colin Wood wrote for Government Technology and Emergency Management from 2010 through most of 2016.

Colin Wood, September 29 2015, “Broadband Barriers: What Is the Biggest Hurdle to Universal Access?” Government Technology, https://www.govtech.com/network/broadband-barriers-what-is-the-biggest-hurdle-to-universal-access.html

Bernie O’Donnell: The biggest barrier to the end user is cost, whether to get the adequate bandwidth or to reach all the income levels, or to reach more rural or remote areas. The industry tends to bundle data transport with entertainment that’s riding the network. If we continue to look at broadband as a vehicle to deliver entertainment, like cable or consumer Internet, we’re missing the real opportunity in the value of the data. There’s a lot of duplication of infrastructure being put out by telecom companies, cable companies and even power companies. Duplicating each other’s efforts in putting in this infrastructure [is wasteful].

#### No food wars – innovation ended food scarcity and buying is preferable to fighting.

Easterbrook, MA, 18

(Gregg, Journalism from Northwestern, It’s Better Than It Looks) BW

Since the middle of the twentieth century, the Green Revolution has decoupled crop production from acreage, followed by the intellectual property revolution decoupling wealth from the riches of nature, and war has declined. Today Germany’s population is 20 percent larger than during the Nazi era, and no German worries about where the next meal will come from or eyes the territory of neighboring nations. In recent generations it has become cheaper to buy than to conquer. Holding land is today just one of many paths to wealth—a longer, winding path compared to investing in start-ups—and while lush topsoil always will be in demand, the politics of scarcity do not apply to food supply, and may never again. Nations that eye each other warily can compete economically to their hearts’ content, compiling reserve accounts to purchase equity or real estate in a world where goods move without restraint on the waters and capital can, in most cases, cross borders to a fare-thee-well. Exactly why the United States invaded Iraq in 2003 has never been clear: we can only be sure this was not a war of conquest, as it would have cost noticeably less to purchase all the oil in Iraq than to seize by force that godforsaken country. Broadly across the globe, buying is now cheaper—as well as a lot more practical—than attacking. And war has declined.

#### Ag is a small part, 0 chance they can solve broader emissions

EPA 21 – The Environmental Protection Agency.

July 27 2021, “Sources of Greenhouse Gas Emissions,” https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions#:~:text=and%20Forestry%20sector.-,Emissions%20and%20Trends,by%2012%20percent%20since%201990.

In 2019, greenhouse gas emissions from the agriculture economic sector accounted for 10 percent of total U.S. greenhouse gas emissions. Greenhouse gas emissions from agriculture have increased by 12 percent since 1990.J

#### And even if the U.S. ended ALL of its emissions that still wouldn’t be enough to solve warming

--using *their own models* as per a super-qualified NASA and IPCC scientist

John Christy ’16, Distinguished Professor of Atmospheric Science at the University of Alabama in Huntsville, Awarded NASA Medal for Exceptional Scientific Achievement (1991), awarded Special Award, American Meteorological Society (1996), Lead Author, Contributing Author and Reviewer of United Nations IPCC assessments, “Testimony in front of the U.S. House Committee on Science, Space & Technology,” 2/2/16, pgs. 14-15, <http://docs.house.gov/meetings/SY/SY00/20160202/104399/HHRG-114-SY00-Wstate-ChristyJ-20160202.pdf>

In any case, impact on global temperature for current and proposed reductions in greenhouse gases will be tiny at best. To demonstrate this, let us assume, for example, that the total emissions from the United States were reduced to zero, as of last May 13th, 2015 (the date of a hearing at which I testified). In other words as of that day and going forward, there would be no industry, no cars, no utilities, no people – i.e. the United States would cease to exist as of that day. Regulations, of course, will only reduce emissions a small amount, but to make the point of how minuscule the regulatory impact will be, we shall simply go way beyond reality and cause the United States to vanish. With this we shall attempt to answer the question of climate change impact due to emissions reductions.

Using the U.N. IPCC impact tool known as Model for the Assessment of Greenhouse-gas Induced Climate Change or MAGICC, graduate student Rob Junod and I reduced the projected growth in total global emissions by U.S. emission contribution starting on this date and continuing on. We also used the value of the equilibrium climate sensitivity as determined from empirical techniques of 1.8 °C. After 50 years, the impact as determined by these model calculations would be only 0.05 to 0.08 °C – an amount less than that which the global temperature fluctuates from month to month. [These calculations used emission scenarios A1B-AIM and AIF-MI with U.S. emissions comprising 14 percent to 17 percent of the 2015 global emissions. There is evidence that the climate sensitivity is less than 1.8 °C, which would further lower these projections.]

As noted, the impact on global emission and global climate of the recent agreements in Paris regarding global emissions is not exactly quantifiable. Knowing how each country will behave regarding their emissions is essentially impossible to predict besides the added issue of not knowing how energy systems themselves will evolve over time.

Because halting the emissions of our entire country would have such a tiny calculated impact on global climate, it is obvious that fractional reductions in emissions through regulation would produce imperceptible results. In other words, there would be no evidence in the future to demonstrate that a particular climate impact was induced by the proposed and enacted regulations. Thus, the regulations will have no meaningful or useful consequence on the physical climate system – even if one believes climate models are useful tools for prediction.

### China

#### At BEST they have an internal link about China taking advantage of our vunerable systems, but their ev concedes China’s been walled out! This means even if China has the lead in 5G U.S. systems won’t be more vunerable because Chinese tech won’t be integrated into U.S. systems

1AC Marar, Senior Contributor, 21

(Satya, and Tech Policy Fellow, March 26th, “America Cannot Afford to Lose the Race Against China to 5G”, *The National Interest*, accessed 01/14/22, <https://nationalinterest.org/blog/buzz/america-cannot-afford-lose-race-against-china-5g-181185>) RES

