# Harvard Round 3 Wiki

## 1NC

### K Anti-Domination

#### 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.

### 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.

#### Violation: Exemptions based on the rule of reason means practices are not prohibited

Skoczny 01 – Professor of law, Holder of the Jean Monnet Chair on European Economic Law at the Warsaw University Faculty of Management

Tadeusz Skoczny, “Polish Competition Law in the 1990s - on the Way to Higher Effectiveness and Deeper Conformity with EC Competition Rules,” European Business Organization Law Review, Vol. 2, Issue 3-4, September 2001, LexisNexis

Most importantly, the new Act departed from the relativity of the prohibition of dominant position abuses; as in Article 82 EC Treaty, it is now a general prohibition which does not allow for exemptions on the basis of a rule of reason. Also new is the prohibition of the abuse of dominant position by groups of undertakings, which will allow to effectively control the state and the development of competition on oligopolistic markets. The Act also eliminated the distinction between monopolistic and dominant position; in theory and in practice, it was difficult to justify the maintenance of this distinction. Therefore, the Act relates only to a dominant position, the definition of which however has been changed. According to the new Article 4 point 9, dominant position means a position "which allows [the undertaking] to prevent effective competition on the relevant market thus enabling [the undertaking] to act to a significant degree independently from its competitors, contracting parties and consumers". It is easy to notice that this definition is based on the United Brands and Hoffmann La-Roche standards. It must nevertheless be emphasised that such understanding of dominance was introduced by the AMC already in 1993; it considered dominance as the capacity to act "to a large extent independently of the competitors and clients, thus also the consumers". Thanks to the AMC's judgements also the relevant product and geographical markets are defined on the basis of the criteria of "close commodity substitutability" and "homogenous competition conditions".

#### 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

### CP States

#### Text: The fifty states and all relevant United States territories should increase prohibitions on anticompetitive unilateral conduct by dominant digital platforms

#### States have the right to enforce federal antitrust law and enact and enforce their own antitrust laws---those state-level laws are not inherently Congressionally preempted.

HLR 20 – Harvard Law Review

“Note: Antitrust Federalism, Preemption, and Judge-Made Law,” Harvard Law Review, Vol. 133, June 2020, LexisNexis

I. THE ANTITRUST FEDERALISM LANDSCAPE

Antitrust federalism, meaning the space carved out for the states in the more generally federal antitrust arena, can be thought of as made up of two "swords" -- the first the states' ability to bring suit under federal antitrust law and the second their ability to enact and enforce their own state antitrust laws -- and one "shield" -- immunity from federal antitrust law for state actions. The swords allow states to attack antitrust offenders, while the shield allows states to defend against federal antitrust action.

All three elements of antitrust federalism find their roots in congressional action or the courts' interpretation of congressional inaction. The power to enforce federal antitrust law as parens patriae for full treble damages -- the first sword -- was granted to the states by Congress in Hart-Scott-Rodino. On the judicial front, the Supreme Court acknowledged state immunity from federal antitrust actions -- the shield -- in Parker v. Brown, noting that the Sherman Act did not explicitly mention its application to state action. Finally, when the Court confirmed that states' ability to make their own antitrust laws -- the second sword and the one discussed in this Note -- was not preempted in California v. ARC America Corp., it considered the same Sherman Act silence.

### DA FTC Trade Off

#### The plan forces tradeoffs in FTC enforcement efforts – they’re in a merger tsunami and barely staying afloat, but the plan drowns them

Rose ’19 - Department Head and Charles P. Kindleberger Professor of Applied Economics in the MIT Economics Department. She served as Deputy Assistant Attorney General for Economic Analysis in the Antitrust Division of the DOJ from 2014 to 2016, and was the director of the National Bureau of Economic Research Program in Industrial Organization from 1991 to 2014.

Nancy Rose, FTC Hearing #13: Merger Retrospectives, April 12, 2019, <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-14-merger-retrospectives>

So I want to start with the last question that was on the set that Dan and Bruce circulated for this panel. Should the FTC devote more resources to retrospectives, even at the cost of current enforcement? And I was delighted to see Commissioner Slaughter be so passionate in her defense of the need for more resources. This goes to what I feel is the most significant, and yet still largely invisible message, in the ongoing debate over competition policy, which is that antitrust enforcement in the United States is chronically and substantially underfunded.

For years, the appropriation requests have been modest in their increases. Oversight hearings and interactions with the Hill have too often featured the mantra, “when business picks up, our talented and hardworking staff just do more with less.” I will say I think the career staff at both the FTC and the DOJ Antitrust Division are among the most dedicated, highly-skilled, and hardest-working professionals.

It was my great privilege to work with a number of them at DOJ, and I know that colleagues who have worked at the FTC feel the same way. They deserve our greatest appreciation and applause and not just from those of us who work in antitrust policy, but from the entire American public, on whose behalf they tirelessly work.

But there is a limit to the number of hours in a day and the number of days in a week and the well below market compensation for the lawyers and economists who work in the agencies, which is another significant problem, is insufficient to demand that staff give up all rights to leave their buildings, occasionally see their families, or catch up on sleep.

So I think it’s inevitable that if we’re asking agencies to reflect on the effectiveness of their decision-making through programs like retrospective programs, it is going to come out of someplace else. And I fear that given the ongoing intensity of the merger wave, that’s going to come out of enforcement.

We are amid an ongoing sustained, what’s been called by some, tsunami of mergers. Each year there are thousands of mergers noticed to the agencies and thousands more below the HSR thresholds, that work by Thomas Wollmann at the University of Chicago suggests, skate through to consummation with practically no probability of review or action, the occasional consummated merger enforcement action notwithstanding.

The dollar volume of mergers is at historic levels and that suggests that there are a lot of mega mergers competing for enforcement resources. In addition, litigation costs continue to climb, both for challenging mergers or bringing Section actions, especially as parties with especially deep pockets escalate litigation defenses, correctly calculating that even adding some tens of millions of dollars in antitrust litigation costs would be just rounding error in their merger financing.

And, finally, I would say it’s inconceivable to me that there are not at least some counsel that are advising parties that a good time to bring marginal mergers forward is when the agencies are stretched thin by major investigations or multiple litigations.

#### Despite short resources, FTC is effectively regulating hospital mergers – the plan halts that progress

Muris ’20 – Professor of Law at George Mason, former Chairman of FTC, Senior Counsel at Sidney Austin LLP, JD from UCLA,

Timothy Muris, “Response to Subcommittee on Antitrust, Commercial, and Administrative Law Committee on The Judiciary U. S. House of Representatives” April 17, 2020, <https://judiciary.house.gov/uploadedfiles/submission_from_tim_muris.pdf>

Finally, the Committee asks about agency resources and performance. The last section below briefly addresses the continual need for the antitrust agencies to address business practices as they evolve, as well as their own performance record. Such evaluation is necessary: ever a UCLA Bruin, I remain devoted to legendary coach John Wooden‘s maxim that “when you are through learning, you are through.” The section thus offers multiple examples of successful and bipartisan FTC efforts to improve enforcement to the benefit of consumers. In the key healthcare sector, American consumers continue to benefit from the FTC’s hard work. After losing seven consecutive hospital merger challenges before I arrived, upon my direction the FTC worked to devise a new enforcement plan by incorporating fresh economic thinking and issuing retrospective case studies showing that several hospital mergers had indeed harmed consumers. This plan resulted in a successful challenge to a consummated hospital merger that served as a template for future enforcement, leading to Obama administration victories in three separate courts of appeal endorsing the FTC’s approach. Such success did not require abandonment of the consumer welfare standard, nor a dramatic increase in agency resources. Indeed, as discussed below, my predecessor as FTC chairman, Bob Pitofsky, did much more for American consumers using the consumer welfare standard with just 1,000 staff than did the agency in the 1970s when it had far greater resources (1,800 staff by the turn of the decade), but was motivated by an antitrust policy that was, instead, at war with itself.

#### Long term per-person healthcare costs will collapse the economy from a bubble burst or terminal budget overstretch – no alt causes – restoring competition in hospital markets is key to reduce costs

Evan Horowitz, Fivethirtyeight, January 11, 2018, The GOP Plan To Overhaul Entitlements Misses The Real Problem, <https://fivethirtyeight.com/features/to-cut-the-debt-the-gop-should-focus-on-health-care-costs/>

There is no wide-reaching entitlement funding crisis, no deep-rooted connection between runaway debts and the broad suite of pension and social welfare programs that usually get called entitlements. The problem is linked to entitlements, but it’s much narrower: If the U.S. budget collapses after hemorrhaging too much red ink, the main culprit will be rising health care costs.

Aside from health care, entitlement spending actually looks relatively manageable. Social Security will get a little more expensive over the next 30 years; welfare and anti-poverty programs will get a little cheaper. But costs for programs like Medicare and Medicaid are expected to climb from the merely unaffordable to truly catastrophic.

Part of that has to do with our aging population, but age isn’t the biggest issue. In a hypothetical world where the population of seniors citizens didn’t increase, entitlement-related health spending would still soar to unprecedented heights — thanks to the relentlessly accelerating cost of medical treatments for people of all ages.1

What’s needed, then, is something far more focused than entitlement reform: an aggressive effort to slow the growth of per-person health care costs. Or — if that’s not possible — some way to ensure that the economy grows at least as fast as the cost of health care does.

Diagnosing the debt: It’s not about demographics

America’s long-term budget problem is very real. Already, the federal government has a pile of publicly held debts amounting to around $15 trillion, or about 75 percent of the country’s entire gross domestic product. That’s the highest level since the 1940s, yet the debt burden is expected to double by 2047 and reach 150 percent of the GDP, according to the Congressional Budget Office.2

It makes sense to list entitlement spending among the culprits for the growing national debt, given that these programs have grown from costing less than 10 percent of the GDP in 2000 to a projected 18 percent in 2047. Part of this is simple demographics: As America ages, more of us become eligible for Social Security and Medicare, thus driving up expenses.3

But there’s a crack in this demographic explanation: It only makes sense for the next 10 to 15 years. That’s the period of rapid transition when graying baby boomers will boost the population of seniors from around 50 million to more than 70 million. A change like that should indeed produce a surge in entitlement spending as those millions submit their enrollment forms.

By 2030, however, this wave will start to ebb, leaving the elderly share of the population at a roughly stable 20 to 21 percent all the way through 2060, based on the size of the population following the boomers and slower-moving forces like lengthening lifespans.

But think what this should mean for entitlement spending. As the population of seniors levels out in those later years, costs should naturally stabilize — at least, if demographics were really the driving factor.

This is exactly what you see for Social Security. The CBO expects total Social Security spending to leap up over the next decade but then settle at just over 6 percent of the GDP, at which point it will cease to be a major contributor to rising entitlement spending or growing debts. Social Security is thus a minor player in our long-term budget drama; if you cut the program to the bone, shrinking future payouts so that they won’t add a penny to the deficit, the federal debt would still reach 111 percent of the GDP in 2047.4

Likewise, cuts to welfare and poverty-related entitlements like food stamps and unemployment insurance are unlikely to improve the debt forecast. In fact, spending on these entitlements has been dropping since the high-need years around the Great Recession and is expected to shrink further in the decades ahead — partly because payouts aren’t adjusted to keep up with economic growth, and partly because the birth rate has been falling and several programs are geared to families with children.5

But the scale of the problem is totally different when you turn to health care. Spending on entitlement-related health programs — including Medicare, Medicaid and subsidies required by the Affordable Care Act — will never shrink or stabilize, according to projections. The CBO predicts these costs will grow over 65 percent between now and 2047 — and then go right on growing after that, heedless of the fact that the percentage of the population that’s over 65 should no longer be increasing.

Why is health care eating the budget? Per-person costs

Demographics aren’t responsible for the projected explosion in health care costs. More important than the growing number of elderly Americans is the growing cost per patient — the rising expense of treating each individual

The CBO found that the lion’s share — 60 percent — of the projected increase in health spending comes from costs that would continue to increase even if our population weren’t getting older.

The reasons for this are many, including the rising cost of prescription drugs and the fact that hospital mergers have reduced competition. But since 2000, per capita health costs in the U.S. have, on average, grown faster than the GDP. And while these costs rose more slowly after the Great Recession and the implementation of the Affordable Care Act, analysis from the Centers for Medicare and Medicaid Services suggests this slower growth rate won’t last.

Which is bad news for these programs, because if the problem were demographic, it’d be easier to solve. By mixing the kind of program cuts Republicans generally support with targeted tax increases favored by some Democrats, you could meet the short-term challenge posed by retiring baby boomers and raise enough money to cover the larger — but stabilizing — population of eligible seniors. But with ever-rising costs, there is no stable future to prepare for. To keep these programs funded, you’d need a wholly different approach — indeed a whole new perspective on mounting federal debt and the role of entitlements.

The future is a race between rising health care costs and economic growth, a race that the economy is losing. Each time health costs outpace the GDP, it creates what the CBO calls “excess cost growth,” which feeds the federal debt. If the government could close this gap, the long-term budget outlook would be a lot rosier.

There are two ways to solve this issue: Either contain health care costs — say through price regulation or more competitive markets — or boost economic growth enough to pay for this expensive health care. Success on either front would make health care spending look more manageable over future decades and lighten the debt load.

Entitlement reform needs health care reform to work

Few of the proposals that commonly fall under the heading of entitlement reform target the health care cost problem, which limits their ability to reduce the long-term debt.

Even when they do address health care, often the result is to shift — rather than solve — the problem. Say lawmakers decide to dramatically cut Medicare. That would indeed ease the government’s debt problem. But the underlying dynamic — the race between health costs and the GDP — wouldn’t really change. Seniors would still need health care, and per-person costs would likely still grow (maybe even faster, since Medicare is a relatively efficient program).

On top of all this, there’s also a deep-seated political barrier: It’s no good if one party picks its favored solution only to watch the other party dismantle it when they next take over. You need political consensus to make changes stick, and America is notably short on consensus right now.

In the end, though, it won’t do to just throw up our hands. Absent some workable solution, spending on health care will sink the federal budget, generating levels of debt that would hold back the economy and potentially spark a global crisis of confidence in the United States’ ability to borrow.

#### Healthcare driven budgetary overstretch causes global instability

Brown, PhD, Professor of Practice and Vice Chair, Public Administration and International Affairs at Syracuse, worked as an economist at the International Monetary Fund and as Chief Economist for Eastern Europe, Africa, and the Middle East at BNP Paribas, ‘13

(Stuart S., “Global Power: Key Issues,” in *The Future of US Global Power: Delusions of Decline*, Palgrave, p. 57-58)

In the first instance, structural26 budget deficits are more likely to be symptoms of incipient overstretch then prima facie evidence of national decline. Overstretch suggests a need to realign commitments and resources, hence spending and revenues. In principle, persistently large deficits demand adjustments that need not materially impact the underlying drivers of longer-term prosperity. In contrast, if fiscal imbalances prove sufficiently chronic, they can eventually trigger growth-inhibiting alterations in microeconomic incentives. In such cases, incipient overstretch can mutate into a more primary threat to the system's underlying dynamism.

In its classical formulation, “imperial overstretch” refers to unrestrained and exorbitant foreign military campaigns. The latter can be said to redound to the detriment of great powers by crowding out more productive capital investments. Yet in contrast to widespread impression, the US fiscal challenge does not primarily reflect out-of-control defense spending and the burden of foreign entanglements. If this were the case, then the feasibility of financing an ever-expanding global power projection would be brought into question. This neither minimizes the sizable resources the US commits to military-related spending nor denies that cutbacks in such spending can help facilitate overall fiscal adjustment. Rather, the point is that an endemic failure to rein in explosive economy-wide health care costs with the latter's implications for public sector health insurance programs – the real fiscal challenge – will do more to endanger macroeconomic stability and eventually erode the material foundation of US power (see chapter 8).

By viewing (health-care driven) fiscal deficits as a necessary manifestation of overstretch is misguided for a more basic reason. The root of the US fiscal problem involves unsustainable commitments – particularly in the area of health expenditure – made by government to its citizens. It is decidedly not a question of any dearth of national resources to adequately meet the health needs of the population at large. As the richest country in the world, the US possesses more than enough resources to achieve this goal. The relevant political and social question is whether the population’s basic health requirements are best met via ever-expanding entitlements requiring increasingly higher levels of taxation.

### CP Section 5

#### The United States Federal Trade Commission should:

#### determine that, under Section 5 of the Federal Trade Commission Act, “unfair methods of competition” includes anticompetitive unilateral conduct by dominant digital platforms

#### issue cease and desist letters to companies engaging in anticompetitive unilateral conduct by dominant digital platforms stating that their conduct constitutes a violation of Section 5 of the FTC Act.

#### The FTC can use cease and desist letters to deter anticompetitive action without modifying antitrust laws

Hoofnagle Hartzog and Solove 19 – Chris Jay Hoofnagle is an American professor at the University of California, Berkeley who teaches information privacy law, computer crime law, regulation of online privacy, internet law, and seminars on new technology. Woodrow Hartzog is Professor of Law and Computer Science at Northeastern University. Daniel J. Solove is a professor of law at the George Washington University Law School.

Chris Hoofnagle, Woodrow Hartzog and Daniel Solove, August 8 2019, “The FTC can rise to the privacy challenge, but not without help from Congress,” Brookings, https://www.brookings.edu/blog/techtank/2019/08/08/the-ftc-can-rise-to-the-privacy-challenge-but-not-without-help-from-congress/

The FTC also could achieve greater deterrence by leveraging an obscure power known as “non-respondent liability.” In cases where the FTC has a fully-adjudicated matter concerning some business practice, the agency can use that precedent to issue civil penalties to others engaging in the same activity. The power is limited to instances of actual knowledge of a closely-matching precedent by the new defendant, butthis can be established by sending that company notice of its wrongdoing and the relevant previous order. If we think about recent privacy wrongs—poor data security, selling data despite promising not to, and so on—many are widespread, recurring practices. If the FTC were willing to adjudicate just one case involving information “sale,” changing users’ settings, or even storing passwords in plain text, hundreds of companies could inherit exposure to civil penalty liability though this mechanism.

