# Disclosure R2 Texas

**1AC**

**1AC---Platforms**

Advantage 1 is Platforms---

**Platform companies facilitate transactions between two sets of users—think Amazon—the *Amex* decision made it extremely difficult to challenge anticompetitive conduct in platform markets**

**Hovenkamp**, James G. Dinan University Professor, University of Pennsylvania Carey Law School and The Wharton School, **‘21**

(Herbert, “Antitrust and Platform Monopoly,” 130 Yale L.J. 1952)

A. Against Platform Exceptionalism

**In *Amex***, the Supreme Court **disregarded a basic principle about markets**, which is that they consist of **close substitutes**.212 Instead, it lumped production complements into the same market, and in the process, it **stymied coherent economic analysis** of the problem. To be sure, power in one side of a two-sided market cannot be assessed without determining what is occurring on the other side. But one does not need to group the two sides into the same “market.” Rather, a relevant market should be determined by reference to the side where anticompetitive effects are feared. Then, assessing power requires the fact finder to consider offsetting effects, some of which may occur on the other side.213

Second, the Court ignored an important distinction between fact and law. Disputes about market boundaries involve questions of fact. Nevertheless, the majority wrote—**as a matter of law**—that two-sided platforms compete **exclusively with other two-sided platforms**. These dicta have already produced **mischief in lower-court decisions**. For example, it led one court to conclude that a merger between a two-sided online flight-reservation system and a more traditional system **could not be a merger of competitors**.214

Third, without argument or evidence, the Court required litigants to show market power indirectly in vertical restraints cases by reference to a relevant market, even though superior techniques are available. Direct measures are particularly useful in digital markets, where the necessary data are easy to obtain and product differentiation makes traditional market definition unreliable.215 This was another breach of the boundary between fact and law.

Fourth, the Court misunderstood the economics of free riding, ignoring the fact that when a firm is able to recover the value of its investments through its own transactions, free riding is not a problem.

Fifth, the Court **failed** to perform the kind of **transaction-specific factual analysis** that has become **critical to economically responsible antitrust law**. Rather, it simply assumed, **without examining the actual transactions** before it, that losses on one side of a two-sided market are **inherently offset by gains on the other side**.216 Amex’s antisteering rule produced immediate losses for both the affected cardholder and the affected merchant. The only beneficiary was Amex, the operator of a platform able to shelter itself from competition. That competition, in turn, would have benefitted both cardholders and merchants.

Markets differ from one another.217 This is why we apply mainly antitrust law to **some markets**, regulation to others, and some mixture of the two to yet others. It is also why antitrust is **so fact intensive**, particularly on issues pertaining to market power or competitive effects. Indeed, the **biggest advantage that antitrust has** over legislative regulation is its **fact-driven methodology**. Antitrust courts do and should **avoid speaking categorically** about market situations that are not immediately before them and avoid making cursory conclusions based on inadequate facts. Within the antitrust framework, **there is no reason to think that digital platforms are unicorns** whose rules as a class differ from those governing other firms. Every market has its distinct features, but the ordinary rules of antitrust analysis are **adequate to consider them**. The ***Amex*** decision is a **cautionary tale** about what can happen when a court is so overwhelmed by a market’s idiosyncrasies that it makes **grand pronouncements**, abandoning well-established rules for analyzing markets in the process.

**Dominant platforms stifle innovation via nascent acquisition and exclusion**

**Allensworth**, Professor of Law at Vanderbilt Law School, **‘21**

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

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

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

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

**Scenario 1 is FinTech---**

**Fintech’s disruptive startups have been squashed by large financial institutions**

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

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

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

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

B. Private Sector Institutional Dynamics

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

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

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

Ii. The Competition Shortcomings

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

A. Entry Barriers

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

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

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

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

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

C. International Competitiveness

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

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

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

**Harrell and Rosenberg 19** – Peter E. Harrell is an adjunct senior fellow at the Center for a New American Security; former Deputy Assistant Secretary for Counter Threat Finance and Sanctions at the U.S. State Department. Elizabeth Rosenberg is a senior fellow and director and director of the Energy, Economics, and Security Program at the Center for a New American Security.

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

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

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

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

Maintaining U.S. Leverage

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

**Iran’s an emerging global hub for Bitcoin mining---that obviates the effectiveness of sanctions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Not too bad,” he said.

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

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

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

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

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

**Tracking solves Iranian evasion---US lead key**

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

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

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

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

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

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

Solutions for Sanctions Risks

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

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

**Strong sanctions prevent Iranian nuclear acquisition**

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

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

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

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

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

**Israel preempts Iran prolif---draws in all major powers**

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

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

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

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

**Can’t stay contained---multiple pathways to global nuclear war.**

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

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

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

**Scenario 2 is China---**

**Only nascent fosters transformative tech innovation**

**Hemphill**, Moses H. Grossman Professor of Law, New York University School of Law, **and** **Wu**, Julius Silver Professor of Law, Science and Technology, Columbia Law School, **‘20**

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

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

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

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

**Only nascent innovation enables us to out-compete China—targeted remedies are key**

**Wheeler**, visiting fellow in Governance Studies at The Brookings Institution, Chairman of the Federal Communication Commission (FCC) from 2013 to 2017, **‘20**

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

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

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

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

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

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

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

**Maintaining our innovative lead solves nuclear war**

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

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

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

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

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

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

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

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

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

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

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

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

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

**Plan---**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**1AC---Conduct**

Advantage 2 is Conduct---

**Antitrust agencies will not investigate anticompetitive conduct on platforms – that enables a host of bad practices – centralization, access discrimination, cybersecurity.**

**Stucke** is a co-founder of The Konkurrenz Group and a law professor at the University of Tennessee, **‘18**

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

That influence comes in part from data. Facebook, Google, Amazon, and similar companies are “**data-opolies**.” By that I mean companies that control a key platform which, like a coral reef, attracts to its ecosystem users, sellers, advertisers, software developers, apps, and accessory makers. Apple and Google, for example, each control a popular mobile phone operating system platform (and key apps on that platform), Amazon controls the **largest online merchant platform**, and Facebook controls the largest **social network platform**. Through their leading platforms, a significant volume and variety of personal data flows. The velocity in acquiring and exploiting this personal data can help these companies obtain significant market power.

Is it OK for a few firms to possess so much data and thereby wield so much power? In the U.S., at least, **antitrust officials so far seem ambivalent** about these data-opolies. They’re free, the thinking goes, **so what’s the harm?** But that reasoning is misguided. Data-opolies pose **tremendous risks,** for consumers, workers, competition, and the overall health of our democracy. Here’s why.

Why U.S. Antitrust Isn’t Worried About Data-opolies

The European competition authorities have recently brought actions against four data-opolies: Google, Apple, Facebook, and Amazon (or GAFA for short). The European Commission, for example, fined Google a record €2.42 billion for leveraging its monopoly in search to advance its comparative shopping service. The Commission also preliminarily found Google to have abused its dominant position with both its Android mobile operating system and with AdSense. Facebook, Germany’s competition agency preliminarily found, abused its dominant position “by making the use of its social network conditional on its being allowed to limitlessly amass every kind of data generated by using third-party websites and merge it with the user’s Facebook account.”

We will likely see more fines and other remedies in the next few years from the Europeans. But in the U.S., the data-opolies have largely escaped antitrust scrutiny, under both the Obama and Bush administrations. Notably, while the European Commission found Google’s search bias to be anticompetitive, the U.S. Federal Trade Commission did not. From 2000 onward, the Department of Justice brought only one monopolization case in total, against anyone. (In contrast, the DOJ, between 1970 and 1972, brought 39 civil and 3 criminal cases against monopolies and oligopolies.)

The current head of the DOJ’s Antitrust Division recognized the enforcement gap between the U.S. and Europe. He noted his agency’s “particular concerns in digital markets.” But absent “demonstrable harm to competition and consumers,” the DOJ is “reluctant to impose special duties on digital platforms, out of [its] concern that special duties might stifle the very innovation that has created dynamic competition for the benefit of consumers.”

So, the divergence in antitrust enforcement may reflect differences over these data-opolies’ **perceived harms.** Ordinarily the harm from monopolies are higher prices, less output, or reduced quality. It superficially appears that data-opolies pose little, if any risk, of these harms. Unlike some pharmaceuticals, data-opolies do not charge consumers exorbitant prices. Most of Google’s and Facebook’s consumer products are ostensibly “free.” The data-opolies’ scale can also mean higher quality products. The more people use a particular search engine, the more the search engine’s algorithm can learn users’ preferences, the more relevant the search results will likely be, which in turn will likely attract others to the search engine, and the **positive feedback continues**.

As Robert Bork argued, there “is no coherent case for monopolization because a search engine, like Google, is free to consumers and they can switch to an alternative search engine with a click.”

How Data-opolies Harm

But higher prices are not the only way for powerful companies to **harm their consumers** or the rest of society. Upon closer examination, data-opolies can **pose at least eight potential harms.**

**Lower-quality products** with **less privacy**. Companies, antitrust authorities increasingly recognize, can **compete on privacy and protecting data**. But **without competition**, data-opolies **face less pressure**. They can depress privacy protection below competitive levels and **collect** personal data **above competitive levels**. The collection of too much personal data can be the equivalent of charging an excessive price.

Data-opolies can also fail to disclose what data they collect and how they will use the data. They face little competitive pressure to change their opaque privacy policies. Even if a data-opoly improves its privacy statement, so what? The current notice-and-consent regime is meaningless when there are **no viable competitive alternatives** and the **bargaining power is so unequal.**

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

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

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

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

**Wealth transfer to data-opolies**. Even when their products and services are ostensibly “free,” data-opolies can **extract significant wealth** in **several ways** that they otherwise couldn’t in a competitive market:

First, data-opolies can extract wealth by getting personal data without having to pay for the data’s fair market value. The personal data collected may be worth far more than the cost of providing the “free” service. The fact that the service is “free” does not mean we are fairly compensated for our data. Thus, data-opolies have a strong economic incentive to **maintain the status quo**, in which users, as the MIT Technology Review put it, “have little idea how much personal data they have provided, how it is used, and what it is worth.” If the public knew, and if they had viable alternatives, they might hold out for compensation.

Second, something similar can happen but with the content users create. Data-opolies can extract wealth by getting creative content from users for free. In a competitive market, users could conceivably demand compensation not only for their data but also their contributions to YouTube and Facebook. With no viable alternatives, they cannot.

Third, data-opolies can extract wealth from sellers upstream. One example is when data-opolies scrape valuable content from photographers, authors, musicians, and other websites and post it on their own platform. In this case, the wealth of the data-opolies comes at the expense of other businesses in their value chain.

Fourth, data-opolies can extract our wealth indirectly, when their higher advertising fees are passed along in the prices for the advertised goods and services. If the data-opolies faced more competitors for their advertising services, ads could cost even less — and therefore so might the products being advertised.

Finally, data-opolies can extract wealth from both sellers upstream and consumers downstream by facilitating or engaging in “**behavioral discrimination**,” a form of price discrimination based on past behavior — like, say, your internet browsing. They can use the personal data to get people to buy things they did not necessarily want at the highest price they are willing to pay.

As data-opolies expand their platforms to digital personal assistants, the **Internet of Things**, and **smart technologies**, the concern is that their data advantage will increase their competitive advantage and market power. As a result, the data-opolies’ monopoly profits will likely increase, at our expense.

Loss of trust. Market economies rely on trust. For online markets to deliver their benefits, people must trust firms and their use of the personal data. But as technology evolves and more personal data is collected, we are increasingly aware that a few powerful firms are using our personal information for their own benefit, not ours. When data-opolies degrade privacy protections below competitive levels, some consumers **will choose not “to share their data, to limit their data sharing with companies**, or even to lie when providing information,” as the UK’s Competition and Markets Authority put it. Consumers may forgo the data-opolies’ services, which they otherwise would have used if privacy competition were robust. This loss would represent what economists call a **deadweight welfare loss**. In other words, as distrust increases, society **overall becomes worse off**.

Significant costs on third parties. Additionally, data-opolies that control a key platform, like a mobile phone operating system, can **cheaply exclude rivals** by:

**steering** users and advertisers to their own products and services to the detriment of rival sellers on the platform (and contrary to consumers’ wishes)

**degrading an independent app’s functionality**

**reducing traffic to an independent app** by making it harder to find on its search engine or app store

Data-opolies can also impose costs on companies seeking to protect our privacy interests. My book with Ariel Ezrachi, Virtual Competition, discusses, for example, Google’s kicking the privacy app Disconnect out of its Android app store.

Less innovation in markets dominated by data-opolies. Data-opolies can **chill innovation** with a weapon that earlier monopolies lacked. Allen Grunes and I call it the “now-casting radar.” Our book Big Data and Competition Policy explores how some platforms have a relative advantage in accessing and analyzing data to discern consumer trends well before others. Data-opolies can use their relative advantage to see what products or services are becoming more popular. With their now-casting radar, data-opolies can acquire or **squelch these nascent competitive threats.**

Social and moral concerns. Historically, antitrust has also been concerned with how monopolies can hinder individual autonomy. Data-opolies can also hurt individual autonomy. To start with, they can direct (and limit) opportunities for startups that subsist on their super-platform. This includes third-party sellers that rely on Amazon’s platform to reach consumers, newspapers and journalists that depend on Facebook and Google to reach younger readers, and, as the European Commission’s Google Shopping Case explores, companies that depend on traffic from Google’s search engine.

