# 1AC --- Platform Dealing --- JCCC

## 1AC --- Unilateral Exclusion --- v1

### 1AC --- Advantage --- Europe

#### Advantage one is Europe:

#### Lack of strong antitrust will cede US leadership on tech giants

Wheeler, 21 (Tom Wheeler, Tom Wheeler is a visiting fellow in Governance Studies at The Brookings Institution. Former chariman of the Chairman of the FCC., 2-10-2021, accessed on 8-18-2021, Brookings, "A focused federal agency is necessary to oversee Big Tech", <https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/)//Babcii>

A less obvious challenge presented by **the fed**eral government’**s failure** to effectively oversee the dominant digital companies is how it has left American companies unprotected in regard to the policies of other nations, and even individual American states. The United States is a worldwide leader in digital products and services for many reasons, but most notably because of its uniform market of 325 million consumers in which to develop products, products that are then widely available to an interconnected world. Such an advantage is [threatened](https://www.brookings.edu/blog/techtank/2019/03/26/the-tragedy-of-tech-companies-getting-the-regulation-they-want/) when the absence of federal government policy leadership opens the door for policies to be determined by others. In an interconnected world, the absence of national oversight and leadership **leaves U.S. companies exposed to rules made by other nations**. Because of this absence, there is little American input. Similarly, the **absence of a national policy encourages state governments** to develop their own answers to pressing digital economy questions—answers that run the risk of diminishing the advantage of a uniform national marketplace. States as diverse as [California](https://oag.ca.gov/privacy/ccpa) and [Vermont](https://www.vpr.org/post/public-utility-commission-vermont-can-regulate-internet-telecommunications#stream/0) are adopting their own approaches to internet governance, while **foreign nations are filling the leadership void** internationally. The European Union proposed a [Digital Services Act](https://ec.europa.eu/digital-single-market/en/digital-services-act-package) **to regulate the behavior** of online companies. The United Kingdom proposed the creation of a [new digital watchdog](https://www.gov.uk/government/publications/digital-regulation-cooperation-forum). Italy [announced](https://www.reuters.com/article/idUSKBN27D0MM) an investigation into Google’s advertising market activities. Germany is [**investigating**](https://uk.reuters.com/article/us-amazon-com-germany-competition/german-watchdog-launches-new-investigation-into-amazon-report-idUKKBN27D2OO) Amazon’s **relationships** with third-party sellers. **China went** so **far** as to attempt to push a **new** internet architecture through the U.N.’s International Telecommunications Union. **American market** oversight **policies have traditionally been the North Star** in the development of international technology policy.[[7]](https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/#footnote-7) Where there is **no policy**, however, **there can be no pole star**. By being absent from the field, the federal government has walked away from a history of American leadership.

#### Specifically --- platform monopolies will cause the EU commission to pursue expanded antitrust

Suominen, 20 (Kati Suominen , Kati Suominen is an adjunct fellow with the CSIS Europe, Russia, and Eurasia Program; Dr. Suominen holds a B.A. from the University of Arkansas, an M.A. from Boston University, an M.B.A. from the University of Pennsylvania’s Wharton School, and a Ph.D. from the University of California, San Diego. She is a life member of the Council on Foreign Relations., 10-26-2020, accessed on 7-20-2021, Csis, "On the Rise: Europe’s Competition Policy Challenges to Technology Companies", https://www.csis.org/analysis/rise-europes-competition-policy-challenges-technology-companies)//Babcii

WHAT IS **DRIVING EUROPEAN PROPOSALS**? Europe’s **antitrust** policy enforcement actions form part of a series of EU steps that have hampered U.S. companies over the past few years. Among them are the European Union’s 2018 copyright law forcing U.S. platforms to increasingly police content posted on their sites and adjudicate freedom of expression; the European Union’s 2018 General Data Protection Regulation (GDPR) that has cost American as well as European businesses billions of dollars to implement; Europe’s proposals to monitor data used for artificial intelligence applications; and several European nations’ [digital services taxes](https://taxfoundation.org/digital-tax-europe-2020/) that primarily impact U.S. technology companies by shifting corporate income taxes for digital services to where they are consumed, as opposed to where they are developed. In part, Europe’s proposals for greater antitrust powers against technology companies represent a continuation of a history of cases where European enforcers and courts applied [an array of tests](https://www.beuc.eu/publications/beuc-x-2018-071_goals_of_eu_competition_law_and_digital_economy.pdf) positing that a certain behavior is anticompetitive—such that it hurts potential competitors, consumer choice, or innovation. Indeed, the Commission’s interventionist approach has long contrasted with U.S. antitrust enforcers and courts that have largely accepted market leadership and consumer loyalty earned through hard competition and risky investments. For U.S. enforcers, protecting consumer welfare (or efficiency and lower cost)—rather than potential competitors—has been their North Star. There are, however, a number of reasons why Europe is acting now to establish a stricter muscular antitrust policy. First, European antitrust officials, much like policymakers in the United States, report being under great political **pressure to “do something” about big tech**nology companies. [Polls suggest](https://bdaily.co.uk/articles/2020/08/26/uk-consumers-put-a-price-on-privacy-half-would-pay-more-to-do-business-with-an-organisation-committed-to-protecting-their-personal-data) that most Europeans support the Commission’s actions against Google and other U.S. technology companies and worry about their personal data getting in the hands of America technology companies and, in the wake of the Snowden revelations, the U.S. government. Antitrust officials are also reported to be **pressured by local**, less digitized **businesses that struggle to compete with** the **digital platforms**, and too often rush to act on populist pressures, despite having no clear empirical basis. Second, Europe is using antitrust to clear space for its own companies in sectors it considers to be in Europe’s comparative advantage, such as financial services, the Internet of Things (IoT), smart factories and smart homes, and healthcare. Europeans have failed to seize on the various technology waves that brought us smartphones, cloud computing, search, and social media, and they lack the kind of market-leading platforms that the United States and China have produced such as Amazon, Facebook, Twitter, Google, Alibaba, and WeChat. Germany’s SAP, the Netherland’s Adyen, and Sweden’s Spotify have [barely 3 percent of the market capitalization](http://www.netzoekonom.de/plattform-oekonomie/) of major tech platforms compared to 68 percent held by U.S. companies. European policymakers are now concerned that **U.S. companies are** going beyond their traditional swim lanes of social networking, ecommerce, and search and moving into “European” sectors. After all, U.S. technology companies often look to apply their technologies in new sectors: Apple started its own credit card and TV service; Google bought Fitbit to get into the wearable tech market and; Amazon has become a global freight forwarder and air cargo carrier. In a more frontal attack, Tesla is now **striking at Europe’s leadership** in high-end, tech-driven vehicles, [looking to build a gigafactory outside of Berlin](https://www.nytimes.com/2019/11/13/business/tesla-elon-musk-berlin.html). Europe needs to pre-empt mergers that would enable these giants to reap even more **market share in Europe** or outright force American companies to open their proprietary data to European firms, so they can accelerate the build-out of valuable algorithms in new markets.

#### They’ll target unilateral exclusion through the Digital Markets Act

Young, 21 (Ryan Young, Ryan Young is a Senior Fellow at the Competitive Enterprise Institute (CEI). Ryan holds an M.A. in economics from George Mason University in Fairfax, Virginia, and a B.A. in history from Lawrence University in Appleton, Wisconsin. He was previously CEI’s 2009-2010 Warren T. Brookes Journalism Fellow. Before joining CEI, he worked in the Cato Institute’s government affairs department., 2-5-2021, accessed on 7-20-2021, Competitive Enterprise Institute, "Proposed European Tech Regulations Will Backfire, Badly - Competitive Enterprise Institute", https://cei.org/blog/proposed-european-tech-regulations-will-backfire-badly/)//Babcii

The European Union recently proposed two major tech regulation bills aimed at America’s tech industry, the [Digital Markets Act](https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2349) (DMA) and the [Digital Services Act](https://ec.europa.eu/digital-single-market/en/digital-services-act-package) (DSA). While American antitrust law is [flawed](https://cei.org/issue_analysis/the-case-against-antitrust-law/), European competition policy is arguably [more so](https://cei.org/issue_analysis/european-union-antitrust-policy-in-the-digital-era/). On purpose or not, **DMA/DSA would add trade barriers** in a world that already has too many. They are costly. And they won’t increase competition. In fact, they would help to lock in the big U.S. companies’ dominance. How would they do this? **They would block self-preferencing**, such as Amazon promoting self-branded products in its search results, or Google and Apple giving their own apps special treatment in their app stores. Retailers and grocery stores already have been doing this for the last century or so, and those markets are highly competitive. It is no different when a company does the same thing online. Companies would face stricter content moderation policies. If the EU says to take down certain content, companies would have a short time frame to either remove it or be fined. European companies would not face these same compliance costs, presumably giving them a leg up, though without improving their products. Tech platforms would be liable for user-posted content, rather than the users themselves. This essentially copies President Trump’s position in the [Section 230 controversy](https://cei.org/news_releases/repealing-section-230-would-be-devastating-to-free-expression-online/). Besides chilling speech, this would give popular services a reason to avoid the European market. It would also lock in dominant players. Facebook can afford to hire armies of content moderators, but startup competitors cannot. Repeat offenders risk fines of up to 10 percent of global revenue. Breaking up companies is another option, though the practical politics of the EU breaking up a U.S.-based company likely make this unrealistic. Unlike most legislation, DMA/DSA would not apply to everyone. They would only apply to “gatekeepers,” a new term defined in just such a way that it applies only to a handful of major U.S. tech companies. In practice, DMA/DSA is simple extraction from successful companies, without proof of consumer harm. Swiss competition commissioner Henrique Schneider argues in a recent Competitive Enterprise Institute [paper](https://cei.org/issue_analysis/european-union-antitrust-policy-in-the-digital-era/) that, even if that EU officials understand basic economics—no sure thing—they “choose to disregard it in order to advance two political aims—protectionism and consumer welfare (as they conceive the latter).” And, as he predicted, **things are getting worse**. Beyond Spotify, it is hard to even name a major European tech company. This is not for a lack of talent and good ideas in Europe. It is because of a broken regulatory culture that prefers tearing down over building up. Taking foreigners down a notch is very different from allowing homegrown entrepreneurs to build and innovate. DMA/DSA is trade protectionism under another name. U.S.-EU trade **relations are already strained** because of President Trump’s [misguided trade war](https://cei.org/issue_analysis/traders-of-the-lost-ark/), Europe’s equally misguided retaliation, and a [long-running dispute](https://cei.org/blog/tit-for-tat-tariffs-dont-work-boeing-and-airbus-show-why/) over subsidies to Boeing and Airbus. President Biden is likely to [further raise trade barriers](https://www.nationalreview.com/2021/02/bidens-trade-agenda-could-be-worse-than-trumps/), as my colleague Iain Murray points out. Some kind of major U.S.-EU trade agreement is likely necessary in the next few years as a diplomatic and economic counterweight against China. **DMA/DSA would aggravate tensions between allies at** precisely **a point when they can be** somewhat **smoothed**. Finally, DSA/DMA wouldn’t actually take down the big American companies, but lock in their dominance. They can afford massive fines and compliance costs; smaller startups can’t. And if a smaller competitor nears the threshold of becoming a “gatekeeper,” it may decide to stay small on purpose, leaving most of the market to big incumbents. This would harm consumers, who would pay more to have fewer choices and lower-quality services.