Here is how the U.S. market economy can provide a huge competitive advantage, but only if the government unleashes that power and works with American allies to push back. The United States and other liberal democracies are falling behind authoritarian China in the global 5G race. And if a recent report from Boston Consulting Group is any indication, then it’ll be an expensive race to lose. Only expedient action by U.S. policymakers can remove barriers currently impeding our companies and innovators from repeating American success in the global 4G race. The Boston Consulting Group’s report finds that the U.S. 5G economy will create 4.5 million jobs and contribute $1.5 trillion in GDP from 2020-30. It also warns that every six-month delay in network deployment means a potential average loss of $25 billion in economic benefits. The losses would handicap the coronavirus recovery across key sectors, including healthcare and manufacturing, killing off tens of thousands of potential jobs. Delays would undermine rapidly-evolving data-intensive technologies that’ll improve American lives, including autonomous vehicles, surgical robots, telehealth services, interactive virtual learning, and smart energy grids. It’s tempting to see 5G as something that doesn’t need to be a competition. But the implications of China’s meteoric rise as a telecommunications player are dire. U.S. officials warn that permitting Huawei, ZTE and other state-backed Chinese giants into 5G networks will make critical systems “vulnerable to disruption, manipulation, and espionage while putting sensitive government, commercial, and personal information at risk.” The risk has locked these Chinese companies out of U.S. 5G infrastructure. Other countries are not so worried. Between the ownership of key 5G patents, artificially low costs, over $75 billion in subsidies, outright industrial espionage, and protected access to China’s lucrative domestic telecommunications market, other governments are increasingly enticed by these Chinese companies. After all, the immediate economic benefits are more straightforward than the long-term consequences of compromised national security and data privacy. In an increasingly interconnected world, American companies engaged in these countries will be impacted too. Chinese laws compel these Chinese companies to hand over user data and assist in state surveillance. And the dictatorship in Beijing already has a history of cyberattacks and attempts to acquire sensitive military intelligence. While Chinese officials tell western audiences that they don’t want to challenge U.S. leadership or hegemony, their statements to Chinese audiences indicate the opposite and flag a deliberate economic and diplomatic strategy to further geopolitical ambitions by undermining the United States.

## 1NR

### China

#### China will lack the requisite skills an infrastructure to mount an actual challenge to U.S. primacy

**Brooks 16**

Stephen G. Brooks is Associate Professor of Government at Dartmouth College, William C. Wohlforth is Daniel Webster Professor of Government also at Dartmouth, International Security, Winter 2015/16, Vol. 40, No. 3, Pages 7-53

Analysts are right to herald China's rapid economic ascent as a harbinger of the country's changing position in the international system. Superpowers are extremely uncommon, and only an exceedingly improbable combination of large-scale and rapid growth can put a state in a position such as China's: moving in the direction of having the latent material capacity to match the superpower. There is no other candidate today. Indeed, after China the most plausible candidate would be the European Union, but it is far from being a state and its integration trajectory has stalled; moreover, its economic trajectory (like Japan's and Russia's) is moving in the wrong direction. At the same time, however, moving toward having the latent material capacity to match the superpower and actually attaining this status are two different things. Whereas one might presume that approaching the economic size of the United States would position China to be able to seek superpower status, we conclude that the gap between economic parity and a credible bid for superpower status should be **measured over many decades**.72 If **the scales are to level out** such that there are two or more roughly comparable states at the top—as was the norm for centuries—**we** thus **expect it will be a long time coming.**

Determining the precise economic and technological levels that a state must attain to have sufficient latent material capacity to bid for superpower status is not a straightforward process. If a rising state's economy and its technological level match the leading state's, then it will obviously be in a position to bid for superpower status. What if, however, the rising state is not equal to the leading state in one or both dimensions? If the rising state is comparable to the leading state technologically but is around half of the latter's economic size, then history would suggest that it could be in a position to bid for superpower status; this was basically the situation regarding the Soviet Union during the first half of the Cold War (though Moscow required a totalitarian state to distill the needed resources and also challenged the United States in a very different military technological environment than the current one). We have shown, however, that the relevant question today is: What if the rising state has attained a significant level of economic size relative to the leading state but is at a fundamentally lower level technologically?

There is no modern historical precedent to help answer this question: the recent rising states of note—namely, the United States in the nineteenth and early twentieth centuries, Germany in the early twentieth century, and the Soviet Union in the middle of the twentieth century—were not at dramatically different technological levels from that of the leading state. As a result, in assessments of the relative power of Germany or the United States vis-à-vis the United Kingdom and the Soviet Union vis-à-vis the United States, technology essentially faded into the background: the crucial issues became the size of the economies of these rising states and how much they tried to distill their wealth into military power. But when the leading and rising states diverge technologically to a dramatic degree, as is the case today, a critical question is whether the latter has the technological capacity to produce and field a defense force that can effectively match up with the former's. This question is relevant regardless of the era under examination; but for reasons that we discuss below, **it is especially relevant now given the extraordinarily complicated nature of much modern weaponry.** In this respect, Tai Ming Cheung underscores that **China faces “an enormous task of remaking a defense establishment that is still more suited to fighting a Vietnam-era conflict than a 21st century engagement.**”73

Posen's analysis of the command of the commons again helps frame our assessment of the gap between China's economic rise and its potential to attain the capabilities of a superpower. In his examination of **the unique** set of **assets** that **the U**nited **S**tates **has developed to sustain this commanding position**, he **points to four central attributes**: (1) **a large scientific and industrial base**; (2) **the specific mix of military systems accumulated over** the past few **decades of procurement**; (3) **the ability** acquired over decades **to coordinate the production of needed weapons systems; and** (4) the particular **skills and** associated **tech**nological **infrastructure the U**nited **S**tates **has painstakingly developed** to be able to effectively employ these weapons in a coordinated manner.74

SCIENTIFIC AND INDUSTRIAL BASE

Posen stresses that the development of the “specific weapons needed to secure and exploit command of the commons … depend[s] on a huge scientific and industrial base.” **Having a much larger scientific and industrial base than any other state has enabled the U**nited **States to “undertake larger projects than any other military in the world.”**75 **There is no reason to think** that **China will soon be able to develop anything comparable**, mainly because it is at a **fundamentally different tech**nological **level from** that of **the U**nited **S**tates. Although **China** is rapidly enhancing its technological inputs, it **faces significant limits** on its ability **to quickly translate** them **into** a **dramatic improvement in** its overall **tech**nological **capacity.** Educating many more science and engineering students, for example, requires increasing the number of institutions that can provide appropriate and useful training far beyond the level that China has now. On this issue, the World Bank and Development Research Center of the State Council of China conclude bluntly that China's “massive expansion of enrollment … has strained instructional capacity” and that “the quality of the training is weak, and many graduates are having difficulty finding employment.”76 In turn, **rapidly augmenting spending on R&D is unlikely to produce dramatically improved tech**nological capacity if it is not embedded within an institutional structure that fosters innovation—something that China is very far from having. As the World Bank and Development Research Center of the State Council of China report, “China has seen a sharp rise in scientific patents and published papers, but few have commercial relevance and even fewer have translated into new products or exports…. A better innovation policy in China will begin with a redefinition of government's role in the national innovation system, shifting away from targeted attempts at developing specific new technologies and moving toward institutional development and an enabling environment that supports economy-wide innovation efforts.”77