But the autonomy concerns go beyond the constellation of app developers, sellers, journalists, musicians, writers, photographers, and artists dependent on the data-opoly to reach users. Every individual’s autonomy is at stake. In January, the hedge fund Jana Partners joined the California State Teachers’ Retirement pension fund to demand that Apple do more to address the effects of its devices on children. As The Economist noted, “You know you are in trouble if a Wall Street firm is lecturing you about morality.” The concern is that the data-opolies’ products are purposefully addictive, and thereby eroding individuals’ ability to make free choices.

There is an interesting counterargument that’s worth noting, based on the interplay between monopoly power and competition. On the one hand, in monopolized markets, consumers have fewer competitive options. So, arguably, there is less need to addict them. On the other hand, data-opolies, like Facebook and Google, even without significant rivals, can increase profits by increasing our engagement with their products. So, data-opolies can have an incentive to exploit behavioral biases and imperfect willpower to addict users — whether watching YouTube videos or posting on Instagram.

Political concerns. Economic power often translates into political power. Unlike earlier monopolies, data-opolies, given how they interact with individuals, possess a more powerful tool: namely, the ability to affect the public debate and our perception of right and wrong.

Many people now receive their news from social media platforms. But the news isn’t just passively transmitted. Data-opolies can affect how we feel and think. Facebook, for example, in an “emotional contagion” study, manipulated 689,003 users’ emotions by altering their news feed. Other risks of this sort include:

Bias. In filtering the information we receive based on our preferences, data-opolies can reduce the viewpoints we receive, thereby leading to “echo chambers” and “filter bubbles.”

**Censorship**. Data-opolies, through their platform, can control or block content that users receive, and enforce governmental censorship of political or religious information.

**Manipulation**. Data-opolies can promote stories that further their particular business or political interests, instead of their relevance or quality.

Limiting the Power of Data-opolies

Upon closer examination, data-opolies can actually be more dangerous than traditional monopolies. They can affect not only our wallets but our privacy, autonomy, democracy, and well-being.

Markets dominated by these data-opolies **will not necessarily self-correct**. Network effects, **high switching costs for consumers** (given the lack of data portability and user rights over their data), and weak privacy protection help data-opolies **maintain their dominance.**

**Luckily, global antitrust enforcement can help**. The Reagan administration, in espousing the then-popular Chicago School of economics beliefs, discounted concerns over monopolies. The Supreme Court, relying on faulty economic reasoning, surmised that charging monopoly prices was “an important element of the free market system.” With the rise of a progressive, anti-monopoly New Brandeis School, the pendulum is swinging the other way. Given the emergence of data-opolies, this is a welcomed change.

**Scenario 1 is Breaches---**

**Monopolization leads to monoculture, which increases the risk of massive systemic failure---competition solves.**

**Duan 20** – Director of Technology and Innovation Policy, R Street Institute, Washington, D.C.

Charles Duan, “Of Monopolies and Monocultures: The Intersection of Patents and National Security,” Santa Clara High Technology Law Journal, Vol. 36, Issue 4, Article 5, May 2020, https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1655&context=chtlj

B. Vulnerabilities of “Monocultures”

A second reason why monopoly undermines cybersecurity is that monopoly leads to a “**monoculture**” of single-vendor products, opening the door to **massive systemic failure** in the case of a cyberattack. Computer researchers developed the theory of software monocultures in the early 2000s, in response to the regular phenomenon of computer viruses and other attacks spreading rapidly by exploiting flaws in the dominant operating system at the time, Microsoft Windows.165 Where a computer system such as Windows has a commanding share of users, a virus that **exploits a flaw** in that system can **quickly spread** to infect a **whole interconnected ecosystem**. An operating system monopoly thus **enables fast and easy spread of cyberattacks**, and **better cybersecurity** would be achieved through **greater diversity in online systems**.166 As one research group posited, “a network architecture that **supports a collection of heterogeneous network elements** for the same functional capability offers a **greater possibility of surviving security attacks** as compared to homogeneous networks.”167

There has been considerable study of the theory that computer monocultures are naturally more vulnerable to attacks.168 In one study, computer science researchers reviewed a catalog of 6,340 software vulnerabilities recorded in 2007, to compare whether comparable software would share the same flaws.169 Of the 2,627 vulnerabilities applicable to application software (as opposed to operating systems, web scripts, and other software components), only 29 (1.1%) applied to substitute products from different vendors but providing the same functionality.170 By contrast, different versions of a single software product were found to share vulnerabilities **84.7% of the time**.171 Thus, **software monocultures share exploitable flaws** even when there is some variation in versions across the monoculture; by contrast, **diversity in software** is almost **guaranteed to prevent a single flaw from affecting all users**.

In the case of 5G and wireless mobile communications, a monoculture is an especially concerning possibility. To the extent that systems such as smart city sensors or communication networks are widely deployed in a monoculture fashion, a widespread attack could have devastating consequences, potentially blacking out a region and affecting essential services such as 911.172 A monoculture that is vulnerable to so-called “**rootkits**” or “**backdoors**”—maliciously installed software that enable bad actors to commandeer systems—could also **enable mass surveillance** or **spying** by private hackers or foreign governments.173 The **presence of systems from multiple vendors** would **mitigate** these possibilities.

The monoculture theory is not without critics, but a review of those criticisms shows them to be inapplicable to contemporary communication technologies. Some critics suggest that software diversity imposes unwarranted costs on firms who must forego economies of scale and devise seemingly duplicative yet different setups of computer systems.174 But those concerns largely focus on the situation where a single firm produces and manages heterogeneous systems, concerns that are avoided where heterogeneity arises naturally through competition between two unrelated firms. Critics also argue that technological measures can create “artificial diversity” through automated randomization of software code, so software engineers can purportedly solve monoculture issues and device users need not worry about the issue.175 But even these critics acknowledge that artificial diversity techniques are often insufficient because they must make assumptions about what aspects of the technology are most vulnerable to attack, and they concede that artificial diversity cannot stop attacks involving operation of legitimate software functions in undesirable ways (sending spam emails or deleting document files, for example).176

It is **widely recognized** that a **monoculture is unavoidable** in at least one respect: Most connected devices will need to **conform to technical standards**.177 5G, for example, is a technical standard developed by a private industry consortium called 3GPP.178 A flaw in any such standard would render all mobile devices implementing the standard vulnerable to an identical attack.179 Avoiding these sorts of **systemic flaws** in standards requires **rigorous development**, **analysis**, and **testing of the standard** in the development process, which in turn **requires ensuring that as many firms as possible**, especially firms that share basic American values, are **involved in the development** of those standards.180 Thus, the necessary standardization of information and communication technologies is perhaps the **most important reason** why a **competitive communication technology market** is **essential to cybersecurity** and national security.

**Platform monopoly ensures any breach cascades, collapses society**

Sandra **Matz** is an Assistant Professor of Business at Columbia Business School, 20**18**, Guy Rolnik is a Clinical Associate Professor for Strategic Management at the University of Chicago Booth school of Business, and an editor of ProMarket.org, Moran Cerf is a Professor of Neuroscience and Business at the Kellogg School of Management at Northwestern University, Solutions to the Threats of Digital Monopolies, <https://promarket.org/2018/04/10/solutions-threats-digital-monopolies/>

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

**Goes 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.

**Scenario 2 is Search---**

**Google’s self-preferencing flagrantly violates the Sherman Act---annihilates small firms and forecloses competition.**

**Hanley 7/8** --- Senior Legal Analyst with the Open Markets Institute. His research focuses on the relationship between technology platforms and antitrust. Before joining Open Markets, Daniel honed his legal experience by working for several organizations including the Connecticut Department of Consumer protection by being award a Janet D. Steiger Fellowship in 2017 from the American Bar Association and as a legal intern with the Honorable Vanessa Lynne Bryant of the U.S. District Court for the District of Connecticut.

Daniel, 7/8/21, “How Self-Preferencing Can Violate Section 2 of the Sherman Act,” Competition Policy International, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3868896

With this framing, Google’s conduct exemplifies how a dominant firm can use **self-preferencing to monopolize a market and violate Section 2** of the Sherman Act. Numerous government reports and anecdotal accounts detail the exclusionary effects Google’s conduct has on market participants and consumers.23

Google’s market share in search far exceeds required thresholds for monopoly power under the Sherman Act.24 Multiple comprehensive investigations into the company’s operations found that Google’s market share in search is almost 90 percent.25 Other evidence also shows that Google is an “indispensable medium” and essential for a firm’s success.26 For example, Google is the top referral site for internet traffic; thus, **if a site is not on Google, it is close to not existing at all** on the internet for most consumers.27 Multiple accounts show that the corporation also has monopoly power in several other markets.28

Google has also engaged in “willful acquisition or maintenance of its monopoly” that harms the competitive process. In multiple instances, comprehensive reports show that Google obtained its dominant position by engaging in a surfeit of exclusionary conduct that includes the use of self-preferencing, making hundreds of acquisitions, and imposing many restrictive contracts on third parties rather than as a consequence of a “superior product, business acumen, or historic accident.”29 Specifically, concerning Google’s use of self-preferencing, two cases are particularly illustrative.

In 2011, the Federal Trade Commission investigated Google for self-preferencing its comparison shopping and local shopping sites.30 Google decided to explicitly demote the search rankings of rival sites like Yelp to promote and advantage its own digital properties, such as Google Maps and Google Shopping.31 Google effectively used its **horizontal monopoly** in general search (i.e. Google.com) to extend its market power into **vertical search services** (i.e. restaurant ratings and reviews).

In another instance, starting around 2015, Google wanted to maintain its dominant position in digital images. To do this, Google **changed its search ranking algorithm** and entered into agreements with Shutterstock and Getty Images to supply it with high-quality stock photos. Google’s changes and agreements significantly demoted the search ranking of Dreamstime, a rival stock photo provider. Since Google relegated Dreamstime’s site to the **back pages of its search results**, it effectively made Dreamstime’s site and other similarly situated sites that do not have an agreement with Google **invisible to consumers** and **depriving consumers of an alternative service**.32 Dreamstime even tried to increase their spending by millions of dollars on Google’s advertising platform, hired advertising and search consultants, and implemented a series of changes recommended by Google to improve their search ranking, all to no avail.

Both of these instances provide an adequate basis for a **violation of Section 2 of the Sherman Act**. In both examples, Google used self preferencing derived from its “dominant economic power” to “**foreclose competition**, to gain a competitive advantage, or to destroy a competitor” and harm the competitive process, — as opposed to succeeding on account of “superior service, lower costs, and improved efficiency.”34 Since Google is indispensable to third parties,35 an artificially lower search ranking from self-preferencing can be devastating for a firm’s competitive position. As such, self-preferencing not only leads to substantial foreclosure of a rival site, but it also can raise the costs to dependent firms because a firm may have to either enter into a special deal with Google or pay for advertising on Google’s search platform to ensure they are at a higher search position.36 All of this has the effect of raising a rival’s costs or forcing a dependent firm to operate in a significantly weaker bargaining position as a direct result of the firm’s market power and self-preferencing.

**Google’s actions are similar to those in a previous Supreme Court case** that affirmed a finding of monopolization and a violation of Section 2 of the Sherman Act in 1973.38 Like Google, Otter Tail Power Company was a vertically integrated corporation (in this case, an electrical utility) that had monopoly power in its relevant market.39 Like Google’s search engine, Otter Tail’s electrical generation and distribution infrastructure were not easily replicable by rivals.40 Like Google’s actions toward Dreamstime, Yelp, and others, Otter Tail used its “strategic dominance” and control of its infrastructure to disadvantage and foreclose municipal rivals by refusing to transmit power over its own power lines from generators to municipal utilities to protect its distribution monopoly.

The primary rationale for the Supreme Court’s decision that Otter Tail violated Section 2 of the Sherman Act is because the company “[used its] monopoly power to destroy threatened competition[.]”42 Importantly, the **Court also distinguished Otter Tail’s conduct from fair competition principles** in which firms, including monopolists, succeed through “superior service, lower costs, and improved efficiency” rather than the use of unfair or exclusionary tactics.

In addition to Google’s monopoly power and exclusionary tactics, other aggravating factors increase the likelihood that the corporation is seeking to maintain its monopoly in violation of the Sherman Act. First, similar to other exclusionary monopolization offenses (like exclusive dealing or tying), self-preferencing does not need to be used against every possible competitor or cause full foreclosure of a rival or dependent firm to obtain the desired adverse effect.44 For example, Google does not need to demote the search rankings of every rival vertical search engine or even remove a rival firm like Yelp or Dreamstime from their site entirely. Detailed analysis shows that **less than 1 percent of users clicked on a link on the second page of a Google search result**, and most user clicks are confined to the first few search results.45 Thus, getting demoted even slightly would effectively relegate a site to digital jail. Similar effects exist across other sites like Amazon.46 In fact, selective manipulation, exclusion, or demotion of a site like Yelp or Dreamstime may actually be just as, if not more of, an effective indicator to determine whether a firm is intending to exclude a rival to leverage into a market or attempting to succeed in the marketplace by providing “superior service, lower costs, and improved efficiency.”47 Additionally, excluding individual firms by self-preferencing may also prove to be an easier path to maintain a firm’s dominance.48 As the Supreme Court stated in 1959, violations of the Sherman Act are “not to be tolerated merely because the victim is just one merchant whose business is so small that his destruction makes little difference to the economy. Monopoly can as surely thrive by the elimination of such **small businessmen**, one at a time, as it can by **driving them out in large groups**.