#### Broad FTC authority means the counterplan solves

Vaheesan 17 – Regulations Counsel, Consumer Financial Protections Bureau

Sandeep Vaheesan, May 11 2017, “RESURRECTING “A COMPREHENSIVE CHARTER OF ECONOMIC LIBERTY”: THE LATENT POWER OF THE FEDERAL TRADE COMMISSION,” UPenn Journal of Business Law, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1548&context=jbl

Under progressive leadership, one federal agency, the FTC, could resurrect antitrust law as “a comprehensive charter of economic liberty.”22 Modern administrative law and Congressional delegation of policymaking authority grant the FTC expansive power to interpret the antitrust provision of Section 5 of the FTC Act.23 In enacting this statute, Congress articulated a grand progressive-populist vision of antitrust. It wanted the FTC to police “unfair methods of competition” that injure consumers, prevent rivals from competing on the merits, and allow large corporations to dominate our political system.24 Congress intended the FTC’s antitrust authority to encompass more than the prohibitions in the Sherman and Clayton Acts and to nip anticompetitive problems in the embryonic stage before corporations gained undue power over consumers, small suppliers, competitors, and the American political system.25

Since the early 1980s, the FTC has championed antitrust law centered on economic efficiency. In 2015, the FTC codified this approach in a Statement of Enforcement Principles laying out its interpretation of Section 5’s prohibition on unfair methods of competition.26 The FTC stated that it would use its Section 5 authority to advance “consumer welfare,” which is functionally similar to the allocative efficiency goal, and apply the rule of reason framework.27 In articulating this narrow interpretation of Section 5, the FTC contradicted Congress’s political economic vision in 1914, which sought to prevent not only short-term injuries to consumers, but also exclusionary practices by large businesses and the accumulation of private political power. And in making the rule of reason the centerpiece of its analytical framework, the FTC adopted a convoluted test that cannot advance the Congressional vision underlying Section 5.

Despite being a champion of the efficiency paradigm since 1981, the FTC under progressive leadership in the future could still change course and be true to the Congressional intent from when the agency was created more than a century ago. In setting out an interpretation of Section 5, whether through enforcement actions or rulemakings, the FTC should anchor Section 5 in the expansive political economic vision of Congress. By enacting the FTC Act, Congress sought to prevent—rather than remedy after the fact—three principal harms from concentrated economic power: wealth transfers from consumers and producers to monopolies, oligopolies, and cartels; private blockades against entry and competition in markets; and the accumulation of economic and political power in corporate hands. To advance Congress’s antitrust vision, the FTC should adopt presumptions of illegality for a variety of competitively suspicious conduct, such as mergers in concentrated industries, exclusionary practices by firms with market dominance or near-dominance, and restraints on retail competition; and challenge monopolies and oligopolies that inflict significant harm on the public. When seeking to preserve or restore competitive market structures, the FTC should pursue simple structural remedies over complicated behavioral fixes.

**Section 5 expansion and clarification is critical to preventing international protectionism**

**Nam 18** – Distinguished Practitioner, Center for East Asian Studies, Stanford University; former Visiting Professor of Law at UC Davis School of Law; former Visiting Fellow at Columbia Business School Center on Japanese Economy and Business; former antitrust attorney at Jones Day

1. Interpretive Latitude in the FTC Act

A dearth of clarity on standards and criteria has been part and parcel of the FTC Act’s considerable normative influence abroad,66 especially with respect to areas of regulator discretion in enforcement. Within two years of the statute’s enactment, President Wilson would confess candidly of the new FTC: “It is hard to describe the functions of [the] [C]ommission. All I can say is that it has transformed the Government of the United States from being an antagonist of business into being a friend of business.”67 While Wilson may have been referring to the FTC as a shield for business owners against monopolies and dominant competitors, his inability to easily condense the mandate of the Commission spoke to its versatility and breadth. The FTC Act’s purview over any “unfair methods of competition”68 per its Section 5 granted the agency wide berth in pursuing both ongoing and incipient antitrust violations beyond the Sherman Act’s reach, instead of limiting the FTC to codified standards and prescriptions for a generally defined set of antitrust violations. According to Winerman, “then, as now, the agency combined formal powers to investigate [and] formal powers to prosecute,” while permitting dialogues “with business to facilitate compliance with the law (those emphasized by Wilson).”69 As discussed, there existed a strong predilection in the FTC Act’s originators towards favoring cooperation with big business over heavy-handed policing and resultant debilitation of the national economy. The inferred use of discretion prevalent throughout the statute proved conducive to this aim.

Section 5 proceeds to state that a person, partnership, or corporation believed culpable of antitrust violations by the FTC will be issued a complaint and a notice of a hearing if “it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.”70 This invocation of the public interest without further elaboration has left open a sizable margin for interpretive license,71 not the least a presumption that the public referenced is the domestic public. Certainly the public interest varies from country to country and is not a fixed concept. Even within a single domestic polity, different interest groups may be at odds regarding its intuitive definition. Former FTC Chairman William Kovacic noted that “in the 1950s and the 1970s, Commission efforts to use Section 5 litigation elicited strong political backlash from the Congress. The very breadth of Section 5 creates political risks in its application.”72 Whether manifestations of checks and balances or politicized affairs, such historical developments contributed to extralegal U.S. regulatory norms in antitrust enforcement that foreign competition regimes could not transplant and adapt in the same manner that they did American competition laws.

Section 5 also states “in determining whether an act or practice is unfair, the Commission may consider established public policies as evidence,” with the qualifier that “[s]uch public policy considerations may not serve as a primary basis for such determination.”73 Befitting the FTC Act’s elastic mandate, no specific examples of any such public policies are offered. Furthermore, the FTC may find unlawful only the unfair method of competition that “causes or is likely to cause substantial injury to consumers not outweighed by countervailing benefits to consumers or to competition.”74 Without further elaboration on countervailing benefits, the statute cedes to the Commission the leeway to finesse its responses to complex antitrust violations. While guidance to fill these descriptive gaps has been supplied domestically by over a century of successive judicial decisions, alongside evolving conventions accounting for legislative as well as private sector interests, most foreign competition regimes lack a comparable array of participant actors beyond the executive branch.75 When acting in a relative vacuum of precedent and checks, protectionist administrations abroad encounter less resistance to their justifications for selective antitrust enforcement in the name of public policy and/or countervailing national economic benefits.

Section 5 is not explicit regarding openness to presidential control, but Section 6 includes direct mention of presidential prerogative: “The Commission shall also have power. . . [u]pon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.”76 Wilson was quick to rely on Section 6,77 and even as the notion of FTC autonomy later became entrenched in the U.S., this portion of the FTC Act was left unamended. Today, the language easily could be construed overseas as an affirmation of the FTC’s subservience to the executive branch. In the event that foreign readers of the Act fail or do not choose to connect the historical dots, they would be unable to find any undergirding support for agency independence in Section 5 or 6. Indeed, novel expansions of FTC autonomy in Section 5 cases still risk political crossfire for “going beyond established principles of antitrust doctrine—principles set in the resolution of Clayton or Sherman Act disputes creat[ing] immediate opportunities to scold the Commission for taking ‘unprecedented’ measures or entering ‘uncharted’ territory,” per Kovacic.78 The originators of the legislation would not have had it any other way.

**Protectionism causes global wars**

**Palen 17** – historian at the University of Exeter

Marc-William Palen, "Protectionism 100 years ago helped ignite a world war. Could it happen again?," The Washington Post, 6-30-2017, https://www.washingtonpost.com/news/made-by-history/wp/2017/06/30/protectionism-100-years-ago-helped-ignite-a-world-war-could-it-happen-again/

The liberal economic order that defined the post-1945 era is disintegrating.

Globalization’s foremost champions have become the first to signal the retreat in the wake of the Great Recession. Economic nationalism, historically popular in times of economic crisis, is once again on the rise in Britain, France and the United States. We are witnessing a return to the antagonistic protectionist politics that defined a bygone era that ended with World War I — suggesting that today’s protectionist revival threatens not just the global economy, but world stability and peace.

Leading liberal democracies have turned their back on free trade. Britain, through Brexit, announced its retreat from European market integration. Before the parliamentary elections, British Prime Minister Theresa May announced a new Industrial Strategy, which includes state subsidization of select industries and stringent immigration restrictions on foreign workers at “every sector and every skill level.” Despite her post-election collapse in support, May continues to move forward with leaving the European Union single market thanks to an unholy alliance with the Democratic Unionist Party, Northern Ireland’s far-right supporters of Brexit.

Likewise, in the recent French presidential elections the vast majority of candidates ran on a platform of “patriotisme économique.” Marine Le Pen, leader of the French far-right National Front party, made a strong bid for the French presidency through a campaign that combined a condemnation of globalization alongside the promise of extreme economic nationalist legislation and an end to immigration into France. President-elect Emmanuel Macron is now pushing hard for a “Buy European Act” to placate French anti-globalization forces.

But nowhere has the anti-trade turn been more marked than in the United States, where “globalism” has become a dirty word. “Free trade’s no good” for the United States, as Donald Trump put it in 2015. President Trump has threatened to shred the North American Free Trade Agreement and to impose protective tariffs on imports from Mexico and China, two of America’s largest trading partners.

In January, a paranoid Trump pulled the United States out of the Trans-Pacific Partnership negotiations — a massive free-trade deal that included a dozen countries in the Asia Pacific — because he believed that the Chinese were secretly plotting to use it to take advantage of the U.S. market.

And in April, Trump signed a “Buy American, Hire American” executive order that forces U.S. government agencies to purchase domestically made products and limits the immigration of foreign skilled workers.

This widespread fear of the global marketplace and the looming threat of tit-for-tat trade wars herald a return to late 19th-century geopolitics. Then, too, many of the leading economies of the day took shelter behind high tariff walls to halt the forces of globalization. Following the onset of an economic depression in the early 1870s, one industrializing country after another turned against trade liberalization. Trade wars, colonialism and closed markets became the name of the geopolitical game.

In stark contrast to today, back then only Britain stuck to free trade with “all the world.” Yet even free-trade bastion Britain was not without its domestic economic nationalist enemies.

In response to the late 19th-century turn to protectionism among Britain’s competitors, formidable right-wing British organizations like the Fair Trade League and the Tariff Reform League emerged to champion retaliatory tariffs and an imperial trade preference system. And the political leader of the turn-of-the-century British imperial protectionist movement was none other than Joseph Chamberlain, Theresa May’s “political hero.”

“Fortress France” turned away from free trade in 1892, the culmination of a decade-long “protectionist backlash” to the ongoing economic depression. The protectionist measure exacerbated the Franco-Italian trade war, which Italy had started with its turn to protectionism in the mid-1880s. Trade between these countries fell considerably, pushing Italy ever closer to Austria-Hungary and Germany — the Triple Alliance — in the years before the First World War.

The United States, however, topped the list of protectionist states. The political and ideological power of protectionism in late 19th-century America — the Gilded Age — was palpable. The Republican Party, formed as the party of antislavery in the 1850s, fast remade itself as the party of protectionism following the Civil War.

Hoping to protect U.S. industries from the unpredictable gales of unfettered global market competition, the ultranationalist party tacked its sails to the “American System” of high tariffs and government subsidization of domestic industries.

More than a century before Trump’s “America first” policy, slogans like “America for Americans — No Free Trade” filled Republican Party convention halls.

For paranoid Gilded Age Republican protectionists, free trade became tantamount to conspiracy.

The GOP’s lead spokesman on the tariff at that time was a short, cigar-smoking politician from Ohio named William McKinley. “The Napoleon of Protection,” as he was dubbed, had well earned the moniker by the time he entered the White House in 1897.

Like the Trump administration today, McKinley viewed free trade with suspicion, although the target of McKinley’s free-trade conspiracy theories was the industrial powerhouse of Britain instead of Trump’s China. McKinley, throughout his long Republican career, charged his pro-free-trade political opponents with being part of a vast British conspiracy that sought to sap America’s high tariff walls and undermine infant American industries. The conspiracy, he argued, included “free trade leaders in the United States and the statesmen and ruling classes of Great Britain”; American free traders were pawns, agents of “the manufacturers and the traders of England, who want the American market.”

Countering Republican conspiracy theorists, late 19th-century U.S. free traders argued that trade liberalization fostered international stability and peace, and that, by contrast, the era’s global uptick in imperialism and war only illustrated how protectionism fomented geopolitical rivalry and conflict.

Trump, tapping into long-standing Republican fears of free trade, is knowingly returning the GOP to its paranoid protectionist roots — a move against globalization that is also building up populist momentum in Britain and France.

The protectionist resurgence among the leaders of post-1945 globalization — be it Brexit, patriotisme économique, or “America first” — holds dire consequences for the liberal economic order by pitting nations against one another and breeding suspicion, distrust and conspiratorial thinking. The ultranationalism, militarism and tariff wars of the late 19th century spilled over into the 20th century, and ended in world war — suggesting a return to the protectionism of old could damage far more than national economies.

### Adv CP

#### The United States federal government should implement a transatlantic data governance framework with the European Union

#### That’s what their ev says is key to solve

Majcin, 21

(Juraj Majcin, PhD Candidate in International Law at the Graduate Institute, Member of Atlantic Council on GeoTech, 6-16-2021, "EU-US tech cooperation: Strengthening transatlantic relations in data-driven economies", accessed 10-13-2021, https://www.atlanticcouncil.org/blogs/geotech-cues/eu-us-tech-cooperation/)

First, the global economy and international trade have become increasingly data driven. According to the report on the future of international trade launched by the World Trade Organization in 2018, the growing digitalization of the global economy will impact international trade in three significant ways: the importance of cross-border data flows as a component of trade in goods and services will grow significantly in the coming years.; trade in digitizable goods (e.g. DVDs or physical books) will decline while trade in digital services such as streaming services and e-books will grow; and regulation of data flows and other technology legislation will become an important source of comparative advantage. Therefore, adopting an agreement on transatlantic data flows is indispensable to adapt the normative framework that governs the EU-US trade relations to the new data-based reality. Second, innovation in the transformative technologies of the Fourth Industrial Revolution (e.g. artificial intelligence and cloud computing) requires a vast amount of data from various sources. As a consequence, countries and businesses that have access to large pools of data are more competitive than those that do not. Currently, China is often referred to as a country with access to almost infinite datasets while having data protection rules focused on national security rather than individual rights. This gives Chinese companies an enormous advantage over their European and American competitors in the development of AI and other technologies. Therefore, an agreement facilitating the exchange of data across the Atlantic via a secure and privacy-respecting framework may increase the competitiveness of both European and American companies in the global economy. Third, authoritarian states such as Russia or China promote an illiberal, techno-nationalist vision of global governance based on harsh restrictions on cross-border data flows with little respect for fundamental human rights. Even more troubling is that these states export their vision of tech governance to developing countries by selling their technology and providing training programs on surveillance and other repressive techniques. They are also highly active at the multilateral level. China, for instance, promotes its approach to internet regulation as an alternative to the current internet architecture via various standardization fora and strategic documents such as China Standards 2035 or the new IP protocol proposed by China to the International Telecommunications Union (ITU). For this reason, by establishing a transatlantic framework on data governance that would ensure free flow of data while protecting human rights, the EU and United States would reiterate their commitment to free internet and set a global standard for other countries to follow. Fourth, the COVID-19 pandemic has shown how crucial it is for governments to have well-functioning, speedy, and secure access to data of different types and origin. By using data modeling and AI technologies, public authorities can predict with greater accuracy the evolution of different public emergencies as well as long-term threats and thus adopt better informed, more precisely targeted policies. This will be of particular importance to refine societal adaptation capacity and resilience to climate change in a wide array of fields, ranging from agriculture to urban planning to public health. Secure data sharing between the US and European publics as well as research authorities may help significantly in this endeavor. However, to tackle the most pressing global issues such as global pandemics or climate change, the United States and the European Union need a data sharing framework that extend beyond the transatlantic space. Therefore, it is crucial that the EU and United States find agreement on the creation of a safe, rights-based data exchange framework that would foster the connection between experts and research institutions from other global players such as China, India, or Brazil.

### DA M&A

**Regional bank consolidation is increasing now, but antitrust expansion chills activity**

**Nylen 21** – covers antitrust and investigations for Politico Pro

Leah Nylen, "Bank mergers come into Democrats’ antitrust crosshairs," Politico, 4-19-2021, https://www.politico.com/news/2021/04/19/progressives-biden-bank-merger-threat-483183

The last time the Justice Department challenged a bank merger was in 1985, around the time that compact discs and New Coke debuted.

In the 36 years since, the U.S. has shed roughly 10,000 banks — some from bank failures, but most through acquisitions that regulators and antitrust prosecutors at the Justice Department have blessed. Critics say that has led to higher fees for consumers, reduced access to banking services and increased concerns about risk to the financial system.

Now, as Democrats in Congress push for an antitrust overhaul to restrain corporate power in tech, health care and agriculture, progressive lawmakers and economists also want the Biden administration to crack down on mergers in the banking sector. It’s setting up a clash with the industry, which has been lobbying for even easier merger scrutiny.

The issue is taking on greater urgency as some of the country’s biggest regional banks — PNC of Pittsburgh, Huntington Bank of Columbus, Ohio and M&T Bank of Buffalo, New York — pursue major deals.

“Bank regulators are playing with matches while wrecking the fire department,” said Senate Banking Chair Sherrod Brown (D-Ohio). “The Wall Street megabanks are so large and powerful that banks across the country feel pressured to get bigger and riskier. These mergers are a symptom of a bigger problem — deregulation has left us with Wall Street banks that are too big and that take too many risks.”

The campaign is threatening to drag big banks into a high-stakes antitrust debate even as they warn they need help from Washington to compete with financial technology upstarts. It comes as progressives play an increasingly influential role in Biden’s economic policy.

“Regulators have served as a rubber stamp for bank mergers for too long,” said Rep. Chuy García (D-Ill.), who with Sen. Elizabeth Warren (D-Mass.) has proposed legislation to overhaul how bank deals are considered. “These mergers have negative consequences for our communities. They mean more Wells Fargos and fewer local bank branches.”

The regional bank mergers at issue accelerated after moderate Democrats joined forces with Republicans in 2018 to ease lending regulations that Congress enacted after the 2008 global financial crisis.

Wall Street analysts are now predicting a merger wave, particularly after SunTrust’s easy combination with BB&T in 2019 to form Truist, the nation’s sixth-largest commercial bank.

The deal boom was delayed by the pandemic. But an increasing number of regional lenders are now planning mergers to better position themselves against the biggest banks, like JPMorgan Chase and Bank of America, whose assets in the trillions of dollars will continue to dwarf the smaller competitors even after they consolidate.

The expected M&A rush may run into antitrust headwinds as top congressional Democrats turn their sights to industries like banking where many players are already considered “too big.”

**That’s key for regional banks to gain sufficient resources to invest in cyber-defenses**

**Mendelson 18** – U.S. president and CEO of Bank Leumi

Avner Mendelson, "Survival strategy: Cut the number of banks in half," American Banker, 1-30-2018, https://www.americanbanker.com/opinion/survival-strategy-cut-the-number-of-banks-in-half#:~:text=Consolidation%20can%20actually%20help%20smaller,regulatory%20burden%20that%20accompanies%20growth.&text=Thus%2C%20as%20banks%20expand%2C%20there,for%20profitable%20growth%20over%20time.