#### Overhaul of US antitrust can get Europe to back down but speed and clarity are key

Dorpe, 21 (Simon Van Dorpe, Simon Van Dorpe is a competition reporter in Brussels, co-author of Politico's weekly Fair Play Newsletter and occasionally reports on Belgian politics., 7-2-2021, accessed on 7-21-2021, POLITICO, "What Vestager can teach Lina Khan on antitrust", https://www.politico.eu/article/margrethe-vestager-lina-khan-meeting/)//Babcii

3. **Need for speed** A **broad consensus** exists among antitrust lawyers, regulators and others who follow the issue that Europe’s Google cases, particularly those on its search engine, have progressed too slowly. This is particularly problematic in fast-moving digital markets as rivals cannot survive as long. “The Commission was **sending an ambulance to a funeral**,” is how Luther Lowe, senior vice president of public policy at Yelp, has put it. Yelp, the online review site, has complained to both EU and U.S. authorities about [Google’s treatment](https://www.politico.eu/article/europe-failed-to-tame-google-can-the-us-do-any-better/) of rivals. Vestager can relate about the many ways in which these cases can be delayed. In the Google Shopping case, for example, Vestager's predecessor Joaquín Almunia spent a lot of time negotiating a settlement with Google that in the end did not receive the backing of the other EU commissioners. 4. What cases can do (and where rules are needed) The takeaways from the antitrust cases brought by the European Commission and a number of national competition authorities — and the [**pressure**](https://www.politico.eu/?p=1136434) **from EU countries — have led** Vestager under her new digital powers **to** propose **a** legal **framework to regulate the behavior of large online firms**. Unlike antitrust enforcement, which looks at whether firms have breached broad rules in the past, the new, more prescriptive rules are aimed at forcing the companies to self-regulate before any potential anti-competitive behavior could occur. This is where Khan can engage on an equal footing, as she was deeply involved in the [proposal](https://www.politico.com/news/2020/10/06/house-democrats-antitust-overhaul-big-tech-426840) of **a massive overhaul of U.S. laws to rein in Big Tech**. Last week, the House Judiciary Committee [passed](https://www.politico.com/states/california/story/2021/06/24/house-panel-approves-plan-to-help-break-up-tech-giants-1386987) the first package of those bills. The interaction **might help** Khan prioritize which practices could most effectively be dealt with through competition enforcement. 5. Breaking up the companies Despite **calls from** complainants and **politicians to break the companies up,** Vestager has repeatedly said that was only a measure of last resort. That is also her position for **the new gatekeeper rules**. "We’ll have the power to fine gatekeepers that breach their obligations — but just as importantly, the proposal would make it possible **to impose remedies** ... that, if necessary, could go all the way to **breaking up the company**," she [said](https://ec.europa.eu/commission/commissioners/2019-2024/vestager/announcements/defending-competition-digital-age_en) last week, adding that "of course, in this case, a structural remedy, where the company has to sell part of its business, would be very much a last resort — just as it is with our antitrust rules." Breaking up companies is easier in the U.S. than in the EU, though a court hasn't ordered that as a remedy for anticompetitive behavior since AT&T in the 1980s. "U.S. jurisprudence makes absolutely clear that structural reorganization is part of the conventional toolkit of abuse of dominance remedies in the U.S.," Kovacic said. Vestager’s reticence may not only be due to the difficulty of splitting up monopolies under the current state of EU law, but also because Europe is not eager to lose political capital by **doing what it believes should have been done in the U.S.**

#### Expanded EU commission antitrust causes digital protectionism

Suominen, 20 (Kati Suominen , Kati Suominen is an adjunct fellow with the CSIS Europe, Russia, and Eurasia Program; Dr. Suominen holds a B.A. from the University of Arkansas, an M.A. from Boston University, an M.B.A. from the University of Pennsylvania’s Wharton School, and a Ph.D. from the University of California, San Diego. She is a life member of the Council on Foreign Relations., 10-26-2020, accessed on 7-20-2021, Csis, "On the Rise: Europe’s Competition Policy Challenges to Technology Companies", https://www.csis.org/analysis/rise-europes-competition-policy-challenges-technology-companies)//Babcii

Both the United States and Europe are currently debating the merits of these arguments—including whether antitrust law should be retailored to address them. In the **United States, antitrust enforcement officials and courts** have, in general, **accepted market leadership earned through competition** in the marketplace, as long as it leads to greater efficiencies and cost savings for consumers. In contrast, the European Commission antitrust officials have tended to favor protecting potential competitors, even if market leaders have managed to outperform competitors and gain consumer loyalty through their ingenuity and smart acquisitions. One of the outcomes of this approach has yielded **recent investigations and multi-billion-dollar fines by the European Commission on American companies** such as Google, Apple, and Amazon for supposedly violating European competition policy rules. Today, the business climate for American technology companies is **heating up in Europe**. Concerned about Europe’s lack of competitiveness in the global digital economy, both the European Commission and various EU member states are looking to significantly **expand their antitrust powers** to curb large technology companies. One way they do this is by **blocking** pre-eminent firms’ **planned mergers and acquisitions** and forcing them to provide access to the data they have gathered—to the benefit of European competitors. Europe’s hardening antitrust stance poses significant problems to **U.S. business interests in Europe’s** giant digital market—Europe’s business-to-consumer (B2C) e-commerce sales alone are climbing [past $850](https://ecommercenews.eu/ecommerce-in-europe-e717-billion-in-2020/) [billion this year](https://ecommercenews.eu/ecommerce-in-europe-e717-billion-in-2020/). The Commission’s approach also risks **digital protectionism** and **politicization** of antitrust enforcement, which could have **significant implications for trade** relations between the United States and the European Union and for many emerging markets’ thinking about competition policy issues.

#### That locks in a combative nature over the digital economy

Barshefsky, 20 (Charlene Barshefsky, Charlene Barshefsky served as United States Trade Representative, the country's top trade negotiator, from 1997 to 2001. She was the Deputy U.S. Trade Representative from 1993 to 1997. JD from colombus school of law, 8-2-2020, accessed on 7-21-2021, Financial Times, "EU digital protectionism risks damaging ties with the US", https://www.ft.com/content/9edea4f5-5f34-4e17-89cd-f9b9ba698103)//Babcii

Europe should reconsider its digital sovereignty agenda and instead pursue greater regulatory co-operation with the US. Demonising US technology companies hinders efforts to address the foremost challenge for both sides with respect to the digital economy: China. Chinese protectionism — which fuses state and Communist party control, and creates subsidies and intellectual property theft on an unparalleled scale — poses **an existential threat to** a vibrant digital **economy**. For example, China is pressing for a new centrally controlled internet, which the US and EU oppose. If Europe persists in its approach, US policymakers will have **no choice but to treat it as a strategic threat**. In the near term, it is **difficult to imagine** that the US will be able to strike **a meaningful trade deal** with the EU — a priority of both sides for many years — so long as the EU pursues the techno-nationalist moves aimed at the US. The Europeans **need to reverse course** before the economic and geopolitical **damage cannot be undone**.

#### It’s the core issue --- Tech antitrust opens the floodgates

Giarda et al., 21 (Raffaele Giarda et al., head of Baker McKenzie's Technology Media & Telecoms Industry Group New York University (M.C.J.) (1994)Columbia University (Summer Program American Law) (1990)University of Rome (J.D., with honors) (1989), 2021, accessed on 9-6-2021, Bakermckenzie, "TMT Looking Ahead", <https://www.bakermckenzie.com/-/media/files/insight/publications/2021/01/tmt-looking-ahead-2021.pdf?la=en)//Babcii>

The long-mooted increased regulation of digital services and markets in Europe landed in December 2020 in the form of two draft regulations, the Digital Services Act and Digital Markets Act. In 2021, digital service providers will be focused on preparing their businesses for the changes ahead, as both proposals navigate the legislative process. The DSA and DMA will not be the only items **near the top of** corporate **agendas in 2021**. Others are likely to include monitoring the continued efforts to find international consensus on tax reforms for the digital economy and addressing the impact of any further developments in the ongoing technology-focused trade wars. AT A GLANCE The EU Digital Services Act: What does the future hold? The European Commission has published its landmark draft new rules applicable to digital services (the Digital Services Act). The DSA shares common themes with the Digital Markets Act (see below) in particular (re) assigning liability or responsibility for possible online harms and a push for even greater transparency from market players. We examine what is actually new for TMT industry players and what lies ahead in these proposals which cover key areas, including safe harbours, notice and take down, know-your-trader requirements, reporting obligations and annual reviews of systemic risks by very large platforms (as defined in the DSA). The EU Digital Markets Act: New rules for platforms. Published alongside the proposed Digital Services Act, the proposals in the Digital Markets Act focus on the largest platforms (gatekeepers) which supply "core platform services" and seek to address what the European Commission perceives as **power asymmetries between platforms**, their business users and end users. Another area of focus is around general market structure — to ensure markets remain "fair and contestable". We look at the definition and role of gatekeepers and the key obligations that will apply under the DMA as well as the road ahead. Trade wars and protectionism — Digital sovereignty under attack? **The** TMT **sector is at the center of disruptive global trade** wars as **geopolitics collide with new technologies and economies are increasingly driven by technological innovation**. Examples include the use of **export controls** to protect "crown jewel" technology, **import restrictions** and **tariffs**, procurement bans and **foreign investment controls** which target key industry players on the basis of perceived national security concerns and **in pursuit of digital sovereignty**. As the concerns underlying these measures are deeply rooted and change is unlikely at the macro level in the short term, we provide an overview of the most important challenges TMT businesses are facing.

#### Europe is key determinant of the future of digital protectionism --- Collaboration is a counterweight against authoritarian regimes

Moghior, 21 (Cosmina Moghior, Cosmina is a Denton Fellow with the Transatlantic Leadership program at the Center for European Policy Analysis (CEPA)., 8-11-2021, accessed on 9-6-2021, CEPA, "Protectionism Threatens To Torpedo The Transatlantic Technology Alliance | CEPA", https://cepa.org/protectionism-threatens-to-torpedo-the-transatlantic-technology-alliance/)//Babcii

Europe similarly is **determined to build its own tech** capacities. It promotes the concept of [digital sovereignty](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651992/EPRS_BRI(2020)651992_EN.pdf) aimed at providing the continent the capacity to make “autonomous technological choices.” Several projects promote domestic production of critical technologies ranging from next-generation mobile phone production to quantum computing. Public funds already are being spent on the European cloud computing project GAIA-X aims to break the U.S. stranglehold on cloud computing. While Europe insists that its actions are not protectionist, designed instead to promote and safeguard European values, GAIA-X aims to ensure data protection and limit access of U.S. intelligence to European data. U.S. tech giants including Amazon, Google, and Microsoft have been invited to join, but are banned from joining the board. The **U.S.** is home to the world’s largest Internet companies and **fears that European regulatory measures will discriminate against them**. Plans for a European “digital” tax – put on hold to secure a global corporate tax reform – would disproportionately impact American companies that provide digital services in Europe. A separate Digital Markets Act proposal under consideration at the European Parliament addresses unfair practices of the so-called “gatekeepers,” that operate “core platform services.” Most of the targeted companies will likely be American, beginning with giants Google, Apple, Facebook, and Amazon. Europe and the U.S. **need to step back from pursuing their protectionist instincts**, which threatens to allow [China’s increasing inroads into the digital market](https://www.brookings.edu/research/untangling-the-web-why-the-us-needs-allies-to-defend-against-chinese-technology-transfer/). **Beijing is making** [**investments**](https://www.aei.org/china-global-investment-tracker/) **on all continents** on projects ranging from education to [critical infrastructure](https://pure.diis.dk/ws/files/727852/DIIS_RP_2016_8_WEB.pdf). Many **countries are turning to China for support** and guidance on technological development while the U.S. and the EU focus on their domestic anxieties and ambitions. A transatlantic tech **alliance could provide the blueprint for offering a viable alternative to** Chinese inroads in **the developing world**. Europe and the U.S. need to coordinate against the export of authoritarian practices on the Internet. They can only do this by **dropping the push for** Buy American and **European Digital Sovereignty.**

#### Otherwise, authoritarians will cement internet protectionism globally

DuPont, 20 (Sam DuPont, Deputy Director, Digital Innovation and Democracy Initiative, Washington, DC, 11-23-2020, accessed on 1-18-2021, Wita, "The Biden Administration Should Pursue a Digital Trade Agreement", https://www.wita.org/blogs/biden-digital-trade-agreement/)//Babcii

A forward-looking **digital trade agreement would guarantee** that all these services and more can compete **internationally**—and that the data upon which they depend can flow freely across borders. Successfully negotiating such an agreement with a large group of **trading partners would** be a boon to U.S. businesses and workers, and there is every reason to believe it would be a political winner on both sides of the aisle. What is more, it would also **advance** the **geostrategic interests** of the United States. An agreement that helps ensure the global digital economy defaults toward free commerce, the free exchange of ideas, and the free flow of data will help the United States and its allies confront and compete with China. At home, the Chinese government has implemented a top-down, repressive model for controlling the internet. And it has used negotiations, influence, and raw power to advocate this model overseas—seeking to build a [coalition of countries](https://www.nbr.org/publication/chinas-vision-for-cyber-sovereignty-and-the-global-governance-of-cyberspace/) with separate, sovereign internets characterized by greater government control over information—in order to validate its domestic approach and enhance its global influence. **The campaign is working: Governments around the world have followed China’s lead by restricting the free flow of information**, blocking online services, and **fragmenting the internet** along national boundaries. Earlier this year, Freedom House documented a [10th consecutive year of decline](https://freedomhouse.org/report/freedom-net/2020/pandemics-digital-shadow) in global “internet freedom,” and the U.S. trade representative cataloged an ever-growing [list of barriers to digital trade](https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2020/march/fact-sheet-2020-national-trade-estimate-strong-binding-rules-advance-digital-trade). It is not enough for the United States to play defense against these efforts—the Biden administration should advance a proactive strategy to ensure an open, global internet with rules that are rooted in democratic values. One of the most effective ways the Biden administration can pursue this goal is by negotiating enforceable rules and commitments on digital trade that bind together a large group of countries with shared values and common interests. A digital trade agreement should be built around rules that guarantee the free flow of data, prohibit data localization requirements, and ban unfair policies that discriminate against foreign digital products and services.