Along similar lines, since self-preferencing needs to be only applied selectively to obtain significant exclusion of a rival or dependent firm, consumers would generally be unable to know or discover that such actions are taking place.50 The founders of Google admitted this and were acutely aware that self-preferencing would also be “very difficult to detect” and have “a **significant effect on the market**.

Second, many technology industries, like internet search, have high barriers to entry and the GAFA corporations have durable and persistent monopoly power.52 In Google’s case, no competitor has meaningfully challenged its dominant position in almost two decades. Such a situation increases the presumption that **antitrust action is warranted**.

Third, self-preferencing facilitates other kinds of predatory and exclusionary behavior condemned by the antitrust laws, including tying.54 Self-preferencing can operate as a form of tying since a company like Google, by preferencing its own services (or the services of other companies) and demoting rivals, encourages users to adopt its products and services together, potentially **locking them in**. Thus, self-preferencing can raise barriers to entry such that a rival service is unfairly inhibited from obtaining a sufficient number of users to be a viable market participant.

Lastly, while benign forms of self-preferencing exist, such as a non-dominant grocery store changing the shelving placement of food items to favor its own in-store brands,56 there are critical differences that distinguish that conduct from Google’s and similarly situated digital giants.57 Unlike an individual grocery store, Google has monopoly power.

Also, as opposed to the physical world, in the digital realm, users confine their searches to the first set of results they are shown. In the digital realm, searching for a particular website or product is a nearly endless process. There will always be more results than a user can review. Thus, in part, there is a “paradox of choice” that exists, and consumers feel that it is not worth their time to endlessly explore options they are presented with.58 As such, users, across multiple technology platforms, confine their search to the first page they are presented with rather than engage in a more scrupulous search as they likely would for a product if they were at a physical retail outlet.59 Thus, self-preferencing in the digital realm can have significant foreclosure effects that are not analogous to physical retailers. All these aggravating factors can **just as easily apply to the conduct or industries of the other digital giants.**

**Erodes local businesses---ending anti-competitive self-preferencing is necessary and sufficient to solve**

Pat **Garofalo 20**, 8-30-2020, "Close to Home: How the Power of Facebook and Google Affects Local Communities," American Economic Liberties Project, https://www.economicliberties.us/our-work/close-to-home-how-the-power-of-facebook-and-google-affects-local-communities/#

**Google Undermines Local Businesses**:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SMEs key to economic strength and quick recovery from decline.**

**Longley 21** --- U.S. government and history expert with over 30 years of experience in municipal government and urban planning.

Robert, 7-26-2021, "How Small Business Drives U.S. Economy," ThoughtCo, https://www.thoughtco.com/how-small-business-drives-economy-3321945

What really drives the U.S. economy? No, it is not war. In fact, it is **small business** -- firms with fewer than 500 employees -- that drives the U.S. economy by **providing jobs for over half of the nation's private workforce**.In 2010, there were 27.9 million small businesses in the United States, compared to 18,500 larger firms with 500 employees or more, according to the U.S. Census Bureau. These and other statistics outlining small business' contribution to the economy are contained in the Small Business Profiles for the States and Territories, 2005 Edition from the Office of Advocacy of the U.S. Small Business Administration (SBA). The SBA Office of Advocacy, the "small business watchdog" of the government, examines the role and status of small business in the economy and independently represents the views of small business to federal government agencies, Congress, and the President of the United States. It is the source for small business statistics presented in user-friendly formats and it funds research into small business issues. "Small business drives the American economy," said Dr. Chad Moutray, Chief Economist for the Office of Advocacy in a press release. "Main Street provides the jobs and spurs our economic growth. American entrepreneurs are creative and productive, and these numbers prove it." Small Businesses Are Job Creators SBA Office of Advocacy-funded data and research shows that small businesses create more than half of the new private non-farm gross domestic product, and they create 60 to 80 percent of the net new jobs. Census Bureau data shows that in 2010, American small businesses accounted for: 99.7% of U.S. employer firms; 64% of net new private-sector jobs; 49.2% of private-sector employment; and 42.9% of private-sector payroll Leading the Way Out of the Recession Small businesses accounted for 64% of the net new jobs created between 1993 and 2011 (or 11.8 million of the 18.5 million net new jobs). **During the recovery** from the great recession, from mid-2009 to 2011, small firms -- led by the larger ones with 20-499 employees -- accounted for **67% of the net new jobs** created nationwide. Do the Unemployed Become Self-Employed? During periods of high unemployment, like the U.S. suffered during the great recession, starting a small business can be just as hard, if not harder than finding a job. However, in March 2011, about 5.5% -- or nearly 1 million self-employed people – had been unemployed the previous year. This figure was up from March 2006 and March 2001, when it was 3.6% and 3.1%, respectively, according to the SBA. Small Businesses Are the Real Innovators Innovation – new ideas and product improvements – is generally measured by the number of patents issued to a firm. Among firms considered “high patenting” firms – those being granted 15 or more patents in a four-year period -- small businesses produce 16 times more patents per employee than large patenting firms, according to the SBA. In addition, SBA research also shows that increasing the number of employees correlates with increased innovation while increasing sales does not.

**Decline cascades---nuclear war**

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

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

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

INTRODUCTION

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

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

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

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

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

METHODOLOGY

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

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

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

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

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

ECONOMY

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

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

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

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

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

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

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

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

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

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

ENVIRONMENTAL

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

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

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

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

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

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

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

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

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

GEOPOLITICAL

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

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

# 2AC

**2AC---Adv 1**

1. **Non-unique—platform monopoly is a structural limit on high-tech innovation**

**Newman**, Associate Professor, University of Miami School of Law, **‘19**

(John, “Antitrust in Digital Markets,” 72 Vand. L. Rev. 1497)

Despite the fact that digital markets frequently exhibit high barriers to entry, skeptics of antitrust enforcement have one card left to play: they portray digital markets as nonetheless being characterized by intense **innovative** rivalry.135 As a result, the argument runs, antitrust would **move too slowly** to correct any problems and is **unnecessary** because the relevant markets will quickly correct themselves.136 Under this view, the lure of monopoly profits will inevitably attract disruptive upstarts seeking to replace dominant incumbents—and monopoly is actually good and desirable because it is necessary to spur technological progress.137 This unorthodox vision traces its roots to Schumpeter’s decades-old invocation of **“creative destruction,”**138 which became a favorite trope among those associated with the Austrian and Chicago schools.139

For empirical support, proponents of this digital creative destruction narrative commonly point to Facebook’s “disruption” of MySpace and Google’s “disruption” of Yahoo.140 Thus, for example, Robert Bork and Gregory Sidak argued that Google should not face antitrust liability because “[i]t surpassed Yahoo, just as Yahoo surpassed others before it.”141 Put another way, if Facebook and Google could supplant their predecessors, they must themselves face the constant risk of disruption—their perch at the top is a precarious one.

Let us pause to revisit these two commonly cited examples of digital disruption. It is true that Facebook supplanted MySpace as the largest social network—in April 2008.142 That was, **to put it rather mildly**, **some time ago**.143 Facebook’s reach **continuously expanded** during the following decade. As of 2018, Facebook, Inc. controlled the three largest mobile social networking apps in the United States144 and boasted a combined user base over **five times larger than that of its nearest rival**.145 With each passing year, the creative-destruction narrative becomes **ever less credible.**

The **Google** example **fares even worse**. Google was already the world’s second most popular search provider **by 2000**.146 That same year, Yahoo (previously the most popular provider) announced that Google would begin serving as the search engine for Yahoo’s web portal,147 effectively making Google the dominant global search provider.148 As with Facebook, Google’s stranglehold over search **only increased with the passage of time**—as of 2018, after nearly two decades of dominance, Google still controlled more than 90% of the global market for general search results.149

The anecdotes of MySpace and Yahoo, still commonly cited by those who argue that digital markets are epicenters of creative destruction,150 **look increasingly creaky with age**. The relevant markets have been characterized not by the “gale” of creative destruction described by Schumpeter, but by entrenched and **unchecked dominance**. It is high time to abandon the “**romantic** but naïve Schumpeterian [**notion**] that giant” monopolists and concentrated oligopolies are necessary for technological progress.151 In fact, **a more sophisticated reading** of Schumpeter suggests that he was not nearly so opposed to government intervention—particularly in the form of **antitrust enforcement**—as his modern-day adherents tend to be.152 An antitrust enterprise that somehow came to view monopoly as good and necessary has rather clearly lost its way.153

Durable market power is the **precise evil** antitrust laws are meant to prevent. Far from being self-correcting, digital markets often **facilitate such power**. This suggests that the orthodox position rests in part **upon a flawed assumption** **about the balance of error costs** in this context. The **societal cost** **from false negatives is substantially higher** than pro-defendant analysts have previously assumed. Normatively, this **militates in favor of an invigorated approach** to digital markets.

1. **Turn—their link is backwards for platforms—defense-friendly regime incentivizes platforms NOT to innovate**

**Newman**, Trial Attorney, U.S. Department of Justice, Antitrust Division, **‘12**

(Jordan, “Anticompetitive Product Design in the New Economy,” 39 Fla. St. U. L. Rev 682)

What all these approaches have in common is that they **place a thumb on the scale in favor of defendants**, at least as compared to the generally used section 2 exclusionary-conduct inquiry,258 essentially a rule-of-reason analysis. The D.C. Circuit in Microsoft III set forth the general method of analysis, complete with allocations of the burden of proof. First, the burden is on the plaintiff to make a prima facie case that the defendant has engaged in monopolistic conduct (properly defined).259 If the plaintiff does so, the burden then shifts to the defendant to show a procompetitive justification for the redesign.260 If the defendant fails to do so, the conduct is exclusionary.261 If, however, the defendant shows some plausible justification, the burden shifts back to the plaintiff to rebut that justification.262 If the plaintiff fails to do so, then the plaintiff must show that the anticompetitive harm outweighs the procompetitive justification.263 The leading treatise takes issue with the last step, at least insofar as it seems to call for courts to engage in “balancing” of close cases—advocating instead a burden-shifting analysis that, while perhaps somewhat less defendant-friendly than the above approaches, calls for “resolv[ing] close cases in favor of the defendant.”264 The various approaches described above, however, end the analysis and dismiss the claim **as soon as the defendant shows any plausible justification** for its behavior. This favorable treatment traditionally accorded to defendants in this area is due largely to the concerns noted above—the fear that, because (1) the markets themselves act as a check on exclusionary product redesigns (making them quite rare) and (2) antitrust courts are generally not competent to second-guess design changes, condemning product redesigns will tend to **unduly stifle innovation**.

Yet, as shown above, **these concerns largely dissipate** in the types of markets under discussion. As to the first, the nature of code-based products and the widespread availability of high-speed Internet access have combined to make the now standard method of redesigning these products—software updates—**a uniquely attractive method of foreclosing rivals.** This is so for three primary reasons: (1) low development and distribution costs,265 (2) **low risk that consumers will reject redesigns**,266 and (3) low losses incurred if these product redesigns fail.267 Additionally, new-economy markets tend to be characterized by **strong positive network externalities**, which may **further incentivize monopolistic behavio**r.268 Given the confluence of these factors, it is much more likely that Ci > Pm – LR in these markets.

And with regard to the second concern, as shown above, the inherent and unique nature of code-based product redesign makes it **uniquely susceptible to antitrust scrutiny**.269 Given that such redesigns are more easily analyzed than traditional, physical product redesigns, it should come as no surprise that firms may be able to offer no justification for their conduct (as occurred in Microsoft III). Alternatively, they may simply settle out of court or enter into consent decrees (as may have occurred in In re Intel). At any rate, the point is that antitrust courts **no longer need to simply throw up their hands** and find for defendants in design-related cases.

Since these concerns largely dissipate in these markets, the need to place a thumb on the scale in favor of defendants—that is, the need for the inquiry to end as soon as the defendant makes any plau sible claim of a procompetitive benefit—**dissipates as well**. And in the formula expressed above, a defendant-friendly approach lowers R by reducing the risk of antitrust liability for engaging in exclusionary, design-related **conduct**. Absent the usual check of market forces, **such an approach even further incentivizes such conduct**. Firms can and **almost certainly do engage in anticompetitive design in these markets**; witness Microsoft’s commingling of code,270 the FTC’s theory in In re Intel, 271 or Apple’s allegedly exclusionary software updates.272 While courts are rightly reluctant to review antitrust challenges to physical product design changes, code-based product markets exhibit unique features that **obviate the need for an overly defendant friendly analysis**.