MIX OF WEAPONS ACCUMULATED THROUGH DECADES OF PROCUREMENT

The particular mix of weapons the **U**nited **S**tates has accumulated to sustain command of the commons has **taken a long time to develop and procure**. The main reason is that **the ever-growing complexity of many top-end weapon systems has greatly increased their development time**. For example, as the number of parts and lines of code associated with the production of aerospace vehicles increased, the development time of these weapons concomitantly increased—from roughly 5 years in the 1960s to around 10 years in the 1990s. Today, “combat aircraft projects take between 15 and 20 years from research to production,” while “the current development cycle for military and intelligence satellites from the initiation of basic research to field deployment is approximately twenty years.”78

As a result, even if another state has the scientific and industrial base and the skills needed to produce these military systems, **it will necessarily be a very long time before it possesses them given the time they take to produce.** Consider that it is projected to take up to seventeen years for the United Kingdom to develop a nuclear submarine successor to its current Trident system. And the United Kingdom has some significant advantages over China: most notably, it has had a longer range of experience producing advanced systems and it receives extensive, direct assistance from the United States in weapons production. In areas where China is far behind the United States in military technology and where the systems in question take a long time to develop, even if all goes well China will need many years of cumulative effort to be in a position to potentially close the gap created by the United States’ own cumulative effort over many decades. Nuclear attack submarines (SSNs) are a particularly telling case in point. **China is now capable of producing SSNs** that are roughly **comparable to the kinds of SSNs the U**nited **S**tates **built in the 1950s**; since then, however, the **U**nited **S**tates has invested hundreds of billions of dollars and six decades of effort to put itself in a position to design and manufacture its current generation of Virginia-class submarines, which have achieved absolute levels of silencing.79

“SYSTEMS INTEGRATION” IN WEAPONS SYSTEMS’ DESIGN AND PRODUCTION

The third attribute Posen highlights is that the ability to supervise the production of the kinds of military systems that give the United States command of the commons requires “significant skills in systems integration and the management of large-scale industrial projects.”80 Many top-end weapon systems today demand an extraordinarily high level of precision in the design and production process—**a requirement that has eluded China in many areas.** As Richard Bitzinger and his colleagues conclude, “Aside from a few pockets of excellence, such as ballistic missiles, the Chinese military-industrial complex has appeared to demonstrate few capacities for designing and producing relatively advanced conventional weapons systems. Especially when it comes to combat aircraft, surface combatants, and ground equipment, the Chinese generally have confronted considerable difficulties in moving prototypes into production, which has resulted in long development phases, heavy program delays, and low production runs.”81

**China's successes in military modernization attract much more attention than its failures**—**or its decisions not to attempt to compete.** As a result, **analysts underestimate the difficulty of gaining the kind of system integration skill for managing** the design and production of the range of **top-end systems needed to project** significant **military power globally**. The actors involved in U.S. defense production decisions have painstakingly accumulated this kind of systems integration skill over decades.82 Just being “very good” in the production and/or design of many top-end systems will not be sufficient—at least in a conflict with a technologically superior competitor.83 Fighter jets provide a telling example. Christina Larson underscores that the “problem with Chinese-and Russian-construction stealth fighters is that if there's a bolt out of place, it shows up on a radar signature. Russian and Chinese construction is typically much looser” than U.S. stealth fighter construction.84 Notably, excellence in production and design must be achieved in all elements of a fighter. China's advanced aircraft program has attained many successes, but the significance of these accomplishments is greatly undermined by China's lack of ability to produce a capable engine. Robert Farley stresses that “the problem with Chinese engines is that they've been remarkably unreliable. Engines require extremely tight tolerances in construction; even small errors can lead to the engine burning out.”85 Regarding China's fifth-generation fighter program, Jesse Sloman and Lauren Dickey underscore that “engines are a critically important component of any fighter aircraft…. [W]ithout a reliable, high-performance turbofan engine to power them,” the fifth-generation fighter program “will be crippled.”86 Because of deficiencies in engine power, China's fourth-generation fighter, the J-15, can have only a partial fuel load or only a very low missile-load when it takes off from an aircraft carrier.87 As Gabe Collins and Andrew Erickson note, China's “inability to domestically mass-produce modern high-performance jet engines” means that the Chinese must continue to use Russian-made engines in its tactical aircraft; and yet, Russian jet engine producers are “a distant second in quality” to the “top jet engine producers [which] are all located in the U.S. and Western Europe.”88

Ultimately, there is a big difference between China's ability to make improvements in select areas where it was already in a strong position to become very capable and its ability to effectively design and produce systems across the range of key systems needed for global power projection; achieveing the latter goal will be very hard, and even if China succeeds, it will take an extremely long time.89 A fundamental reason why is that attaining the necessary knowledge and experience to produce these kinds of top-end systems is “largely a product of a costly and time-consuming process of trial and error.”90 In general, China has most consistently made rapid advances in those kinds of weapons systems—such as missiles—in which the learning curve is relatively small. In a number of other areas that are more complicated and require much greater skill in design and production—such as aircraft engines—even extremely high levels of effort and resources have so far not given China the capability to mass-produce effective systems that are comparable even to the kinds that the United States and the Soviet Union began fielding three decades ago in the final phase of the Cold War.91 And in many other areas, perhaps most notably SSNs and antisubmarine warfare, **Chinese decisionmakers** appear to **have recognized** that **they are nowhere close to being in a position to manage** the **production of top-end systems and so have decided not to devote a significant level of effort.**92

As one of us has stressed previously, a related consideration is that having the requisite design skills and domestic production for modern weaponry must also be complemented by an ability to tap into global production networks in key dual technologies. States unable or unwilling to pursue globalization in weapons-related production will not be on the leading edge in military technology given the complexity of much modern weaponry, whose production now generally demands access to a global supply base.93 In part because of restrictions on access to key technologies from Western countries, Chinese defense firms have thus far made only tentative steps toward pursuing globalization in weapons-related production.94 But even if Chinese defense firms had full access to needed inputs from Western firms and sought them out, it is highly doubtful that many of them would be able to fully exploit such linkages anytime soon: it is extremely difficult, and thus requires a very long time, for firms to gain the requisite experience and capacity to manage the complex global supply chains associated with today's leading-edge weapons, given that **they typically involve a mind-bogglingly large number of subcontractors and technological partners**.95

#### Their scenario is science fiction – attacking one part of the grid makes other parts more alert and stronger against cyber attacks

Uchill 18 – Senior Reporter SC Media.