It’s no secret that the banking industry has been consolidating for the last 30 years — the number of bank charters has fallen from 14,000 in 1985, to close to 8,500 in 2000, to 4,938 at the end of 2017 — a remarkable 64% drop, most of which happened during the '90s and after the financial crisis. New bank formation also virtually stopped, from a rate of nearly 100 per year up until 2008 to fewer than two per year now.

But while that reduction is remarkable, it’s not necessarily a bad thing.

Some of the post-crisis decline can be attributed to bank failure and the lack of de novo banks, but a significant amount is due to an uptick in M&A activity — particularly among smaller banks — driven by increased regulatory and technology standards that incentivize scale.

Over the past few years, there have been well over 200 M&A deals per year among community banks, those with less than $10 billion in assets, almost double the amount of such activity in the crisis years of 2008 and 2009, according to the S&P Global Market Intelligence.

Going forward, the trend of consolidation is likely to continue, and it’s possible that a healthy 2,000 to 3,000 institutions would serve the U.S. even better than the current number. The goal should be to maintain competition without creating concentration.

Further consolidation makes sense because the bar at which a bank can remain profitable has risen. The fixed costs of running a bank, both opening it for business and maintaining it for the long haul, continue to grow: These costs run the gamut from keeping up with compliance, anti-money-laundering and other standards to having a program and resources in place to attract talent. Now more than ever, technology is a major cost center. Banks must invest in their tech infrastructure to meet customer expectations, keep up with competitors and steel themselves against cyberattacks.

Consolidation can actually help smaller banks stay profitable, while managing the increased regulatory burden that accompanies growth. The regulatory requirements for banks vary by asset size, and the vast majority of U.S. banks have less than $10 billion in assets, the first major regulatory threshold. What often happens is that smaller players — those under the $10 billion mark— join together to surpass that first threshold by a wide margin. Once these banks reach $20 billion or $30 billion in assets, they can become attractive acquisition targets for banks in the $100 to $250 billion range, well above the $50 billion threshold that triggers even greater oversight from regulators. Thus, as banks expand, there is even more incentive for consolidation and mergers to reach scale to allow for profitable growth over time.

This is not to say that small banks don’t have their place in the ecosystem. In rural areas, regional and community banks fill an important social and economic role by bringing banking services to otherwise underbanked communities. These institutions deliver a product offering that is relevant to their customers and beneficial to the entire local community. As long as these smaller banks have a business proposition that truly justifies their size, there will always be room for them. I would even advocate that the industry, as a whole, should ensure these banks are properly incentivized and encouraged to exist. But in large urban markets like New York, Chicago and Los Angeles — where bigger players abound and where there is no shortage of competition — consolidation is the most logical path forward.

At the same time, there is still room for new entrants — but these select few newcomers will need to innovate and fill gaps, not just replicate the status quo. A handful of new banking charters will likely come from fintech startups with banking capabilities. Yet these, too, will eventually be ripe for acquisition by larger banks that need to build out their technology. Thus, the trend toward further consolidation will continue.

Community bank executives, especially those heading the very smallest banks, must continue to explore ways to be more competitive and more resilient. In doing so, they can’t ignore the fact that selling to or merging with another bank may benefit shareholders and customers alike.

**Cyberattacks against small banks collapse the US financial system---they’re uniquely vulnerable**

**Harner et al. 20** – Chris Harner is managing director of the cyber risk solutions practice at Milliman, an actuarial and consulting firm; Chris Beck is an executive risk consultant within the practice; Blake Fleisher is a senior cyber risk analyst in the practice

Chris Harner, Chris Beck, and Blake Fleisher, "Cyberattacks Could Cripple Major U.S. Banks," CFO, 3-11-2020, https://www.cfo.com/cyber-security-technology/2020/03/cyberattacks-could-cripple-u-s-banking-system/

In the 21st century, first-order, single-point failures with profound second- and third-order effects are especially common in cyberattacks against complex systems. For one, the U.S. financial system is complex and highly interconnected, making it very vulnerable to a cyberattack.

The Federal Reserve Bank of New York (FRBNY) recently epitomized this interconnectivity in a report, arguing that a cyberattack could impair a bank’s ability to service creditors. More specifically, impairment of any of the five most active U.S. banks could result in significant spillovers to other banks, with 38% of the network affected on average.

Perhaps even more concerning, the FRBNY identified a subset of smaller banks that, if impaired, could threaten the solvency of a top-five institution. In particular, the FRBNY estimated it would take the financial distress of six small banks, each below $10 billion in assets, or just one institution with between $10 billion and $50 billion in assets.

More than 80 U.S. banks fall into the midsize bank category, with aggregate assets of approximately $1.8 trillion, while there are about 4,440 small banks, with cumulative assets of around $4.7 trillion. Combined, the midsize and small banks account for about 36% of all commercial banking assets. This indicates that the complexity of the U.S. banking system may not be driven solely by the “megabanks.”

A cyberattack on these banks, which appear benign in isolation and have simpler balance sheets, could ultimately cause a cascading failure of interbank funding, leading to a tipping point for a broader systemic liquidity crisis.

At a glance, when viewed with typical “first-order thinking,” this is deeply troubling, because larger banks tend to have more resources and invest more in building robust cybersecurity than smaller banks. Even if a large bank puts in place a proper cybersecurity policy with the right controls for its own protection, which it absolutely needs to do, it may not be enough.

The issue is not just building a bigger cybersecurity “moat and castle.” Instead, financial institutions need to understand the interconnectedness of their entire ecosystem, integrating cyber risk, vendors, liquidity sources, off-balance-sheet exposures, etc.

More thoughtful analysis, using second- and third-order thinking, indicates that cyberattacks by their very nature know no physical boundaries and can spread rapidly across the globe. We know this from the infamous NotPetya attack in 2017, when a worm planted in Ukrainian tax software managed to infect not just Ukrainian critical infrastructure, but also the largest global shipper, A.P. Moller-Maersk, and the big pharmaceutical company Merck as well as a chocolate factory in Australia.

In a system like banking that is already highly interconnected in its own right, one would expect the overall impact on the U.S. financial system to be even greater. The FRBNY’s paper is a very important illustration of how an operational risk can rapidly lead to grave financial risk.

#### That causes nuclear war

Tønnesson 15 - Stein Tønnesson 15, Research Professor, Peace Research Institute Oslo; Leader of East Asia Peace program, Uppsala University, 2015, “Deterrence, interdependence and Sino–US peace,” International Area Studies Review, Vol. 18, No. 3, p. 297-311

Several recent works on China and Sino–US relations have made substantial contributions to the current understanding of how and under what circumstances a combination of nuclear deterrence and economic interdependence may reduce the risk of war between major powers. At least four conclusions can be drawn from the review above: first, those who say that interdependence may **both inhibit and drive conflict** are right. Interdependence raises the cost of conflict for all sides but asymmetrical or unbalanced dependencies and **negative trade expectations** may generate tensions leading to trade wars among inter-dependent states that in turn increase the risk of military conflict (Copeland, 2015: 1, 14, 437; Roach, 2014). The risk may increase if one of the interdependent countries is governed by an inward-looking socio-economic coalition (Solingen, 2015); second, the risk of war between China and the US should not just be analysed bilaterally but include their allies and partners. Third party countries could drag China or the US into confrontation; third, in this context it is of some comfort that the three main economic powers in Northeast Asia (China, Japan and South Korea) are all deeply integrated economically through production networks within a global system of trade and finance (Ravenhill, 2014; Yoshimatsu, 2014: 576); and fourth, decisions for war and peace are taken by very few people, who act on the basis of their future expectations. International relations theory must be supplemented by foreign policy analysis in order to assess the value attributed by national decision-makers to economic development and their assessments of risks and opportunities. If leaders on either side of the Atlantic begin to seriously **fear or anticipate their own nation’s decline** then they may blame this on external dependence, appeal to anti-foreign sentiments, contemplate the use of force to gain respect or credibility, adopt protectionist policies, and ultimately **refuse to be deterred by** either **nuclear arms** or prospects of socioeconomic calamities. Such a dangerous shift could happen **abruptly**, i.e. under the instigation of actions by a third party – or against a third party. Yet as long as there is both nuclear deterrence and interdependence, the tensions in East Asia are unlikely to escalate to war. As Chan (2013) says, all states in the region are aware that they cannot count on support from either China or the US if they make provocative moves. The greatest risk is **not** that **a territorial dispute** leads to war under present circumstances but that **changes in the world economy** alter those circumstances in ways that render inter-state peace more precarious. If China and the US fail to rebalance their financial and trading relations (Roach, 2014) then a trade war could result, interrupting transnational production networks, provoking social distress, and exacerbating nationalist emotions. This could have unforeseen consequences in the field of security, with nuclear deterrence remaining the only factor to **protect the world from Armageddon**, and **unreliably so**. Deterrence could **lose its credibility**: one of the two great powers might gamble that the other yield in a cyber-war or conventional limited war, or third party countries might engage in conflict with each other, with a view to obliging Washington or Beijing to intervene.

### Tech

#### Big tech is still deeply invested in military application of AI – and it does so via acquisition of startups

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Thomas Brewster, December 22 2020, “Google Promised Not To Use Its AI In Weapons, So Why Is It Investing In Startups Straight Out Of ‘Star Wars’?,” Forbes, https://www.forbes.com/sites/thomasbrewster/2020/12/22/google-promised-not-to-use-its-ai-in-weapons-so-why-is-alphabet-investing-in-ai-satellite-startups-with-military-contracts/?sh=6cb4fb757595

Pichai may have promised Google AI wouldn’t harm people, but he said nothing about Google’s parent company Alphabet. In late 2019, Pichai became CEO of Alphabet while still retaining his job as CEO of Google – and through investments by Google and its venture capital wing, GV (formerly Google Ventures), Alphabet is still very much in the business of war.

GV positions itself as an “independent, return-driven fund” with $5 billion under management. But the Mountain View, Calif.-based firm was spun out of Google back in 2009 and it’s all Alphabet money. As it says on its website, “GV is the venture capital arm of Alphabet,” and Alphabet is the firm’s “sole limited partner.” (GV and Pichai declined repeated requests for comment on this story.)

Both Google and GV have minority stakes in companies supplying military surveillance tools. In 2016 GV acquired a stake in Palo Alto-based Orbital Insight and in 2017 Google took equity in Planet, headquartered in San Francisco. Together, in the last three years, the two firms have won at least $30.5 million in Defense Department contracts, alongside deals with space intelligence agencies, for projects that could be said to “directly facilitate injury.”

Orbital is a software company founded by former Google Books director James Crawford. Its AI sifts through masses of satellite images, drone footage and aggregated smartphone location data from 800 million devices across the world with the goal of telling customers what’s physically changed on Earth and why it matters. The uses are myriad. Orbital could, for instance, track North Korean nuclear sites or the Taliban building training camps. But it also has peaceful uses like monitoring deforestation in the Amazon and mapping watersheds or sprawling urban slums. It gets its satellite footage from a range of providers, including Planet, its Google-portfolio sibling.

Planet, which was founded by NASA engineers, has 150 imaging satellites in orbit, claiming they make up the world’s largest constellation of Earth-imaging satellites. Planet’s big sell is the ability to quickly and cheaply send up small satellites into space. It has Doves - about the size of a loaf of bread - and Skysat satellites - about the size of a minifridge. Both are capable of beaming high-quality imagery back to earth. The startup was valued at nearly $1.8 billion after a 2018 funding round, according to PitchBook data. Google acquired 16% of the company, after selling its satellite imaging subsidiary Terra Bella to Planet in 2017, which has now diluted to 13%.

Both companies work with the U.S. military and various intelligence agencies. Planet has contracts with space intel agencies, including [the National Reconnaissance Office](https://www.planet.com/pulse/national-reconnaissance-office-signs-contract-with-planet-federal/) and [the National Geospatial-Intelligence Agency](https://www.nga.mil/news/1595534848163_NGA_to_leverage_high-revisit_Planet_imagery,_autom.html), a DOD combat support agency. Orbital bid for work on that controversial Project Maven, according to two former employees.

Government contracting records show that between February 2017 and July 2020 Orbital was given $10 million to develop AI technology for a Defense Department program called Datahub. The Datahub would take satellite imagery and “track enemy patterns of life 24/7, all weather and day/night across large areas of responsibility at machine speed,” according to Pentagon [budget](https://comptroller.defense.gov/Portals/45/Documents/defbudget/FY2017/budget_justification/pdfs/2017MarchAmended/03_RDT_and_E/OSD_FY17_RDTE_ABS_20170314.pdf) [documents.](https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2020/budget_justification/pdfs/03_RDT_and_E/RDTE_Vol3_OSD_RDTE_PB20_Justification_Book.pdf) The resulting intelligence would be used to speed up a DoD tactical approach known as Find-Fix-Finish-Exploit-Analyze (F3EA), whereby a target is found, tracked, captured or killed, interrogated and then an analysis done to determine future opportunities. Intelligence derived from Datahub would also be used to automate the Defense Department’s weapons deployment “for timely precision strikes.”

The investments threaten to be problematic for Google and Alphabet – even when done at arm’s remove through its “independent” venture capital wing. Google has repeatedly stumbled trying to live up to the expectations of its idealistic workforce. There was Project Maven and there was [Project Dragonfly in 2017](https://www.forbes.com/sites/jeanbaptiste/2019/07/19/confirmed-google-terminated-project-dragonfly-its-censored-chinese-search-engine/?sh=566a9b257e84), when Google planned a search tool that came with built-in Chinese censorship. Then there were internal [protests over contracts with the immigration agencies helping enact the Trump administration’s policies in 2019](https://medium.com/@no.gcp.for.cbp/google-must-stand-against-human-rights-abuses-nogcpforcbp-88c60e1fc35e). Just this December, the exit of Google researcher Timnit Gebru, who was investigating potential racial bias in AI, led to a public fracas. Gebru claimed she’d been fired for posting frustrations about the retraction of one of her papers. More than 2,500 Google employees have signed a [petition](https://googlewalkout.medium.com/standing-with-dr-timnit-gebru-isupporttimnit-believeblackwomen-6dadc300d382) demanding their employer be transparent about Gebru’s termination.

A Google spokesperson said: “When we do our due diligence before any investment, we work with entrepreneurs to understand their tech, business plans and team, and, where appropriate, look for consistency with the AI Principles we announced in 2018.”

GV has been involved in every Orbital fundraising round since the satellite imagery company was founded in 2013. GV participated in a $9 million Series A round in 2015 and then in 2016 led a $15 million equity investment as part of the Series B. It has invested in all four of Orbital’s raises, the most recent being a $50 million Series D in November 2019. In all, Orbital has raised $130 million, most recently at a valuation of $480 million, according to PitchBook data. Forbes estimates GV has a stake of roughly 13% in the startup, which Forbes named as [a Next Billion-Dollar startup in 2017](https://www.forbes.com/sites/susanadams/2017/09/26/the-next-billion-dollar-startups-2017/). Sequoia is the largest outside stakeholder at over 20%, according to a source familiar with the investments.

#### 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 – they read the impact for us

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.

### Convergence Adv

#### Relations collapse inevitable

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KONRAD H. JARAUSCH is the Lurcy Professor of European Civilization at the University of North Carolina at Chapel Hill, Foreign Affairs, September 8, 2015, “Continental Drift”

On the surface, everything seems to be fine between the transatlantic partners. In after-dinner speeches, the partners continue to celebrate their friendship, especially when faced with common threats such as international terrorism. Hordes of U.S. tourists visit European sites each summer; many Europeans fly to the United States every year to admire the nation’s landscape. Study abroad programs are flourishing in both directions, filled with students interested in discovering the connections between two cultures on either side of the Atlantic Ocean. Mutual trade has reached new heights, with U.S. imports from the EU totaling $247.2 billion during the first seven months of 2015.

But behind closed doors in Washington and Brussels, there is increasing irritation. The complex Transatlantic Trade and Investment Partnership (TTIP) negotia­tions seem stalled over disagreements on genetically modified food, industrial safety standards, and fears of unregu­lated competition. Despite close bonds between European countries and Washington, continental leaders are still upset about the U.S. wiretapping program that eavesdropped on French president Francois Hollande, German Chancellor Angela Merkel, and senior EU officials. The continental public fails to understand the spectacle of the U.S. presidential campaign, which seems both farcical as well as an unnecessarily lengthy process. At the same time, the U.S. media has had a field day denouncing Brussels’ austerity policies, especially with regard to Greece. Although none of these issues are particularly threaten­ing in isolation, their accumulation reveals an increasing distance between the partners.

Euro-bashing and anti-Americanism are both on the rise. During the 2008 presidential elections, Republican candidate Mitt Romney campaigned against “European socialism.” Europe too has taken a back seat to the Obama administration’s turn to Asia and Africa as more dynamic regions of economic development, and policy rebalance has left European concerns in second place behind the markets—and geopolitical conflicts—to the East. And with an ever smaller portion of the U.S. population having European heritage, Europe has been reframed as part of the past. Meanwhile, many Europeans have sought to emancipate themselves from Washington’s guardianship. Previous generations might have been grateful for the United States’ intervention in two world wars. But time has run out on that sentiment.

Further, although the transatlantic relationship is based on common Enlightenment-era human values, their interpretation has started to diverge, particularly when it comes to the use of force. Contrasting memories of war as being overseas or on one’s doorstep have created fundamentally different responses to it, which manifested themselves in the Franco-German refusal to join the 2003 invasion of Iraq and the consistent EU preference for negotia­tions for political resolution over military intervention. Both Germany and Russia abstained from the UN Security Council vote on intervention in Libya, and were dismayed when conditions in the nation after the deposition of Libyan dictator Muammar al-Gaddafi deteriorated quickly. As a result, few European nations are willing to get involved in the discord in Syria, having their hands full already with the stream of refugees. Europe is a war-weary continent made all the more afraid of violence in the wake of Russia’s annexation of Crimea—few if any leaders demonstrate the level of comfort with intervention that some within the United States have expressed in the halls of Congress or on the campaign trail.