1. **Turn—legal uncertainty bad for innovation—aff increases predictability**

**Portuese**, director of antitrust and innovation policy at ITIF, adjunct professor of law at the Global Antitrust Institute of George Mason University, **‘21**

(Aurelien, “Principles of Dynamic Antitrust: Competing Through Innovation,” June 14, <https://itif.org/publications/2021/06/14/principles-dynamic-antitrust-competing-through-innovation>)

First, the rule-of-law principles require **enhanced legal certainty** that provides for firms’ dynamic capabilities and **enables firms to engage in the rivalrous process**. Indeed, **legal uncertainties** and **unintelligibility** generate risk**-averse attitudes** that **prevent innovative products** and services from being produced. The legal loopholes and regulatory vagueness constitute the **basis for market uncertainties**. This entrepreneurial risk **prevents more aggressive competition** from taking place and a bolder, innovative culture to emerge. The principles are **pivotal** to the ability of our institutions to create growth. **To generate minimal uncertainty constitutes the fundamental premise on which competition through innovation can thrive.**

Antitrust rules must retain their generalities and principle-based approach in order to be adapted and avoid accusations of being obsolete. Simultaneously, antitrust rules **need a case-by-case application** of the very meaning of these rules. **Therefore, the role of the courts remains crucial.** Nothing can prevent courts from judicially reviewing and elaborating, in an evolutionary process, antitrust enforcement. The dynamic nature of antitrust enforcement also pares down to the beautiful work of the court. **Precedents are not legal constraints**; they are the basis for an evolutionary interpretation of antitrust laws.

1. **Pounder—antitrust policy creates a harsh environment**

**Dashefsky**, Co-Chair of Antitrust & Trade Practices Group, Bass Berry Sims, **‘8/9/21**

(Michael G., “Be Prepared: Aggressive Antitrust Enforcement Is Back,” <https://www.bassberry.com/news/aggressive-antitrust-enforcement-is-back/>)

This summer has seen a **flurry** of **bold antitrust announcements** from the Biden administration. By issuing a **sweeping executive order** calling for numerous changes to antitrust enforcement and by **naming progressive favorites** and prominent Big Tech critics to head the Federal Trade Commission (FTC) and the Antitrust Division of the U.S. Department of Justice (DOJ), President Biden has **signaled** that federal antitrust policy is **entering a new era**.

The FTC has **already begun carrying out its mandate** to reshape antitrust policy. Under the leadership of new Chairwoman Lina Khan, the FTC **has moved quickly** to **eliminate checks** on its antitrust enforcement powers. A majority of the FTC’s commissioners have expressly **disavowed** the agency’s longstanding approaches to policing antitrust violations and have given the new chair **unprecedented authority** over investigations and rulemakings.

**Collectively**, the Biden administration and the FTC **have sent a clear message to the business community**: **aggressive antitrust enforcement is back.** Companies should expect to see an **increase in antitrust investigations**, **stiffer penalties** for violations, more **burdensome merger reviews**, and **new rules** targeting a range of industry practices. In this **environment**, effective antitrust counseling and compliance programs are more important than ever.

**2AC---T**

**We meet—aff creates ex ante rules that make conduct deemed anti-competitive per se illegal**

**Crane**, Assistant Professor, Benjamin N. Cardozo School of Law, **‘07**

(Daniel, “Rules Versus Standards in Antitrust Adjudication,” 64 Wash. & Lee L. Rev. 49)

The solution, though imperfect, **is to use bright-line rules** as immunizing devices for broad swaths of industrial behavior while preserving a role for standards in determining liability for conduct falling outside of the safe harbors created by the rules. For many categories of conduct, such an approach minimizes the cost of configuring the law because **the rule itself supplies a conclusive answer** of no liability or presents a safe harbor that defendants can elect in order to minimize the likelihood of litigation. For example, specifying that a firm cannot be held liable for tying unless it has at least a 50% market share in the tying market would provide a case-dispositive safe harbor that could reduce litigation costs substantially in a large number of tying cases, even though such costs would remain in cases where the defendant's market share exceeded 50%. While it would also save costs to **specify prohibitory rules for cases falling outside the safe harbor** (such as **making tying per se unlawful if the defendant's tying product market share exceeds 50%),** the generalization of such a rule would be vastly overbroad. Bright-line rules are most appropriate in antitrust when used as immunizing devices. Relatively few categories of conduct are unambiguously harmful and can be prohibited in equally categorical terms.

**Expand the scope of its core antitrust laws” requires modifying the applicability of the antitrust laws such that they are applicable to conduct that would otherwise not violate.**

**Kovacic et al. 03** – Professor at George Washington University Law School

William E. Kovacic, Theodore B. Olson, R. Hewitt Pate, Paul D. Clement, Jeffrey A. Lamken, Catherine G. O’Sullivan, Nancy C. Garrison, David Seidman, Brief for the United States and the Federal Trade Commission as Amici Curiae Supporting Petitioner, Verizon Communs. Inc. v. Law Offices of Curtis v. Trinko, 2003 U.S. S. Ct. Briefs LEXIS 513, Supreme Court of the United States, May 2003, LexisNexis

Conversely, the 1996 Act **does not expand the scope of the antitrust laws** to **outlaw conduct that**, but for the 1996 Act, **would not violate the antitrust laws**. Such an expansion of Sherman Act duties would "**modify** \* \* \* **the applicability of** \* \* \* **the antitrust laws**" in contravention of 47 U.S.C. 152 note. Violations of the duties imposed by the 1996 Act are just that--violations of the 1996 Act, subject to the sanctions and penalties imposed by that Act. They do not automatically amount to treble-damages antitrust claims. The courts of appeals are again in accord. Pet. App. 29a; Covad, 299 F.3d at 1283 ("We agree with Goldwasser that merely pleading violations of the 1996 Act alone will not suffice to plead Sherman Act violations."); Goldwasser, 222 F.3d at 400 (It is "both illogical and undesirable to equate a failure to comply with the 1996 Act with a failure to comply with the antitrust laws."); Cavalier Tel. Co., 2003 WL 21153305, at \*11-\*12 (similar).

**2AC---States CP**

1. **CP is a de facto patchwork—majority of states bound by federal precedent**

Richard A. **Duncan** is a partner in the Minneapolis office of Faegre & Benson LLP, **and** Alison K. **Guernsey** is presently a third-year law student at the University of Iowa College of Law and Editor-in-Chief of the Iowa Law Review, 20**08**, Waiting for the Other Shoe to Drop:

Will State Courts Follow Leegin? https://www.faegredrinker.com/webfiles/leegin\_article.pdf

This article explores yet another barrier to widespread adoption of RPM programs, one that is particularly applicable to franchisors seeking to negotiate national account pricing or to establish nationwide minimum pricing: state antitrust laws. Nearly all states have antitrust statutes, and those few that do not have such laws regulate anticompetitive conduct through consumer protection statutes or common law theories. The good news, at least for those who favor uniform national economic regulation, **is that most state courts follow federal antitrust precedent,** either **because of statutory command** or a **decisional preference for uniform operation** of state and federal antitrust laws. However, a significant minority of states feel themselves **relatively unbound** by federal precedent, and even those that do follow federal decisional law generally leave themselves an escape route if federal law varies from state statute or putative state policy goals.

This article reviews the current statutory and decisional law on RPM in the fifty states and the District of Columbia, and offers some predictions on which are likely to continue to prohibit RPM. Because this area of the law is now rapidly changing, it is also foreseeable that state legislatures will attempt to pass new statutes prohibiting RPM in reaction to Leegin. Twenty-five states did just that to permit “indirect purchasers” to sue for monetary damages after the Supreme Court held in Illinois Brick Co. v. Illinois that such purchasers lacked standing to sue under federal antitrust law. 7 Ultimately, Leegin does offer significantly greater leeway to suppliers to regulate their customers’ pricing behavior and for national account pricing programs in particular to flourish. However, during the transition to the post-Leegin world, franchisors must still take care when designing sales and distribution programs to assess the likely response of individual states to restraints on resale prices.

State Levels of Adherence

Most states have antitrust statutes containing provisions **analogous to, or the same as,** Section 1 of **the Sherman Act.** In fact, **only four states**—Arkansas, Vermont, Georgia, and Pennsylvania—do not. 8 Consistent with the manner in which **many state statutes parallel the language of federal antitrust provisions**, the majority of states also **give deference to federal decisional law when interpreting their state antitrust statutes**. There are exceptions for instances in which the state statutory language differs significantly from that of the Sherman Act or when the state legislature has expressed a policy interest at odds with federal precedent.

1. **Rogue state DA—CP creates mass uncertainty that chills all business**

Robert W **Hahn** Is Executive Director of the American Enterprise Institute, Brookings Joint Center, which focuses on antitrust and regulatory policy, **and** Anne **Layne-Farrar** is a Senior Consultant with NERA Economic Consulting, 20**03**, Federalism in Antitrust, 26 Harv. J. L. & Pub. Pol'y 877

When states file antitrust cases **under state statutes** **rather** than under the Clayton or Sherman Acts, the likelihood of inconsistent and **conflicting antitrust precedent is even higher**. As a result, state action affects not only current cases, but can also **affect future firm behavior**. With mergers, the **possibility** of a challenge from **any of the fifty states**, each with its own standard of evaluation, **could prevent companies from even attempting a beneficial transaction**. As Lande points out, "it is confounding enough for antitrust counselors to have to contend with two potential federal enforcement agencies.

**Even if state laws were identical**, the interpretation and application of those laws would differ "since enforcers with divergent philosophies **necessarily** will interpret ambiguous terms differently in various factual contexts." Philosophical differences in approaches to antitrust enforcement are likely to stem from many sources, such as political affiliation, educational training, and personal experience. The National Association of Attorneys General (NAAG) Merger Guidelines for the states **explicitly allow for this**, noting that the general policy can be **supplemented** or varied in light of differing precedents, and "in the exercise of [the AGs'] individual prosecutorial ... discretion." While differing views can be helpful in some areas of law, such as when different states provide a testing ground for new regulations appropriate for federal adoption, this kind of experimentation is likely to be wasteful in the antitrust arena.

1. **CP impliedly preempted—conflicts with federal precedent**

Victoria **Graham**, Bloomberg Law, Ohio Rethinks State Antitrust Laws to Confront Facebook, Google (1), October 17, 20**19**, <https://news.bloomberglaw.com/antitrust/ohio-rethinks-state-antitrust-laws-to-confront-facebook-google>

Ohio Rethinks State Antitrust Laws to Confront Facebook, Google (1)

Ohio legislators are considering whether to rewrite antitrust laws to reflect the growth of **big tech** in the latest sign of growing bipartisan state-level interest in confronting Alphabet Inc.’s Google and Facebook Inc.

Most state antitrust laws **directly mirror U.S. competition law** and Ohio could **only go so far** with antitrust revisions before they **potentially conflict with federal law** or **interfere with how companies do business.**

“Given the global and national footprints for the digital technology companies, **state legislative carve-outs** for the sector could affect **companies’ ability to do commerce across states and regions,**” said Diana Moss, president of the American Antitrust Institute.

States do have some room to maneuver in areas where the U.S. Congress hasn’t expressly enacted legislation, similar to how California enacted its own privacy law in the absence of a federal statute.

“Just because certain conduct is legal under federal law doesn’t mean the state couldn’t outlaw it,” Ralph Breitfeller, of counsel at Kegler, Brown, Hill & Ritter Co. in Columbus, Ohio, said.

State Scrutiny

Ohio lawmakers discussed a possible rethink of the state’s antitrust laws Oct. 17 during a legislative hearing in Cleveland examining the impact of Google and Facebook. The hearing featured several academics and Yelp Inc. executive, Luther Lowe, who has emerged as an outspoken critic of Google’s power to control the internet.

Legislators should consider changing state antitrust laws to allow regulators to assess factors other than price, such how much data one firm controls, when reviewing a merger, Dennis Hirsch, a professor at The Ohio State University Moritz College of Law, said during the hearing.

Current merger analysis, at both the state and federal level, doesn’t factor in data aggregation since it’s mostly concerned on how consumer prices are impacted by a merger.

A second hearing will follow in Cincinnati on Oct. 28.

The probe—the first of its kind by any U.S. state legislature—is led by state Sen. John Eklund, a Republican who represents a district east of Cleveland and practiced competition law for more than 40 years.

Ohio’s Attorney General Dave Yost (R) is among state attorneys general in both parties that have emerged as some of the most vocal critics of big tech’s power. Multi-state investigations into Facebook and Google’s dominant market power have positioned the states as potentially more aggressive enforcers than federal regulators.

At the federal level, Justice Department and Federal Trade Commission officials have been hesitant to call for new antitrust legislation, while Congress contemplates whether modifications need to be made to address the unique challenges of big tech.

The antitrust laws that date back as late as 1890 during the breakup of Standard Oil don’t need major changes since they are flexible enough to deal with new technology changes, such as the rise of Amazon.com Inc. and Apple Inc., most federal enforcers argue.

Yost, who is involved in both a Google and Facebook multi-state antitrust investigation, said during a September press conference that these hearings will “help inform” the state’s investigation and the discovery it conducts into both tech companies.