Joe Uchill, August 23 2018, “Why "crashing the grid" doesn't keep cyber experts awake at night,” Axios, https://www.axios.com/why-crashing-the-grid-doesnt-keep-cyber-experts-awake-at-night-a40563a5-f266-493d-856a-5c9a5c1383dd.html

Reality check: The people tasked with protecting U.S. electrical infrastructure say the scenario where hackers take down the entire grid — the one that's also the plot of the ["Die Hard" movie](https://www.youtube.com/watch?v=Sv8Uh2Usldo) where Bruce Willis blows up a helicopter by launching a car at it — is not a realistic threat. And focusing on the wrong problem means we’re not focusing on the right ones.

So, why can't you hack the grid? Here's one big reason: "The thing called the grid does not exist," said a Department of Homeland Security official involved in securing the U.S. power structure.

Think of the grid like the internet. We refer to the collective mess of servers, software, users and equipment that routes internet traffic as "the internet." The internet is a singular noun, but it’s not a singular thing.

You can’t hack the entire internet. There’s so much stuff running independently that all you can hack is individual pieces of the internet.

Similarly, the North American electric grid is actually five interconnected grids that can borrow electricity from each other. And the mini-grids aren't singular things either. Taking down "the grid" would be more like collapsing the thousands of companies that provide and distribute power accross the country.

"When someone talks about 'the grid,' it's usually a red flag they aren't going to know what they are talking about," says Sergio Caltagirone, director of threat intelligence at Dragos, a firm that specializes in industrial cybersecurity including the energy sector.

Redundancy and resilience: Every aspect of the electric system, from the machines in power plants to the grid as a whole, is designed with redundancy in mind. You can’t just break a thing or 10 and expect a prolonged blackout.

On some level, most people already know this. Everyone has lived through blackouts, but no one has lived through a blackout so big it caused [the Purge.](https://www.youtube.com/watch?v=K0LLaybEuzA)

'The power system is the most complex machine ever made by humans," said Chris Sistrunk, principle consultant at FireEye in energy cybersecurity. "Setting it up, or hacking it, is more complicated than putting a man on the moon."

An attack that took out power to New York using cyber means would require a nearly prohibitive amount of effort to coordinate, said Lesley Carhart of Dragos. Such a failure would also tip off other regions that there was an attack afoot. Causing a power outage in New York would likely prevent a power outage in Chicago.

#### Robust statistical studies prove that countries don’t escalate over cyber conflict

Jensen 2019 – Benjamin Jensen is an expert on military innovation and the changing character of conflict. His academic work includes work on military innovation, military operations, strategy, and how technology alters conflict dynamics.

Benjamin Jensen, June 20 2019, “WHAT A U.S. OPERATION IN RUSSIA SHOWS ABOUT THE LIMITS OF COERCION IN CYBER SPACE,” War on the Rocks, https://warontherocks.com/2019/06/what-a-u-s-operation-in-russia-shows-about-the-limits-of-coercion-in-cyber-space/

As social scientists start using larger data sets and experiments to analyze cyber operations, they are casting doubt on whether coercion in this new domain works at all.  Wargame experiments analyzing [cyber attacks against critical infrastructure](https://warontherocks.com/2017/07/cyber-attacks-on-critical-infrastructure-insights-from-war-gaming/) reveal difficulties coordinating responses between private industry and the national security establishment, as well as a reluctance to escalate when a cyber incident might cause significant economic damage. Other [experiments](https://www.cato.org/publications/policy-analysis/myth-cyber-offense-case-restraint) and [simulations](https://cltc.berkeley.edu/2018/04/16/cyber-operations-conflict-lessons-analytic-wargames-2/) similarly demonstrate that players, including national security experts, are unlikely to escalate in response to cyber acts alone. Players seem reluctant to risk World War III over hacking. This hesitation likely is due to the covert character of cyber campaigns and the fact that any predicted coercive effects, to include deterrence, are [expectations about the future](https://twitter.com/RidT/status/1140101505074311169). Because cyber operations occur in the shadows, politicians can hide the fallout in the short term and avoid public pressure to respond.

There are real concerns about whether cyber operations are a sufficiently costly signal or even the right instrument of power to coerce rivals. [Previous studies](https://global.oup.com/academic/product/cyber-strategy-9780190618094?cc=us&lang=en&) have found cyber operations can compel rivals, but only when used in conjunction with other instruments of power. It is also unclear whether cyber operations achieve demonstrable battlefield effects. A recent study by [Nadiya Kostyuk and Yuri Zhukov](https://journals.sagepub.com/doi/abs/10.1177/0022002717737138) finds cyber attacks in Syria and Ukraine did not change combatant behavior. These findings echo earlier studies questioning [the efficacy](https://www.mitpressjournals.org/doi/pdf/10.1162/ISEC_a_00136) and [very concept of cyber war](https://www.tandfonline.com/doi/abs/10.1080/01402390.2011.608939?journalCode=fjss20).

#### Large scale cyber attacks have no chance of success which disincentivizes their use

Lindsay 2013 – Jon R. Lindsay is Assistant Professor of Digital Media and Global Affairs at the Munk School of Global Affairs and Public Policy and the Department of Political Science at the University of Toronto.

Jon Lindsay, August 1 2013, “Stuxnet and the Limits of Cyber Warfare,” Security Studies, https://www.tandfonline.com/doi/abs/10.1080/09636412.2013.816122

According to offense-defense theory in international relations, “war is far more likely when conquest is easy, and shifts in the offense-defense balance have a large effect on the risk of war.”98 One potential explanation for the relative absence of strategic cyber warfare in the historical record is that cyber offense at this level is not actually stronger than defense. Cyber warfare against critical infrastructure may face more formidable defenses than generally appreciated. Another explanation is that the causal relationship between the cyberspace offense-defense balance and strategic warfare is ambiguous. The most contentious debate over general offense-defense theory has focused on whether it is possible to measure the offense-defense balance at all, to include whether it should encompass just technology or also some combination of doctrine, manpower, resources, territory, and even diplomacy.99 Critics have noted that the same weapons can be employed in different contexts or at different levels of war: e.g., entrenchment can provide tactical cover during operational offensives, and tanks can support counterattacks during operational defensives.100 Moreover, defenses that can be easily defeated tactically can be reinforced by threats of strategic retaliation that make offensive aggression unwise. Technology alone does not determine the offense defense balance. An organization’s ability to employ weapons, in particular operational and strategic circumstances, is critical.