Differing attitudes don’t end at diplomacy, either. The United States’ experience of colo­nial settlement, westward expansion, and mass immigration put a premium on both rugged individualism and a willingness to work hard for personal advancement. In Europe’s more collectivist systems, the widespread suffering experienced during times of war, monetary inflation, and economic depression served to emphasize public respon­sibi­lity for society’s weaker members. This helped create an ethos of social solidarity that even conser­va­tive parties embrace. That is why the debate over the Affordable Care Act, for example, is incomprehensible for Europeans: healthcare in most countries is a given right, and single-payer systems the norm The huge income gap in the United States is a source of amazement for Europeans who take pride in their greater equality and how it reduces social tensions. Many European nations argue that social welfare programs should be given primacy in strained national budgets, while NATO and the United States see value in defense spending as the continent finds itself with combat at its doorstep. In 2015, only five of NATO’s 28 member states met their agreed-upon defense spending goals, raising already-high tensions about which nations must foot the bill for mutually assured safety. Freedom, in the United States, emphasizes protection from government control and foreign aggression; in Europe, freedom places high value on security and public provision of goods and services.

There are many other areas in which interpretations of freedom and responsibility have started to differ. One such example is the U.S. gun culture, which has transformed from its revolutionary and frontier-era roots into a source of increasingly high homicide rates. Three-strikes laws have swelled the U.S. prison population, which is now several times higher, per capita, than that of EU member countries. The European preoccupation with privacy, a byproduct no doubt of Fascist and Communist dictatorships that controlled personal lives, makes present-day government intrusion into one’s private affairs objectionable. Online privacy has become a key concern of the European Commission, which has passed laws that provide protection of personal data and “the right to be forgotten” in databases. Ever since the USA PATRIOT Act set a precedent of curbed civil liberties in the United States, the nation has taken a divergent path—one where certain freedoms from surveillance have been curtailed, rather than upheld. This divergence in policy is among one of the larger schisms between Europe and the United States which has the potential to create lasting divisions between two regions born from a singular philosophy in centuries’ past.

#### Adaptation possible and likely

Matt Ridley ’14, member of the British House of Lords, member of Science and Technology select committee, fellow of the Royal Society of Literature and of the Academy of Medical Sciences, foreign honorary member of the American Academy of Arts and Sciences, “We have a new climate change consensus — and it's good news everyone,” *The Spectator*, 4/5/14, <http://www.spectator.co.uk/2014/04/armageddon-averted/>

That has now changed. The received wisdom on global warming, published by the Intergovernmental Panel on Climate Change, was updated this week. The newspapers were, as always, full of stories about scientists being even more certain of environmental Armageddon. But the document itself revealed a far more striking story: it emphasised, again and again, the need to adapt to climate change. Even in the main text of the press release that accompanied the report, the word ‘adaptation’ occurred ten times, the word ‘mitigation’ not at all.

The distinction is crucial. So far, the debate has followed a certain bovine logic: that global warming is happening, so we need to slow it down by hugely expensive decarbonisation strategies — green taxes, wind farms. And what good will this do? Is it possible to stop global warming in its tracks? Or would all these green policies be the equivalent of trying to blow away a hurricane? This question — just how much can be achieved by mitigation — is one not often addressed.

There is an alternative: accepting that the planet is warming, and seeing if we can adjust accordingly. Adaptation means investing in flood defences, so that airports such as Schiphol can continue to operate below existing (and future) sea level, and air conditioning, so that cities such as Houston and Singapore can continue to grow despite existing (and future) high temperatures. It means plant breeding, so that maize can be grown in a greater range of existing (and future) climates, better infrastructure, so that Mexico or India can survive existing (and future) cyclones, more world trade, so that Ethiopia can get grain from Australia during existing (and future) droughts.

Owen Paterson, the Secretary of State for the Environment, in repeatedly emphasising the need to adapt to climate change in this way, has been something of a lone voice in the government. But he can now count on the support of the mighty IPCC, a United Nations body that employs hundreds of scientists to put together the scientific equivalent of a bible on the topic every six years or so. Whereas the last report had two pages on adaptation, this one has four chapters.

Professor Chris Field is the chairman of Working Group 2 of the IPCC, the part devoted to the effects of climate change rather than the cause. ‘The really big breakthrough in this report,’ he says, ‘is the new idea of thinking about managing climate change.’ His co-chair Vicente Barros adds: ‘Investments in better preparation can pay dividends both for the present and for the future … adaptation can play a key role in decreasing these risks’. After so many years, the penny is beginning to drop.

In his book An Appeal to Reason, Lawson devoted a chapter to the importance of adaptation, in which he pointed out that the last IPCC report in 2007 specifically assumed that humans would not adapt. ‘Possible impacts,’ the report said, ‘do not take into account any changes or developments in adaptive capacity.’ That is to say, if the world gets warmer, sea levels rise and rainfall patterns change, farmers, developers and consumers will do absolutely nothing to change their habits over the course of an entire century. It is a ludicrous

assumption.

But this assumption was central, Lawson pointed out, to the estimated future cost of climate change the IPCC reported. A notorious example was the report’s conclusion that, ‘assuming no adaptation’, crop yields might fall by 70 per cent by the end of the century — a conclusion based, a footnote revealed, on a single study of peanut farming in one part of India.

Lawson pointed out that adaptation had six obvious benefits as a strategy, which mitigation did not share. It required no international treaty, but would work if adopted unilaterally; it could be applied locally; it would produce results quickly; it could capture any benefits of warming while avoiding risks; it addressed existing problems that were merely exacerbated by warming; and it would bring benefits even if global warming proves to have been exaggerated.

Ask yourself, if you were a resident of the Somerset Levels, whether you would prefer a government policy of adapting to anything the weather might throw at you, whether it was exacerbated by climate change or not, or spending nearly £50 billion (by 2020) on low-carbon technologies that might in a few decades’ time, if adopted by the whole world, reduce the exacerbation of floods, but not the floods themselves.

It is remarkable how far this latest report moves towards Lawson’s position. Professor Field, who seems to be an eminently sensible chap, clearly strove to emphasise adaptation, if only because the chance of an international agreement on emissions looks ever less likely. If you go through the report chapter by chapter (not that many people seem to have bothered), amid the usual warnings of potential danger, there are many sensible, if jargon-filled, discussions of exactly the points Lawson made.

Chapter 17 concedes that ‘adaptation strategies … can yield welfare benefits even in the event of a constant climate, such as more efficient use of water and more robust crop varieties’. Chapter 20 even acknowledges that ‘in some cases mitigation may impede adaptation (e.g., reduced energy availability in countries with growing populations)’. A crucial point, this: that preventing the poor from getting access to cheap electricity from coal might make them more vulnerable to climate change. So green policies may compound the problem they seek to solve.

In short, there is a great deal in this report to like. It has, moreover, toned down the alarm considerably. Even the New Scientist magazine has noticed that the report ‘backs off from some of the predictions made in the previous report’ and despite the urgings of Ed Davey to sex up the summary during last week’s meeting in Yokohama, New Scientist noticed that ‘the report has even watered down many of the more confident predictions that appeared in the leaked drafts’.

For instance, references to ‘hundreds of millions’ of people being affected by rising sea levels were removed from the summary, as were statements about the impact of warmer temperatures on crops. The report bravely admits that invasive alien species are a far greater threat to species extinction than climate change itself. Even coral reefs, the report admits, are threatened mostly by pollution and overfishing, which might be exacerbated at the margin by climate change. So why don’t we have intergovernmental panels on invasive species and overfishing?

As these examples illustrate, perhaps most encouraging of all, the report firmly states that the impact of climate change will be small relative to other things that happen during this century: ‘For most economic sectors … changes in population, age structure, income, technology, relative prices, lifestyle, regulation and governance will be large relative to the impacts of climate change.’ So yes, the world is heating up. But in many ways, it will be a better world.

The report puts the global aggregate economic damage from climate change at less than 2.5 per cent of income by the latter years of the century. This is a far lower number than Lord Stern arrived at in his notorious report of 2006, and this is taking the bleak view that there will be a further 2.5˚C rise from recent levels. This is the highest of nine loss estimates; the average is only 1.1 per cent.

And the IPCC is projecting two thirds more warming per increment of carbon dioxide than the best observationally based studies now suggest, so the warming the IPCC outlines is not even likely with the highest emissions assumption.

In other words, even if you pile pessimism upon pessimism, assuming relatively little decarbonisation, much global enrichment and higher climate ‘sensitivity’ than now looks plausible — leading to more rapid climate change — you still, on the worst estimate, hurt the world economy in a century by only about as much as it grows every year or two. Rather than inflict an awful economic toll, global warming would make our very rich descendants — who are likely to be maybe eight or nine times as rich as we are today, on global average — a bit less rich.

To avoid this little harm, we could go for adaptation — let poor people get as rich as possible and use their income to protect themselves and their natural surroundings against floods, storms, potential food shortages and loss of habitat. Or we could go for mitigation, getting the entire world to agree to give up the fossil fuels that provide us with 85 per cent of our energy. Or we could try both, which is what the IPCC now recommends.

But the one truly bonkers thing to do would be to go unilaterally into a policy of subsidising the rich to install technologies that drive up the cost of energy, desecrate the countryside, kill golden eagles, clear-cut swamp forests in North Carolina, turn grain into motor fuel, so driving up the price of food and killing people, and prevent poor people in Africa getting loans to build coal-fired, cheap power stations instead of inhaling smoke from wood fires cut from virgin forests.

All this we are doing in this country, with almost no prospect of cutting carbon emissions enough to affect the climate. That’s the very opposite of adaptation — preventing the economic growth that would enable us to adapt while failing to prevent any climate change.

The report is far from ideal (don’t worry, Professor Field, I know that endorsement from the likes of me would kill your career). As Rupert Darwall, author of The Age of Global Warming, has pointed out, it systematically ignores the benefits of climate change and makes the unsupported claim that crop yields have been negatively affected by climate change, its only evidence being recent spikes in crop prices — a big cause of which was climate policy, not climate change, in the shape of biofuels programmes that diverted 5 per cent of the world’s grain crop into fuel.

Did you gather from the press that the report warns of rising deaths from storms and droughts, falling crop yields, spreading diseases, and all the usual litany? Did you conclude from this that deaths from storms will increase, crop yields will fall, and diseases will kill more people? Oh, how naive can you get!

No, no, no — what they mean is that the continuing fall in deaths from storms, floods and disease may not be as steep as it would be without climate change, that the continuing rise in crop yields may not be as fast as it would be without climate change, and that the continuing retreat of malaria might not be as rapid as it would be without climate change. In other words, the world will probably heat up — but it’s not going to end. It’s going to be healthier and wealthier than ever before, just a tad less wealthy than it might otherwise have been. Assuming we do not adapt, that is.

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### EU CP

#### Agreement restores coop and U.S. cred

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(Juraj Majcin, PhD Candidate in International Law at the Graduate Institute, Member of Atlantic Council on GeoTech, 6-16-2021, "EU-US tech cooperation: Strengthening transatlantic relations in data-driven economies", accessed 10-13-2021, https://www.atlanticcouncil.org/blogs/geotech-cues/eu-us-tech-cooperation/)

The window of opportunity for an agreement between the United States and European Union (EU) on a common tech rulebook is open once again. In December 2020, the European Commission, encouraged by the victory of ardent Atlanticist Joseph Biden in the US presidential election, issued [A New EU-US Agenda for Global Change](https://ec.europa.eu/info/sites/default/files/joint-communication-eu-us-agenda_en.pdf), an ambitious proposal for strengthening and broadening the transatlantic relationship in multiple key domains including technology governance. In turn, the Biden Admiration has vowed to [restore US alliances](https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/04/remarks-by-president-biden-on-americas-place-in-the-world/) harmed by the previous administration and to deepen its cooperation with like-minded countries to counter the influence of authoritarian states over global technology rules. This alignment of interests on both sides of the Atlantic has created an unprecedented opportunity to overcome the differences that have prevented the two parties from adopting a common, normative framework on tech regulation, most notably on data governance, privacy protection, and digital taxation. Building on the momentum generated by the EU-US summit, leaders from both sides should take advantage of this new political climate to strengthen the transatlantic bond and adapt it to the needs of data-driven economies.

#### But the differences in tech regulations wouldn’t be solved by the aff because they can’t influence data governance

Majcin, 21

(Juraj Majcin, PhD Candidate in International Law at the Graduate Institute, Member of Atlantic Council on GeoTech, 6-16-2021, "EU-US tech cooperation: Strengthening transatlantic relations in data-driven economies", accessed 10-13-2021, https://www.atlanticcouncil.org/blogs/geotech-cues/eu-us-tech-cooperation/)

Despite the clear benefits to be harnessed by both sides in establishing a framework for free exchange of data across the Atlantic, there are multiple contentious points that make the adoption of such agreement difficult. Assessing the current transatlantic digital landscape, there is tremendous asymmetry between the United States and the European Union in tech legislation. Although the two entities often call each other like-minded, there are significant limits to this like-mindedness, notably when it comes to data governance, privacy protection, and digital taxation. While the United States applies a laissez faire approach to tech governance that leaves a lot of space for self-regulation by private entities, the EU has a robust regulatory framework that imposes firm guardrails for tech companies. The best illustration of the EU’s strict approach to tech regulation is the General Data Protection Regulation (GDPR) that defines how private data of EU citizens may be collected and processed. The EU plans to expand its tech rulebook even more through recently unveiled drafts of [the Digital Markets Act](https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en), the [Digital Services Act](https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package), and the [Data Governance Act](https://digital-strategy.ec.europa.eu/en/library/proposal-regulation-european-data-governance-data-governance-act). However, despite its global leadership in tech regulation, the EU lags far behind the United States (and China) in industry innovation, with few major tech companies of its own.

On the other side of the Atlantic, as the the birthplace and home of the world’s five biggest tech companies, the United States is a global leader in tech innovation. However, for the moment, it has a relatively thin tech rulebook, lacking federal legislation on issues such as privacy protection or governance of online content.  This regulatory asymmetry creates a challenging constellation for any potential transatlantic regulatory framework on technology as it would have to reconcile two partners with seemingly irreconcilable approaches to tech regulation and vastly different levels of innovation. Some EU policymakers have already identified this regulatory asymmetry as a problem and call for more innovation and less regulation. For instance, French president Emmanuel Macron [has said](https://techcrunch.com/2020/12/08/macron-promotes-european-tech-ecosystem-in-an-interview-with-zennstrom/?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAACaCbbMKuyCV7lwotSApWevyGRWUiIN4ARMe9wRMSFc9wnxxt4tQ2G8bumcRiHipH-QSxNniHVgFPzwDZCMR339WMNKzmeCG7MuF1vRCIeUtzM8hFYKxeDcgA_qpcWnXkOFU8ZW1L-KcV2mCPrODKiMX5Qwy955jz5xXI8StlEaR), “when you look at the map, we have what we call the GAFA [Google, Alphabet, Facebook, Apple] in the US, the BATX [Baidu, Alibaba, Tencent, Xiaomi] in China and GDPR in Europe.”

#### And taxes mean only the CP can solve while the plan wouldn’t do enough to get US EU tech coop

Majcin, 21

(Juraj Majcin, PhD Candidate in International Law at the Graduate Institute, Member of Atlantic Council on GeoTech, 6-16-2021, "EU-US tech cooperation: Strengthening transatlantic relations in data-driven economies", accessed 10-13-2021, https://www.atlanticcouncil.org/blogs/geotech-cues/eu-us-tech-cooperation/)

Another contentious point in the mutual tech relations between the European Union and United States is digital taxation. In 2018, the European Commission issued [a proposal](https://ec.europa.eu/taxation_customs/business/company-tax/fair-taxation-digital-economy_en) for a 3 percent tax levied on digital business activities, arguing that under current rules it is impossible to tax the profits of influential tech companies generated in Europe as they are not physically present in the EU. The blueprint for a digital tax introduced by the Commission would replace the requirement of physical presence by a system taxing companies in the place where they “have significant interaction with users through digital channels.” The United States looked quite skeptically on this proposal. Then Trump Administration expressed [a series of concerns](https://www.cnbc.com/2020/01/23/europe-digital-tax-and-trumps-tariff-threats.html) that the tax would apply disproportionality to US companies operating in Europe and threatened retaliatory measures by increasing tariffs on European goods. The proposal has not been adopted yet as it is currently discussed by the European Parliament. However, there is a chance that the EU and the United States find a multilateral solution on digital taxation through a negotiated outcome of the discussions currently ongoing under the auspices of the Organization for Economic Cooperation and Development (OECD) and G20 within the framework of the [Inclusive Framework on Base Erosion and Profit Shifting (BEPS)](https://www.oecd.org/tax/beps/beps-about.htm/).

#### Will Now

Majcin, 21

(Juraj Majcin, PhD Candidate in International Law at the Graduate Institute, Member of Atlantic Council on GeoTech, 6-16-2021, "EU-US tech cooperation: Strengthening transatlantic relations in data-driven economies", accessed 10-13-2021, https://www.atlanticcouncil.org/blogs/geotech-cues/eu-us-tech-cooperation/)

Although there are multiple contentious points between the European Union and the United States regarding tech regulation, the political climate on both sides of the Atlantic seems favorable for finding agreement on these issues. The benefits that such an agreement may generate for US and European businesses, research institutions, and civil society in terms of secure and facilitated data sharing are too important to ignore. This is especially true during what is often coined the Fourth Industrial Revolution, with data as its main driving force. The good news is that data is reusable, unlike oil or coal, which were behind previous industrial revolutions. The same data that empowers innovation on one side of the Atlantic can generate another kind of innovation on the other side. Doing so, however, requires institutionalized, secure, human-centered channels that would allow both stakeholders in both the European Union and the United States to harness the full potential of data in the modern digitalized economy.

## Tech

#### Data – smaller firms means its spread out, harming algorithmic research

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(Dakota Foster and Zachary Arnold, “Antitrust and Artificial Intelligence: How Breaking Up Big Tech Could Affect the Pentagon’s Access to AI,” May 2020, https://cset.georgetown.edu/publication/antitrust-and-artificial-intelligence-how-breaking-up-big-tech-could-affect-pentagons-access-to-ai/)

All else being equal, smaller AI firms have less data. While the relationship between the quantity of data inputs and the quality of algorithmic outcomes is not linear, a correlation is usually evident. For example, recent experiments by researchers at Google found a logarithmic relationship between the amount of data fed into an image recognition model and the model’s performance.42 If more data means more innovation, a post-breakup AI sector could be less innovative overall.

Antitrust action would likely reduce the amount of data held by large companies. This might hurt innovation, especially in application areas requiring exceptionally high amounts of data for acceptable performance.43 In short, the impact of antitrust action on data-driven innovation may hinge on the size of broken-up companies and their data holdings. Google Search or Amazon Web Services, for example, would be large corporations in their own right.44 AWS, one of Amazon’s larger divisions, achieved revenues similar to Raytheon’s company-wide revenues in 2018,45 demonstrating the possible size of spin-offs.46

#### Costs – the speculative nature of AI requires huge investments to reap rewards, means only large companies can

**Foster 20** – Dakota Foster is a graduate student at Oxford University and a former visiting researcher at the Center for Security and Emerging Technology.