Ohio has played a pivotal role in shaping the history of U.S. antitrust law.

The nation’s first antitrust legislation which is still the current federal statute that prohibits monopolistic conduct, the Sherman Antitrust Act, was introduced by Senator John Sherman (R-Ohio).

After the Sherman Act’s passage, it was then Ohio’s Attorney General David Watson who first sued Standard Oil, which eventually lead the U.S. Supreme Court to force a breakup of the corporate trust in 1911.

Workarounds

States have to ensure that any new antitrust statutes **don’t directly conflict with existing federal law** **since courts generally strike state laws as invalid if they clash with the federal government,** John Newman, a former attorney at the DOJ’s antitrust division, who is now an antitrust professor at The University of Miami School of Law, said.

1. **Even if the CP results in uniform LAW, patchwork ENFORCEMENT kills solvency**

Robert W **Hahn** Is Executive Director of the American Enterprise Institute, Brookings Joint Center, which focuses on antitrust and regulatory policy, **and** Anne **Layne-Farrar** is a Senior Consultant with NERA Economic Consulting, 20**04**, The Case for Federal Preemption in Antitrust Enforcement, 18 Antitrust 79

State-to-State Conflicts

When states file antitrust cases **under their own statutes**, **rather than** under the Clayton or Sherman Acts, the likelihood the cases will be governed by **Inconsistent** or even **conflicting antitrust precedents** runs high. **Even if state laws were uniform**, with enforcers in each state coming from different backgrounds and holding divergent philosophies, legal Interpretations are **bound to differ**. While diverse views can be helpful in some areas of law-for example, varying state rules can provide a natural test for the efficacy of new regulations at the federal level-this kind of experimentation is likely to be **wasteful in the antitrust arena**.

A Case Study

The problems cataloged above **are not mere theoretical possibilities**, United Stales v. Microsoft provides a real-world example. Throughout the course of the lawsuit, the parties lobbied state attorneys general, federal antitrust authorities, and even the courts ." Thus, California Attorney General Bill Lockyor chose to reject an early settlement attempt, noting that "his resolve was hardened after listening over the weekend to advice from technical technical experts and officials from Microsoft's competitors, such as IBM, AOL Time Warner Inc., Sun Microsystems Inc., and Novell Inc. "24 California subsequently took the lead in continuing the litigation on behalf of the non-settling states and even provided the bulk of the funding."

Comments made by officials at the Justice Department suggest that federal authorities are a much tougher sell for lobbyists. Assistant Attorney General for Antitrust Charles James emphasized his concern over special Interests. "The number of requests for meetings with me immediately after my nomination but before my confirmation became so daunting," he wrote, "that I adopted the posture of refusing to meet personally with any third parties in the Microsoft case. . ."?n While lobbying on Individual antitrust cases certainly occurs at the federal level, the magnitude of Issues and the probability that competing views will neutralize arguments make it far more costly to gain influence.

In addition to **derailing early settlement talks**,;" the states **created uncertainty** that the settlement finally reached by the Department of Justice **would stick**. **Nine states** agreed to settle along with the DOJ, but nine others **proposed a radically different remedy**. Those nine states, which included California and Massachusetts are home of some of Microsoft's most vocal rivals,'6 Not surprisingly, their remedy proposal neatly **dovetailed with the Interests of Microsoft's competitors.**

For example, the states that refused to settle demanded that Microsoft license large amounts of valuable intellectual property for little or no compensation." The Initial effect of weakening the protection of intellectual property after It has been developed Is always positive for consun'ers, who need not compensate the innovator to get the benefit. The long-term effects, however, are decidedly negative, even for consumers: Innovation could decline because firms will have less Incentive to Invest in R&D if they cannot prevent others from using the fruits of their efforts and will not receive any compensation for the expropriation." Under the litigating states' remedy, competitors would have gained access to Microsoft's software code at no cost, but consumers could have suffered In the long term because the disclosure requirements would have left Microsoft with little incentive to improve Windows or many of the company's software applications.

One of the litigating states' requirements would have forced Microsoft to auction off the right to adapt its Office business applications suite to three non Windows operating systems. In return, Microsoft would have received only the one-time auction fees and no royalty payments. As part of the auction, Microsoft would have had to provide the winning bidders with code for any future upgrades to Office, plus access to any Windows source code (the program's "blueprints") at no charge.

Another of the litigating states' proposals would have required Microsoft to release its Web browser software (Internet Explorer and MSN Explorer) under "open source" licenses. To comply, Microsoft would have had to publish the underlying source code, making it available at no charge to all (that is, not just to three winners of the Office auction). Indeed, most of the Intellectual property disclosure rules proposed by the litigating states seemed designed to prevent Microsoft from recouping the value of R&D investments through licensing. Thus, under the states' alternative remedy, technology companies **stood to gain a great deal of Microsoft's Intellectual property at little or no cost**. Still other provisions would have raised Microsoft's costs with **little apparent benefit to consumers.**

**2AC---Agency CP**

**Non-antitrust agency is bad—massive uncertainty and undermines efficient antitrust enforcement**

**Huddleston**, JD, Former Director of Tech and Innovation Policy at AAF, **‘20**

(Jennifer, “Why Technology Should Not Be Regulated Like Finance,” September 30, <https://www.americanactionforum.org/insight/why-technology-should-not-be-regulated-like-finance/>)

Not only have there been calls to mirror regulations from the financial sector in order to change competition policy, a recent paper has proposed **creating a new specialized regulatory agency** to protect consumers and regulate data. As with calls for a Glass-Steagall for tech, this proposal also finds its inspiration in the financial sector, and specifically in the Consumer Financial Protection Bureau (CFPB) created in the wake of the 2008 financial crisis. This paper by former Federal Communications Commission Chairman Tom Wheeler, Phil Verveer, and Gene Kimmelman suggests the creation of a Digital Platform Agency to regulate a number of aspects of current technology **platforms** to promote consumer protection. The authors recognize that antitrust is a limited tool that should not be used to address policy concerns beyond its intended competition purposes. The lessons of the CFPB show, however, **that creating a new agency** to focus on a perceived crisis or focus on a sole industry **may create new problems** and result in **over-regulation** that deters **beneficial uses of data**.

The authors argue that while consumers have benefited from technologies, the current behaviors of Big Tech do not benefit consumers and “there are inadequate public policy tools available to protect consumers and promote competition.” Other advocates for creating such an agency have also pointed to data privacy incidents such as the 2018 Cambridge Analytica scandal as a reason to establish such an agency and take a more interventionalist approach.

**Creating a new agency** is an approach to data regulation taken by European regulators. This approach has **tended to create regulatory burdens** that are **greater for smaller players** and also to raise the **cost of doing business more generally**. More specific regulation on these issues also presumes that consumers’ **prefer the tradeoffs of heightened privacy** and limited data usage and does not allow consumers to **select products that fit their preferences**. For example, as the Center for Data Innovation’s Eline Chivot and Daniel Castro point out, this more regulatory approach and the differences in interpretations among European data protection authorities **could increase costs and deter certain applications** of **algorithms** and **artificial intelligence**. The more aggressive regulatory posture that could come from a new agency **may dissuade innovators from considering new data practices** by signaling the need to seek regulatory approval and **increasing the compliance costs** associated with **pursuing new ideas**.

To be sure, American consumers are not without protection **when harm does occur**. The Federal Trade Commission (**FTC**) has been an engaged enforcer when needed for consumer harms caused by digital platforms such as data breaches or unfair and deceptive practices. While there are reforms that could provide **greater certainty** for consumers, innovators, and regulators (as previously discussed), **the current FTC approach** of mostly responsive actions **balances the tradeoffs involved** in many data issues while still protecting consumers when harm occurs. A new agency would likely **shift this approach**.

**Antitrust paradigm key—letting consumer protection rationale take over destroys decades of predictable law**

**Wright**, JD, PhD, Professor, George Mason University School of Law and Department of Economics, and Inaugural Scholar-in-Residence, FTC Bureau of Competition, **‘12**

(Joshua, “The Antitrust/Consumer Protection Paradox:

Two Policies at War with Each Other,” 121 Yale L.J. 2218)

The new consumer protection policy contemplated by Dodd-Frank combines the insights of behavioral economics and its fundamental assumptions about individually irrational behavior and welfare with the centralization- and incentives-of a powerful administrative agency. While some have recognized the monumental changes that Dodd-Frank portends for consumer protection law, its significant implications for **antitrust** law **have not been fully appreciated**.26 By way of **contrast** with **the near-sudden legislative creation** of the new behavioral **consumer protection law**, the evolution of the Sherman Antitrust Act has been a tale of **measured integration** of neoclassical microeconomic analysis into the vague contours of the Sherman Act. **Antitrust** law has gradually incorporated both theoretical and empirical insights from antitrust economics under the Supreme Court's auspices and through the **case-by-case development** of a common law of antitrust. **There is no serious debate** that the **institutional integration** of economics into antitrust law through the courts **has been a boon for consumers.**

Robert Bork's The Antitrust Paradox famously exposed the then-incoherent, unstable, and unpredictable body of antitrust law pursuing multiple (sometimes conflicting) goals, none with any success. The integration of economics shifted antitrust law from an intellectually embarrassing and socially costly body of law to a broad "consumer welfare prescription."" Indeed, antitrust law has traveled an institutional journey that has resulted in its **deep commitment** not merely to economic analysis generally but specifically to **rational choice microeconomics.**

The antitrust/consumer protection paradox represents a **critical crossroads** for consumer law. While the intellectual and philosophical underpinnings of rational choice and behavioral economics are important components of the rift in consumer law, they do not explain its emergence. Rather, the key to understanding the emerging chasm between antitrust and consumer protection lies in comparative institutional analysis. The **primacy of judicial decisionmaking** and private litigation in the development of antitrust is conducive to a set of economic tools that **narrows the possible set of outcomes**, **reduces uncertainty**, and **improves the quality of decisions**. 9 An important feature of behavioral economics is that it **broadens** rather than reduces **uncertainty** about possible equilibrium outcomes from a given transaction, rule, or business practice. Thus, it is unsurprising that behavioral economics **has not gained traction** in the courts, especially with respect to antitrust.3 o On the other hand, behavioral economics' **lack of predictability** makes it **malleable** and easier to manipulate than its neoclassical relative, which are attractive features for achieving the political ends sought by an administrative agency.

The emerging policy equilibrium is both **unstable** and **untenable** in the long run. It is not only **wildly inefficient** but also causes firms attempting to **avoid liability** from one pillar of consumer law to increase their exposure under another. There can be no peaceful equilibrium coexistence of the "new" consumer protection and the "old" antitrust. There are only two general possibilities for the ultimate resolution of this paradox: **(1)** the successful hostile takeover of "old" antitrust by a "new" **behavioral version** consistent with the "new" consumer protection or (2) **the failure** of behavioral **consumer protection** institutions and reversion to **neoclassical consumer law**. Over the short and perhaps even medium term, the divergence is likely to persist. Indeed, resolution of the internal intellectual conflict within antitrust evolved over decades, not years. The outcome, in terms of both the nature and timing of such a resolution, depends most critically upon a comparative analysis of antitrust and consumer protection institutions

**Doesn’t solve adv 1—only DOJ and FTC have authority over mergers—that’s key to nacent acquisitions, AI, and fintech**

James **Lowe**, Sidley Austin LLP, Relevant Authorities and Legislation, 20**20**, <https://iclg.com/practice-areas/merger-control-laws-and-regulations/usa>

**The principal merger authorities** in the United States are the Federal Trade Commission (**FTC**) and the Antitrust Division of the Department of Justice (**DOJ**). **The agencies share jurisdiction;** and for transactions subject to premerger reporting obligations, the notification must be submitted to both agencies, and both agencies may conduct a preliminary review. Under an interagency clearance agreement, only one of the agencies will open a formal investigation into any particular merger.

**Links to DA—new agencies leech off of existing expert agencies**

**Bannan** is policy counsel at New America’s Open Technology Institute, focusing on platform accountability and privacy, **and** **Gambhir**, New America's Open Technology Institute, **‘21**

(Christine and Raj, “Does Data Privacy Need its Own Agency?” <https://d1y8sb8igg2f8e.cloudfront.net/documents/Does_Data_Privacy_Need_its_Own_Agency.pdf>)

After authorization of the entity and confirmation of leadership, a new independent agency will face **basic hurdles** to set up agency infrastructure and operations that can be mitigated through agency design. A new agency needs office space; internet, email, and phone service; and a complete complement of staff including not only subject matter experts but also everything from human resources to internal information technology specialists. At a prior OTI panel, David Medine, who served as the first chairman of the PCLOB and also previously served as special counsel at the CFPB, argued that a new agency should “**sit on the structure of the old agency** until it’s **ready to separate**.” Medine noted that unlike with the PCLOB, the CFPB staff benefited from being able to **use Treasury Department payroll**, **email**, and website infrastructure before the agency was ready to stand on its own. The Brown DPA is the only DPA proposal to use this model of operating on the Federal Reserve System infrastructure. Therefore, while it is more feasible for an existing agency to begin its enforcement duties, a DPA could avoid initial operational problems that other new agencies have faced if it **utilized an existing agency’s infrastructure**.