The popular belief in the offense dominance of cyberspace should be recalibrated to the scale and ambitiousness of the attack under consideration. Some weapons are costly to master. Some targeting objectives are difficult to realize. Some attacks are risky due to potential retaliation. It is notable that the vast majority of attacks by internet miscreants are individually insignificant. Cybercriminals, for instance, exploit highly standardized resources (millions of computers running identical applications, homogeneous entities like credit card accounts and user credentials, billions of email transactions) to create stereotyped attacks. Most of their attacks fail most of the time, but they can still profit on the aggregate because the set of potential victims is so large. By contrast, to cause a predictable level of damage to a particular ICS target, the cyber warrior has to tailor the attack to a more heterogeneous assemblage of people and machines. Errors there are more likely to lead to irreversible mission failure. Although low-intensity cyber attacks exploiting homogeneous assets do have certain advantages over technical defenses, high-intensity cyber attacks exploiting heterogeneous complexity have to overcome some serious obstacles. This distinction may help to explain why Stuxnet’s infiltration phase was, in retrospect, so much more effective than its payload phase: the former targeted homogeneous Windows machines to move copies of code around, but the latter targeted more particular equipment to cause physical destruction.101 Even infrastructure that appears superficially standardized and homogeneous, such as cascades of centrifuges and networks of routers, is often supported by the heterogeneities of workplace practices, human interventions, and nonstandard local equipment.102

### DA Exemptions

#### Timeframe – immediate implementation is bad – undermining the economic recovery now turns case

Jan Rybnicek is Counsel in the antitrust practice of Freshfields Bruckhaus Deringer and a Senior Fellow at the Global Antitrust Institute at Antonin Scalia Law School at George Mason University, February 12, 2021, Op-ed: Recent antitrust proposals could ‘throw sand in the gears’ of economic recovery by stalling M&A, https://www.cnbc.com/2021/02/12/op-ed-recent-antitrust-proposals-add-friction-to-ma-at-wrong-time.html

Last year, some in Congress called for a merger moratorium banning all M&A during the pandemic. Then, in a surprise announcement, the FTC — over the objection of two commissioners — said it would no longer quickly approve the vast majority of transactions notified to the government that cannot plausibly reduce competition. Most recently, Senator Amy Klobuchar, D-Minn., introduced antitrust reform legislation that would give the government even greater power to block M&A it deems problematic.

While these proposals are well-intentioned, they threaten to throw sand in the gears of the economy and to do far more harm than good. Adding friction to M&A activity has the potential to stall capital markets, reduce innovation and investment, and frustrate economic growth. And it does so at precisely the wrong time — when the nation is attempting an economic recovery during an ongoing global pandemic that has upended how we work.

Antitrust has seized lawmakers’ interest like no other time in modern memory. Senator Klobuchar’s legislation is the most ambitious attempt to reform the antitrust laws in nearly half a century. A key focus of the bill is to make it even easier for the federal antitrust authorities — the Federal Trade Commission (FTC) and the Department of Justice (DOJ) — to intervene in private parties’ dealings by blocking M&A that they decide will harm competition.

Under existing law, the antitrust agencies must convince a judge that a deal is likely to substantially lessen competition in order to obtain an injunction preventing the transaction. The agencies bear the burden in proving their case. That typically has not been too tall an order. While reviewing a government challenge to a small grocery store merger and lamenting the internal contradictions in antitrust law, Supreme Court Justice Potter Stewart once observed that the only thing consistent about merger litigation is that the government always wins.

Over the last several decades, antitrust has become a more principled body of law through the incorporation of economics and a focus on promoting consumer welfare, but one thing has not changed: the government still nearly always wins.

Reform advocates would have you believe that the FTC and DOJ show up in court on a wing and a prayer and rarely are able to convert the power and credibility of the federal government into merger litigation victories. But reality is far different. The government has no problem blocking mergers it believes are problematic. Over the last 20 years the DOJ and FTC have prevailed in nearly 85% of merger challenges. That is a record any litigator would envy. And the government’s win-rate only improves when looking at more recent cases. In fact, after the DOJ or FTC challenge a merger, companies more often than not abandon their deal before trial because the legal standard is so favorable to the government. This even includes successful challenges against deals involving the acquisition of a nascent firm that does not compete against the acquirer today but, in the government’s view, could in the future, such as the DOJ’s recent success in blocking Visa’s purchase of fintech upstart Plaid.

Senator Klobuchar’s legislation would put the thumb on the scale even more in favor of the government. It would lower the legal standard and allow the government to stop any deal that raises even an “appreciable risk of materially lessening competition.” It also would create presumptions against large deals that do not even involve competitors. Most significantly, the legislation flips the traditional burdens of proof on their head and requires defendants to prove that their deal should be allowed to close. In light of the disadvantages companies already face when confronted with government opposition, such changes are unwarranted, unless you believe the government is infallible and should win 100% of its cases.

Giving the government greater discretion to intervene in deals would add unnecessary friction to the M&A market and reduce the types of investments that have fueled U.S. economic growth, including in the many startups whose founders and investors develop new and innovative products in part due to the prospect of exit through M&A.

#### Legislative change is unique – companies do not expect immediate statutory/legal changes—enforcement only affects a small slice of deals

Zero 21 – Senior Reporter for Mergers & Acquisitions

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**.**

#### 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.

**No chance of legislation**

Dave **Perera**, US antitrust legislation faces uphill battle despite unified Democratic government, MLex, March 12, 20**21**, https://mlexmarketinsight.com/news-hub/editors-picks/area-of-expertise/antitrust/us-antitrust-legislation-faces-uphill-battle-despite-unified-democratic-government

Those expecting — or fearing — more ambitious outcomes likely **won’t see them enacted**. So until America’s November 2022 election, **scratch from the list of high probabilities reforms** such as requiring dominant firms to separate lines of business, or shifting the burden of proof onto an acquiring company.

Put another way, unless a bill can attract significant Republican support, **not even two years of unified Democratic government** can guarantee reforms.

— American exceptionalism —

Single party control of both congressional chambers and the presidency is relatively rare in American politics. It has occurred in fewer than a third of legislative sessions since 1980. When it strikes, it doesn’t last long — typically just the two years between one congressional election and another.

Historically, unified control is a fertile period for new regulations. President George W. Bush overhauled Medicare. President Barack Obama ushered in financial sector reforms and the Affordable Care Act. Indications are that President Joe Biden is emboldened by his party’s last-minute capture of the Senate.