Dakota Foster, 6-2-2020, "Antitrust investigations have deep implications for AI and national security," Brookings, https://www.brookings.edu/techstream/antitrust-investigations-have-deep-implications-for-ai-and-national-security/

In late March, Attorney General William Barr announced that “decision time” was looming for America’s leading tech firms. By early summer, Barr expects the Department of Justice to reach preliminary conclusions about possible antitrust violations by Silicon Valley’s largest companies. The DOJ’s investigation is just one of several probes scrutinizing potential abuses by Facebook, Google, Amazon, Apple, and Microsoft. While concerns over consumer protections, anti-competitive practices, and industry concentration have fueled these antitrust investigations, their results will almost certainly have national-security ramifications.

Secretary of Defense Mark Esper has argued that artificial intelligence is likely to shape the future of warfare, and the national-security community has largely backed that conclusion. The most recent National Defense Strategy, released in 2018, highlights AI’s importance, noting that the Pentagon will seek to harness “rapid application[s] of commercial breakthroughs…to gain competitive military advantages.” With defense officials arguing that U.S. military superiority may hinge on artificial intelligence capabilities, antitrust action aimed at America’s largest tech companies—and leading AI innovators—could affect the United States’ technological edge.

But the effects of such action are highly uncertain. Will a less concentrated tech sector comprised of slightly smaller firms fuel innovation and create openings for a new generation of tech companies? Or will reductions to scale significantly hurt leading tech firms’ ability to leverage the traditional building blocks of AI innovation—like computing power and data—into breakthroughs? The answers to these questions aren’t clear cut but offer a way to begin thinking about how antitrust enforcement could impact artificial intelligence innovation and national security more broadly.

Unlike some earlier national-security technologies, the commercial sector plays an outsize role in AI development. As a result, government access to both AI products and innovation hinges, in large part, on industry. While academia, private research labs, and AI start-ups offer important contributions to AI development, major American technology companies have traditionally led the field. Last year, Microsoft, Facebook, Amazon, Google, and Apple ranked among the ten largest recipients of U.S. artificial intelligence and machine learning (ML) patents.

Changes to the composition of America’s tech sector might boost net AI innovation. From 2013-2018, 90 percent of successful Silicon Valley AI start-ups were purchased by leading tech companies. This is a potentially worrisome trend for AI innovation. After all, incumbent firms and emerging companies can have very different incentives. Entrenched tech giants may be more focused on maintaining market share than disrupting markets altogether.

As Big Tech increasingly moves to acquire AI start-ups, individual firm dynamics also shift. Instead of “building for scale,” start-ups begin to “build for sale,” adopting a mentality that may be ill-suited for moonshot innovations. Would a company like DeepMind (now owned by Google parent-company Alphabet), for example, have developed AlphaGo—the ground-breaking computer program that became the first to beat a human player in Go—if the firm’s primary goal was to be acquired by a bigger player?

Antitrust action could shift these incentives and spur competition, potentially opening the door for new AI innovations—and for a new wave of AI companies. With their smaller statures, some of these firms might focus on more niche AI applications, including defense-related products, as start-ups like Anduril and ShieldAI have done. Today’s tech giants have every financial incentive to cater to foreign markets and the average consumer, not to the U.S. federal government. Indeed, with its global user-base, it is hard to imagine Google tailoring its AI innovation decisions to U.S. defense needs. The same may not hold within an AI ecosystem where some companies built, for example, in the mold of Palantir (a data-analytics company with clear national-security applications) consider government their primary customer and subsequently concentrate on its demands.

National-security agencies, from the Pentagon to the U.S. intelligence community, could stand to benefit from more targeted innovation—and from an industrial base better attuned to their needs. As Christian Brose points out, only a fraction of the U.S.’s billion-dollar tech “unicorns” have operated in the defense sector, leaving the U.S. military “shockingly behind the commercial world in many critical technologies.”

As Silicon Valley’s largest companies consolidate AI talent and novel ideas through acquisitions, these companies gain an ever-larger say in the future of AI. This consolidation, which antitrust action could disrupt, may not favor innovation. But breaking up major tech firms also has potential pitfalls for AI innovation. With scale comes resources, and AI innovation is resource-intensive, requiring large quantities of data, diverse datastores, and vast computing power—known as “compute” in industry jargon.

American tech giants’ huge revenues uniquely equip them to fund costly AI research. Google’s DeepMind, arguably the world’s leading AI-research organization, is billions of dollars in debt and lost over $500 million in 2018 alone. Google’s fortress-like balance sheet can easily absorb the costs associated with such cutting-edge research, but smaller firms likely cannot. The economics of compute offer a concrete example of this dynamic. The rapidly increasing volume of compute required for deep learning research, coupled with compute’s prohibitively expensive prices, creates significant barriers to entry and innovation for smaller AI firms. As Microsoft co-founder Paul Allen noted in 2019, the “exponentially higher” costs of compute may leave the U.S. with only “a handful of places where you can be on the cutting edge.” Even the most well-funded independent AI organizations rely on Big Tech’s compute resources. OpenAI’s billion-dollar compute partnership with Microsoft, reached after OpenAI spent millions renting compute from leading tech firms, offers one example.

Changes to firms’ scale also may impact their access to data, another key resource required for AI innovation. Studies have linked the performance of deep learning models to the quantity of data fed into them. At present, tech giants have access to unprecedented volumes of data about their users. Google, for example, can harness data from Google Search, Maps, YouTube, Gmail, and other sources. If antitrust enforcement leads to divestment or broader break-ups, access to data may diminish, lessening innovation.

#### Which is why big tech firms spend proportionally MORE on R&D

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(Dakota Foster and Zachary Arnold, “Antitrust and Artificial Intelligence: How Breaking Up Big Tech Could Affect the Pentagon’s Access to AI,” May 2020, https://cset.georgetown.edu/publication/antitrust-and-artificial-intelligence-how-breaking-up-big-tech-could-affect-pentagons-access-to-ai/)

If R&D spending drives innovation, firms that can spend more on R&D— presumably large ones—will generally hold an edge in innovation. A post-breakup AI sector could be less innovative as a result. Large tech companies do in fact spend more on R&D both in absolute and relative terms. According to PricewaterhouseCoopers, in absolute terms, Amazon and Alphabet were the world’s top two corporate R&D spenders in 2018, with Samsung, Intel, Microsoft and Apple in the top ten.62

In terms of relative R&D spending—the percentage of total firm expenses spent on R&D—large tech companies remained among the highest spenders, led by Facebook (33 percent) in fifth place globally.63 Alphabet and Microsoft, which each spent 20 percent, and Amazon (13 percent) ranked among the top thirty. The smallest firm (based on total operating expenses) of the top 100 global relative R&D spenders was NXP Semiconductors, a Dutch firm with $6.8 billion in operating expenses.64

Because larger firms tend to spend more on R&D, breaking them up would likely reduce their R&D spending. Increases in spending at smaller firms could counter this decline, but the amount and efficacy of that spending are uncertain—both at the individual firm level and in the aggregate across the post-breakup AI ecosystem.65 That said, broken-up firms would remain very large, with sizable R&D budgets to match. Imagine a break-up of Alphabet, whose operating expenses amounted to $110 billion last year; a spin-off company with one-fourth of Alphabet’s current R&D budget would still be larger than 77 of the 100 leading global relative R&D spenders.

#### This conclusion is empirically verified – most historical innovation occurs in incumbent firms NOT start ups

Garcia-Macia et al. 19 – Garcia-Macia, International Monetary Fund; Hsieh, Booth School of Business, University of Chicago and National Bureau of Economic Research; Klenew, Department of Economics, Stanford University and National Bureau of Economic Research

Daniel Garcia-Macia, Chang-Tai Hsieh, and Peter J. Klenew, "How Destructive Is Innovation?," Econometrica, Vol. 87, No. 5 (September, 2019), 1507–1541, September 2019, <http://klenow.com/DestructiveInnovation_GHK.pdf>

Likewise, when a new product replaces an existing product, one would like to identify whether the new product is owned by another firm (“creative destruction”) or the same firm (“own innovation”). Based on case studies, Christensen (1997) argued that innovation largely takes the form of creative destruction, and almost always from new firms. Akcigit and Kerr (2018) looked at whether patents cite earlier patents by the same firm or by other firms. The case studies and the sample of patenting firms, however, may not be representative of firms in the broader economy. Many innovative firms, particularly outside of manufacturing, do not patent.

In the absence of more direct evidence, we try to infer the sources of growth indirectly from the patterns of job creation and job destruction among all private sector firms in the U.S. nonfarm economy. We use data from the U.S. Longitudinal Business Database (LBD) from 1983 to 2013. The seminal work of Davis, Haltiwanger, and Schuh (1996) documents the magnitude of job flows within U.S. manufacturing, and these flows are commonly used as proxies for the intensity of creative destruction. For example, Decker, Haltiwanger, Jarmin, and Miranda (2014) pointed to the decline in U.S. job reallocation since the 1970s as evidence of a decline in the rate of creative destruction.

We view the LBD data through the lens of an exogenous growth model featuring creative destruction, own innovation, and new varieties. For industries such as manufacturing, the object of innovation may be products. For services and retail, which make up the bulk of the LBD data, innovation may take the form of new and improved establishments. For example, Walmart opening a new store may be akin to adding a new product. A new Walmart store arguably gains market share by offering a distinct variety (the store format, including all the items for sale within it) and/or by offering low prices (due to high process efficiency) relative to existing stores in the local market.

We reach four conclusions from our indirect inference based on LBD data. First, most growth appears to come from incumbents rather than entrants. This is because the employment share of entrants is modest. Second, most growth seems to occur through quality improvements rather than brand new varieties. Third, own-variety improvements by incumbents loom larger than creative destruction (by entrants and incumbents). The contribution of creative destruction is around 25 percent of growth, with the remainder mostly due to own innovation by incumbent firms. Fourth, the contribution of entrants and creative destruction declined from 1983–1993 to 2003–2013, while the contribution of incumbent firms, particularly through own innovation, increased.

#### Bureaucracy – small firms cant navigate pentagon contracts

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(Dakota Foster and Zachary Arnold, “Antitrust and Artificial Intelligence: How Breaking Up Big Tech Could Affect the Pentagon’s Access to AI,” May 2020, https://cset.georgetown.edu/publication/antitrust-and-artificial-intelligence-how-breaking-up-big-tech-could-affect-pentagons-access-to-ai/)

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

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

#### Link turns case – big firms will use the plans laws to wreck small firms

Dorsey et al., Associate at Wilson Sonsini Goodrich, ‘18

(Elyse, Rosati. Jan M. Rybnicek is a Senior Associate at Freshfields Bruckhaus Deringer, and Joshua D. Wright, JD, PhD, University Professor and the Executive Director, Global Antitrust

Institute, Scalia Law School at George Mason University, Former FTC Commissioner, “Hipster Antitrust Meets Public Choice Economics: The Consumer Welfare Standard, Rule of Law, and Rent Seeking,” CPI Antitrust Chronicle, April)

Additionally, the incredibly costly nature of antitrust proceedings exacerbates its vulnerability to rent seeking.39 Antitrust cases and investigations can drag on for years, entail the collecting, processing, and production of millions of documents, and involve tremendous attorneys’ fees. Remedies (or consent terms) can be invasive, last for years, and impair a defendant’s ability to adapt to changing circumstances and thus to remain competitively viable. Looming in the background is the possibility of trebled damages at the end of the day. Consider that an unhappy competitor could embroil a rival in an antitrust quagmire via its own litigation, or by complaining to a government agency and potentially triggering an investigation, that would divert significant amounts of that rival’s resources for years — thereby crippling a rival and diminishing the amount of competition it faces. With so much at stake, conditions are ripe for actors to engage in just such rent-seeking activities in an attempt to appropriate some of this vast wealth for themselves. The empirical evidence and historical record of antitrust actions — particularly during the era when antitrust was explicitly governed by a vague, multi-faceted standard — provide ample support for public choice theory and the economic theory of regulation, while tending to reject the public interest account of regulatory behavior.40

Finally, given this reality, what can be done to mitigate rent seeking? Public choice economics instructs that rent seeking opportunities are diminished when agencies have less discretion (e.g. when rules are clearer) and when another body (e.g. the public, a court, Congress) can more easily hold them accountable for their actions — factors that tend to go hand-in-hand.41 The rule of law thus diminishes incentives for rent seeking and corruption. When these constraining factors are in place, agencies have lowered ability to depart from what is required of them or to otherwise manipulate outcomes to respond to rent-seeking incentives. As such, what antitrust enforcement craves is a clear, well-established standard by which the public and the courts can evaluate agency decisions and identify and correct any deviations that undermine consumer outcomes.

#### Best ev shows google is rapidly adding AI to military programs now

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Thomas Brewster, December 22 2020, “Google Promised Not To Use Its AI In Weapons, So Why Is It Investing In Startups Straight Out Of ‘Star Wars’?,” Forbes, https://www.forbes.com/sites/thomasbrewster/2020/12/22/google-promised-not-to-use-its-ai-in-weapons-so-why-is-alphabet-investing-in-ai-satellite-startups-with-military-contracts/?sh=6cb4fb757595

Pichai may have promised Google AI wouldn’t harm people, but he said nothing about Google’s parent company Alphabet. In late 2019, Pichai became CEO of Alphabet while still retaining his job as CEO of Google – and through investments by Google and its venture capital wing, GV (formerly Google Ventures), Alphabet is still very much in the business of war.

GV positions itself as an “independent, return-driven fund” with $5 billion under management. But the Mountain View, Calif.-based firm was spun out of Google back in 2009 and it’s all Alphabet money. As it says on its website, “GV is the venture capital arm of Alphabet,” and Alphabet is the firm’s “sole limited partner.” (GV and Pichai declined repeated requests for comment on this story.)

Both Google and GV have minority stakes in companies supplying military surveillance tools. In 2016 GV acquired a stake in Palo Alto-based Orbital Insight

and in 2017 Google took equity in Planet, headquartered in San Francisco. Together, in the last three years, the two firms have won at least $30.5 million in Defense Department contracts, alongside deals with space intelligence agencies, for projects that could be said to “directly facilitate injury.”

Orbital is a software company founded by former Google Books director James Crawford. Its AI sifts through masses of satellite images, drone footage and aggregated smartphone location data from 800 million devices across the world with the goal of telling customers what’s physically changed on Earth and why it matters. The uses are myriad. Orbital could, for instance, track North Korean nuclear sites or the Taliban building training camps. But it also has peaceful uses like monitoring deforestation in the Amazon and mapping watersheds or sprawling urban slums. It gets its satellite footage from a range of providers, including Planet, its Google-portfolio sibling.

Planet, which was founded by NASA engineers, has 150 imaging satellites in orbit, claiming they make up the world’s largest constellation of Earth-imaging satellites. Planet’s big sell is the ability to quickly and cheaply send up small satellites into space. It has Doves - about the size of a loaf of bread - and Skysat satellites - about the size of a minifridge. Both are capable of beaming high-quality imagery back to earth. The startup was valued at nearly $1.8 billion after a 2018 funding round, according to PitchBook data. Google acquired 16% of the company, after selling its satellite imaging subsidiary Terra Bella to Planet in 2017, which has now diluted to 13%.

Both companies work with the U.S. military and various intelligence agencies. Planet has contracts with space intel agencies, including [the National Reconnaissance Office](https://www.planet.com/pulse/national-reconnaissance-office-signs-contract-with-planet-federal/) and [the National Geospatial-Intelligence Agency](https://www.nga.mil/news/1595534848163_NGA_to_leverage_high-revisit_Planet_imagery,_autom.html), a DOD combat support agency. Orbital bid for work on that controversial Project Maven, according to two former employees.

Government contracting records show that between February 2017 and July 2020 Orbital was given $10 million to develop AI technology for a Defense Department program called Datahub. The Datahub would take satellite imagery and “track enemy patterns of life 24/7, all weather and day/night across large areas of responsibility at machine speed,” according to Pentagon [budget](https://comptroller.defense.gov/Portals/45/Documents/defbudget/FY2017/budget_justification/pdfs/2017MarchAmended/03_RDT_and_E/OSD_FY17_RDTE_ABS_20170314.pdf) [documents.](https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2020/budget_justification/pdfs/03_RDT_and_E/RDTE_Vol3_OSD_RDTE_PB20_Justification_Book.pdf) The resulting intelligence would be used to speed up a DoD tactical approach known as Find-Fix-Finish-Exploit-Analyze (F3EA), whereby a target is found, tracked, captured or killed, interrogated and then an analysis done to determine future opportunities. Intelligence derived from Datahub would also be used to automate the Defense Department’s weapons deployment “for timely precision strikes.”

The investments threaten to be problematic for Google and Alphabet – even when done at arm’s remove through its “independent” venture capital wing. Google has repeatedly stumbled trying to live up to the expectations of its idealistic workforce. There was Project Maven and there was [Project Dragonfly in 2017](https://www.forbes.com/sites/jeanbaptiste/2019/07/19/confirmed-google-terminated-project-dragonfly-its-censored-chinese-search-engine/?sh=566a9b257e84), when Google planned a search tool that came with built-in Chinese censorship. Then there were internal [protests over contracts with the immigration agencies helping enact the Trump administration’s policies in 2019](https://medium.com/@no.gcp.for.cbp/google-must-stand-against-human-rights-abuses-nogcpforcbp-88c60e1fc35e). Just this December, the exit of Google researcher Timnit Gebru, who was investigating potential racial bias in AI, led to a public fracas. Gebru claimed she’d been fired for posting frustrations about the retraction of one of her papers. More than 2,500 Google employees have signed a [petition](https://googlewalkout.medium.com/standing-with-dr-timnit-gebru-isupporttimnit-believeblackwomen-6dadc300d382) demanding their employer be transparent about Gebru’s termination.

A Google spokesperson said: “When we do our due diligence before any investment, we work with entrepreneurs to understand their tech, business plans and team, and, where appropriate, look for consistency with the AI Principles we announced in 2018.”

GV has been involved in every Orbital fundraising round since the satellite imagery company was founded in 2013. GV participated in a $9 million Series A round in 2015 and then in 2016 led a $15 million equity investment as part of the Series B. It has invested in all four of Orbital’s raises, the most recent being a $50 million Series D in November 2019. In all, Orbital has raised $130 million, most recently at a valuation of $480 million, according to PitchBook data. Forbes estimates GV has a stake of roughly 13% in the startup, which Forbes named as [a Next Billion-Dollar startup in 2017](https://www.forbes.com/sites/susanadams/2017/09/26/the-next-billion-dollar-startups-2017/). Sequoia is the largest outside stakeholder at over 20%, according to a source familiar with the investments.