#### Digital protectionism undermines the future of globalization --- Getting Europe on board is key

GCGS, 21 (GCGS, Greenberg Center for Geoeconomic Studies at the Council on Foreign Relations, 4-12-2021, accessed on 9-6-2021, Council on Foreign Relations, "The Rise of Digital Protectionism", https://www.cfr.org/report/rise-digital-protectionism)//Babcii

Despite the limitations brought about by Europe’s digital **restrictions**, participants largely agreed that Europe is more an irritant than **a major threat** and that the EU could help the United States push back against **Chinese digital protectionism**. A Digital Economy Drives Globalization Barriers to the free flow of data and digital information are consequential to the United States, participants said, because the global digital economy has quickly become a large part of cross-border trade flows. Participants estimated that cross-border data and digital flows account for between $2.8 trillion and $4 trillion of the $7 trillion to $15 trillion in total cross-border flows of goods and services. Moreover, although **cross-border flows in traditional goods** and services **flatlined** after the 2008 financial crisis, **data and digital flows have continually grown**, increasing eighty-fold since 2005. Participants noted that the **digital economy is the sole part of globalization that is still proceeding** apace and is more diffuse than traditional globalization, given the active role that smaller firms and smaller countries play. One participant argued that the digital economy is “shifting the nature of globalization,” by deepening cross-border trade in virtual goods even as growth in physical trade has been nearly stagnant. New technologies are creating economic opportunities, but **creeping protectionism**, especially in China, **could** **threaten** U.S. competitiveness in **critical sectors**. Participants highlighted massive Chinese investment in semiconductors, for example, as well as China’s dominance of the supply chains for fifth-generation mobile phones, not to mention Chinese determination to stake out a leading position in sectors such as AI, robotics, electric and autonomous vehicles, and biotechnology. China’s digital approach, one participant noted, has already resulted in its dominance of crucial sectors, “and they will dominate going forward.” But It Affects the Old Economy, Too Digital protectionism does not just pose a risk to U.S. competitiveness in sectors at the center of the future economy, it also threatens traditional sectors such as manufacturing, energy, and agriculture. Participants noted that advanced manufacturing has a large and growing data component: 3-D printing and digital manufacturing, for example, rely on cross-border data flows as well as a data-intensive research and development program. Traditional sectors such as agriculture are seeing a growing role for data, for example, in biotechnology and the development of new strains of seeds. Likewise, extractive industries and the energy sector are being transformed to rely increasingly on data, from geological big data crunching that enabled the hydraulic fracturing revolution to global shipping that is becoming increasingly automated. In that sense, some participants suggested, China’s digital protectionism, while boosting its dominance of high-tech sectors, could backfire in other areas. The rise of big data across a growing number of sectors is helped by jurisdictions such as the United States that allow unfettered data flows. Europe’s tough privacy laws also discourage innovation among technology firms; data localization requirements push tech startups to American shores, where compliance costs are lower. One participant suggested differentiating and regulating data—from anonymous industrial data to regular user information, to extremely sensitive, personal information such as health records—according to its sensitivity. Maintaining cross-border data flows with few government restrictions will be **important as the digital transformation plays out** in traditional sectors. As one participant put it, networks matter: an economy that tries to insulate itself from global data flows by throwing up restrictions to cross-border data-sharing risks cutting itself off rather than protecting its national champions.

#### Digital globalization prevents global war

Dr. Asma Iqbal & Muhammad Rafi Khan 21, Assistant Professor of Political Science, Government Graduate College for Women Samanabad; Lecturer/Research Officer at Minhaj University Lahore, “Power and Interdependence with Internet,” Pakistan Social Sciences Review, Vol. 5, No. 1, pgs. 1142-1153, 3/30/21, https://pssr.org.pk/issues/v5/1/power-and-interdependence-with-internet.pdf

Interdependence

Reflecting a softer image of power and extending its domains to global social structures, interdependence is a multidimensional term, that gained traction with the emergence of the concept of globalization. It refers to a state, or a condition, that compels two or more actors to seek cooperation. For such cooperation, the absence of enmity is not a requirement. There are many examples of interdependence between fierce enemies, like Pakistan and India, China and India, and Russia and the US. The goals of this interdependence are to fulfill domestic and international deficiencies for national interest, and sometimes, international interest. The presence of Russia and the US in the Security Council, where both take decisions together in international interest, and can also veto any move for their own or their ally’s national interest.

The world today has mostly been eradicating the threats of war and becoming increasingly interdependent. Their actions are mostly based on the cost- benefit ratio. For instance, if a state must choose between war and trade and applying the statistical models for a complete understanding of both before deciding, the trade will supersede in choice over the war in most cases. That is why even enemies are doing trade, while the war of words also gains traction. This is because the cost of war is higher, and the benefit of trade is higher. The democratic peace theory and the McDonald Peace theory exist in almost the same domains, where political relationship and economic connectivity, both are eradicating scenarios of a possible war.

As an effective tool of soft power, the interdependence has shattered the isolation of introverted peoples and merged them with vibrant, dynamic, and socially linked societies. It relies on multidimensional mediums to avoid conflicts, increase connectivity, and inculcates multilateralism. Among these, the Internet is the most obvious, effective and resourceful medium that “frees us from geographic fetters and brings us together in topic-based communities that are not tied down to any specific place. Ours is a networked, globalized society connected by new technologies” (Dentzel, 2014).

The internet, coinciding with matters related to power, is a world of unknown depth. It is the most effective tool of connectivity in this modern world. It can also be designated as a doorway between traditional unilaterality and a multilateral world. It boosted interdependence and opened new horizons of connectivity and cooperation. Therefore, the virtual age has cut the distances short and challenged the hardships of the physical world with a counterbalance, depicted in the figure below.

#### Internet connectivity solves every impact

Tony Blair 21, Former prime minister of Great Britain and founder and executive chairman of the Tony Blair Institute for Global Change, “The Progressive Case for Universal Internet Access: How to Close the Digital Divide by 2030,” 3/2/21, https://institute.global/policy/progressive-case-universal-internet-access-how-close-digital-divide-2030

Today, the internet is the beating heart of the world. And just as the roads, railways and canals provided the arteries for commerce in the Industrial Revolution, today’s network infrastructure is the circulatory system on which much of modern life depends. Without it, the ramifications of Covid-19 would have been far more severe.

That we have been able to use the internet to mitigate the impact of the pandemic is a small relief, but the Covid-19 crisis has emphasised the importance of everyone being connected in the future. Eradicating extreme poverty, solving the global education crisis, building better health-care systems and responding to pandemics effectively all require connectivity. For low-income countries, being largely excluded from the exponential potential of the internet means that they cannot transform their nations. It is extraordinary that today half the world remains offline.

Closing the digital divide by 2030 should be one of the primary global policy priorities. Accelerating internet expansion will drive economic growth and enable progress and – as this report from my Institute demonstrates – the benefits of investment vastly offset the costs. It outlines the urgent action required on stimulating demand, regulatory reform and greater global coordination, and how a new digital coalition needs to be formed to transform opportunity and access for billions of people.

But prioritising internet access is not only about poverty alleviation. During these past years of isolationist and unilateralist policymaking by Western governments, China has been taking a more dominant role in developing economies. It has been investing in digital hardware infrastructure, taking an active role within international bodies and influencing the standards and values that underpin the internet.

This requires strong global leadership. Collaborating with China, as well as competing. Stewarding the right global coalitions around investment to achieve universal internet access. Leadership with the vision, commitment and confidence to establish the internet for a prosperous and inclusive global society.

We’ve lost our way on this in recent years, but an open and connected world will be the lifeblood for our future growth. It’s time that we make it a reality.

#### Only global internet connectivity can resolve existential threats --- China’s model is insufficient

- Disease, natural disasters, state collapse and limits of growth

Eagleman 10 (David Eagleman is a neuroscientist at Baylor College of Medicine, where he directs the Laboratory for Perception and Action and the Initiative on Neuroscience and Law and author of Sum (Canongate). Nov. 9, 2010, “Six ways the internet will save civilization,”  
 <http://www.wired.co.uk/magazine/archive/2010/12/start/apocalypse-no>)//Babcii