History, of course, isn’t a blueprint. Even a brief look at past episodes of unified control reveals that **not even single-party capture** of the executive and legislative branches of the US government **can assure the enactment of a partisan agenda.**

For one thing, neither political party is a **monolith**. Although far more politically aligned than when Democratic conservatives found common cause in the 20th century with Republicans, the major American parties nonetheless are coalitions of centrist and activist wings. For Democrats, the tensions inherent in appeasing all sides became apparent earlier this month when centrists trimmed benefits in the $1.9 trillion coronavirus stimulus package.

Neither is single party grip on power secure unless it commands an overwhelming majority in the Senate, thanks to a uniquely American institution: the filibuster. In the Senate, the rules mandate a three-fifths vote before debate over a bill is cut off. In recent decades, it’s become a weapon routinely wielded by the minority party to kill legislation.

The upshot is that policy legislation needs **supermajority** support before it can proceed, meaning the 50 Democrats of today’s Senate have little choice but to resign themselves to the grind of **finding Republican supporters**. There are limited exceptions. Assuming Democrats stay in unison, they don’t need Republican votes to appoint judges, approve executive branch nominations or pass fiscal legislation such as the coronavirus stimulus that just became law.

It’s within Democrats’ power to abolish the filibuster, but for now, the maneuver appears safe. Asked just days ago about the matter, White House spokeswoman Jen Psaki told reporters that the president’s preference is for it to stay in place. “The president is an optimist by nature,” Psaki added.

— Hunting for bipartisan consensus —

Not every bill introduced in Congress, nor even every bill approved by a committee or even an entire single chamber, makes it through the process because its sponsors believe it’ll become law. There are a host of bills drafted with the intent of sending a message to industry, to independent regulators, to donors, to constituents.

There are bills that lawmakers view as setting out a position to influence an ongoing policy debate. Even if it won’t become law this year, it might the next year, or the next, reintroduced and refined along the way.

Telltale signs of whether a bill is a serious attempt at law are the number of cosponsors, and whether that list of names includes members of both parties in good stead with their party’s leadership.

Bipartisan support is important even in the House, where Democrats have the votes to completely bypass Republicans. Because the House doesn’t have the filibuster to contend with, those with the majority of seats control the chamber. House Democrats can and do pass bills in the face of absolute House Republican opposition, but — special exceptions for fiscal bills aside — those bills are dead on arrival in the Senate.

As long as the filibuster exists or Democrats lack a Senate supermajority, the House Judiciary antitrust subcommittee must court Republican support if its intention is to make new law.

Finding clues of what House Democrats might seriously achieve, then, may be little more difficult than looking up the policy prescriptions House Republicans favor: giving regulators more resources, shifting the burden of proof in merger cases and boosting data portability and interoperability.

A report issued by now-ranking Republican Ken Buck as a rejoinder to last year’s Democratic House Judiciary antitrust subcommittee staff report on competition in digital markets allowed that the GOP shares other Democratic concerns, including predatory pricing, monopoly leveraging and control over marketplace platforms.

That conciliatory signal also came weighted, with warnings that Congress should be wary of “handing additional regulatory to agencies in an attempt to micromanage.” Instead, try instead telling enforcers they should return to first principles, the Colorado lawmaker advised.

Whether Republicans and Democrats in the Senate **can find common cause** is an even **more fraught question**. Unlike its House counterpart, the Senate Judiciary subcommittee on antitrust **hasn't conducted a 16-month investigation** into digital monopolization. The subcommittee’s senior Republican, Utah’s Mike Lee, is prone to **touting the importance of the consumer welfare standard** and rails against online platforms “eager to impose the ideological censorship called for by their political benefactors.”

Lee also says he’s open to working with subcommittee Chairwoman Amy Klobuchar on strengthening enforcement, adding the caveat that current antitrust laws are sufficient.

Klobuchar, a Minnesota Democrat, doesn’t need Lee to get a bill through her subcommittee, but failing to find consensus with Republicans imperils her chances of making law. The prospects for her Competition and Antitrust Law Enforcement Reform Act becoming law as current written aren't good.

— 'Big tech is out to get conservatives' —

A looming question hanging over any bill, even one tailored to win bipartisan support, is whether it could be **derailed by Republican anger** at online platforms for alleged anti-conservative bias.

A right-wing trope especially spread by President Donald Trump during his last year in office — the belief that platforms use their content moderation powers to silence conservatives — has mainstream acceptance in Republican circles. It’s a refrain almost obligatory for Republican lawmakers to repeat when discussing any issue related to online platforms. “Big tech is out to get conservatives,” House Judiciary Committee ranking member Jim Jordan of Ohio has said more than once.

Democrats have their own share of anger at online platforms’ content-moderation practices, to be sure. They accuse online platforms of circumventing consumer protections, undermining civil rights laws and not doing enough to stymie disinformation.

It’s Republicans, though, who appear the angriest, and are the more likely to insist that any legislative reform touching online platforms address content moderation, **with the intention of making it harder,** not easier, for online platforms to remove users, **potentially imperiling a compromise measure.**

There is one bill that just might thread that narrow opening between antitrust and content. It has a bipartisan coalition in the House and the Senate. Attached are House antitrust subcommittee Chairman David Cicilline of Rhode Island, Representative Buck, Senator Klobuchar and Senator John Kennedy, a Louisiana Republican. It’s the Journalism Competition and Preservation Act, and it would establish a four-year safe harbor from federal and state antitrust laws for news organization to collectively negotiate with online platforms.

**It isn't antitrust reform**. Critics say **it’s the opposite of reform**, as the answer to monopoly shouldn’t be the mere suspension of antitrust law. But it’s something they agree on, and for lawmakers looking to lodge a win, it might suffice.

**The aff represents the largest substantive antitrust change in decades---that signals to the courts**

**Tracy 21** – Ryan Tracy and Brent Kendall, tech and legal reporters, respectively, in WSJ’s Washington Bureau

(Ryan Tracy and Brent Kendall, 3-12-2021, "Antitrust Law: What Is It and Why Does Congress Want to Change It? ," WSJ, <https://www.wsj.com/articles/antitrust-law-what-is-it-and-why-does-congress-want-to-change-it-11615554000>)

What would the changes mean?

Even if Congress acts on only a couple of **middle-of-the-road** proposals, it could **mark the biggest substantive changes in decades**, as courts have been reading current antitrust laws more narrowly. Very large companies could have trouble getting deals approved. Tech giants could have to divest themselves of certain business lines.