#### Big tech is interested in DOD AI programs – Google’s “ethics” still allow AI application to the military which can later be used for weapons

Simonite 19 – Tom Simonite is a senior writer for WIRED in San Francisco covering artificial intelligence and its effects on the world. He once trained an artificial neural network to [generate seascapes](https://www.wired.com/story/we-made-artificial-intelligence-art-so-can-you/) and is available for commissions. Simonite was previously San Francisco bureau chief at MIT Technology Review, and wrote and edited technology coverage at New Scientist magazine in London.

Tom Simonite, February 12 2019, “The Pentagon Doubles Down on AI–and Wants Help from Big Tech,” Wired, https://www.wired.com/story/pentagon-doubles-down-ai-wants-help-big-tech/

IN THE 1960S, the Department of Defense began shoveling money toward a small group of researchers with a then-fringe idea: making machines intelligent. Military money played a central role in establishing a new science—[artificial intelligence](https://www.wired.com/story/guide-artificial-intelligence/).

Sixty years later, the Pentagon believes AI has matured enough to become a central plank of America’s national security. On Tuesday, the department released an unclassified version of its AI strategy, which calls for rapid adoption of AI in all aspects of the US military.

The plan depends on the Pentagon working closely with the tech industry to source the algorithms and cloud computing power needed to run AI projects. Federal contracting records indicate that Google, Oracle, IBM, and SAP have signaled interest in working on future Defense Department AI projects.

“AI will not only increase the prosperity of the nation but enhance our national security,” said Dana Deasy, the department’s chief information officer, at a news briefing Tuesday. He said [Russian and Chinese investments in military AI technology](https://www.wired.com/story/for-superpowers-artificial-intelligence-fuels-new-global-arms-race/) heighten the need for US forces to use more AI, too. “We must adopt AI to maintain our strategic position and prevail on future battlefields,” Deasy said.

Previous Defense Department efforts to tap into the tech industry’s AI expertise haven’t all gone smoothly. Last year thousands of Google employees protested against the company’s work on [Project Maven](https://www.wired.com/story/googles-contentious-pentagon-project-is-likely-to-expand/), which was intended to demonstrate how the US military could benefit from tapping commercially available AI technology.

The pushback against Google’s work on a program using algorithms to identify objects in video from drones prompted the company to decide not to renew the contract. CEO Sundar Pichai also released new guidelines on its use of AI that [forbid work on weapons](https://www.wired.com/story/google-sets-limits-on-its-use-of-ai-but-allows-defense-work/), but permit other military work.

The heart of the Pentagon AI strategy [published Tuesday](https://media.defense.gov/2019/Feb/12/2002088963/-1/-1/1/SUMMARY-OF-DOD-AI-STRATEGY.PDF) is a unit established in June last year called the Joint Artificial Intelligence Center, known as the JAIC. It will function as a hub of AI expertise to support military branches, and vet all Defense Department AI projects larger than $15 million. The JAIC will also develop its own AI projects in a similar vein to Project Maven, including by tapping tech company algorithms and AI tools.

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In budget requests last summer, the [Air Force](https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2018/prior1415s/18-12_PA_ISR_MIP_Request.pdf) and [Marine Corps](https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2018/ir1415s/18-22_IR_ISR.pdf) described plans to make wider use of Maven algorithms, including putting them “on multiple unmanned aerial vehicles,” and using them to identify targets based on data from drones carrying special cameras that can monitor up to 40 square miles of territory at a time. William Carter, deputy director of the technology policy program at the Center for Strategic and International Studies, says Project Maven has won respect for showing that Pentagon AI projects could be quick, and efficient. “One of the most remarkable things about Maven was that it was so cheap relative to the power of the system that was developed,” he says.

The JAIC will also work on new cloud infrastructure to provide the data storage and computing power needed for AI projects. That likely means more contracts like JEDI, a cloud contract worth more than $10 billion that is expected to be announced in coming months, with Amazon and Oracle among the leading bidders.

Oracle, Google, IBM, and SAP were listed among the “interested vendors” for an “[AI industry day](https://secure-web.cisco.com/1CcDGH7aaCCEOO9r4DLKQ0P-nZHzAR5aDLQsQJ5Lr7GJmbIpwRh7IghR-8SqrpmcAclWxq2oyXqVUVIZIEWph-uSdTBUEwg2GCzvpwFYLeM4Szs6GbEfAdIifSOqdkbL3P-Zu17b0plhlc6P1bpwy5UViZsmNM7uP0wsj6ILEce7vAXa_VZmzum2kZ2VWDYrMXbEVrA-vNmNtcDtGjY0zgE0sKFGXybzGr5FIuyBJVma3p6RCktkhhuI2UcHjniYpoHCBMjiylat76RJffJeh8weVjbdL5pGx9KAPukgMXQMmasWHKPZgtSPJvGjW542W2f6WjZRXqgz3LUMBjgnHccG1gz87FgunSXSP7fd6gCnBEN7ydbMh08aZY3-9Uxbx/https%3A%2F%2Fwww.fbo.gov%2Findex.php%3Fs%3Dopportunity%26mode%3Dform%26id%3D0b743e01335e2d7a051db4c54382f730%26tab%3Dcore%26tabmode%3Dlist)” the JAIC co-hosted in late November to discuss future AI projects. A Google spokesperson confirmed the company participated in the industry day. An IBM spokesperson pointed to the company’s existing $135 million Army contract that involves applying AI to predict equipment faults, and said IBM hopes to work more with the Defense Department on the technology. Brian Roach, managing director for regulated industries at SAP North America, said the company works with all branches of the armed services and is interested in supporting all kinds of future government AI programs. Oracle did not respond to a request for comment.

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#### Alphabet acquisition of AI has been crucial to military application of AI tech

Brewster 20 – editor for Forbes, covering security, surveillance and privacy.  Also the editor of The Wiretap newsletter, which has exclusive stories on real-world surveillance and all the biggest cybersecurity stories of the week.

Thomas Brewster, December 22 2020, “Google Promised Not To Use Its AI In Weapons, So Why Is It Investing In Startups Straight Out Of ‘Star Wars’?,” Forbes, https://www.forbes.com/sites/thomasbrewster/2020/12/22/google-promised-not-to-use-its-ai-in-weapons-so-why-is-alphabet-investing-in-ai-satellite-startups-with-military-contracts/?sh=6cb4fb757595

Planet’s spokesperson said there was no such shift, that its first customers were with military and intelligence agencies, and it has “no internal record of any employee ever leaving Planet because of our work with governments.” It pointed Forbes to the company’s [ethics code](https://www.planet.com/ethics/) in which it says: “Our partners may not use our products to further actions that sponsor harm, abuse, aggression, violence, or other violations of human rights.” The company also has an Ethics Committee that “reviews potential or existing customer engagements for ethical issues” and it has nixed potential private and public sector contracts because of moral concerns. Planet declined to provide any information on what those contracts were.

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All these tricky ethical quandaries haven’t stopped Pichai’s Alphabet companies from investing further in the geospatial market. GV is also backing a less-proven moonshot, participating in $40 million and $35 million rounds in 2018 and 2020 for SpinLaunch. The startup has a novel idea for getting satellites into orbit, using what amounts to a giant, spinning arm that hammer-throws satellites into space. Thanks to Alphabet’s money and a [2019 $2.5 million contract with the DoD’s Defense Innovation Unit Small Responsive Launch program](https://www.businesswire.com/news/home/20190619005661/en/SpinLaunch-Secures-First-Contract-for-Revolutionary-New-Space-Launch-Services), SpinLaunch’s as-yet unproven tech could soon be responsible for helping the Pentagon deploy even more military spy satellites to monitor the planet.

#### Tons of deals now proves that Big tech is helping develop military tech now

Simonite 19 – Tom Simonite is a senior writer for WIRED in San Francisco covering artificial intelligence and its effects on the world. He once trained an artificial neural network to [generate seascapes](https://www.wired.com/story/we-made-artificial-intelligence-art-so-can-you/) and is available for commissions. Simonite was previously San Francisco bureau chief at MIT Technology Review, and wrote and edited technology coverage at New Scientist magazine in London.

Tom Simonite, February 12 2019, “The Pentagon Doubles Down on AI–and Wants Help from Big Tech,” Wired, https://www.wired.com/story/pentagon-doubles-down-ai-wants-help-big-tech/

IN THE 1960S, the Department of Defense began shoveling money toward a small group of researchers with a then-fringe idea: making machines intelligent. Military money played a central role in establishing a new science—[artificial intelligence](https://www.wired.com/story/guide-artificial-intelligence/).

Sixty years later, the Pentagon believes AI has matured enough to become a central plank of America’s national security. On Tuesday, the department released an unclassified version of its AI strategy, which calls for rapid adoption of AI in all aspects of the US military.

The plan depends on the Pentagon working closely with the tech industry to source the algorithms and cloud computing power needed to run AI projects. Federal contracting records indicate that Google, Oracle, IBM, and SAP have signaled interest in working on future Defense Department AI projects.

“AI will not only increase the prosperity of the nation but enhance our national security,” said Dana Deasy, the department’s chief information officer, at a news briefing Tuesday. He said [Russian and Chinese investments in military AI technology](https://www.wired.com/story/for-superpowers-artificial-intelligence-fuels-new-global-arms-race/) heighten the need for US forces to use more AI, too. “We must adopt AI to maintain our strategic position and prevail on future battlefields,” Deasy said.

Previous Defense Department efforts to tap into the tech industry’s AI expertise haven’t all gone smoothly. Last year thousands of Google employees protested against the company’s work on [Project Maven](https://www.wired.com/story/googles-contentious-pentagon-project-is-likely-to-expand/), which was intended to demonstrate how the US military could benefit from tapping commercially available AI technology.

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#### There doing a ton of new innovation now

Brewster 20 – editor for Forbes, covering security, surveillance and privacy.  Also the editor of The Wiretap newsletter, which has exclusive stories on real-world surveillance and all the biggest cybersecurity stories of the week.

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#### Platform regulations ripple across multiple industries and upends the economic environment and security of platform operators

Sokol and Alstyne 20 – professor of law at the Levin College of Law at the University of Florida and academic adviser to the U.S. Chamber of Commerce Antitrust Council; Questrom Professor of Management at Boston University and a digital fellow at the MIT Initiative on the Digital Economy

D. Daniel Sokol and Marshall Van Alstyne, " The Rising Risk of Platform Regulation," MIT Sloan Management Review, 11-11-2020, <https://sloanreview.mit.edu/article/the-rising-risk-of-platform-regulation/>

On Oct. 6, 2020, the U.S. House Judiciary Committee's antitrust subcommittee released a 450-page report following a 16-month inquiry into the digital economy. It recommended fundamental changes to antitrust laws generally and targeted the Amazon, Apple, Facebook, and Google technology platforms specifically. 1 Several weeks later, the U.S. Department of Justice filed suit against Google, accusing it of using "anticompetitive tactics to maintain and extend its monopolies in the markets for general search services, search advertising and general search text advertising." 2 Similar regulatory initiatives aimed at platforms are underway around the world, including in the European Union, United Kingdom, Japan, Korea, and India. 3

The **blizzard of regulatory action** swirling around platforms is producing new rules and laws, expanded powers for existing regulatory authorities, and the establishment of new regulatory authorities. These outcomes will not only affect Big Tech but also **many other companies**, in industries such as construction, health care, finance, energy, and industrial manufacturing, that have adopted or are considering adopting platform business models.

Few platform operators and owners have fully considered how the **growing regulatory risk** - which includes breakups, line-of-business restrictions, acquisition limits, and interoperability and data portability mandates - could **derail their businesses**. As a result, they could be **caught off guard**, just like many companies were caught off guard when the Sarbanes-Oxley Act of 2002 mandated board restructurings and expanded executive financial accountability in the aftermath of accounting scandals. 4

The regulatory outcomes being proposed and adopted today could have varying degrees of impact on platform businesses. The most severe proposal in the House Judiciary Committee report would dictate a structural breakup, requiring "divestiture and separate ownership of each business." This could **unravel** the network effects that drive platform growth and produce value. U.S. regulators have rarely pursued solutions this extreme, but there are notable exceptions, including the breakups of Standard Oil in 1911 and AT&T in 1984, and the attempted breakup of Microsoft, which settled with the DOJ in 2004. (It's too early to say whether Google will join this list, but the DOJ complaint leaves open the possibility.)

A more likely outcome is the separation of platforms from the products and services sold on them, which some policymakers advocate to combat self-preferencíng, a catchall term for actions that favor a platform owner's offerings over those of its competitors. In its limited form, such a rule might restrict potential bias in search listings. In its extreme form, it could forbid vertical integration - a **significant source** of value in many platform models - by precluding a company from selling its own offerings on its platform, even when they offer **superior value** to users. In 2019, for example, India imposed a flat rule forbidding companies from owning more than 25% equity in any product sold on their platforms. 5

Another outcome proposed in the House Judiciary Committee report is the forced sharing of commercial data with competitors, which is aimed at creating an even playing field by providing equal access to data. But giving competitors access to user data also entails privacy and security risks, including secondary misuse of data and ambiguities in accountability for data breaches. 6

The report also recommends strict limits on the merger and acquisition activity of platform companies to prevent what the committee believes are anti-competitive activities, such as dictating prices and the rules of commerce in their markets. However, these limits can also **hamper** the ability of platforms to **reach scale**, to acquire new functionality that they can share with large pools of users, and to obtain the **talent and capabilities needed** if they are to innovate.

More generally, the House Judiciary Committee report proposes changing presumptions about how antitrust works in ways that would benefit plaintiffs - for example, by reducing the need to show causal harm (aka antitrust injury) to bring a claim. These presumptions, along with the extension of antitrust by adopting vague, noneconomic factors (such as "fairness"), could make many of the **valuecreating everyday business decisions** currently made by platform operators (such as exclusive dealing, bundled offerings, and price cuts) more **prone to antitrust litigation**, fines, and other restrictions.

#### Independently the shock of the DA turns case—aff’s incentive is so blunt it chills activity everywhere and prevents effective competition

Dushnitsky 21– Gary Dushnitsky is an associate professor of Strategy and Entrepreneurship at London Business School. He also serves as a senior fellow at the Mack Institute for Innovation Management at the Wharton School of the University of Pennsylvania. Daniel Sokol is a professor of Law and affiliate professor of Business at the University of Florida. =

(Gary Dushnitsky and Daniel Sokol, “Competition laws could be a death knell for startup mergers and acquisitions,” 7/22/2021, The Hill, https://thehill.com/opinion/white-house/564321-competition-laws-could-be-a-death-knell-for-startup-mergers-and?rl=1)

Technology entrepreneurs and innovations yet to be imagined are in the crosshairs of misguided antitrust legislation. Antitrust policy is under the microscope from both political parties.

The Biden administration’s Executive Order on Promoting Competition in the American Economy lays the groundwork for the first-ever antitrust regulations for technology companies and internet platforms, and proposed legislation by Sens. Amy Klobuchar (D-Minn.) and Josh Hawley (R-Mo.) would rewrite antitrust law. Both bills and the order seek to limit merger activity focused on acquisitions of smaller companies by larger technology companies, with their proposals ranging from presuming anticompetitive effects to outright prohibitions.

However, these proposals likely will have unintended consequences that would hamper innovation and entrepreneurship. The result is that certain potential deals will never leave the boardroom and others will be abandoned because the risks of antitrust intervention are too high.

For deals that do move forward, many will be challenged under more stringent merger laws. Such a change in the law will fundamentally alter the ability of U.S. companies to innovate in the technology sector, and result in collateral damage across a wide range of traditional industries such as biotech, consumer goods and finance, along with sustainability-focused or previously neglected sectors.

Investors and founders must be able to realize returns on their investments and efforts, commonly referred to as ‘entrepreneurial exit,’ or they will not take the risk of investing in startups and commercializing emerging technologies. Without the ability to exit, neither founders nor investors will be able to reap the gains of entrepreneurial value creation. If the proposed legislation becomes law, it will foreclose many merger and acquisition exits and thus lessen the incentives for founding and growing a business. It therefore makes investment in innovative ventures less likely since founders and investors cannot reap the rewards of a relatively timely exit at high valuations. When certain potential acquirers can no longer make acquisition bids, venture capital investors will lose the ability to make significant returns and funding to the entrepreneurial ecosystem may wither.

#### Its good, big tech power is the ONLY way to respond to foreign tech threats

CCIA 2021 – The Computer and Communications Industry Association is an international non-profit advocacy organization based in Washington, DC, United States which represents the information and communications technology industries.

The Computer and Communications Industry Association, 2021, “NATIONAL SECURITY ISSUES POSED BY HOUSE ANTITRUST BILLS,” https://www.ccianet.org/wp-content/uploads/2021/09/CCIA-KS-NatSec-White-Paper.pdf

Reducing the Effectiveness of Threat Information to Law Enforcement Major U.S. technology companies and online platforms work with U.S. law enforcement, military, and intelligence agencies to combat a variety of national security and criminal threats. The head of U.S. Cyber Command in 2020 discussed the importance of the U.S. government’s engagement with the tech industry, noting that “many leading U.S. companies find themselves on the frontlines of competition in cyberspace. Working collaboratively where we can allows us to improve collective defense and stay a step ahead of our adversaries.” The nature and scale of these platforms gives them a broad and deep view of the threat landscape. This allows those companies to secure U.S. data and infrastructure against foreign threats with an agility, speed and thoroughness that is not feasible for smaller, fragmented companies that have limited apertures. The critical missions of national security and law enforcement agencies, of course, also benefit from this security proficiency. Not only are the threats more rapidly detected and mitigated, but trend and threat analysis can be quickly shared with these agencies in multiple matured fora that have evolved over the last 10 years. This also means that government agencies can more effectively and confidently use the legal tools available to investigate threats posed by hostile foreign adversaries, including terrorists, proliferators, spies, and cyber actors. At a moment in history when it has never been more clear that cyber threats are very real and can impact the daily operation of the economy as well as essential services, the provisions in the House bills that seek to reduce the size, scale, and integration of a handful of leading U.S. tech firms, especially H.R. 3825 and H.R. 3816, could significantly hinder the ability of the agencies to fulfill their missions to defend against such threats. A scattered group of smaller, isolated platforms with scant perspective of the threats they each face, and fewer resources, will be unable to engage in the same level of threat detection, investigation, mitigation and information sharing. The loss to U.S. government efforts will be further significantly compounded if, as should be expected, foreign companies step in to take at least some of customers previously served by U.S. companies. Not only will these companies be less inclined to work with U.S. agencies, they will be outside the scope of statutory legal authorities granted to U.S. agencies to compel the production of information.