Many great civilizations have fallen, leaving nothing but cracked ruins and scattered genetics. Usually this results from: **natural disasters, resource depletion, economic meltdown, disease,** poor information flow and corruption. But we’re luckier than our predecessors because we command a technology that no one else possessed: a rapid communication network that finds its highest expression in the internet. I propose that there are six ways in which **the net** has vastly **reduced the threat of societal collapse. Epidemics can be deflected by telepresence** One of our more dire prospects for collapse is an infectious-disease epidemic. Viral and bacterial epidemics precipitated the fall of the Golden Age of Athens, the Roman Empire and most of the empires of the Native Americans. The internet can be our key to survival because the ability to work telepresently can inhibit microbial transmission by reducing human-to-human contact. In the face of an otherwise devastating epidemic, businesses can keep supply chains running with the maximum number of employees working from home. This can reduce host density below the tipping point required for an epidemic. If we are well prepared when an epidemic arrives, we can fluidly shift into a self-quarantined society in which microbes fail due to host scarcity. Whatever the social ills of isolation, they are worse for the microbes than for us. The **internet will predict natural disasters** We are witnessing the downfall of slow central control in the media: news stories are increasingly becoming user-generated nets of up-to-the-minute information. During the recent California wildfires, locals went to the TV stations to learn whether their neighbourhoods were in danger. But the news stations appeared most concerned with the fate of celebrity mansions, so Californians changed their tack: they uploaded geotagged mobile-phone pictures, updated Facebook statuses and tweeted. The balance tipped: the internet carried news about the fire more quickly and accurately than any news station could. In this grass-roots, decentralised scheme, there were embedded reporters on every block, and the news shockwave kept ahead of the fire. This head start could provide the extra hours that save us. If the Pompeiians had had the internet in 79AD, they could have easily marched 10km to safety, well ahead of the pyroclastic flow from Mount Vesuvius. If the Indian Ocean had the Pacific’s networked tsunami-warning system, South-East Asia would look quite different today. Discoveries are retained and shared Historically, critical information has required constant rediscovery. Collections of learning -- from the library at Alexandria to the entire Minoan civilisation -- have fallen to the bonfires of invaders or the wrecking ball of natural disaster. Knowledge is hard won but easily lost. And information that survives often does not spread. Consider smallpox inoculation: this was under way in India, China and Africa centuries before it made its way to Europe. By the time the idea reached North America, native civilisations who needed it had already collapsed. The net solved the problem. New discoveries catch on immediately; information spreads widely. In this way, societies can optimally ratchet up, using the latest bricks of knowledge in their fortification against risk. Tyranny is mitigated **Censorship of ideas** was a familiar spectre in the last century, with state-approved news outlets ruling the press, airwaves and copying machines in the USSR, Romania, Cuba, **China**, Iraq **and elsewhere**. In many cases, such as Lysenko’s agricultural despotism in the USSR, it **directly contributed to** the **collapse** of the nation. Historically, **a more successful strategy has been** to confront **free speech** with free speech -- and the internet allows this in a natural way. It democratises the flow of information by offering access to the newspapers of the world, the photographers of every nation, the bloggers of every political stripe. Some posts are full of doctoring and dishonesty whereas others strive for independence and impartiality -- but all are available to us to sift through. Given the attempts by **some governments to build firewalls**, it’s **clear** that this benefit of **the net requires constant vigilance**. Human capital is vastly increased Crowdsourcing brings people together to solve problems. Yet far fewer than one per cent of the world’s population is involved. We need expand human capital. Most of the world not have access to the education afforded a small minority. For every Albert Einstein, Yo-Yo Ma or Barack Obama who has educational opportunities, uncountable others do not. This squandering of talent translates into reduced economic output and a smaller pool of problem solvers. **The net** opens the gates education to anyone with a computer. A motivated teen anywhere on the planet can walk through the world’s knowledge -- from the webs of Wikipedia to the curriculum of MIT’s OpenCourseWare. The new human capital **will serve us well when we confront existential threats** we’ve never imagined before. Energy expenditure is reducedSocietal collapse can often be understood in terms of an **energy budget**: when energy spend outweighs energy return, collapse ensues. This has taken the form of **deforestation or soil erosion**; currently, the worry involves **fossil-fuel depletion**. The internet addresses the energy problem with a natural ease. Consider the massive energy savings inherent in the shift from paper to electrons -- as seen in the transition from the post to email. Ecommerce reduces the need to drive long distances to purchase products. Delivery trucks are more eco-friendly than individuals driving around, not least because of tight packaging and optimisation algorithms for driving routes. Of course, there are energy costs to the banks of computers that underpin the internet -- but these costs are less than the wood, coal and oil that would be expended for the same quantity of information flow. The tangle of events that triggers societal collapse can be complex, and there are several threats the net does not address. But vast, networked communication can be an antidote to several of the most deadly **diseases threatening civilisation**. The next time your coworker laments internet addiction, the banality of tweeting or the decline of face-to-face conversation, you may want to suggest that the net may just be the technology that saves us.

### 1AC --- Advantage --- Credibility

#### Advantage two is the FTC:

#### Biden and the FTC are pursuing big tech but will fail now absent a congressional commitment

Nicolás Rivero 21. NU Graduate. "Biden’s antitrust crusaders can’t crusade without Congress". Quartz. 3-11-2021. https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/amp/

US president Joe Biden is poised to promote two of the country’s most prominent anti-monopoly crusaders to top jobs in his administration. The moves signal that Biden is **serious about cracking down on** dominant companies that include **Facebook, Google, Amazon, and Apple.** But for the president’s trustbusting champions to make a real impact, they’ll need support from Congress. Biden appointed Columbia law professor Tim Wu to the National Economic Council (NEC) as his top advisor on technology and competition on March 5. Politico reports that Biden will soon follow up by nominating Lina Khan, also a Columbia law professor, to the Federal Trade Commission (FTC). (Before she can take her seat as one of the antitrust agency’s five commissioners, Khan must be confirmed by the Senate.) Khan and Wu are two of the leading voices in a new movement of legal thought that argues the US should fundamentally overhaul the way it approaches antitrust. The crux of their argument is that courts should broaden the values they consider when deciding whether to block a merger or break up a dominant company. Rather than focus narrowly on the impact a company has on consumer prices, they argue that judges should also think **about a company’s impact** on small businesses, labor rights, and the health of democracy. Khan and Wu have already secured a win for their cause just by being appointed—essentially a White House stamp of approval on their viewpoints. But despite much handwringing from industry groups, neither appointee will be able to single-handedly remake American antitrust in their image. How the FTC can tackle antitrust To be sure, Wu can advocate loudly for his preferred policies from his perch at the NEC, which advises the president on economic policy. And if Khan makes it to the FTC, which is the top US antitrust enforcement agency, she’ll have direct influence over which investigations the agency prioritizes, which lawsuits it brings, and whether its prosecutors will ask judges to impose fines, break up dominant firms, or require them to change their business practices. But there are clear limits to their power. The most the FTC can do is bring more antitrust cases that ask courts for more aggressive remedies, like breakups. That would allow the agency to make a point about what it considers acceptable business behavior. But many of those lawsuits would be bound to lose in front of judges who have grown far more skeptical of antitrust cases over the past four decades and far more conservative over the past four years. A larger caseload would also require Congress to approve more funding for the cash-strapped agency, which is already struggling to pay for its current docket. “The agencies have been asked on many occasions to do a lot with relatively little…but it’s not for free,” says former FTC chair and George Washington University law professor Bill Kovacic. If the FTC wants to pursue more large cases without a bigger budget, “they’ll have to make choices, and those choices will involve backing off of other areas of enforcement.” The FTC could also decide to dust off its rarely used rule-making power and declare certain anticompetitive business practices illegal. But any new rule would almost certainly trigger legal challenges, which would spark a long, expensive court battle in front of judges who aren’t likely to be sympathetic. Kovacic estimates the process could take four or five years—and in the end, judges might just strike the rule down. How Congress can tackle antitrust The best hope for stricter antitrust enforcement lies in Congress. Lawmakers could pass bills, like one recently proposed by Minnesota senator Amy Klobuchar, that would make it easier for enforcement agencies to challenge mergers and acquisitions. They could even go a step further and draft an updated set of antitrust laws, perhaps following the **blueprint laid out in** last year’s antitrust **report from the House of Rep**resentative**s** (which was co-authored by Khan). Armed with new laws clearly banning specific behaviors, prosecutors at the Department of Justice and the FTC would stand a better chance winning cases against well-funded adversaries like Facebook and Google. Those steps wouldn’t hinge on heroics from antitrust hardliners like Khan and Wu. Instead, their success would depend on the whims of Senate centrists like West Virginia’s Joe Manchin, who has lately been flexing his power to derail the chamber’s democratic majority in opposition to left-wing priorities like a $15 minimum wage. Ultimately, Congress should be the body that sets US antitrust policy. It has the clearest authority to ban the bullying business tactics for which Big Tech firms have been criticized. Legislative fixes are likely to be quicker and less vulnerable to court challenges—not to mention more democratic—than changing FTC rules. And it has traditionally been Congress’s prerogative to keep the country’s antitrust policy up to date: Legislators updated the monopoly laws every two decades or so between 1890 and 1950 to respond to new threats. They’ve just neglected that tradition for the past 70 years.

#### The ability for the FTC to succeed is solely dependent on congress re-writing antitrust law

Bhaskar Chakravorti 21. Dean of global business at Tufts University’s Fletcher School of Law and Diplomacy. "Lina Khan Has Her Own Antitrust Paradox". Foreign Policy. 7-7-2021. https://foreignpolicy.com/2021/07/07/ftc-lina-khan-regulate-tech-congress/

A poisoned chalice is not the most welcoming of gifts for a new chair of a major federal agency. But that is what legal scholar Lina Khan has been handed as she arrives at her office at the Federal Trade Commission (FTC), with media coverage more befitting a rock star than a regulator. She is breathlessly described as a legal wunderkind and her “Amazon’s Antitrust Paradox” may already be the most widely talked about note in the history of the Yale Law Journal. Even Sen. Ted Cruz said he looks forward to working with her—and you know that puts her in an extremely select club. The clock is ticking on her very first assignment—to refile an antitrust complaint against Facebook and convince a federal judge to reconsider a complaint he so expeditiously threw out. Khan has under 30 days. The best thing Khan can do? Nothing. Congress ought to make the next move and do the responsible thing by getting its act together and reaching an agreement over a slate of bills it has been bickering over, creating a modern regulatory infrastructure **for today’s tech.** U.S. lawmakers ought to stop cheering Khan from the sidelines and egging her into a legal skirmish. Instead, they need to do the hard work of taking the longer view—bringing antitrust **law to the digital age** before refiling another complaint. Unless our lawmakers create the right framework and agency responsible for regulating the digital industry, Khan’s FTC—and U.S. consumers—will be drawn into near-term battles while the actual war rages on. Here is the plot so far and what must be done. The Facebook antitrust rewrite Khan is being pushed into is fraught with problems. The FTC, under the previous administration, rushed through a lawsuit against Facebook in December 2020, alleging the company’s acquisitions of Instagram and WhatsApp were anti-competitive. Regardless of the merits or demerits of Facebook’s purchases, a federal judge did not buy it. He did offer a 30-day period for revising and refiling. To be sure, antitrust lawsuits must meet high hurdles and take their time to wind through courts, but the speed of this rejection was stunning. Unsurprisingly, hopes are now pinned on Khan being precisely the person to take on the challenge—and advice is pouring in on how to go back for round two. Some have argued the agency just needs to be more explicit about its definition of the market and the data it is relying on. It is useful to recall that, as the judge threw out the complaint, he also ruled that “the FTC’s inability to offer any indication of the metric(s) or method(s) it used to calculate Facebook’s market share renders its vague ‘60%-plus’ assertion too speculative and conclusory to go forward.” Defining the “market” and “market share” as well as putting data against these are not straightforward in Facebook’s case. Since access to the social media platform is free to users, figuring out the “market” might mean considering the advertising customers who actually pay for space there see. Here, Facebook’s share is as low as across all U.S. online advertising. The share climbs to 60 percent when limited to U.S. social media advertising but then drops away when the social media advertising market is considered globally. Moreover, “social networking” itself is a fluid category. A Facebook commissioned study found that 90 percent of the people who use one of Facebook’s apps also use YouTube and 25 percent also use Twitter. To complicate matters further, in Apple’s App Store, Facebook is classified as “social networking,” but YouTube is “video, music, and live streaming” and Twitter is “news.” Other metrics, such as time spent on the apps or total user interactions, are not regularly reported. No matter how the FTC reframes the market and market share (and even if it is accepted by the judge), the **definitions will be open to numerous challenges, which will surely lengthen the legal process, giving the defendant the upper hand.** One might argue the conventional metrics for proving monopoly power—“market share” and related measures—are outmoded and a different approach is needed. The FTC might, instead, frame the complaint against Facebook differently: The company used its dominance to play fast and loose with user data. For such an argument to hold though, it needs to be linked to implications for consumer welfare—the prevailing standard for antitrust that has been applied since the 1960s. But how does one prove consumers are harmed by the fact that Facebook is collecting their data? Clearly, part of the data being collected gives users services tailored to their interests that many users find beneficial. This begs more questions: Are users being asked for more data than is strictly necessary? Is the information being collected in intrusive or abusive ways? Ultimately, the FTC and the courts would have decide if customers are getting a good value in exchange for their data. Regardless of how one discusses consumer welfare, Khan, especially, ought to resist being forced into this straightjacket; after all, she has argued that antitrust standards based on consumer welfare are unfit to gauge competitiveness in the digital economy. To put her ideas into practice, she ought to have the freedom to bring a case that rests on the argument that a company’s impact on the market structure inhibits competition. Since Khan has written forcefully about revisiting antitrust standards, it is natural to expect this case would be her chance to rewrite not only the charge against Facebook but to change those standards more broadly. There is little doubt this is where her mind is. The FTC under her leadership voted to revoke a 2015 policy statement that limited the agency’s reach, giving it room to frame cases beyond the two foundational boundaries of antitrust in the United States: the Sherman Antitrust Act and the Clayton Antitrust Act. But the FTC’s levers are limited. Although Khan can reframe the fundamentals of the antitrust complaint, without adequate regulatory infrastructure—something only Congress can provide—there are likely to be unsurmountable obstacles as the chess game between the law and Facebook unfolds. No matter how brilliantly Khan’s FTC rewrites the case against Facebook, the agency’s powers, budget, and resources are still limited. Ad hoc adjustments to the FTC’s budget, as envisioned in one of the bills in Congress, and stopgap measures to expand its powers do not get around the fundamental fact that the FTC was not set up to pursue the breadth of novel issues and policy trade-offs that digital industries create.