If lawmakers, for example, make slight changes to reinforce broad government authority to successfully challenge mergers that threaten consumers, **“that would signal to the courts that merger enforcement is important and that doubts should not always be resolved in favor of defendants,”** said Wayne State University law professor Stephen Calkins.

**That new calculus specifically impacts implied immunity---it’s judicially constructed, ambiguous, and is open to change**

**Lacour 8** – J.D. Candidate, June 2009, St. John's University School of Law

Justin Lacour, "Unclear Repugnancy: Antitrust Immunity in Securities Markets After Credit Suisse Securities (USA) LLC v. Billing," St. John's Law Review, Vol. 82, No. 3, Summer 2008, https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1084&context=lawreview

Introduction

For over a century, American antitrust laws have sought to promote competitive conduct in the market place and to protect consumers from price discrimination, price fixing, and other ill effects of monopolistic behavior.1 The application of antitrust laws to industries subject to federal regulation presents a difficult issue, since an activity otherwise prohibited by the antitrust laws may be permitted or even required when Congress has spoken by passing a regulatory statute. 2 A court must determine whether a regulatory statute-either expressly or by implication-repeals the antitrust laws, and whether jurisdiction over the particular conduct lies with the regulatory agency, rather than the court.3 When Congress has remained silent, a court may determine that implied immunity exists if maintaining an antitrust action would "thwart the regulatory scheme created by Congress." 4 Although both securities regulation and antitrust laws seek to promote efficient markets,5 the SEC, in regulating securities markets, must consider additional issues, such as "the economic health of the investors, the exchanges, and the securities industry," unlike antitrust law, which is concerned solely with competition. 6 The parallel application of antitrust laws and securities regulation could therefore potentially interfere with regulatory controls and "could undercut the very objectives the antitrust laws are designed to serve. ' 7 The Securities Act, the Securities Exchange Act, and the Investment Company Act,8 like most regulatory statutes, are silent on the issue of antitrust jurisdiction, 9 leaving courts to determine whether implied immunity exists.'0

While the Supreme Court has stated that the general principles applicable to antitrust immunity are "well established,"11 commentators have opined that "'[tjhe case law of implied immunity is... a quagmire.'"12 Courts have differed greatly on when implied immunity is necessary. 13 Despite this confusion, courts have developed two distinct approaches, treating implied immunity largely as a question of authority. Most courts have looked at whether the challenged conduct fell under the jurisdiction of the regulatory agency.14 If the challenged practice fell under the agency's jurisdiction, and the agency has exercised its authority over the practice, then a finding of implied immunity may be appropriate. Courts have differed, though, as to the extent to which the agency must exercise its authority over the practice in question before finding implied immunity.1 5 A second approach is to base a finding of implied immunity solely on the presence of a pervasive regulatory scheme. Courts have found implied immunity appropriate when the agency controls every aspect of the industry's conduct, 16 or when "'Congress must be assumed to have foresworn the paradigm of competition'" in creating the regulatory scheme. 17 Implied immunity, however, has rarely been established solely on the presence of pervasive regulation. 18

Steady throughout these differing approaches to implied immunity in the case law is the long-held standard that, for implied immunity to apply, there must be "'a convincing showing of clear repugnancy between the anti-trust laws and the regulatory system.' "19 Most courts have held that a repugnancy exists when the application of both antitrust laws and the regulatory scheme would produce conflicting standards for the regulated industry.20 Gordon v. New York Stock Exchange, Inc.21 provides a clear example of this traditional implied immunity analysis. In Gordon, the SEC had approved a system of fixed commission rates, a practice that would be a per se violation of antitrust laws. Since the practice fell under the SEC's authority and there was a direct conflict between the two laws, the Supreme Court found implied immunity. 22 Other courts have also viewed repugnancy, not in terms of a conflict between two laws, but as a conflict of authority: Application of antitrust laws would conflict with the authority Congress has granted to regulatory agencies. 23

Still, courts have applied even this seemingly simple rule in different ways. Courts have differed as to the effect agency approval or disapproval of the activity has on the question of implied immunity. Some courts have been willing to find implied immunity even when the challenged conduct has been disapproved of by both antitrust laws and the regulatory agency. 24 Many courts, however, have chosen to treat agency disapproval of the challenged practice as refuting any claim of implied immunity since, in such cases, there would be no conflict between antitrust laws and the regulatory scheme. 25 In short, the "clear repugnancy" standard appears as muddled as the other areas of implied immunity case law.

**That disrupts financial stability---effective and unilateral SEC regulation is critical**

**Allen**, Associate Professor, Suffolk University Law School, **‘18**

(Hillary, “The SEC as Financial Stability Regulator,” 43 J. Corp. L. 715)

After the financial crisis of 2007-2008 (the “Crisis”), regulators around the world adopted the pursuit of “financial stability” as one of the foremost goals of financial regulation.2 However, the ubiquity of the goal belied a lack of consensus about how regulators should approach financial stability, and that lack of consensus persists today. This Article takes an expansive view of financial stability regulation, arguing that such regulation should seek to prevent disruptions to both financial institutions and markets, if such disruptions would have negative consequences for the broader economy. Because the Securities and Exchange Commission (the “SEC”) has much more experience with the securities markets than other US financial regulators, the SEC is the agency best positioned to **ensure the robustness of those markets**. The SEC can therefore make a significant contribution **as a market-oriented financial stability regulator** – even if other forms of financial stability regulation might be best left to prudential regulators, like the Federal Reserve.

Private participants in the securities markets have neither the **incentives** nor the **ability** to promote **financial stability** (a collective good),3 and so **only a government body** can work to ensure that the securities markets are **robust to shocks**, and minimize the likelihood of shocks occurring in the first place. **If the SEC fails** to take on this role, we **cannot expect any other government agency to fill the lacuna**. While the Financial Stability Oversight Council (“FSOC”) was created to address threats to the stability of the financial system, it is, at its core, a committee that is designed to leverage the expertise of its member agencies rather than performing extensive regulatory functions itself. Other than the SEC, there is no regulatory agency represented on the FSOC that has extensive experience with the securities markets.4 And there are certainly developments in the securities markets that raise financial stability **concerns** – this Article will focus in **particular** on the increasing prevalence of **high frequency trading** (“HFT”) in the equity markets.