## EU

#### There’s a huge framing issue, they have not read a single card that climate coop is insufficient now, their ev is neg cards about how Biden rejoining paris will kickstart dialogue on climate

Morningstar, 21   
(Richard Morningstar, Chairman at the Atlantic Council Global Energy Center, Former U.S. Ambassador to the European Union and Azerbaijan, February, 2-9-2021, "Prospects for Transatlantic Climate and Energy Cooperation", accessed 10-13-2021, https://www.wilsoncenter.org/article/prospects-transatlantic-climate-and-energy-cooperation) jcw

Introduction The Biden administration will inherit a strained transatlantic relationship but also an unprecedented opportunity to build a more resilient partnership. There is eagerness on both sides of the Atlantic to repair the US-EU ties. A reinvigorated US-EU climate and energy agenda will contribute significantly to a renewed partnership. Reestablished multilateral partnerships will be essential to implementing US-EU climate and energy initiatives The anticipated return to multilateralism under the Biden administration will enable the US and EU to synergize their efforts to effectively address pressing global challenges, such as climate change and other large-scale energy security threats that individual countries cannot resolve on their own. By rejoining the Paris Agreement, the US will abandon Trump’s unilateral “Energy Dominance” approach and will take a crucial step towards rebuilding trust with its transatlantic allies. The US must reenter the Paris Agreement with humility and prioritize lowering carbon emissions domestically, before leading on climate solutions within a global arena. The new Administration should act quickly, among other things, to reenact regulations on methane emissions and vehicle fuel efficiency standards as well as to prioritize clean energy projects in any pandemic green recovery plan. Setting ambitious targets under the Paris Agreement, with clear short-term benchmarks, will demonstrate US’ commitment to carbon emission reductions and will pave the way for more robust transatlantic coordination in the area. John Kerry’s appointment as the special presidential envoy for climate—a new cabinet-level post— is an early indicator that working with US allies will be fundamental to the Biden administration’s climate policy. However, no matter who wins the two runoff Senate elections in Georgia, because of a closely divided Senate, the feasibility of enacting robust environmental legislation will be difficult. The US-EU Energy Council—which was downplayed during the Trump administration—should serve as the overarching platform for transatlantic climate and energy work. A ramped-up US engagement in global forums, such as the Clean Energy Ministerial and Mission Innovation will reinforce the efforts of the US-EU Energy Council. Additionally, the US and EU need to combine forces to support a just transition around the globe, especially in the African countries. This work should encompass coordinated financing strategies, energy literacy initiatives, and standardized metrics for quantifying a just transition. Transatlantic work on climate issues presents ample avenues for restoring the US-EU ties The work on climate should be integrated into all areas of US-EU cooperation, since greenhouse gas emissions have broad implications on political, economic, and societal issues. Trade policies can serve as key levers of the energy transition and can significantly contribute to meeting the Paris Agreement targets, if properly deployed. The EU’s proposed carbon border adjustment mechanism (CBAM)—a key component of the European Green Deal—will have significant implication on the US-EU relationship as the EU moves to impose a tax on imported goods based on their attributed carbon emissions. The EU is aiming to introduce CBAM through a tiered approach, likely starting off with the steel and cement industries before applying the tax to electricity and natural gas markets. The US and the EU should consult with each other closely on the implementation of CBAM to ensure compliance with World Trade Organization rules. As part of this consultation, the US and the EU will need to develop standards for measuring and verifying carbon emissions, especially in natural gas production and transport. Standardized metrics will encourage US exporters to expand their efforts to reduce methane emission, many of which are already happening voluntarily. Furthermore, standards and metrics transparency could shift the European conversation around fracking towards a constructive dialogue about emissions reductions across the lifecycle of natural gas. The US and the EU can drive the commercialization of new clean energy technologies through streamlining and standardizing licensing requirements and implementing complementary policies that unlock demand for these innovations. For example, coordination on hydrogen safety, codes, and regulatory standards will create certainty for investors and a path forward for integration with existing technologies, such as natural gas pipelines. The development of green technologies is inextricably linked to energy security. Expanded transatlantic coordination on technology innovation and robust public-private partnerships will reduce emissions and insure a reliable and affordable energy supply. A significant portion of clean energy technologies are manufactured using rare earth minerals, the market for which is monopolized by China. The US and the EU should work to forge secure supply chains, recycling, and environmentally-sound domestic development of these critical minerals. Transatlantic energy security will be reinforced through continued work on energy diversification Natural gas will continue to play an important role in the European energy mix in the short to medium term. Expanded work on diversification of energy routes and sources can reduce emissions and bolster energy security on both sides of the Atlantic. US LNG exports to Europe have played an important part in reducing Russian energy leverage in the region. The US should continue being a reliable supplier of LNG while expanding cooperation on resource diversification in other areas. The EU can support US energy diversification through collaboration on scaling up new clean energy technologies, such as hydrogen and offshore wind. In the same way, the US can support the EU by exporting its carbon capture and storage best practices and advanced nuclear technologies expertise. The US and the EU can amplify their efforts to resolve geopolitical energy conflicts through multilateral institutions. The allies should continue engagement in the Three Seas Initiative and the East Med Gas Forum, where they are currently observers. Bilateral initiatives, such as the U.S.-Egypt Strategic Energy Dialogue, can be integrated into broader engagement towards resolving disputes over exclusive economic zones in the region. Most importantly, the US and the EU should develop cohesive climate, energy and trade policies with respect to China and Russia. Part of these efforts should include coordination on sanctions implementation, whether with respect to Iran, Venezuela, Nord Stream or other places in the world. The sanctions could disrupt the progress on rebuilding the US-EU ties without a proper dialogue and a path forward. The US and the EU can further enhance energy diversification through a coordinated financing strategy to support commercialization of new technologies and the development of electricity and natural gas interconnections. The U.S. International Development Finance Corporation and Export–Import Bank of the United States, European financing bodies, the Three Seas Initiative Investment Fund and the private sector can address remaining energy security gaps through investments that will contribute to competitive energy markets across Europe. Coordinated financing efforts will also be impactful in the developing countries and in regions most severely affected by climate change. Lastly, these investments can support the economic recovery efforts from the impacts of COVID-19. Diversification of energy systems is expediting digitalization and automation across natural gas and electricity interconnectors. While the digitalization has enabled integrated energy markets, greater transparency, decrease in carbon emissions, and improved efficiency of operations, the digital transformation is also exposing this critical infrastructure to cyberattacks from malicious actors. The US and the EU can form information sharing networks to exchange critical cybersecurity information, which will help ensure a rapid response to cyberattacks. There is global momentum and appetite for a robust emission reduction agenda. The US and the EU must seize this moment to lead on climate solutions. Cooperation on climate and energy issues will build interdependencies, create cohesion, and improve the effectiveness of how the US and the EU address climate change and energy security, and will contribute to the economic recovery from the COVID-19 pandemic.

## 1NR

### Tech

#### Data is the ONLY thing that matters in the development in AI – startups will lead to a bunch of half-baked solutions that CAN’T solve

Sundblad 18 – Willem Sundblad is a manufacturing industry expert and specializes in analyzing and commenting on trends with clarity and technical expertise.

Willem Sundblad, October 18 2018, “Data Is The Foundation For Artificial Intelligence And Machine Learning,” Forbes, https://www.forbes.com/sites/willemsundbladeurope/2018/10/18/data-is-the-foundation-for-artificial-intelligence-and-machine-learning/?sh=6640b85251b4

Artificial intelligence (AI) and machine learning (ML) are going to have a huge impact on manufacturing. With these technologies, manufacturers will gain the computational power needed to solve problems that humans can’t possibly solve. They will ultimately be able to provide prescriptive answers to production issues manufacturers have been asking for centuries. Namely, how do we make our product as efficiently as possible, with zero waste and the least amount of downtime.

As with most reports about groundbreaking technology, this discussion of the ‘holy-grail’ is way ahead of industry practices. The vision serves a useful purpose in suggesting what’s possible. But with many manufacturers lacking the data infrastructure necessary to obtain real AI and ML capabilities, the journey towards perfect production can also be so abstract that it confuses the very people looking to achieve it. I’m often asked by corporate leadership, “Where and how do we adopt AI technology?”

Begin with data

While the sci-fi-sounding AI scenarios highlight the technology’s incredible computational power, the practical, effective applications begin with data. Indeed, data is both the most underutilized asset of manufacturers and the foundational element that makes AI so powerful. Think of [Maslow’s Hierarchy of Needs](https://www.simplypsychology.org/maslow.html), a theory of motivation that is depicted as a pyramid, with the most basic, most important needs at the bottom, and the most complex needs at the top.

The Data Science Hierarchy of Needs Pyramid

 SOURCE: “THE AI HIERARCHY OF NEEDS” MONICA ROGATI.

Similarly, [Monica Rogati’s Data Science Hierarchy of Needs](https://hackernoon.com/the-ai-hierarchy-of-needs-18f111fcc007) is a pyramid showing what’s necessary to add intelligence to the production system. At the bottom is the need to gather the right data, in the right formats and systems, and in the right quantity. Any application of AI and ML will only be as good as the quality of data collected.

When beginning to adopt AI, many manufacturers discover that their data is in many different formats stored [throughout several MES, ERP, and SCADA](https://www.forbes.com/sites/willemsundbladeurope/2018/10/03/beyond-digital-transformation-how-industry-4-0-benefits-your-customers-employees-and-culture/#1704f40f29fc) systems. If the production process has been manual, very little data has been gathered and analyzed at all, and it has a lot of variance in it. This is what’s known as ‘dirty data’, which means that anyone who tries to make sense of it—even a data scientist—will have to spend a tremendous amount of time and effort. They’ll need to convert the data into a common format and import it to a common system, where it can be used to build models.

Once good, clean data is being gathered, manufacturers must ensure they have enough of the right data about the process they’re trying to improve or the problem they’re trying to solve. They need to make sure they have enough use cases and that they are capturing all the data variables that are impacting that use case.

For example, gathering only one variable about revolutions per minute of your machine is not going to be enough to tell you why a failure happened. However, if you add vibration, temperatures, and data about many conditions that contribute to machine failure, you can begin to build models and algorithms to predict failure. In addition, as more data is collected, you can create accuracy requirements, such as This algorithm will be able to predict this failure within one day’s time, with 90% accuracy.

If this all sounds complicated, solutions are available to automatically collect the data from a variety of devices and systems, then automatically clean the data or format. This allows engineers to focus on building models and algorithms, rather than spend time cleaning the data.

Start by solving a simpler problem

Starting an AI journey with a data first approach allows manufacturers to start understanding and controlling their processes from the beginning. This not only helps manufacturers get to a controlled process and begin reaping some relatively quick benefits like eliminating process variations, it will improve the types of analytics they can do in the future, with more advanced AI and ML models.

Remember: If your process is out of control, adding AI to it won’t magically fix it.

Another crucial reason to start with gathering data and solving immediate production problems is to gain first mover advantage in your industry. Companies like Google, Amazon and Facebook dominated their industries because they were the first to begin building data sets. Their data sets have become so large, and their data collection and analysis so sophisticated that they are able to grow their competitive advantage.

For manufacturers, the equation is similar. The sooner a manufacturer starts the journey toward AI, the sooner they will build large data sets that will enable them to execute advanced AI and ML models. With each iteration, they’ll put more distance between themselves and the competition.

### M&A

#### Bank mergers in particular are high now

**Sikander and Gull 21** – S&P Global Market Intelligence Contributors

Ali Shayan Sikander and Zuhaib Gull, "Bank M&A 2021 Deal Tracker: Fla. deals lead US in a hot August," S&P Global Market Intelligence, 8-24-2021, https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/bank-m-a-2021-deal-tracker-june-hits-highest-monthly-total-since-2019-62489908

U.S. bank M&A activity kept up a torrid pace in August as 20 deals were announced, bringing total 2021 deal announcements to 132, compared to 103 over all of 2020.

Total deal value has also soared this year to $38.95 billion, compared to $27.75 billion for the full year 2020. Similarly, the median deal value-to-tangible common equity ratio for 2021 deals rose to 152.8%**,** up from 134.2% for the full year 2020.

#### Perception—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**.**

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

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

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

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

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

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

#### Courts limit Biden enforcement – any squo antitrust actions won’t take effect until 2023

Christopher et. Al. 7/26 – Paul Christopher is the Head of Global Market Strategy for Wells Fargo Investment Institute (WFII), a subsidiary of Wells Fargo Bank, N.A., which is focused on delivering the highest quality investment expertise and advice to help investors manage risk and succeed financially.

[Paul Christopher, CFA](https://www.wellsfargoadvisors.com/research-analysis/strategists/paul-christopher.htm), [Ken Johnson, CFA](https://www.wellsfargoadvisors.com/research-analysis/strategists/ken-johnson.htm), [Gary Schlossberg](https://www.wellsfargoadvisors.com/research-analysis/strategists/gary-schlossberg.htm), [Michael Taylor, CFA](https://www.wellsfargoadvisors.com/research-analysis/strategists/michael-taylor.htm), and [Michelle Wan, CFA](https://www.wellsfargoadvisors.com/research-analysis/strategists/michelle-wan.htm), “Policy, Politics & Portfolios,” Wells Fargo, https://www.wellsfargoadvisors.com/research-analysis/reports/policy/domestic-foreign-policies.htm

Antitrust laws are intended to help protect consumers from predatory corporate activity and promote fair competition in the open market. The intention of these laws and associated regulations is to help curb a range of business practices, including price fixing and monopolies. Without regulatory oversight, lawmakers' concern is that consumers would likely pay higher prices and have access to fewer choices of products and services.

Antitrust laws are comprised of three pieces of legislation enacted by Congress (see Sidebar 1). U.S. antitrust regulations are enforced by two federal agencies: the Federal Trade Commission (FTC) and the Department of Justice (DOJ). Yet, there are limits and potential delays to antitrust policy under current laws. At times, U.S. courts have struggled to interpret vague language and make rulings.

Biden acts

Earlier this month, President Biden signed an executive order (EO) initiating a broad-based approach to spur competition across sectors including Information Technology, Health Care, and agriculture. The EO includes 72 actions and recommendations across 12 federal agencies (see Sidebar 2).1 President Barack Obama issued a similar EO late in his second term, but few agencies responded to it. Recently appointed FTC Chair Lina Kahn appears poised to broaden oversight and enforcement of anti-competition laws. Yet, there are questions about the president’s authority over the FTC and the agency’s reach; certain measures will likely be blocked by courts.

In Congress, regulating Big Tech has garnered bipartisan support, but for different reasons. Democrats are focused on alleged anticompetitive practices while Republicans are concerned about the limitations on commentary and content on social media websites. Last September, Congress held hearings to investigate these allegations. In June, the House Judiciary Committee approved five of six proposed bills, mainly aimed at Big Tech platforms favoring proprietary products and services. Yet, even with bipartisan support, we believe the odds of passing meaningful antitrust legislation in the near term are slim as proposals for physical infrastructure and social spending take precedence. That said, we expect antitrust legislation to remain a priority for lawmakers ahead of midterms.

Investment implications

With the signing of the EO, we believe changes in regulatory oversight are likely. Successful antitrust litigation from lawmakers is a growing possibility, yet likely slow in coming. The DOJ suit filed last year is still scheduled for September 2023, demonstrating the snail-like pace of litigating antitrust cases.

We currently have a neutral tactical position on the Information Technology sector. This outlook aligns with our view that the path of regulation is unclear and will likely be delayed by court challenges. This trajectory may not affect the earnings of large firms with component businesses that could be flexible enough to maintain earnings growth as individual or spun-off companies. Thus, the cross-currents of regulation add uncertainty that balances against our view that the sector’s earnings will grow over the next 6 to 18 months.

#### Biden acts are vague and guaranteed to be challenged by the courts

Alvarado 8/31 – Investment Strategy Analyst Wells Fargo.

Luis Alvarado, August 31 2021, “Prospective policy changes don’t dent a strong economy,” Wells Fargo, https://www.wellsfargo.com/investment-institute/ppp-prospective-policy-changes-dont-dent-strong-economy/

Last month, President Biden signed an executive order (EO) that aims to broaden the administration’s focus on anticompetitive practices and industry consolidation.2 The order proposes 72 actions and recommendations across more than a dozen federal agencies that target increased competition in sectors including agriculture, health care, pharmaceuticals, technology, and transportation. The EO does not decree specific policies; rather it encourages regulators to craft strategies for executing the list of proposed actions. In fact, critics contend the EO is a vague outline of recommendations that will likely face legal roadblocks.

A sweeping order

Promoting market competition has been a key priority for the White House. The administration maintains that industry consolidation has reduced competition, hurting consumers, workers, and small businesses. The EO provisions aim to spur competition in consolidated industries and reinvigorate innovation. Yet, certain obstacles will likely delay such broad edicts. The president’s authority over federal agencies is limited, and implementing antitrust policy is a laborious process stymied by court injunctions and industry blockades.

The order seeks to promote competition and growth across a number of sectors. Its highlights include:3

Labor markets — Limits or bans noncompete clauses, occupational licensing requirements, and companies from sharing wage information. These actions complement the proposed Protecting the Right to Organize Act (PRO) that would grant workers unionization and collective-bargaining rights.

Health care — Encourages collaboration among states to promote drug importation and ban pay-for-delay agreements (see sidebar 1). It supports generic drugs and reducing prescription-drug prices.

Transportation — Advocates refunding of baggage and travel fees for unoffered services and requires fee disclosure. It also requires railroad track owners to provide rights of way to passenger trains and limits transport fees for maritime shipping.

Agriculture — Encourages new rules to reduce poultry processers’ pricing leverage over smaller producers. It also advocates new requirements for “Product of USA” meat labeling.

Information technology (IT) — Restores net neutrality rules, requires disclosure of broadband prices and speeds, and limits early termination fees. It also calls for greater scrutiny of IT mergers and data collection.

Banking and finance — Supports updating guidelines for financial mergers and requires banks to permit data portability for customers.

Investment implications

We believe the EO will usher in changes in regulatory oversight. Antitrust legislation from Congress is another growing possibility, yet likely slow in coming.4 That said, we expect antitrust legislation to remain a priority for lawmakers ahead of midterm elections.