#### Legislative action and prohibitions key --- Enforcement and resources can’t secure large wins

Morton, 20 (Fiona Morton, e Theodore Nierenberg Professor of Economics at the Yale University School of Management. , 2-18-2020, accessed on 8-31-2021, Equitable Growth, "Reforming U.S. antitrust enforcement and competition policy - Equitable Growth", https://equitablegrowth.org/reforming-u-s-antitrust-enforcement-and-competition-policy/)//Babcii

Reform antitrust statutes to deter and prevent anticompetitive conduct more effectively Increasing resources and more aggressive enforcement alone will not solve the problem. Judicial decisions interpreting the antitrust laws have significantly (limited) crippled antitrust enforcement. These decisions reflect, at best, an archaic economic understanding of competition or, at worst, simply bad economic reasoning. Under a series of U.S. Supreme Court decisions over the past decade, for example, it is doubtful that the government could have successfully broken up AT&T’s phone monopoly in the 1980s. That break up, arguably the government’s most successful monopolization prosecution, focused on AT&T’s refusal to allow MCI, a long-distance competitor, to connect its long-distance service to local phone monopolies. In Verizon Communications v. Trinko, the Supreme Court dramatically expanded a monopolists’ ability to avoid antitrust liability when it refuses to deal with competitor or potential competitor, and also implied that antitrust concerns are subordinate in an industry [subjected to the regulation](https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1160&context=mlr).[22](https://equitablegrowth.org/reforming-u-s-antitrust-enforcement-and-competition-policy/#footnote-22) More recently, the Supreme Court misapplied basic economic reasoning in a case that, under some interpretations, has the potential to almost **exempt technology platforms from antitrust** enforcement: [Ohio v. American Express](https://www.supremecourt.gov/opinions/17pdf/16-1454_5h26.pdf).[23](https://equitablegrowth.org/reforming-u-s-antitrust-enforcement-and-competition-policy/#footnote-23) Since technology platforms comprise an ever-increasing share of economic activity, this situation is of [grave concern](https://www.yalelawjournal.org/feature/multisided-platforms-and-antitrust-enforcement).[24](https://equitablegrowth.org/reforming-u-s-antitrust-enforcement-and-competition-policy/#footnote-24) Even where the antitrust plaintiffs have been successful, the difficulty and cost of those successes suggest systematic underweighting of the benefits of competition and deference to the desire of the corporation for increased market power. The government’s long battles over stopping pay-for-delay deals and anticompetitive hospital mergers are notable examples of this misalignment, as is the approval by the government of the Sprint-T-mobile merger. In all of these cases, the corporations did not seek that market power on the merits, but through regulation (Trinko or state-supervised hospital mergers), exclusion (pay for delay and American Express), or merger (AT&T-TimeWarner or Sprint-T-mobile). Despite the government’s success in some merger litigation, this success only occurs in transactions that [most clearly violate the law](https://www.ftc.gov/enforcement/cases-proceedings/171-0231/otto-bock-healthcarefreedom-innovations).[25](https://equitablegrowth.org/reforming-u-s-antitrust-enforcement-and-competition-policy/#footnote-25) The fact that the two antitrust agencies must litigate cases that are clearly anticompetitive—rather than the parties not even considering the deal in the first place or abandoning it after the government makes its concerns known—speaks to the limitations of current antitrust legal doctrine. **It would likely take decades to reverse this body of accumulated legal doctrine, even if every future case that was litigated were decided with perfect accuracy**. Fortunately, **Congress is the final arbiter on competition law** and can change it to reflect the desire of society for competitive markets. Congress has not substantively amended those laws in more than 60 years. A broad foundation of economic research supports retooling our antitrust laws for the 21st century and restoring the vigor that was originally intended. Although legislation can take many forms, successful antitrust reform **legislation should** accomplish four goals: **Overturn Supreme Court preceden**t that has inoculated exclusionary conduct from antitrust scrutiny even when it harms competition by eliminating or harming competitors **Prohibit courts from assuming that some aspect of a market is competitive** or will become competitive rather than assessing the evidence in the case Create simple rules (known as presumptions) that will **lower the resource cost of enforcement** for conduct and acquisitions that economic research shows are likely to raise competitive problems Clarify that the antitrust laws are designed to **protect competition** that may manifest itself across a broad range of outcomes such as higher prices, reduced quality, harm to innovation, lower input prices, and elimination of potential competition

#### Big tech is the core question for FTC credibility

Rich, 19 (Jessica Rich, Former Director of the FTC’s Bureau of Consumer Protection, She is a graduate of New York University Law School (1987) and Harvard University (1983)., 8-12-2019, accessed on 7-22-2021, The New York Times, "Give the F.T.C. Some Teeth to Guard Our Privacy", https://www.nytimes.com/2019/08/12/opinion/ftc-privacy-congress.html)//Babcii

Two top Senate lawmakers on Monday expressed frustration with a federal probe into Facebook’s privacy practices, urging the government to move more swiftly and consider imposing tough punishments that target the company’s top executives. The [message](https://www.blumenthal.senate.gov/imo/media/doc/5.6.19_Letter%20to%20FTC%20re%20Facebook.pdf) — delivered by Democratic Sen. Richard Blumenthal (Conn.) and Republican Sen. Josh Hawley (Mo.) — reflects the mounting political pressure on the Federal Trade Commission to deliver a strong rebuke of the tech giant while sending a message to the rest of Silicon Valley that Washington has started taking privacy violations more seriously. “This investigation has been long delayed in conclusion — raising the specter of a remedy that is too little too late,” the lawmakers wrote. “The public is rightly asking whether Facebook is too big to be held accountable. The FTC must set a resounding precedent that is heard by Facebook and **any other** tech company that disregards the law in a rapacious quest for growth.” Facebook and the FTC each declined comment for this story. Specifically, Blumenthal and Hawley contend that a fine ranging into billions of dollars would be a “bargain” for a company as large as Facebook, which [recorded $15 billion in revenue last quarter](https://www.washingtonpost.com/technology/2019/04/24/facebook-sets-aside-billions-dollars-potential-ftc-fine/?hpid=hp_hp-top-table-main_facebook-420pm%3Ahomepage%2Fstory-ans). The tech giant last month said it expects a fine as high as $5 billion, confirming [earlier reports from the Post](https://www.washingtonpost.com/technology/2019/02/14/us-government-facebook-are-negotiating-record-multi-billion-dollar-fine-companys-privacy-lapses/?utm_term=.d028b5cd197e) that the FTC could require Facebook to pay a record-breaking financial penalty to settle the probe. "Even a fine in the billions is simply a write-down for the company, and **large penalties have done little to deter large tech firms**," the lawmakers said. Blumenthal and Hawley instead urged the commission to limit Facebook’s data collection, including requirements that restrict the kind of information it collects for advertising. They further called for accountability targeting individual executives if the commission determines “any Facebook executive knowingly broke the law” or its pledge to improve its privacy practices, a commitment it made to end another FTC probe in 2011. The lawmakers cited reporting from the Post last month that found the agency almost held Facebook CEO Mark Zuckerberg personally accountable as [part of that investigation eight years ago](https://www.washingtonpost.com/technology/2019/04/19/federal-investigation-facebook-could-hold-mark-zuckerberg-accountable-privacy-sources-say/?utm_term=.1089ed3f938c), but ultimately opted against putting him under order. If the FTC had done so, Zuckerberg could have faced fines and other punishments as a result of the agency’s current inquiry. Lawmakers including Democratic Sen. Ron Wyden (Ore.) [similarly have urged the FTC](https://www.washingtonpost.com/technology/2019/04/23/facebooks-mark-zuckerberg-should-be-liable-companys-privacy-missteps-top-lawmaker-says/?utm_term=.39a5e7dfcdb8) to target Zuckerberg specifically as a result of its ongoing investigation. But the FTC is unlikely to put Zuckerberg under order, a move that could undermine settlement talks and force the two sides to court, according to two people familiar with the probe. The sources spoke on condition of anonymity because the talks are supposed to be confidential. For now, Facebook has told the U.S. government it is willing to submit to greater oversight of its data-protection practices to end the current FTC inquiry, which began in March 2018. The probe initially focused on the social-networking giant’s entanglement with Cambridge Analytica, a political consultancy that improperly accessed data on 87 million Facebook users. The resulting settlement could grant the FTC unprecedented visibility into Facebook’s decisions to launch new products and services, while empowering the company’s board of directors to take a more aggressive approach to privacy oversight, [the Post reported](https://www.washingtonpost.com/technology/2019/05/03/facebook-has-told-federal-investigators-its-open-heightened-oversight-its-privacy-practices/?utm_term=.89361666f9e4). On Monday, Blumenthal and Hawley signaled support for some of those elements, including more board oversight and heightened privacy audits of Facebook. “The **Facebook** investigation will be **a defining moment for the Commission**,” the bipartisan duo wrote. “It **must be seen as a strong protector** of consumer privacy and begin to set out a new era of enforcement, **or it will not be taken as a credible enforcer.”**

#### Failure decimates the FTC --- losses threaten the institution.

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But the current FTC leadership seems to have overlooked the agency’s history. As such, it has already promised to produce different policy outcomes and noted that the Section 5 Policy Guidelines were shortsighted. As a result, the current FTC has decided, with the support of the other two Democratic Commissioners, to rescind the Policy Guidelines. It is unknown whether the current FTC will try to adopt different guidelines or whether it will start opening more cases under Section 5 of the FTC Act. Furthermore, it is less clear whether the new FTC leadership currently counts with the sufficient and aligned Neo-Brandeisian human talent to bring solid cases that are not based on the consumer welfare standard or to litigate before judges that support the Neo-Brandeisian vision of antitrust. What seems clear is that the new agency’s leader might find it hard to bring all Commissioners to an agreement with respect to what the agency can do with Section 5 of the FTC Act, and this situation, in and of itself, puts the agency in peril. The FTC’s Rulemaking Authority Another important policy change that may be detrimental to the FTC is its expressed willingness to expand the agency’s rulemaking authority under, e.g., Section 18 of the FTC Act. It is well known that in addition to its authority to investigate law violations by individuals and businesses, the FTC also has federal rulemaking authority to issue industry-wide regulations. However, the agency’s rulemaking authority has been self-limited since the 80s in an effort to ensure the institution doesn’t overuse its capacity to adopt industry-wide regulations and raise concerns with those policy makers that are against the legislature deferring its core mandate to an independent agency that doesn’t represent the people. Traditionally the legislature has the constitutional mandate to create laws affecting different sectors of the economy. Whereas it is legally accepted to design independent agencies with constrained mandates to adopt regulations, such powers are not necessarily understood to construe independent agencies as substitutes for the legislature’s powers. It is a basic tenet of administrative law, that agencies are constrained by the enabling statute that gives them authority to promulgate regulations in the first place. Against this background, it seems risky for the new leadership to engage in broad rulemaking endeavors that might raise concerns from an institution legitimacy perspective. In the long term, it is predictable that many policymakers might not be supportive of an agency that implements its rulemaking authority in its broadest sense. As a result, some degree of political backlash against the agency might not help the agency’s lifecycle, especially if the agency is not granted with specific legislative guidance in the form of new legislation. The Future of the FTC One of the most challenging matters to tackle when it comes to leadership of antitrust authorities, or administrative agency for that matter, is legacy and the impact for the future of the agency. To put it simply, while antitrust leaders leave agencies, the side effects of leadership’s successes and failures condition the future of the agencies. Their leadership has consequences and sets precedent which will bind the agency well into the future. Under the current political context, it would not be surprising if the current Neo-Brandeisian FTC enjoyed political support and success with its decision to bring big cases, especially against leading tech companies. In the short term, if the FTC makes headlines for opening cases against “Big Tech”, policymakers pushing for antitrust reforms will surely applaud the new changes as they would reflect a commitment to enhanced enforcement outcomes notwithstanding the strength of the cases. However, in the mid-and long-term, if the FTC loses the big cases, the commitment to policy outcomes won’t be met. And then, it is unlikely that the question would be whether the antitrust norms are fit for today’s economy, but rather if the agency is capable of executing its mandate effectively. The recent decision in the FTC v. Facebook case is a good example of this paradigm, where the Judge expressed that the FTC had not carried out a sufficiently robust analysis supported by evidence, and therefore dismissed the case. Eventually, the agency’s short-term reputational gains could quickly turn into a debacle for the institution itself with the caveat that by then, most probably, Neo-Brandeisian leadership will be long gone. Unfortunately then, the U.S. antitrust system — which is the only one to keep two federal antitrust agencies, bringing about positive outcomes for consumers — might be at risk. Political support to merge these two institutions could gain even more support, as has happened in the past, to the detriment of consumers.