**Circumvention—FTC commission structure is durable—new agency proposals are at whims of new admin**

**Bannan** is policy counsel at New America’s Open Technology Institute, focusing on platform accountability and privacy, **and** **Gambhir**, New America's Open Technology Institute, **‘21**

(Christine and Raj, “Does Data Privacy Need its Own Agency?” <https://d1y8sb8igg2f8e.cloudfront.net/documents/Does_Data_Privacy_Need_its_Own_Agency.pdf>)

**All three DPA bills** are based on the original leadership model of the CFPB and therefore must be modified to pass constitutional muster. The bill sponsors can decide to strike the for-cause removal requirements: § 301(c)(3) in EshooLofgren, § 4(c)(3) in Gillibrand, and § 301(c)(3) in Brown. Alternatively, they could revise their bills to adopt a multi-member body similar to the FTC. However, this seems **unlikely** because DPA advocates seek to differentiate their proposed agencies from the FTC, and a **single director model** is a **significant point of distinction**.

There are benefits to both the independence of the FTC and the single-director DPA model. Many federal agencies are led by a single director rather than a commission, including the administrator of the Environmental Protection Agency and the attorney general of the Department of Justice (DOJ). **The tradeoff** to their relative efficiency is **less stability**. The 2018 Sourcebook of United States Executive Agencies published by the Administrative Conference of the United States endorses the multi-member commission structure as the **most stable**. The Conference stated, “**Among the most durable agencies**,” meaning those **least susceptible** to **elimination by hostile administrations**, “are those multi-member bodies located **outside the executive departments** with features such as party-balancing limitations and **fixed terms**.”

**A single-director DPA model** is more likely to experience **dramatic swings in policy** dependent on the president in office, while the **FTC model tends to be more consistent** across administrations. The CFPB underwent **extreme changes** in policy under the Obama and Trump administrations that some attribute to the single-director structure. Some scholars argue, however, that single-director agencies are much more efficient than the alternative and that these ideological swings are simply the result of directors reflecting the partisan inclinations of whichever president they were appointed by. Moreover, data privacy legislation has more bipartisan support than Dodd-Frank did when it was passed and therefore would likely not be as susceptible to the dramatic partisan shifts as the CFPB.

**2AC---PTD CP**

1. **Perm: do the CP---‘should’ isn’t mandatory.**

**Duarte 19**.Development Code of the City of Duarte, California, Municipal Code, “ARTICLE 1 - ENACTMENT, APPLICABILITY, AND ENFORCEMENT”, 1/10/2019, https://library.municode.com/ca/duarte/codes/development\_code?nodeId=ART1ENAPEN\_CH19.02PUAPDECO

B. *Terminology*. When used in this title, the following rules apply to all provisions of this Development Code: 1. *Language*. When used in this Development Code, the words "shall," "must," "will," "is to," and "are to" are always mandatory. "Should" is **not mandatory** but is strongly **recommended**; and "may" is permissive.

**Uncertainty. It introduces a new, unpredictable process over antitrust out of the blue. Best studies prove it wrecks R&D investment.**

**Lin et al. 21** --- School of Law, Southwestern University of Finance and Economics, Chengdu.

Yuchen, Daxin Dong, Jiaxin Wang, “The Negative Impact of Uncertainty on R&D Investment: International Evidence,” International Evidence, Sustainability 2021, 13, 2746. https://doi.org/10.3390/ su13052746

In summary, in this study, we reported a **significantly negative** impact of **uncertainty** on **R&D investment** at the country level. The analyses were based on a sample covering 109 countries from 1996 to 2018. It was also found that uncertainty reduced the number of annual new patent applications. The **adverse impact of uncertainty** on R&D was not only **significant statistically**, but also economically. According to the estimation results, if the uncertainty index rises by one unit (one standard deviation), the scale of **R&D investment** and the number of **patent applications** will decline by **15.6%** (2.1372%) and 22.7% (3.1099%), respectively. Further analyses demonstrated that the effect of uncertainty was not uniform across all countries. In some country groups, the effect was strong and statistically significant. However, in several country groups, the effect was moderate and insignificant. However, we always observed a negative effect. Overall, Hypothesis 1 in our study is verified, and Hypothesis 2 is contradicted.

The study results provided strong support to some previous studies which reported a negative impact of uncertainty on **R&D investment**, including Arif Khan et al. [5], Cho and Lee [11], Czarnitzki and Toole [8], Goel and Ram [12], Ivus and Wajda [1], Jung and Kwak [15], Nan and Han [17], Wang et al. [4], and Xu [20]. The results did not support several studies that reported a positive effect of uncertainty, such as Atanassov et al. [3], Gu et al. [13], Han et al. [14], Jiang and Liu [6], Meng and Shi [16], Ross et al. [9], Stein and Stone [18], Tajaddini and Gholipour [7], and Vo and Le [19]. Our study utilized a **wide sample** of more than 100 countries and examined the country-level aggregate R&D investment. This feature enabled our study to better depict the overall situation in the world, compared to most of the extant studies, which have only focused on the R&D of business corporations within one country.

The findings in this study have important policy implications. First, in order to keep abreast of the R&D investment dynamics, governments and economic agents should pay attention to the degree of uncertainty in the economy. The **negative impact** of uncertainty on R&D is a phenomenon that **widely exists** in different countries over the world, as shown by our analyses on the full sample, as well as various subsamples. If governments can effectively monitor the variations in uncertainty and evaluate the relevant market responses, they will be able to understand the current situation and forecast future tendency of aggregate R&D investment in a better way. Being more informed will facilitate governments to make proper public policies if necessary. After understanding the link between uncertainty and R&D, firms can reasonably expect that other enterprises in the industry will **adjust investment** accordingly when **uncertainty changes**. During the procedure of making their own R&D investment plans, firms should not neglect the potential responses of the competitors and partners to varying uncertainty.

Second, given the **importance of innovation** and **technological advancement** for sustainable economic and social development, it is necessary to reduce the degree of macro uncertainty. Governments should avoid frequent variations of economic policies and the **abrupt implementation of substantial reforms**. The communication and information sharing among governments and private sectors should be reinforced to reduce noises, mitigate misunderstanding, and enhance trust and confidence. Countries should also improve their institutional and economic infrastructure—for example, by reducing frictions in financial markets and strengthening governmental effectiveness—in order to increase the resistibility of economic system to unexpected shocks. In the case that the major origins of the uncertainty can be identified—such as the coronavirus pandemic in the current period—urgent actions should be carried out to deal with the problems

**Eviscerates startups---VC investments are key to every facet of their innovative success.**

**Alvarez-Garrido 20** --- Assistant Professor at the Department of International Business at the University of South Carolina, Darla Moore School of Business.

Elisa, 03-2020, “The impact of VC firms on startup innovation,” Mack Institute, https://mackinstitute.wharton.upenn.edu/wp-content/uploads/2020/03/Alvarez-Garrido-Elisa\_Uncovering-the-Impact-of-Venture-Capital-Firms-on-Startup-Innovation.pdf

Investors may be able to help startups overcome some of the **obstacles** that arise in the innovation process, hence increasing their **chances of success**. Venture capital **(VC) firms** are of particular interest because they have a **significant impact** on economic growth through the financing of **innovative startups** (Gornall and Strebulaev, 2015; Samila and Sorenson, 2011; Timmons and Bygrave, 1986), and their contribution to startups goes well beyond merely financing (e.g., Gorman and Sahlman, 1989; Hellmann and Puri, 2002; Hsu, 2006). Kortum and Lerner (2000) provided the first empirical proof that VC investment was associated with **higher levels of patenting**, after accounting for the entrepreneurial opportunities and technological advancements in each industry. The effect is economically **very significant**: with 3 percent of R&D investment, VC investments amount to 8 percent of patents in the U.S. (Kortum and Lerner, 2000). Samila and Sorenson (2011) further support the impact of VC on innovation. They show that the supply of VC in a region fosters startup patenting not only directly, but also indirectly by **enhancing** the effect of **research grants**. These studies jointly provide empirical proof that VC firms, on average, **foster startup innovation** at an early stage above and **beyond selection**.

**2AC---Politics DA**

**No link – Biden’s not getting involved in negotiations**

**Shear et al 1/20** – White House correspondent and two-time Pulitzer Prize winning reporter.

Michael D. Shear, Zolan Kanno-Youngs, and Katie Rogers, “Biden the Negotiator Confronts the Cold Reality of Capitol Hill Gridlock,” *The New York Times*, 20 January 2022, https://www.nytimes.com/2022/01/20/us/politics/president-biden-senate-house.html.

WASHINGTON — President Biden entered the White House promising to engage with Congress in a way that few presidents ever had, thanks to his three decades as a senator. A year in, with much of his agenda mired in congressional gridlock, Mr. Biden is changing his approach — a stark admission that his approach to governing so far has fallen short.

Mr. **Biden will retreat from** the tangle of **day-to-day negotiations with members of his own party** that have made him seem powerless to advance key priorities, according to senior White House advisers. The change is part of an intentional reset in how he spends his time, aimed at emphasizing his power to govern as president, rather than getting trapped in a series of congressional battles.

**Four internal strategy memos drafted by White House advisers this week lay out the shift** ahead of Mr. Biden’s first State of the Union address to Congress on March 1: The president will ramp up his attacks on Republicans ahead of the midterm election campaigns to help Democratic candidates. He will travel the nation more and engage with voters. And he will focus more on what he has already accomplished than on legislative victories he hopes to achieve.

The president is also planning to use his executive power to help former inmates return to society and reform police departments, after legislation on the latter issue failed to pass last year, according to several White House aides and a person familiar with the plans, all of whom spoke on condition of anonymity to discuss strategy.

“If I made a mistake, I’m used to negotiating to get things done, and I’ve been, in the past, relatively successful at it in the United States Senate, even as vice president,” Mr. Biden said in a news conference on Wednesday. “But I think that role as president — is a different role.”

“**The public doesn’t want me to be the ‘president-senator**,’” Mr. **Biden said. “They want me to be the president and let senators be senators**.”

**It was a striking public admission** for a politician who has been in public life, first as a senator of Delaware and later as vice president, for nearly half a century. For much of his first year as president, Mr. Biden preferred to wax about politics being “the art of the possible,” citing his history of negotiating in the Senate. (On Wednesday, he still could not resist reminding reporters that he had successfully prodded Strom Thurmond, the late Republican senator and segregationist, to sign onto a reauthorization of the Voting Rights Act in 1982.)

Mr. Biden and his advisers say they are not giving up on passage of a scaled-back version of his $2.2 trillion social spending bill, which has been stymied by fierce opposition from Republicans and two senators in his own party. During the news conference on Wednesday, Mr. Biden said he was confident he would be able to pass a package that includes some of its provisions on energy and the environment, but said he needed to focus more on engaging with voters.

One memo to Mr. Biden from Kate Bedingfield, the White House communications director, promised a revamped focus on amplifying the president’s accomplishments, such as the passage of the coronavirus stimulus package, the infrastructure law and the distribution of millions of vaccines. The White House must also focus on achievements that make a difference in people’s lives, like jobs created through the stimulus and infrastructure packages, according to the memo.

The president’s advisers are skeptical of recent suggestions from some progressive lawmakers that Mr. Biden should issue a series of sweeping executive orders and actions to simply put in place his stalled social policy legislation through administrative means. White House officials have said that the president does not have the authority for those provisions, several said.

But they said the new strategy envisions the use of executive actions when possible to show that Mr. Biden is confronting issues facing the United States. They pointed to his recent purchase of 1 billion Covid tests in response to shortages as an example of the kind of presidential actions that will be a centerpiece of his efforts.

“You’re going to see President Biden remind Americans in the coming weeks why they voted for him, for his decency, humility, and empathy,” said Senator Chris Coons, Democrat of Delaware and a close confidant of Mr. Biden’s. He said Mr. Biden needs to get away from Washington, where he has been bogged down with a handful of lawmakers, and meet with real Americans to show he understands their struggles.

**The reset is a response to growing anxiety** inside and outside the White House about the administration’s political trajectory and the perception **that** Mr. **Biden’s presidency has been hijacked by** moderate Democratic senators like Joe **Manchin** III of West Virginia **and** Kyrsten **Sinema** of Arizona as well as progressives like Representative Alexandria Ocasio-Cortez, Democrat of New York, and Senator Bernie Sanders, independent of Vermont.

**Anti-monopoly action is bipartisan**

Christopher **Cadelago** **and** Meridith **Mcgraw**, Politico, ‘It’s ceding a lot of terrain to us’: Biden goes populist with little pushback, 7/19/**21**, <https://www.politico.com/news/2021/07/19/biden-populist-antimonopoly-500100>

“If you're against competition, then what are you for?” said Bharat Ramamurti, deputy director of the National Economic Council. “Big business charging people whatever they want. You’re for businesses being able to offer workers low wages because there's no other competitor in town to offer something better. I mean, **it's very hard to be against competition**.”