In reviewing the highlights above, we conclude that the equity sector impacts appear narrow as the provisions should have their main impact at the subindustry level. The Health Care sector is the notable exception because prescription-drug price controls are a significant negative for that industry. Nevertheless, we look for a gradual return of a broad range of health care spending as a potential counterbalancing positive for the sector. We maintain our neutral rating on Health Care and favor holding exposure at a market weight.

For other sectors, we expect little effect from the president’s order on our current tactical guidance over the coming six to 18 months. Congress has other legislative priorities, and the courts will likely block many regulatory agency directives. Consequently, our outlook for strong economic growth is a more important factor in guiding our sector preferences. Specifically, we hold a favorable view of the Communication Services sector along with cyclical sectors oriented to economic expansion, including Energy, Financials, Industrials, and Materials.

#### Plan is one of the first major pro-plaintiff decisions in decades—that is magnified and affects every future case

Pale 04– R. Hewitt Pale, Former Assistant Attorney General, Antitrust Division @ US DOJ

(R. Hewitt Pale, “ANTITRUST LAW IN THE U.S. SUPREME COURT, Presented at British Institute of International and Comparative Law Conference, May 11, 2004, <https://www.justice.gov/atr/speech/antitrust-law-us-supreme-court>)

In considering my topic for a forum on comparative law, it occurred to me that it might be useful to focus on the special role of the United States Supreme Court in making American antitrust law. The topic is especially timely because our Supreme Court granted review in four antitrust cases this term, each of which is the object of intense study by U.S. antitrust practitioners. The Supreme Court, unlike the intermediate appellate courts of the federal system, has discretion to choose the cases it will hear, and its choices have a profound effect on the development of antitrust law.

Little has changed over the last century in terms of the wording of our antitrust statutes. The Sherman Act was enacted in 1890, and the Clayton Act in 1914, and the legislative amendments since that time have been minimal. Yet U.S. antitrust law has come a long way indeed in those years through judicial interpretations of the law. Congress chose not to enact detailed prescriptions for antitrust enforcement, relying instead on the courts to apply the broad statutory principles to particular fact situations. As former Assistant Attorney General William Baxter has observed, this "common law" approach may lack the certainty provided by a more detailed statute, but it "permits the law to adapt to new learning without the trauma of refashioning more general rules that afflict statutory law." (1) Our Supreme Court has described the antitrust laws as having "a generality and adaptability comparable to that found to be desirable in constitutional provisions."(2)

American antitrust law began to take shape only when the Supreme Court began to build the basic framework of antitrust analysis in its decisions. In 1911, it decided the landmark Standard Oil case, in which the United States sought to break up the famed oil conglomerate.(3) Observing that the standards of the antitrust law must be developed by the courts deciding each case "by the light of reason, guided by the principles of law and the duty to apply and enforce the public policy embodied in the statute,"(4) the Court announced the Rule of Reason, under which the Sherman Act is deemed to prohibit only "unreasonable" restraints of trade. In another decision that year, United States v. American Tobacco Co.,(5) involving a conglomerate in the tobacco industry, the Supreme Court emphasized the Rule of Reason's fundamental grounding in competition concerns. This standard proscribed "contracts or agreements or combinations which operated to the prejudice of the public interests by unduly restricting competition or unduly obstructing the due course of trade or which, either because of their inherent nature or effect or because of the evident purpose of the acts, etc., injuriously restrained trade . . . ."(6)

In 1918, Chicago Board of Trade v. United States(7) made clear that the Rule of Reason encompasses all the relevant circumstances. To determine whether a restraint is illegal, a court must "ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable" and the "history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained."(8)

Around the same time, the Court was also developing the doctrine of per se illegality, which provides bright-line guidance as to certain clearly anticompetitive practices. In United States v. Trenton Potteries Co., (9) the Court held that a price fixing agreement among competitors is an unreasonable restraint "without the necessity of minute inquiry whether a particular price is reasonable or unreasonable."(10) In 1940, in another landmark case brought by the United States in the oil industry, United States v. Socony-Vacuum Oil Co.,(11) the Supreme Court repeated that price-fixing agreements are illegal per se and that "no showing of so-called competitive abuses or evils which those agreements were designed to eliminate or alleviate may be interposed as a defense."(12) The per se rule underpins the Antitrust Division's criminal prosecution of collusion among competitors.

The Supreme Court's pre-1950 decisions set the stage for the late twentieth-century developments in antitrust law. They established the fundamental principle — consistent with the modern approach worldwide — that antitrust laws prohibit only conduct that unreasonably restricts competition, to the detriment of consumers. And the Court established that the type of inquiry required depended on the nature of the particular conduct at issue.

That auspicious beginning did not mean that the course of American antitrust analysis always ran smoothly through the last half of the century. A consequence of the common law approach is that when antitrust thinking veers from the path of promoting consumer welfare, the Supreme Court may follow. We experienced that effect in the 1960s and 1970s as our Supreme Court issued decisions emphasizing artificial presumptions not soundly grounded in economic reasoning. In Brown Shoe, Pabst, and Von's Grocery, the Court ruled that mergers could be found unlawful based on extremely small increases in market concentration.(13) In Schwinn,(14) it abandoned its formerly cautious approach to vertical practices,(15) holding exclusive dealer territories unlawful per se. Similarly, in Albrecht,(16) it held vertical maximum price fixing illegal per se.

As the sophistication of economic analysis increased, our Supreme Court began to reexamine some of these precedents and return to fundamental principles of competition and consumer welfare. In GTE Sylvania,(17) the Court overruled Schwinn, and in State Oil v. Khan,(18) it overruled Albrecht. The Court adopted a significantly different approach to mergers in General Dynamics,(19) refusing to find a violation, despite current high market shares, in a case where those market shares did not reflect a realistic threat to future competition. And in Matsushita,(20) the Court poured cold water on theories of liability that make little economic sense, and it expressed skepticism of liability theories based on price cutting, which is often "the very essence of competition."(21)

Of particular note is the Court's decision in Brunswick,(22) in which it rejected the theory that a private plaintiff could obtain treble damages as compensation for continued competition resulting from a merger that prevented a firm from leaving the market. This may be one of the Supreme Court's lesser-known decisions outside the United States, but it is of fundamental significance. Private treble damage litigation is an important tool in the U.S. antitrust enforcement scheme, and the Brunswick decision mandated that it, like government enforcement, be firmly anchored to pro-competition, pro-consumer principles. The Court emphasized that private damages must be based on conduct causing injury of the type that the antitrust laws were intended to prevent. Plaintiffs may not prevail unless they are harmed by anticompetitive consequences of a defendant's conduct, for the antitrust laws were enacted to protect competition, not competitors.

In the last quarter of the twentieth century, the Supreme Court began hearing fewer antitrust cases. In part this reflects a general trend in the Court's practices. In its 2002 term, it issued only 81 written opinions, having issued only 71 the year before.(23) In contrast, thirty years earlier, the Court issued 164 written opinions in its 1972 term and 151 in 1971, including full opinions in ten antitrust cases during those two terms.(24) A litigant's chance of obtaining review today is quite low. In the last complete term, 2002, the Supreme Court considered 8,340 petitions for review by writ of certiorari, but granted full review to only 91 cases, or 1.1%.(25) Even if the unpaid, in forma pauperis, petitions are left out of the calculation, the odds improve only to 4.5%.(26)

A change in the statute governing appeals in civil antitrust cases brought by the government has also had the effect of limiting the number of Supreme Court opinions in antitrust cases in recent years. Until 1974, appeals in these cases went directly to the Supreme Court under the Expediting Act. That statute was amended in 1974 to provide that these appeals go to the intermediate appellate courts unless the district court certifies that immediate Supreme Court review is of "general public importance in the administration of justice."(27) Even then, the Court retains discretion to remand the case to the court of appeals. District courts have certified only three such cases for direct appeal.(28) One of these was Microsoft, but the Supreme Court declined to hear the case and remanded it to the court of appeals.

Because there are so few Supreme Court antitrust decisions each year — and because each one sets precedent that will govern the application of the antitrust laws in the lower courts for decades to come — each decision is an event of major significance for antitrust enforcers and the antitrust bar. Every phrase is studied with care, and every future case is evaluated in terms of the Court's reasoning process.

#### AND, even if the substantive change is small—it signals that courts everywhere should favor plaintiffs

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.

**Expense of security and lack of dedicated employees creates a structural weakness for small banks that hackers will exploit**

**Schaberg 17** – head of the U.S. Financial Institutions and co-head of the FinTech groups at Hogan Lovells

Richard Schaberg, "2017 Resolutions for Community Banks: A Focus on Cybersecurity," JD Supra, 1-13-2017, https://www.jdsupra.com/legalnews/2017-resolutions-for-community-banks-a-36428/

In December 2016, Thomas Curry, the Comptroller of the Currency, stated that cybersecurity was the single greatest systemic threat to our financial system. He was not being hyperbolic.

Cybersecurity should be on everyone’s mind. Businesses, politicians, and regulators have all recently paid lip service to the importance of cybersecurity and paid dearly for gaps in their own policies and procedures. Given the nature of financial services, the need is very acute. At a recent dinner, the general counsels of the Office of the Comptroller of the Currency (“OCC”), the Federal Deposit Insurance Corporation (“FDIC”), the Board of Governors of the Federal Reserve System (“Federal Reserve”), the National Credit Union Administration (“NCUA”), and the Consumer Financial Protection Bureau (“CFPB”) all declared that cybersecurity was a top priority in terms of guidance and compliance. Now is the time for bank boards and senior management to review the new, pending and existing rules and regulations regarding their cybersecurity responsibilities, and perhaps ways to be proactive in protecting their banks from known and potential cyber threats.

Despite the very real consequences of a cyberattack, creating and maintaining an up-to-date cybersecurity policy remains a big challenge at most community banks, in part due to the expense of setting up a robust system and the lack of dedicated employees or departments focusing on this issue. The prudential regulators have put increased pressure on the boards of directors of community banks to ensure their institutions are ready to detect and deter any cyberattacks. This increased burden on bank boards is exacerbated by the increased regulatory focus on board accountability with respect to bank relationships with third parties. See e.g. OCC Bulletin 2013-29.

The Gramm-Leach-Bliley Act (“GLBA”) required regulatory implementation of information security standards and the OCC, the Federal Reserve, and the FDIC issued Interagency Guidelines Establishing Information Security Standards, establishing the standards on how banks must protect customer information. A bank’s information security policy and procedures must, like all other policies and procedures, be commensurate with the bank’s risk level. Today, however, all banks large and small are at risk from hackers--the only difference is that the hacker might target a community bank over a larger bank on the assumption its protective measures are weaker. All banks, no matter the size, must develop internal controls to keep up with the ever-evolving world of cybercriminals.

**Hackers have turned to community banks---large banks have invested heavily in strong defenses and research, which deters attacks**

**Clark 19** – Writer for HighSide; former Signal Officer in the US Army, where they managed information security

Cecilia Clark, "Hackers Are Targeting Community Banks. Here’s What You Need to Know.," HighSide, 7-16-2019, https://highside.io/blog/hackers-are-targeting-community-banks-heres-what-you-need-to-know/

Some look at the JP Morgan hack and conclude that cyber criminals only target big banks, and smaller community banks are immune. They think because community banks have fewer resources, they have fewer opportunities for cyber attacks and are more likely to successfully defend their assets. They argue that because smaller banks have fewer assets, they’re less attractive targets for hackers.

Unfortunately, those naysayers are wrong. Hackers are successfully attacking community banks more frequently. Sophisticated cyber thieves are moving away from bigger institutions and using their resources on “softer targets”.

After the JP Morgan breach, big banks were able to justify spending more money on cybersecurity. They invested in more research and greater protections, making them harder to penetrate. As a result, many hackers started looking at other targets as easier prey. And many smaller banks can’t invest in cybersecurity the way bigger institutions can. So instead of the JP Morgans, hackers are now looking at community banks, credit unions, real estate attorneys, and other mid-tier financiers.

When asked about cybersecurity and small banks, finance expert Sean Niquette says, “Small banks often have to balance between regulatory burdens on capital and investing in IT security infrastructure.” He explains that the balancing act has left many smaller banks lagging behind in security.

Regulators support his stance. The Federal Reserve of Boston and other regulatory bodies urge that smaller banks are at the greatest risk of cyber attacks.

#### Cyber attacks go nuclear

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

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

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

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

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

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

**Healthcare consolidation is booming now and has momentum for the future**

**Diamond et al. 21** – Brandee Diamond is an M&A partner at Foley & Lardner LLP; Louis Lehot is an emerging growth company, venture capital, and M&A lawyer at Foley & Lardner; Eric Chow is an M&A lawyer with Foley & Lardner LLP

Brandee Diamond, Louis Lehot, and Eric Chow, "Healthcare Shines in M&A’s Major Comeback So Far In 2021," Healthcare Innovation, 4-12-2021, https://www.hcinnovationgroup.com/finance-revenue-cycle/mergers-acquisitions/article/21218175/healthcare-shines-in-mas-major-comeback-so-far-in-2021

In 2020, everything changed. Jobs were cut, businesses were shuttered, and too many people lost their lives. But the global pandemic also triggered a response that is creating new jobs, stimulating innovation, and **forging new business models**. The market for mergers and acquisitions has **weathered the storm** of COVID-19 and is **surging** into the second quarter of 2021 with **all pistons firing**, particularly in **healthcare**.

Today, there is so much more besides COVID testing and vaccinations happening behind the doors of healthcare providers worldwide. Think about it. Your town's family doctor's office down the street might now be part of a giant healthcare system. Or, your local urgent care center may be considering a merger with a leading healthcare corporation. These are unprecedented times in virtually every facet of the word in every nook and cranny on the planet, and **healthcare is at the forefront** when it comes to M&A.

In 2020, the healthcare industry was **beaten down** from the **overflowing** of COVID patients causing the **ripple effect** of non-emergency procedures' **postponements**. Looking forward, however, healthcare M&A activity is **set to increase** with the return of non-urgent **medical interventions** and healthcare companies **betting on growth** to get stronger and healthier.

The 2021 rebound

Early in 2020, there was a massive drop-off in M&A deals compared to the prior-year period, particularly for more significant transactions. However, the M&A market still had plenty of **potential for momentum**. Tragically, as the coronavirus's **full impact hit** by late March, most deal-making came to a screeching halt. Since companies put their resources into transitioning staff to working from home, reviewing finances, and maximizing dollars, many **paused** any pre-planned M&A deals and stopped filling the top of the funnel for a new pipeline.

As companies, investors and bankers adapted to virtual deal-making over the last year, M&A in sectors unaffected or boosted by the lockdown slowed. By summer 2020, transactions grew each month with key announcements in technology and **healthcare** corporate **consolidations**. Despite a slowdown for deals in the second quarter of 2020, activity increased in the second half, triggering an annual volume above $3 trillion for the seventh year in a row. And by winter, the pace of M&A deals **exceeded the historical average** with a fourth-quarter record of 1,250 global M&A transactions, equal to over $1 trillion.

This year, there is already **significant growth** on the horizon. In fact, 53 percent of U.S. executives said their companies plan to **increase M&A investment** in 2021. And, according to Morgan Stanley, “**All the elements** **are there** for an active M&A market in 2021, from corporations looking for **scale and growth** to private equity firms and SPACs looking to **invest capital**.” For some, growth will come from market leaders finding strength in a recovering economy. In contrast, others that have seen business models destroyed by the pandemic will explore how smaller deals in complimentary sectors can help innovate their businesses. Overall, targets will come from sellers, including businesses that have **struggled during the recession**, private investors, and companies that are reassessing assets.

M&A activity in healthcare to watch

As 2021 unfolds, there will an increase in **urgent care M&A activity**. We will likely see urgent care systems **buying smaller urgent care systems**, healthcare companies that don't have much to do with urgent care making **mergers and acquisitions**, and urgent care buying companies that complement their services. For example, retail chains like Walmart and CVS are opening more healthcare clinics. These days, urgent care clinics are not just used for emergency or immediate problems but are now also giving out vaccines and even doing annual physicals.

In healthcare, a merger's primary goal is to improve the quality of care while concurrently driving efficiencies that should lower costs. The reality is that today, it’s becoming more challenging to **stay in business** when your company is only known for one thing. Oftentimes, larger companies **offer more services**, which helps the patient and the provider’s pocket. Most of the time, consolidation happens because **customers prefer to combine trips**. The **fear of exposure** to the virus and **aiming to limit outings** will likely **push healthcare** companies to **make moves in M&A** as it relates to consolidation.

As of late, youth sports activities have become more sophisticated, with more businesses catering to them. As popularity grows, unfortunately, sports-related injuries grow too - creating **more opportunities** for healthcare companies. Ultimately, the pandemic is another reason for healthcare companies to offer **all-in-one** facilities. Despite the factors fueling deals, healthcare companies are going to see **more M&A activity** is due to the **growth vector** it can bring to a business.

M&A trends triggered by COVID-19

Several significant trends may characterize a robust M & M&A market for the rest of 2021 and beyond. First of all, we can expect **more megadeals** (transactions of at least $5 billion) in 2021, from pharma companies acquiring early-phase products and private equity acquisitions. With larger companies leading in this area, this activity will come even as company valuations have increased from their COVID-19 lows. The increase in megadeals in the second half of 2020 helped total U.S. deal value bounce back strongly going into 2021.

In addition, companies pursuing stock-for-stock mergers to gain scale comprised many of the largest corporate M&A transactions. Scale has always been important, and the pandemic has proven that you have to be **large enough** in order **to survive**. **Scale** and **more access** to capital markets have been a **considerable benefit** for larger companies. As the pandemic rages on, corporates remain focused on accessing capital, strengthening positions, and **investing in scale**, and consolidations **should continue** in sectors powered by technology and **healthcare**.

Private equity firms should continue to contribute to 2021 M&A volume meaningfully. In 2020, sponsor-backed transactions comprised 26 percent of M&A activity - the highest since before the financial crisis. In fact, by the end of 2020, financial sponsors had a record $2.9 trillion of capital. Last year, we saw many traditional private-equity funds investing across the capital structure to provide companies with cash during a challenging time.

Looking ahead

Looking later in 2021 and beyond, as vaccinations increase and business conditions in COVID-impacted sectors improve, companies will likely focus more on spending to accelerate growth, scale, and digitize their businesses.

As the global economic rebound aims for more growth this year, those **low-interest rates** will continue to make borrowing cheaper than ever before. This, along with the prospect for companies’ **renewed confidence** to spend, could create **more deals**, especially in **healthcare**-related business. So, M&A remains one of the most attractive ways to achieve growth, which should make 2021 a busy year…

**Consolidation is necessary to preserve rural hospitals, but antitrust expansion deters and prevents necessary mergers**

**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.