#### Strong FTC solves scams and privacy violations --- it’s a prerequisite to all reforms.

Testimony of Ted Mermin 21. Executive Director Center for Consumer Law & Economic Justice UC Berkeley School of Law. Before the United States House of Representatives Committee on Energy & Commerce Subcommittee on Consumer Protection and Commerce Hearing on “The Consumer Protection and Recovery Act: Returning Money to Defrauded Consumers”. https://docs.house.gov/meetings/IF/IF17/20210427/112501/HHRG-117-IF17-Wstate-MerminT-20210427.pdf

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

#### Strong privacy law protections are key to soft power

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One of the greatest foreign policy challenges posed by **weak US privacy law**, though, is that Washington **loses cred**ibility **on** democratic tech **governance** by purporting to fight digital repression globally while allowing data-enabled abuses at home. Many authoritarian governments spin this reality right into what-about-ism, in which everything is hypocrisy and there is no difference between democratic and authoritarian countries. The Kremlin, for example, routinely [uses problems](https://www.atlanticcouncil.org/blogs/new-atlanticist/russia-uses-us-data-policy-shortfalls-to-justify-campaign-against-internet-freedom/) in American internet policy to suggest that internet openness is nonsense and to justify the Russian state’s internet repression. So, to be clear, the weakness of US privacy law does not mean there’s no hope (there is), nor that criticisms of authoritarian technology abuses are baseless (quite the opposite). Government surveillance in the US is also not the same as that in Russia or China. But among many other digital harms allowed in the US, the lack of data controls on US firms undermines American **soft power**. As much as the US government condemns data surveillance practices overseas, American citizens are still **unprotected** from rampant corporate data hoarding and selling at home. This undermines Washington’s credibility. Politicians vaguely speak of zero controls on corporate data collection in China ([inaccurate](https://slate.com/technology/2019/02/china-consumer-data-protection-privacy-surveillance.html)), while not acknowledging that the US has virtually no corporate surveillance controls whatsoever; the US government [campaigns](https://www.wired.com/story/the-us-is-waging-war-on-digital-trade-barriers/) against Indian data localization rules and continues [labeling](https://ustr.gov/sites/default/files/files/reports/2021/2021NTE.pdf) the GDPR a trade barrier while not presenting a positive, democratic alternative for a “better” privacy law. All the while, companies and government organizations keep [teaming up](https://www.vice.com/en/topic/watching-ourselves) to surveil American communities with poor or nonexistent oversight. If the US is going to forge a realistic, attractive, democratic model of technology governance—one it can use to entice internet “[**swing states**](https://www.newamerica.org/cybersecurity-initiative/reports/digital-deciders/)” and hold up against **Beijing's** and **Moscow’s** digital **abuses**—it needs to be **privacy-proactive**. Otherwise, the US fails to live up to the democratic ideal by failing to protect its citizens, especially its most vulnerable, from unchecked corporate data collection and sale. It also risks feeding into a post-Snowden view in Europe and elsewhere that the US is merely repeating its 2010-era “internet freedom” agenda when it speaks in the language of techno-democracy. Citizens’ ability to lead a safe and **democratic life** in the digital age matters in and of itself, but it also **matters for American fo**reign **po**licy. Congress needs to investigate and hold hearings on the ways that US tech firms might also undermine US national security through their data practices. The unregulated brokering of US citizen data on the open market is one place to start. In a globally connected world, US **fo**reign **po**licy cannot succeed without **safeguarding** the **data** and the rights of American citizens at home.

#### Soft power solves extinction

Joseph S. Nye 20. Harvard University Distinguished Service Professor, Emeritus. "COVID-19’s Painful Lesson About Strategy and Power". War on the Rocks. 3-26-2020. https://warontherocks.com/2020/03/covid-19s-painful-lesson-about-strategy-and-power/

In 2017, President Donald Trump announced a new National Security Strategy that focused on great-power competition with China and Russia. While the plans also note the role of alliances and cooperation, the implementation has not. Today, COVID-19 shows that the strategy is inadequate. Competition and an “America First” approach is not enough to protect the United States. Close cooperation with both allies and adversaries is also essential for American security.

Under the influence of the information revolution and globalization, world politics is changing dramatically. Even if the United States prevails in the traditional great-power competition, it cannot protect its security acting alone. COVID-19 is not the only example. Global financial stability is vital to U.S. prosperity, but Americans need the cooperation of others to ensure it. And while trade wars have set back economic globalization, there is no stopping the environmental globalization represented by pandemics and climate change. In a world where borders are becoming more porous to everything from drugs to infectious diseases to cyber terrorism, the United States must use its soft power of attraction to develop networks and institutions that address these new threats. For example, this administration proposed halving the U.S. contribution to the World Health Organization’s budget — now we need it more than ever.

A successful national security strategy should start with the fact that “America First” means America has to lead efforts at cooperation. A classic problem with public goods (like clean air, which all can share and from which none can be excluded) is that if the largest consumer does not take the lead, others will free-ride and the public goods will not be produced. As the technology expert Richard Danzig summarizes the problem:

Twenty-first century technologies are global not just in their distribution, but also in their consequences. Pathogens, AI systems, computer viruses, and radiation that others may accidentally release could become as much our problem as theirs. Agreed reporting systems, shared controls, common contingency plans, norms and treaties must be pursued as a means of moderating our numerous mutual risks.

Tariffs and border walls cannot solve these problems. While American leadership is essential because of the country’s global influence, success will require the cooperation of others.

On transnational issues like COVID-19 and climate change, power becomes a positive-sum game. It is not enough to think of American power over others. We must also think in terms of power to accomplish joint goals, which involves power with others. On many transnational issues, empowering others helps us to accomplish our own goals. The United States benefits if China improves its energy efficiency and emits less carbon dioxide, or improves its public health systems. In this world, institutional networks and connectedness are an important source of information and of national power, and the most connected states are the most powerful. Washington has some sixty treaty allies while China has few. Unfortunately, as Mira Rapp-Hooper recently argued, the United States is squandering that power resource.

In the past, the openness of the United States enhanced its capacity to build networks, maintain institutions, and sustain alliances. But will that openness and willingness to engage with the rest of the world prove sustainable in the current populist mood of American domestic politics? Even if the United States possesses more hard military and economic power than any other country, it may fail to convert those resources into effective influence on the global scene. Between the two world wars, America did not and the result was disastrous.

#### Lack of privacy laws and scamming defense makes geopolitical conflict inevitable

Casey Newton 20. Verge contributing editor. "The massive Twitter hack could be a global security crisis". Verge. 7-15-2020. https://www.theverge.com/interface/2020/7/15/21325708/twitter-hack-global-security-crisis-nuclear-war-bitcoin-scam

Beginning in the spring of 2018, scammers began to impersonate noted cryptocurrency enthusiast Elon Musk. They would use his profile photo, select a user name similar to his, and tweet out an offer that was effective despite being too good to be true: send him a little cryptocurrency, and he’ll send you a lot back. Sometimes the scammer would reply to a connected, verified account — Musk-owned SpaceX, for example — giving it additional legitimacy. Scammers would also amplify the fake tweet via bot networks, for the same purpose. The events of 2018 showed us three things. One, at least some people fell for the scam, every single time — certainly enough to incentivize further attempts. Two, Twitter was slow to respond to the threat, which persisted well beyond the company’s initial comments that it was taking the issue seriously. And three, the demand from scammers coupled with Twitter’s initial measures to fight back set up a cat-and-mouse game that incentivized bad actors to take more drastic measures to wreak havoc. That brings us to today. The story picks up with Nick Statt in The Verge: The Twitter accounts of major companies and individuals have been compromised in one of the most widespread and confounding hacks the platform has ever seen, all in service of promoting a bitcoin scam that appears to be earning its creator quite a bit of money. We don’t know how it’s happened or even to what extent Twitter’s own systems may have been compromised. The hack appears to have subsided, but new scam tweets were posting to verified accounts on a regular basis starting shortly after 4PM ET and lasting more than two hours. Twitter acknowledged the situation after more than an hour of silence, writing on its support account at 5:45PM ET, “We are aware of a security incident impacting accounts on Twitter. We are investigating and taking steps to fix it. We will update everyone shortly.” Among the hacked accounts were President Barack **Obama**, Joe **Biden**, Amazon CEO Jeff **Bezos**, Bill **Gates**, the Apple and Uber corporate accounts, and pop star Kanye West. But they came later. The first prominent individual account to be compromised? Elon Musk, of course. Within the first hours of the attack, people were duped into sending more than $118,000 to the hackers. It also seems possible that a great number of sensitive direct messages could have been accessed by the attackers. Of even greater concern, though, is the speed and scale at which the attack unfolded — and the national security concerns it raises, which are profound. The first and most obvious question is, of course, who did this and how? And at press time, we don’t know. At Vice, Joseph Cox, one of the best security reporters I know, reported that members of the underground hacking community are sharing screenshots suggesting someone gained access to an internal Twitter tool used for account management. Cox writes: Two sources close to or inside the underground hacking community provided Motherboard with screenshots of an internal panel they claim is used by Twitter workers to interact with user accounts. One source said the Twitter panel was also used to change ownership of some so-called OG accounts—accounts that have a handle consisting of only one or two characters—as well as facilitating the tweeting of the cryptocurrency scams from the high profile accounts. Twitter has been deleting screenshots of the panel and has suspended users who have tweeted the screenshots, claiming that the tweets violate its rules. To speculate much further would be irresponsible, but Cox’s reporting suggests that this is not a garden-variety hack in which a bunch of people reused their passwords, or a hacker used social engineering to convince AT&T to swap a SIM card. One possibility is that hackers accessed internal Twitter tools; another that Cox raises is that a Twitter employee was involved in the incident — which, if true, would make this the second inside job revealed at Twitter this year. In any case, Twitter’s response to the incident offered further cause for distress. The company’s initial tweet on the subject said almost nothing, and two hours later it had followed only to say what many users were forced to discover for themselves: that Twitter had disabled the ability of many verified users to tweet or reset their passwords while it worked to resolve the hack’s underlying cause. The near-silencing of politicians, celebrities, and the national press corps led to much merriment on the service — see this, along with Those good tweets below, for some fun — but the move had other, darker implications. Twitter is, for better and worse, one of the world’s most important communications systems, and among its users are accounts linked to emergency medical services. The National Weather Service in Lincoln, IL, for example, had just tweeted a tornado warning before suddenly going dark. To the extent that anyone was relying on that account for further information about those tornadoes, they were out of luck. Of course, Twitter’s move to stop verified accounts from tweeting represents a difficult balancing on equities. You would probably rather the National Weather Service not tweet than a hacker sell the account to a bad actor who logs in and falsely suggests that tornadoes are sweeping through every city in America. But the ham-fisted approach to resolving the issue — banning a huge portion of 359,000 verified accounts — reflects the staggering scale of the breach. This is as close to pulling the plug on Twitter as Twitter itself has ever come. And that makes you wonder what contingencies the company has put into place in the event that it is someday taken over not by greedy Bitcoin con artists, but state-level actors or psychopaths. After today it is no longer unthinkable, if it ever truly was, that someone take over the account of a world leader and attempt to start a nuclear war. (A report on that subject from King’s College London came out just last week.) It is in such a world that I find myself in the unusual position of agreeing with Sen. Josh Hawley, the Missouri Republican who among other things wants to end content moderation. He wrote a letter to Twitter CEO Jack Dorsey, and I found myself agreeing with all of it: “I am concerned that this event may represent not merely a coordinated set of separate hacking incidents but rather a successful attack on the security of Twitter itself. As you know, millions of your users rely on your service not just to tweet publicly but also to communicate privately through your direct message service. A successful attack on your system’s servers represents a threat to all of your users’ privacy and data security.” And yet even Hawley doesn’t go far enough. The threat here is not simply user privacy and data security, though those threats are real and substantial. It is about the striking potential of Twitter to incite real-world chaos through impersonation and fraud. As of today, that potential has been realized. And I can only worry about how, with a presidential election now less than four months away, it might be realized further. Twitter will likely spend the next several days investigating how this incident took place. A criminal investigation seems likely, during which the company may not be able to fully describe Wednesday’s events to our satisfaction. But it is vital that as soon as possible, Twitter share as much about what happened today as it can — and, just as importantly, what it will do to ensure that it never happens again. After Wednesday’s catastrophe, it hardly seems like hyperbole to suggest that our world could hang in the balance.