HFT is an umbrella term for a variety of different automated trading strategies; their common characteristic is that the computer algorithms that make the trading decisions are designed to hold assets for only a very short period of time. HFT now accounts for **more than half of all trading** in the US equity markets,5 and while the practice certainly affords benefits in terms of reducing the time and cost of executing trades, it also increases the **complexity**, **interconnectedness** and **opacity** of the equities markets.6 Events such as the **“Flash Crash”** in May 2010 have alerted regulators to HFT’s potential to both generate and transmit shocks through the financial system: the potential **threats** that HFT **poses to financial stability** (as well as to **investors** and **capital formation**) will be explored in detail in this Article. Of course, high frequency traders do not trade exclusively in the equity markets (i.e. the secondary trading market for listed stocks): 7 there is an almost limitless list of assets that HFT firms will trade, including a multitude of derivatives instruments. However, this Article will focus on the equity markets.

The SEC is **currently considering** how to **reform its regulation of the equity markets** in light of HFT and other developments, a project that began in earnest with the issuance of a “Concept Release on Equity Market Structure” on January 14, 2010 (the “Concept Release”).8 Although some reforms have been implemented since that time, the project of market structure reform is nowhere near complete. To the extent that the SEC is planning to promulgate further rules addressing HFT and the equity market structure more generally, **such rules can be said to be in the “preproposal period”** (i.e. the time prior to the proposal of any rule in the Federal Register). As Krawiec notes, the preproposal period is “a time period about which little is known, despite its importance to policy outcomes. . . the need to produce a proposed rule that is ready for comment pushes much regulatory work to this early stage of the rule development process.”9 This Article seeks to provide some insight into the preproposal stage of the market structure reform project by considering the testimony, public statements, speeches and press releases that have been disseminated on the subject of HFT by the SEC, its Commissioners, and its staff.10

**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**.

#### Our explanation is more robust – relative, structural decline creates critical points that lead to war

Jacob L. Heim, Senior Policy Researcher, RAND, and Benjamin M. Miller, PhD, Economist; Professor, Pardee RAND Graduate School, 2020, Measuring Power, Power Cycles, and the Risk of Great-Power War in the 21st Century, https://www.rand.org/pubs/research\_reports/RR2989.html

Global Power Dynamics and Global Conflict

There are many models that link the distribution of global power to the prospects for major interstate war, according to different theories of why wars occur.27 Put broadly, when assessing whether one scenario is more stable than another, analysts apply a model (ranging from a heuristic to a formal model) to assess the prospects for crisis or war under different distributions of global power. One such approach would be to use a quantitative metric (such as the GPI) within a theoretical model that evaluates the likelihood of a war erupting under different distributions of global power.

There are many theoretical models that an analyst could use for this purpose.28 Among these models, power cycle theory represents an intriguing option due to its quantitative nature and its ability to operate on aggregated metrics, such as the GPI.

*Power cycle theory* relates the relative distribution of power in the international system to the likelihood of major wars—that is, large wars that will reorder the international system.29 For this reason, it focuses on *latent* indicators of military power. The theory concerns long-term shifts in power that take place over decades, rather than the year-to-year fluctuations in military capabilities that arise as states actualize their latent power by fielding new weapon systems, testing new technologies, or training their militaries in new concepts of operation. Power cycle theory posits that the largest wars—measured by duration and number of casualties—tend to occur when multiple great powers simultaneously experience *critical points* at which their relative rates of growth fundamentally shift. These major wars are also sometimes called extensive wars because they involve multiple major powers that fully mobilize, leading to a large number of casualties and restructuring of the international system. Scholars have found confirming evidence for the theory when testing it against the historical record as a whole and when examining case studies in specific major wars (such as WWI).30 By focusing on fundamental elements of national power and the risk of wars that could reorder the international system, these sorts of frameworks can help strategists step back and look for structural shifts in power that can destabilize the international system. Of course, destabilizing shifts represent only one concern out of many that national security strategists confront on a daily basis—from terrorism and power vacuums to nuclear proliferation and transnational crime—but they are a necessary concern that requires attention and foresight. Power cycle theory, like all models, is a simplification of reality, but we judge that it has value in helping analysts understand the balance of power and prospects for major wars in a systematic and quantifiable way. We do not view it as a replacement for critical thinking, the study of history, regional expertise, or other methods. We consider it to be a valuable tool to add to the larger toolbox used by national security analysts and those concerned about how future trends could affect great-power competition and war.

There are many theories of warfare involving cycles.31 While each differs in particulars, they share some broad characteristics because they emphasize long-term causes of war. In these theories, uneven rates of growth among states play an important role in creating systemic disequilibria. Theories differ on which rates of growth matter most; some focus exclusively on economic growth, while others focus on broader indexes that include population. Theories also differ on what configurations of powers are the most dangerous; for example, transition theories focus on when a rising power’s capabilities approach those of the leading power in absolute terms, while power cycle theory focuses on when the trend in a nation’s growth changes (peaks, bottoms out, or reaches an inflection point). All theories generally accept the argument that a discrepancy between a state’s perceived status and its desired status influences its behavior. We use power cycle theory in this report because of its unambiguous and quantifiable character (the theory leads to specific predictions tied to quantitative conditions). Although we apply power cycle theory, we do so mainly as an illustration of how one can combine international relations theory with future balance-of-power scenarios to consider which ones may be more unstable than others; we encourage strategists to consider many lenses when evaluating scenarios.

Power Cycle Theory

To answer questions about whether a balance of power in a given scenario makes a major war more or less likely, one needs to apply a theory that relates certain configurations of power to predictions about stability. Power transition theory, for example, might focus on the period around 2023, when China’s modified GPI score surpasses that of the United States. Power cycle theory, however, suggests that the risk of war is higher when several major powers go through critical points at similar times—not when their shares of global power cross each other. As mentioned earlier, critical points occur when the direction or acceleration of a state’s relative growth trend changes, such as when a state’s power falls after reaching its zenith or rises after reaching its nadir. Critical points may also occur when the *rate* of growth or decline accelerates or decelerates. For example, in our baseline scenario, Chinese relative growth experiences an inflection point around 2011.

Before 2011, Chinese relative growth was accelerating, in line with the economic trends that we discussed in the opening. After 2011, however, Chinese relative growth decelerates. While it is still growing in absolute and relative terms, its rate of relative growth slowed. Figure 10 highlights that, between 1990 and 2010, China’s relative power growth rate accelerated. After 2010, its relative power growth rate began decelerating. In the baseline scenario, its relative rate of growth continues to slow, but it does not peak. The point where China’s relative power growth rate stops accelerating and begins to decelerate (marked with the black dot in Figure 10) is a particular type of critical point called an inflection point, and it has special significance for a rising power.