The right’s muted response to Biden’s orders underscores the **remarkable ideological shift** that’s occurring in Washington, D.C. A Republican Party once closely allied with corporate America finds itself increasingly less so in the Donald Trump era. Indeed, in the aftermath of Biden’s orders, even officials in Trump’s orbit were saying **the politics were smart.**

“Both [Biden and Trump] have elements in their constituencies that want this, and, by the way, they’re on solid ground with the rest of America,” said a Trump adviser. “America has a love-hate relationship with these companies.”

But, so far, much of the GOP’s newfound economic populism has been delivered in words rather than action. And that’s given Democrats **space to pursue an agenda** that, even just **five years ago**, likely **would have sparked massive blowback**.

“People will understand who's on their side and who's not,” said Cedric Richmond, a senior White House adviser and director of the Office of Public Engagement. “There will be Democrats who are on the side of working families, and not Republicans. For them, I think it's a terrible mistake.”

The executive order Biden issued earlier this month included 72 initiatives in all. Among the most consequential were his moves calling for greater scrutiny of tech acquisitions, bolstering competition for generic drug makers and importers from Canada, allowing hearing aids to be sold over the counter, standardizing plans for health care shoppers trying to compare insurance options, and protecting certain meat-packing workers from what are seen as artificially low wages.

It was another prong in what economic observers view as an increasingly populist White House agenda. Earlier, Biden had stated his commitment to waiving intellectual property rights for Covid-19 vaccines and nominated Amazon critic and anti-monopoly advocate Lina Khan to chair the Federal Trade Commission.

Some of Biden’s actions came on issues that **already had Republican support**, including the effort to bring down the price of hearing aids, discouraging agricultural consolidation and limiting so-called noncompete agreements that harm U.S. workers, among others. **Twenty-one Republicans backed Khan’s nomination.**

The **cross-partisan appeal around anti-monopoly policies** traces back **even further**. During the 2016 election, Trump ran on promises to combat big mergers and take on massive corporations that he said posed a “huge antitrust problem.” Following Trump’s loss, Sen. Josh Hawley (R-Mo.) and Rep. Ken Buck (R-Colo.) have called for sweeping antitrust reform in Congress that at times **echoes Democratic efforts**. Fox News’ Tucker Carlson, one of the most influential voices to the right, cheered the choice of Khan to lead the FTC.

**Lujan stroke thumps Congressional shocks**

**DeBonis 2/2** – Congressional reporter covering the House of Representatives.

Mike DeBonis, “Sen. Ben Ray Luján’s stroke shows the fragility of Democrats’ Senate majority,” *The Washington Post*, 2 February 2022, https://www.washingtonpost.com/politics/2022/02/02/sen-ben-ray-lujns-stroke-shows-fragility-democrats-senate-majority.

**Luján is “expected to make a full recovery**,” the statement said. A Luján aide who spoke on the condition of anonymity to describe the senator’s medical condition said he could return to work in Washington **in four to six weeks if his recovery goes as doctors expect.**

**Russia won’t risk war**

**Carpenter, 18** – senior fellow in defense and foreign policy studies at the Cato Institute and a contributing editor at the National Interest (Ted Galen Carpenter, "Russia Is Not the Soviet Union," *National Interest*, 7-28-2018, https://nationalinterest.org/feature/russia-not-soviet-union-27041?page=0%2C1)

The problem with citing such examples is that they **applied to a different country**: the Soviet Union. Too many Americans act as though there is no meaningful difference between that entity and Russia. Worse still, U.S. leaders have embraced the same kind of uncompromising, hostile policies that Washington pursued to contain Soviet power. It is a major blunder that has increasingly poisoned relations with Moscow since the demise of the Union of Soviet Socialist Republics (USSR) at the end of 1991.

One obvious difference between the Soviet Union and Russia is that the Soviet governing elite embraced Marxism-Leninism and its objective of world revolution. Today’s **Russia is not a messianic power**. Its economic system is a rather mundane variety of corrupt crony capitalism, **not rigid state socialism**. The political system is a conservative autocracy with aspects of a rigged democracy, **not a one-party dictatorship** that brooks no dissent whatsoever.

Russia is hardly a Western-style democracy, but neither is it a continuation of the Soviet Union’s horrifically brutal totalitarianism. Indeed, the country’s political and social philosophy is **quite different** from that of its predecessor. For example, the Orthodox Church had no meaningful influence during the Soviet era—something that was unsurprising, given communism’s official policy of atheism. But today, the Orthodox Church has a considerable influence in Putin’s Russia, especially on social issues.

The bottom line is that Russia is a **conventional**, somewhat **conservative**, power, whereas the Soviet Union was a messianic, totalitarian power. That’s a rather large and significant difference, and U.S. policy needs to reflect that realization.

An equally crucial difference is that the Soviet Union was a global power (and, for a time, arguably a superpower) with global ambitions and capabilities to match. It controlled an empire in Eastern Europe and cultivated allies and clients around the world, including in such far-flung places as Cuba, Vietnam, and Angola. The USSR also intensely contested the United States for influence in all of those areas. Conversely, Russia is merely a regional power with very limited extra-regional reach. The Kremlin’s ambitions are focused heavily on the near abroad, aimed at trying to block the eastward creep of the North Atlantic Treaty Organization (NATO) and the U.S.-led intrusion into Russia’s core security zone. The orientation seems far more defensive than offensive.

It would be **difficult** for Russia to execute anything more than a very **geographically limited expansionist agenda**, even if it has one. The Soviet Union was the world’s number two economic power, second only to the United States. Russia has an economy roughly the size of Canada’s and is no longer ranked even in the global top ten . It also has **only three-quarters** of the Soviet Union’s territory (much of which is nearly-empty Siberia) and barely **half the population** of the old USSR. If that were not enough, that **population is shrinking** and is **afflicted with an assortment of public health problems** (especially rampant alcoholism).

All of these factors should make it evident that **Russia is not a credible rival**, **much less an existential threat**, to the United States and its democratic system . Russia's power is a pale shadow of the Soviet Union's. The only undiminished source of clout is the country's sizeable nuclear arsenal. But while nuclear weapons are the ultimate deterrent, they are **not very useful for power projection** or warfighting, unless the political leadership wants to **risk national suicide**. And there is **no evidence** whatsoever that Putin and his oligarch backers are suicidal. Quite the contrary, they seem **wedded to accumulating ever greater wealth** and perks.

**2AC---BizCon DA**

1. **No link to our mechanism—only applies to dominant firms and avoids blunt overdeterrent proposals**

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

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

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

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

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

1. **“Tough talk” sufficient to trigger the link**

Andrew Ross **Sorkin**, Biden’s Antitrust Team Talks Its Way to a Win, 7/27/**21**, https://www.nytimes.com/2021/07/27/business/dealbook/aon-deals-antitrust.html

Tough talk on antitrust

In the Biden administration’s first major antitrust action, the government scored a victory **simply by showing a willingness to fight**. Aon called off its proposed $30 billion **takeover** of the rival insurer Willis Towers Watson yesterday, **citing delays stemming from a lawsuit** brought just over a month ago by the Justice Department to block the deal, which was first announced in March last year.

“This is a victory for competition and for American businesses,” Attorney General Merrick Garland said in a statement after the deal was scrapped. The government argued that merging two of the three biggest insurance brokers would “likely lead to higher prices and less innovation.” The companies countered that the government didn’t understand their businesses.

“**We reached an impasse**,” Greg Case, Aon’s C.E.O., said in a statement. Aon had angled for a summer trial while the Justice Department suggested winter next year. The judge set a November date, but warned of delays; Aon decided that instead of digging in, **it would pay a $1 billion termination fee to Willis and move on**.

**Tough talk can make big deals less appealing**, former antitrust officials told DealBook. “The **risk** and **time delays of a merger challenge** often cause the parties to abandon a deal,”

said Doug Melamed, a Stanford law professor and former acting chief of the Justice Department’s antitrust division. President Biden’s pledge to rein in corporate power with more aggressive antitrust enforcement efforts, backed by a team of Big Tech critics, is **limited by existing laws**. **Aon’s move highlights how trustbusters can have their way by other means**.

# 1AR

### 1AR---Adv 1

#### Regs drive clarity and predictability

Chopra, Commissioner, Federal Trade Commission, and Khan, FTC Chair, Academic Fellow, Columbia Law School; Counsel, Subcommittee on Antitrust, ‘20

(Rohit and Lina, “The Case for “Unfair Methods of Competition” Rulemaking,” 87 U. Chi. L. Rev. 357)

First, rulemaking would enable the Commission to issue clear rules to give market participants sufficient notice about what the law is, helping ensure that enforcement is predictable.43 The APA requires agencies engaging in rulemaking to provide the public with adequate notice of a proposed rule. The notice must include the substance of the rule, the legal authority under which the agency has proposed the rule, and the date the rule will come into effect.44 An agency must publish the final rule in the Federal Register at least thirty days before the rule becomes effective.45 These procedural requirements promote clear rules and provide clear notice. As the Supreme Court has stated, a “fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.”46 Clear rules also help deliver consistent enforcement and predictable results. Reducing ambiguity about what the law is will enable market participants to channel their resources and behavior more productively and will allow market entrants and entrepreneurs to compete on more of a level playing field.

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

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

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

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

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

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

### 1AR---States CP

**CP is vast over-deterrence that causes companies to abandon transactions—primary federal enforcement better**

**Lande**, Associate Professor, University of Baltimore School of Law, **‘90**

(Robert H., “When Should States Challenge Mergers: A Proposed Federal/State Balance,” 35 N. Y. L. Sch. L. Rev. 1047)

Further, it is **confounding enough** for antitrust counselors to have to contend with two potential federal enforcement agencies. Since both the Assistant U.S. Attorney General and the Chair of the FTC are selected by the President, 63 however, their approaches are in practice similar, if not identical. 64 Experienced merger counselors can **provide relatively certain advice** to their clients **as to what the federal enforcers are likely to do** by closely monitoring both agencies.65

**It is immensely more difficult** to actively monitor the enforcement philosophies of **fifty state attorneys general,** many of whom have **little track record** in the merger area (and some of whom bring few antitrust cases of any type).66 The state attorneys general come from both political parties and can have **widely differing enforcement philosophies**.67 The states have agreed upon a **common substantive standard** to be used in evaluating mergers-the NAAG Merger Guidelines.68 No set of guidelines with fifty different potential enforcers **can offer anything close to predictability**, however, since enforcers with divergent philosophies necessarily will interpret ambiguous terms **differently in various factual contexts**. In the extreme, business would be forced "to **limit its activities to the levels set by the most restrictive state interpretation of federal antitrust law**.,,70 The **additional uncertainty** from **fifty potential state reviews**, along with the **inevitable** accompanying **delays and costs**,71 could cause many beneficial transactions **never to be attempted.** These uncertainties and costs are an increment to the transaction costs already arising from federal review, which by itself may **deter significant beneficial transactions**.72

### 1AR---Ptx DA

**Presidential leadership’s irrelevant**

**Dickinson 9** professor of political science at Middlebury College (Matthew, “Sotomayor, Obama and Presidential Power,” May 26, 2009 Presidential Power http://blogs.middlebury.edu/presidentialpower/2009/05/26/sotamayor-obama-and-presidential-power/]

What is of more interest to me, however, is what her selection reveals about the basis of presidential power. Political scientists, like baseball writers evaluating hitters, have devised numerous means of measuring a president’s influence in Congress. I will devote a separate post to discussing these, but in brief, they often center on the creation of legislative “box scores” designed to measure how many times a president’s preferred piece of legislation, or nominee to the executive branch or the courts, is approved by Congress. That is, how many pieces of legislation that the president supports actually pass Congress? How often do members of Congress vote with the president’s preferences? How often is a president’s policy position supported by roll call outcomes? These measures, however, are a misleading gauge of presidential power – they are a better indicator of congressional power. This is because how members of Congress vote on a nominee or legislative item is rarely influenced by anything a president does. Although journalists (and political scientists) often focus on the legislative “endgame” to gauge presidential influence – will the President swing enough votes to get his preferred legislation enacted? – this mistakes an outcome with actual evidence of presidential influence. Once we control for other factors – a member of Congress’ ideological and partisan leanings, the political leanings of her constituency, whether she’s up for reelection or not – we can usually predict how she will vote without needing to know much of anything about what the president wants. (I am ignoring the importance of a president’s veto power for the moment.) Despite the much publicized and celebrated instances of presidential arm-twisting during the legislative endgame, then, most legislative outcomes don’t depend on presidential lobbying. But this is not to say that presidents lack influence. Instead, the primary means by which presidents influence what Congress does is through their ability to determine the alternatives from which Congress must choose. That is, presidential power is largely an exercise in agenda-setting – not arm-twisting. And we see this in the Sotomayer nomination. Barring a major scandal, she will almost certainly be confirmed to the Supreme Court whether Obama spends the confirmation hearings calling every Senator or instead spends the next few weeks ignoring the Senate debate in order to play Halo III on his Xbox. That is, how senators decide to vote on Sotomayor will have almost nothing to do with Obama’s lobbying from here on in (or lack thereof). His real influence has already occurred, in the decision to present Sotomayor as his nominee. If we want to measure Obama’s “power”, then, we need to know what his real preference was and why he chose Sotomayor. My guess – and it is only a guess – is that after conferring with leading Democrats and Republicans, he recognized the overriding practical political advantages accruing from choosing an Hispanic woman, with left-leaning credentials. We cannot know if this would have been his ideal choice based on judicial philosophy alone, but presidents are never free to act on their ideal preferences. Politics is the art of the possible. Whether Sotomayer is his first choice or not, however, her nomination is a reminder that the power of the presidency often resides in the president’s ability to dictate the alternatives from which Congress (or in this case the Senate) must choose. Although Republicans will undoubtedly attack Sotomayor for her judicial “activism” (citing in particular her decisions regarding promotion and affirmative action), her comments regarding the importance of gender and ethnicity in influencing her decisions, and her views regarding whether appellate courts “make” policy, they run the risk of alienating Hispanic voters – an increasingly influential voting bloc (to the extent that one can view Hispanics as a voting bloc!) I find it very hard to believe she will not be easily confirmed. In structuring the alternative before the Senate in this manner, then, Obama reveals an important aspect of presidential power that cannot be measured through legislative boxscores.