#### It escalates quickly and goes nuclear

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To incite conflict between two nuclear-armed rival states, State A hires proxy hackers to launch a deepfake video, depicting senior military commanders of State B conspiring to launch a preemptive strike on State C. This footage is then deliberately leaked into State C’s AI-augmented intelligence collection and analysis systems, provoking it to escalate the situation with an unprovoked retaliatory strike. State B, fearful of a decapitating strike and losing the first mover’s advantage, swiftly escalates the situation. These dynamics might also be set in train once a crisis has begun—if, for example, in the aftermath of a high-casualty terrorist attack that triggers a period of heightened tension between nuclear-armed adversaries (e.g., India and Pakistan), a nonstate actor (potentially a state proxy) launches a propaganda campaign on social media, starting a spiral of escalation.

#### FTC’s enforcement reputation solves runaway tech --- leadership and legitimacy are key

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Despite these limitations, the FTC has a formidable reputation as an enforcement authority, and commercial entities, and their lawyers, pay close attention to its orders and decisions.248 For example, when the FTC issues a complaint, it is published on the FTC’s website, which often generates significant attention in the privacy community.249 One reason for this is the fear firms have of the FTC’s auditing process, which not only is “exhaustive and demanding,” but can last for as long as 20 years.250 As such, the FTC settles most of the enforcement actions it initiates.251 Firms are motivated to settle with the FTC because they can avoid having to admit any wrongdoing in exchange for taking remedial measures, and thus they also avoid the costs to their reputation from apologizing.252

Though done by necessity, the rule-making process the FTC engages in with its consent orders and settlement agreements can be of benefit when regulating emerging technologies. 253 For one, it allows the flexibility needed to adapt to new and rapidly changing situations.254 Further, the FTC can wait and see if an industry consensus develops around a particular standard before codifying that rule through its enforcement actions.255 As with the common law, which has long demonstrated the ability to adjust to technological changes iteratively, the FTC’s incremental case-bycase approach can help minimize the risks of producing incorrect or inappropriate regulatory policy outcomes.256

In addition to its use of consent orders and settlement agreements, the FTC has created a type of “soft law” by issuing guidelines, press releases, workshops, and white papers.257 Unlike in enforcement actions, where the FTC looks at a company’s conduct and sees how its behavior compares to industry standards, the FTC arrives at the best practices it develops for guidance purposes through a “deep and ongoing engagement with all stakeholders.”258 As such, not only is the FTC’s authority broad enough to regulate the use of emerging technologies such as AI in commerce, but the FTC’s enforcement actions also constitute a body of jurisprudence the FTC can rely on to address the real and potential harms that stem from the deployment of consumeroriented AI.259

Given its broad grant of authority, the regulatory tools at its disposal, and its experience dealing with emerging technologies, the FTC is currently in the best position to take the lead in regulating AI. The FTC’s leadership is sorely needed to fill in the remaining – and quite large – gaps in those few sectoral laws that specifically address AI and algorithmic decision-making.260 Several factors make the FTC the ideal agency for this role. First, the FTC can use its broad Section 5 powers to respond rapidly and nimbly to the types of unanticipated regulatory issues AI is likely to create.261

Second, the FTC has an established history of approaching emerging technologies with “a light regulatory touch” during their beginning stages, waiting to increase its regulatory efforts only once the technology has become more established.262 This approach provides the innovative space needed for new technologies such as AI to develop to their full potential. Thus, as it has in the past, the FTC would focus on disclosure requirements rather than conduct prohibition, and take a case-by-case approach rather than rely on rulemaking.263 Also, as it has traditionally done, the FTC can hold public events on consumer-related AI and issue reports and white papers to guide industry.264

In other words, the FTC has long taken a co-regulatory approach to regulation, which it can and should proceed to do with AI. As in other emerging technology areas, this will help industry continue to grow and innovate, while allowing for the calibration among all relevant stakeholders of the “appropriate expectations” concerning the use and deployment of AI decision-making systems.265 At the same time, the FTC should use its regulatory powers to nudge, and when necessary, push companies to refrain from engaging in unfair and deceptive trade practices in the design and deployment of AI systems.266 The FTC should also place the onus on firms that design and implement those systems to ensure misplaced or unrealistic consumer expectations about AI are corrected.267

By nudging (or pushing) firms in this way, the FTC can “gradually impose a set of sticky default practices that companies can only deviate from if they very explicitly notify consumers.”268 In terms of disclosure requirements, as it has done in other contexts, the FTC can develop rules and guidelines for “when and how a company must disclose information to avoid deception and protect a consumer from harm,” which can include requiring firms to adopt the equivalent of a privacy policy. 269 Given the black box like nature of most algorithmic decision-making processes, there is much that AI developers might have to disclose to prevent those processes from being deemed unfair or deceptive.270

In addition, given its broad authority under Section 5, the FTC is able to address small, nuanced changes in AI design that could adversely affect consumers, but that other areas of law, such as tort, may not be able to adequately handle.271 Again, this is important because AI and algorithmic decision-making can pose profound and systemic risks of harm, even though the actual harm to individual consumers may be small or hard to quantify. And as it has done in the area of privacy, the FTC can become the de facto federal agency authority charged with protecting consumers from harms caused by AI systems and other algorithmic decisionmaking processes.272

The FTC also can, and should, seek to work with other agencies to address AI-related harms, given that the regulatory efforts of other agencies will still occur and be needed in specific sectors or industries, which would impact and be relevant to the FTC’s efforts as well.273 Agency cooperation is essential to ensuring regulatory consistency, accuracy, and efficiency in the type of complex, varied technological landscape that AI presents.274 This should not be a problem as the FTC’s Section 5 authority overlaps regularly with the authority of other agencies, and the FTC itself has a history of cooperating with those agencies.275 Further, the FTC can use its experience working with other agencies to build standards and policy consensus within the regulatory community and among stakeholders. 276

The overarching role the FTC has played in protecting consumer privacy within the United States also has given it legitimacy within the wider privacy community. The FTC has been pivotal over time in promoting international confidence in the United States’ ability to regulate privacy by for example acting as the essential mechanism for enforcing the Safe Harbor Agreement with the European Union.277 As it takes on a similar overarching regulatory role for AI and algorithmic decision-making processes in this country, the FTC should gain a similar level of legitimacy internationally. This is important given the increasingly cross border nature of AI research and development.

#### Regulated emerging tech solves numerous existential threats --- Unregulated tech causes them

- Solves asteroids, super volcanoes, methane-hydrate release, supernova’s, and gamma-ray bursts  
- Avoids exotic weaponry, engineered pandemics, and runaway nanotech

Anders Sandberg et al. 08. Anders Sandberg is a James Martin Research Fellow at the Future of Humanity Institute at Oxford University. Jason G. Matheny is a PhD candidate in Health Policy and Management at Johns Hopkins Bloomberg School of Public Health. Milan M. Ćirković is senior research associate at the Astronomical Observatory of Belgrade. "How can we reduce the risk of human extinction?". Bulletin of the Atomic Scientists. 9-9-2008. https://thebulletin.org/2008/09/how-can-we-reduce-the-risk-of-human-extinction/

Humanity could be extinguished as early as this century **by succumbing to natural hazards**, such as an **extinction-level asteroid or comet impact, supervolcanic eruption, global methane-hydrate release, or nearby supernova or gamma-ray burst**. (Perhaps the most probable of these hazards, supervolcanism, was discovered only in the last 25 years, suggesting that other natural hazards may remain unrecognized.) Fortunately the probability of any one of these events killing off our species is very low–less than one in 100 million per year, given what we know about their past frequency. But as improbable as these events are, measures to reduce their probability can still be **worthwhile**. For instance, [investments](http://www3.interscience.wiley.com/journal/118486553/abstract?CRETRY=1&SRETRY=0) in asteroid detection and deflection technologies cost less, per life saved, than most investments in medicine. While an extinction-level asteroid impact is very unlikely, its improbability is outweighed by its potential death toll.

The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face even greater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics “fade out” by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore’s Law.

Farther out in time are technologies that remain theoretical but might be developed this century. Molecular nanotechnology could allow the creation of self-replicating machines capable of destroying the ecosystem. And advances in neuroscience and computation might enable improvements in cognition that accelerate the **invention of new weapons**. A survey at the Oxford conference found that concerns about human extinction were dominated by fears that **new tech**nologies would be misused. These emerging threats are especially challenging as they could become dangerous more quickly than past technologies, outpacing society’s ability to control them. As H.G. Wells noted, “Human history becomes more and more a race between education and catastrophe.”

Such remote risks may seem academic in a world plagued by immediate problems, such as global poverty, HIV, and climate change. But as intimidating as these problems are, they do not threaten human existence. In discussing the risk of nuclear winter, Carl Sagan emphasized the astronomical toll of human extinction:

A nuclear war imperils all of our descendants, for as long as there will be humans. Even if the population remains static, with an average lifetime of the order of 100 years, over a typical time period for the biological evolution of a successful species (roughly ten million years), we are talking about some 500 trillion people yet to come. By this criterion, the stakes are one million times greater for extinction than for the more modest nuclear wars that kill “only” hundreds of millions of people. There are many other **possible measures** of the potential loss–including culture and science, the evolutionary history of the planet, and the significance of the lives of all of our ancestors who contributed to the future of their descendants. **Extinction** is the undoing of the human enterprise.

### 1AC --- Plan

#### The United States Federal Government should substantially increase prohibitions on platform utilities by expanding the scope of its core antitrust laws to include non-FRAND (Fair, Reasonable, and non-discriminatory) dealing as an anticompetitive business practice

### 1AC --- Solvency

#### Contention three is Solvency:

#### The plan targets only the most dominant platforms and requires them to follow FRAND (Fair, Reasonable, and Nondiscriminatory) dealing standards

Klipa, 19 (Nik Decosta Klipa, 3-13-2019, accessed on 9-2-2021, Boston.com, "4 things to know about how — and if — Elizabeth Warren's plan to break up the tech giants would work", https://www.boston.com/news/politics/2019/03/13/elizabeth-warren-big-tech-plan/)//Babcii

2. How exactly would she break up Big Tech? Going further than the Microsoft settlement, Warren’s plan aims to “restore competition to the tech sector” through two approaches. The first would be through legislation to designate companies that have more than $25 billion in annual global revenue and offer “an online marketplace, an exchange, or a platform for connecting third parties” as “platform utilities.” These companies would be prohibited from both running a marketplace and acting as a participant in it. They would also be **required to meet “a standard of fair, reasonable, and nondiscriminatory dealing with users.”** “If you run a platform where others come to sell, then **you don’t get to** sell your own items on the platform because you have two comparative advantages,” Warren [told The Verge over the weekend](https://www.theverge.com/2019/3/9/18257965/elizabeth-warren-break-up-apple-monopoly-antitrust). “One, you’ve sucked up information about every buyer and every seller before you’ve made a decision about what you’re going to sell. **And** second, you have the capacity — because you run the platform — to **prefer your product over anyone else’s product. It gives an enormous comparative advantage to the platform**.” In her Medium post, Warren said that Amazon Marketplace, Google’s ad exchange, and Google Search would be platform utilities under her proposed law. That means Google Search would have to be spun off from its sprawling parent company, Alphabet. Google-owned ad providers would also have to be split off in order to participate on the company’s ad exchange. Amazon Basics, which sells generic brand electronics and home accessories on Amazon’s website, would have to be broken off into its own company. And in her interview with The Verge, Warren confirmed that Apple would have to be broken up in order to keep offering apps on its App Store. “Apple, you’ve got to break it apart from their App Store,” she said. “It’s got to be one or the other. Either they run the platform or they play in the store. They don’t get to do both at the same time.” Warren’s team says the $25 billion threshold provides a **clear line** that **only** captures the most powerful companies. And while there’s a huge list of companies with revenue over that threshold, **very few** of them offer online marketplaces — which are [**different than an online store**](https://www.quora.com/What-is-the-difference-between-an-online-marketplace-and-an-online-platform) — in which they also compete. Retail giants, like Walmart, or groceries store chains, would still be able to sell their own branded products alongside other brands on their online stores, since they process and fulfill the orders themselves (as opposed to letting third-parties list and sell their products on the website).