**NATO solves it.**

Alan **Dowd 20** --- Contributing editor with Providence and a senior fellow with the Sagamore Institute

[Published: 3-11-2020, "NATO is Finally Waking Up, Trying to Deter Russia." Providence. Accessible: https://providencemag.com/2020/03/nato-finally-waking-deter-russia/]

After years of [crossing their fingers and hoping for the best](https://www.brookings.edu/blog/order-from-chaos/2018/03/05/dont-rehabilitate-obama-on-russia/), **NATO** nations are **rebuilding their military capabilities**, preparing for **worst-case scenarios**, and **posturing the alliance for deterrence**. Exercise Defender Europe 20, which [gets underway in the coming days](https://www.eur.army.mil/Newsroom/Releases-Advisories/Press-Releases-Article-View/Article/1981905/defender-europe-20-builds-useucom-strategic-readiness-in-support-of-the-nationa/), is just the latest evidence that NATO is returning to its core mission of deterrence.

[Defender Europe 20](https://www.eur.army.mil/Portals/19/documents/DEFENDEREurope/DEFENDEREurope20Factsheet200224.pdf)—NATO’s **largest exercise in a quarter-century**—enfolds 20,000 US troops, 17,000 troops from other NATO and partner nations, 20,000 pieces of equipment from the US, and military units from **18 nations**. Led by the US Army, the exercise will see units land at 14 airbases and seaports, move along 12 convoy routes, and operate across 10 countries. The exercise involves parachute assaults, large-unit water crossings, and live-fire war games. Defender Europe 20 aims to test and demonstrate the ability to move heavy assets from US bases to ports and bases in Europe. That’s where the US Navy comes into play. For the first time since 1986, the Navy will test its ability to conduct “a contested cross-Atlantic convoy operation,” according to the [US Naval Institute](https://news.usni.org/2020/02/28/navy-drills-atlantic-convoy-ops-for-first-time-since-cold-war-in-defender-europe-20).

In short, Defender Europe 20 is “**a very big deal**,” in the words of Lt. Gen. Chris Cavoli, commander of US Army-Europe.

Russia

While NATO increased the number of military exercises in recent years, the alliance’s exercises are smaller in number and scale than Russia’s, as the [Atlantic Council](https://www.atlanticcouncil.org/blogs/natosource/the-nato-russia-exercise-gap/) details. A 2018 Russian exercise, for example, involved 300,000 personnel. A 2019 Russian exercise featured 130,000 troops, 20,000 vehicles, and 600 aircraft.

That brings us to the reason for Defender Europe 20 specifically—and NATO’s renewed commitment to deterrence generally.

Before its invasion of Ukraine and annexation of Crimea, Vladimir Putin’s Russia **grew more aggressive** even as NATO grew **less concerned** about deterrence. Recall that before the Ukraine crisis, the alliance carved out a special [Russian place within NATO headquarters](https://www.nato.int/cps/en/natohq/topics_50091.htm), slashed defense spending, and **pulled back deterrent assets** across Europe. In 2013, for instance, the Obama administration withdrew every [American main battle tank](https://www.stripes.com/news/us-army-s-last-tanks-depart-from-germany-1.214977) from Europe—so for the first time since 1944, Europe was left unprotected by American armor. That same year, [Britain](https://web.archive.org/web/20130308092831/http:/news.sky.com/story/1060076/british-army-bases-in-germany-to-shut-by-2019) announced it would close its garrison in Germany, pulling thousands of combat troops out of mainland Europe. All the while, Germany busily beat its swords into plowshares: during the Cold War, West Germany deployed 2,125 tanks; by 2014, the country had fewer than 300.

Yet even as NATO turned the page on Cold War hostility, Putin waged a crippling cyberwar against NATO member Estonia; invaded and dismembered NATO aspirants Georgia and Ukraine; violated the Intermediate-Range Nuclear Forces (INF) Treaty; reactivated the First Guards Tank Army, a 500-tank force based in western Russia; conducted scores of provocative “snap” military exercises near NATO territory; hacked the [US political system](https://www.washingtonpost.com/world/national-security/russian-government-hackers-penetrated-dnc-stole-opposition-research-on-trump/2016/06/14/cf006cb4-316e-11e6-8ff7-7b6c1998b7a0_story.html); mused about using [nuclear weapons](https://www.brookings.edu/opinions/pay-attention-america-russia-is-upgrading-its-military/) to somehow de-escalate a conventional war; unveiled a military [doctrine](http://www.defensenews.com/story/defense/policy-budget/policy/2015/01/10/russia-military-doctrine-ukraine-putin/21441759/) pledging to use Russia’s military “to ensure the protection of its citizens outside the Russian Federation”; increased military outlays by 125 percent; shipped arms to the [Taliban](https://www.washingtonpost.com/news/checkpoint/wp/2017/04/24/russia-is-sending-weapons-to-taliban-top-u-s-general-confirms/); and engaged in “a massive military buildup from the Arctic to the Mediterranean,” as NATO Secretary-General Jens [Stoltenberg](https://www.nato.int/cps/en/natohq/opinions_158078.htm?selectedLocale=en) explains.

Russia’s air force has revived the dangerous Cold War-era practice of [buzzing](https://www.cnn.com/2017/10/31/politics/us-jets-escort-russian-bombers-uss-ronald-reagan/index.html) NATO warships. Russia’s army is menacing the Baltics and Poland. Russia’s navy has annexed the Sea of Azov, gained a strategic foothold in the Mediterranean (courtesy of Syria), slipped [warships](https://www.independent.co.uk/news/uk/home-news/russian-warship-english-channel-british-navy-monitoring-a8502516.html) into the English Channel for provocative sail-throughs, and returned to the Atlantic with gusto. Pentagon officials say Russian submarine activity in the [North Atlantic](https://providencemag.com/2020/03/nato-finally-waking-deter-russia/North%20Atlantic) is “more than we’ve seen in 25 years.”

To be sure, Putin’s military is a shell of the Red Army. But it pays to recall that his **military buildup** and outright aggression occurred as NATO members slashed military spending, **deemphasized** their [**all-for-one collective defense commitments**](http://407u4flpk751yvorj2prtwot-wpengine.netdna-ssl.com/wp-content/uploads/Alan-Dowd-NATO-Takes-the-Fifth.pdf), and “hugged the bear,” in the words of former NATO commander Gen. Philip Breedlove.

Putin, like history’s other revisionist autocrats, tries to justify his actions by contriving external causes and claiming the high road of self-defense. He cites NATO’s eastward expansion to explain Russia’s bellicose turn. The problem with Putin’s version of history is that it doesn’t correspond with reality. As the Brookings Institution’s Steven Pifer [details](http://www.brookings.edu/blogs/up-front/posts/2014/11/06-nato-no-promise-enlarge-gorbachev-pifer), Mikhail Gorbachev “made clear there was no promise regarding broader enlargement” as the Cold War thawed. [Gorbachev himself](http://www.nato.int/cps/eu/natohq/topics_111767.htm) conceded, “The topic of NATO expansion was not discussed at all.”

The alliance didn’t double-cross its way to the Russian border. Instead, NATO grew through a transparent process that allowed East European nations to pursue membership on their own volition—and encouraged the sort of political reforms that actually diminished tensions with post-Soviet, post-authoritarian Russia. But Putin won’t be confused by the facts—and Putin’s Russia has reverted to authoritarianism.

Allied Response

**Reawakened** to the dangers on its eastern flank, NATO members are **revitalizing the alliance**.

For years, both the Trump and Obama administrations pleaded with NATO allies to invest more in defense. The message is finally getting through. By 2024, **two-thirds of the alliance** will invest **2 percent of GDP** on defense, as NATO has called for since 2006. Last year marked the fifth consecutive year of increased defense spending in Europe and Canada. The alliance’s European members have added [**109,000 troops**](https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2019_06/20190625_PR2019-069-EN.pdf)**to their ranks** since 2015. By the end of 2020, Stoltenberg reports, NATO’s European and Canadian members “will add $100 billion extra toward defense.”

NATO members have **tripled the size** of their **rapid-response force** (to 40,000 troops); approved a US proposal to develop capabilities to deploy 30 troop battalions, 30 squadrons of aircraft, and 30 warships to any European crisis zone within 30 days of a go order; and launched a new [Rapid Air Mobility](https://www.nato.int/cps/en/natohq/news_162475.htm) program, which grants NATO aircraft priority to move across European airspace.

Britain is standing up a **Littoral Strike Group** based in the Mediterranean-Atlantic.

Germany, Britain, and Canada are spearheading NATO’s forward-deployed battlegroups in the Baltics.

Croatia, Hungary, Slovakia, and Slovenia are establishing a [Regional Special Operations Component Command](https://www.nato.int/cps/en/natohq/news_169958.htm) to coordinate, train, and jointly deploy commando units—and posture the alliance to detect and defend against Russia’s hybrid warfare tactics.

Germany recently signed an agreement with the US that will lead to “an **unprecedented level of interoperability**,” according to DefenseNews, with German brigades deploying under operational control of the US Army.

Troops from Canada, Denmark, Great Britain, Lithuania, and Poland have joined US troops in Ukraine for a long-term [mission](https://www.nationalguard.mil/News/Article/2036319/red-arrow-soldiers-in-ukraine-for-multinational-mission/) aimed at **rebuilding Ukraine’s army**.

Poland, which already hosts US troops on a rotating basis, has pledged $2 billion to build a permanent US base on Polish soil.

That brings us to the United States, the political-military lynchpin of the alliance.

After Russia’s invasion of Ukraine, President Barack Obama [quadrupled](https://obamawhitehouse.archives.gov/the-press-office/2016/02/02/fact-sheet-fy2017-european-reassurance-initiative-budget-request) funding for the defense of NATO’s East European members.

Although his comments about NATO have often been counterproductive (see [here](https://www.washingtonpost.com/world/national-security/trump-says-us-wont-rush-to-defend-nato-countries-if-they-dont-spend-more-on-military/2016/07/21/76c48430-4f51-11e6-a7d8-13d06b37f256_story.html), [here](https://www.cnn.com/2019/01/15/politics/trump-nato-us-withdraw/index.html), and [here](https://www.politico.com/magazine/story/2017/06/06/trump-nato-speech-27-words-commitment-215231)), President Donald Trump’s **actions vis-à-vis NATO** speak **louder than his words**.

Trump [**tripled**](https://www.npr.org/2019/12/03/784444270/under-trump-nato-nations-get-more-u-s-troops-and-military-spending)**Obama’s funding levels** for what’s now known as the European Deterrence Initiative; reactivated the Navy’s [Second Fleet](https://www.navy.mil/submit/display.asp?story_id=63027) (which was deactivated in 2011, after defending the Atlantic and supporting NATO throughout the Cold War); re-established the Army’s Germany-based [V Corps](https://www.wsj.com/articles/army-reformulating-v-corps-to-bulk-up-in-europe-11581458468) (which was deactivated in 2012, after decades defending Europe); authorized construction of or **upgrades to**[**bases**](https://www.defensenews.com/smr/nato-priorities/2018/06/25/poking-the-bear-us-air-force-builds-in-russias-backyard/?utm_source=RC+Defense+Morning+Recon&utm_campaign=0b9b0a7072-EMAIL_CAMPAIGN_2018_06_25_04_16&utm_medium=email&utm_term=0_694f73a8dc-0b9b0a7072-81835633) in Iceland, Luxembourg, Norway, Slovakia, Hungary, Romania, Latvia, and Estonia; shipped weapons to Ukraine; and **expanded NATO** ([Montenegro](https://www.reuters.com/article/us-usa-nato-montenegro-idUSKBN16Z2UG) and soon [Republic of North Macedonia](https://www.defensenews.com/congress/2019/10/22/us-senate-approves-north-macedonia-to-nato/)).

These initiatives—on both sides of the Atlantic—**raise the costs of Putin’s hybrid war**. Doubtless, Putin privately realizes his assault on Ukraine triggered a response that made the US and its NATO allies more engaged, more alert to his malign actions, and more prepared to detect and reverse any attempt to repeat his Ukraine gambit elsewhere.