#### That successfully deters and remedies platforms exclusionary conducts AND restores FTC credibility --- They can’t do it alone

John B. Kirkwood 21, Professor of Law, Seattle University School of Law. American Law Institute. Executive Committee, AALS Antitrust and Economic Regulation Section. Advisory Board, American Antitrust Institute. Advisory Board, Institute for Consumer Antitrust Studies, "Tech Giant Exclusion," Florida Law Review, Forthcoming, pg. 42-43, 01/15/2021, SSRN.

The better approach would be to amend the Sherman Act to prohibit conduct that reduces competition significantly, whether or not it produces monopoly power. This change would enable the antitrust laws to reach and penalize the tech giants’ **unjustified exclusion without splitting them** into pieces **or forcing them to divest** their private label products. To be sure, a conduct approach is likely to be less clean than vertical separation. Once Amazon stops selling AmazonBasics items and Google divests Google Maps, the need for ongoing monitoring is likely to be minimal. In contrast, an antitrust challenge to tech giant exclusion would require a significant resource commitment. But as explained below, that resource commitment is likely to be both manageable and worthwhile.

The tech giants, as we have seen, have excluded third parties selling on their platforms by demoting them in search results, using nonpublic seller-specific data to boost their own products, or refusing to deal

with them simply because they are competitors. While this behavior is not widespread, it appears to be unjustified and anticompetitive. It enhances the tech giants’ market power and injures their customers. Yet no one in the United States has successfully challenged any of this conduct.

The most likely reason is that the conduct did not violate the Sherman Act. It is unilateral, not collusive, and it did not result in actual or imminent monopoly power. 224 This gap should be closed. The Sherman Act should be amended to reach unilateral exclusion by the tech giants that reduces competition significantly, even if it is unlikely to generate or maintain monopoly power. Further, the Department of Justice and the FTC should be authorized to obtain civil penalties if they establish a violation of this new section. This would couple public civil penalty enforcement with private treble damage actions, magnifying the deterrent effect of antitrust law.

These twin sanctions would alter the tech giants’ financial **calculus**. They would not deploy exclusionary tactics unless the likely gains outweighed the prospect of substantial financial penalties. Of course, that might not stop them in every case. They may figure that if they can disable rivals for a time they can achieve sufficient scale economies or network effects to ward off future entry, thereby earning long-run profits that would exceed the cost of any sanctions they have to pay.225 But they cannot count on that and the issue is not easy to resolve.226 In the face of such uncertainty, stiff financial sanctions are likely to reduce the incidence of exclusionary conduct. This is particularly so in complementary product markets, where the tech giants cannot generally hope to gain the scale and network advantages they possess in their core businesses.227 \*\*\*FOOTNOTE BEGINS\*\*\* 227 For example, Amazon sells private label batteries on amazon.com. Even if it could capture more of this complementary market for itself, it is unlikely to attain significant advantages over third party competitors like Eveready and Duracell. \*\*\*FOOTNOTE ENDS\*\*\*

The existence of Section 5 of the Federal Trade Commission Act is no reason not to expand the Sherman Act. In theory, Section 5 covers anticompetitive conduct that falls short of monopolization, but as Section A explains, its remedies are limited and its track record has been disappointing. Section B addresses the risk that expanding the Sherman Act would unduly deter procompetitive conduct. This risk can be minimized, however, by confining the amendment to the tech giants and including proof requirements that would defeat most challenges to desirable conduct. Section C describes the recent Congressional support for this change. Section D uses a detailed example to demonstrate that it would be workable in practice.

A. Section 5 of the FTC Act Passed in 1914, the FTC Act not only created a second federal agency to enforce the Sherman Act, it gave the agency a broader mandate. Section 5 prohibits “unfair methods of competition,”228 whether or not they emerge from collusion or result in monopoly power. In principle, therefore, Section 5 plugs the hole in the Sherman Act just described. In practice, however, it rarely does so. As explained below, the **ability of Section 5 to deter** anticompetitive conduct is modest. It cannot be enforced by private parties and violations of Section 5 do not result in treble damages and attorneys’ fees. The Department of Justice cannot enforce it, reducing its deterrent effect still further. Perhaps most important, courts have been reluctant to apply Section 5 outside the bounds of the Sherman Act. In consequence, the FTC has rarely brought such suits; in the last forty years, the **FTC has not pursued a single** pure Section 5 **challenge to unilateral exclusion**

# 2AC --- Finals

## Adv---Europe

## Adv---Credibility

## OFF

### 2AC --- T --- Prohibit

#### 2. “At least” sets a minimum for what it means to be topical.

Bradford 14, JD (Case 2:13-cv-01581-AKK Document 24 Filed 09/11/14 , Lexis)

In addition, there is a distinct difference between the two phrases used. “At least” is defined as “not less than,” “at a minimum,” or “at the minimum.”2 The phrase is indefinite, and signifies only that a minimum unit of time (one year) is required.

#### Expand the scope just means to increase claims

Epstein, New York University School of Law, 19 [Richard A., Laurence A. Tisch Professor of Law, The New York University School of Law, the Peter and Kirsten Bedford Senior Fellow, The Hoover Institution, the James Parker Hall Distinguished Service Professor of Law Emeritus and Senior Lecturer, the University of Chicago. This Article was presented at a conference sponsored by the Classical Liberal Institute and the Nebraska Law Review, Understanding the Visible: The Undisputed Facts and Disputed Law of Platform Antitrust, held on February 22 & 23, 2019 at the NYU Law School. For the record, I have advised Qualcomm on various antitrust matters over the years, including its current litigation with the FTC. My thanks to William Dawley and Joseph Scopelitis, NYU Law School Class of 2020 for their excellent research assistance., Nebraska Law Review, “SYMPOSIUM: Judge Koh's Monopolization Mania: Her Novel Antitrust Assault Against Qualcomm Is an Abuse of Antitrust Theory”, 98 Neb. L. Rev. 241 \*

The question then arose whether the violation of the Telecommunications Act counted as a violation of the antitrust laws as well. The statutory framework contained two key provisions. The Telecommunications Act was not allowed to preempt the operation of the antitrust laws: "nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws." 64 By the same token, the status quo was preserved because the Telecommunications Act also did nothing to expand the scope of the antitrust laws. It did not create new claims going beyond existing antitrust standards. The creation of any additional antitrust standards would be equally inconsistent with the saving clause's mandate that nothing in the Telecommunications Act would "modify, impair, or supersede the applicability" of existing law.

#### C/I --- Prohibition means to forbid an action

Garner, Black’s Law Dictionary editor-in-chief, 16 [Bryan A., Black’s Law Dictionary, Fifth Pocket Edition, “prohibition”, p. 630]

prohibition. (15c) 1. A law or order than forbids a certain action.

#### 5. Reasonability --- Competing interps causes race to the bottom and substance crowd out --- It was one of 4 policy aff’s in the topic paper

“Antitrust Controversy Area Proposal,” 2021, <http://www.cedadebate.org/forum/index.php?topic=7654.0>

Text

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### 2AC --- Courts CP --- F/L

#### b. It’s not percieved

Nick Robinson 7, JD – Yale Law and Fox Fellow – Jawaharlal Nehru University, “Citizens Not Subjects: U.S. Foreign Relations Law and the Decentralization of Foreign Policy”, Akron Law Review, 40 Akron L. Rev. 647

There are clearly times that the U.S. must act with a united voice, but the legislature and executive are better suited than the judiciary to determine when localities' actions are a genuine threat to the nation's foreign relations interests. [189](https://www.lexis.com/research/retrieve?_m=6ff947ef13102cfa62af5b82dbff1b34&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAz&_md5=7b58b9ab099442696692e212407f145a&focBudTerms=court%20w/35%20foreign%20policy%20w/35%20confus%21%20or%20incoheren%21&focBudSel=all#n189) These branches are better acquainted with the nation's foreign policy and can more efficiently and accurately target localities' actions that adversely affect foreign relations than courts. Also, giving broad preemption power to the judiciary may result in diverse decisions by lower courts in the same area of foreign relations, creating further confusion. [190](https://www.lexis.com/research/retrieve?_m=6ff947ef13102cfa62af5b82dbff1b34&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAz&_md5=7b58b9ab099442696692e212407f145a&focBudTerms=court%20w/35%20foreign%20policy%20w/35%20confus%21%20or%20incoheren%21&focBudSel=all#n190) Therefore, courts should abandon their heightened preemption analysis in the field of foreign relations. They should only preempt localities' actions in foreign relations when they are explicitly required to by the executive, the legislature, or the Constitution.

#### c. Congress k2 clarity

Derrian Smith 19. J.D., 2019, Indiana University Maurer School of Law; B.A., 2016, Indiana University - Indianapolis. "Taming Sherman's Wilderness." Indiana Law Journal, vol. 94, no. 3, Summer 2019, p. 1223-1246. HeinOnline.

CONCLUSION

The Sherman Act, by its vague and sweeping language, is a broad delegation of authority to the Supreme Court. Congress sent us into the wilderness-law students and generalist judges alike. In light of swelling desire for the antitrust laws to be more effective against modern-day competition foes, Congress should update the Sherman Act. The common-law approach has not achieved the stability

one would expect of a statute levying hefty criminal sanctions, and the Court appears to approximate agency rulemaking on an increasingly frequent basis. Delegating rulemaking authority to an antitrust agency may be a viable solution. But there are some draw backs-namely constitutional objections to which the Sherman Act may be vulnerable, especially if an agency delegation were not accompanied by some level of additional statutory clarity. Even if the agency solution proves unworkable, Congress should address head-on the growing need for clarity, predictability, and stability, which the Sherman Act significantly fails to provide.

#### b. Courts spur enforcement chilling

**Baer, 20** (Bill Baer, visiting fellow in governance studies at The Brookings Institution, previously served as the assistant attorney general of the Antitrust Division and as the acting associate attorney general of the U.S. Department of Justice and in a variety of roles at the Federal Trade Commission, including director of the Bureau of Competition, 10-1-2020, accessed on 5-19-2021, Brookings, "Improving antitrust law in America", https://www.brookings.edu/testimonies/improving-antitrust-law-in-america/)//Babcii

How did we get there? In my view, the fear of getting it wrong warped antitrust enforcement. Antitrust jurisprudence today is too cautious, too worried about adverse effects of “over enforcement” (so called Type I errors). Bias against enforcement has caused many courts to demand a level of proof that is often unattainable. That chills enforcement, limits our ability to challenge conduct or acquisitions of potential rivals—especially in the technology sector where firms benefiting from network effects can acquire enduring market power. What should we do about it? We need to change current law to direct the courts and antitrust enforcers to be more assertive in challenging conduct and consolidation that risks creating or enhancing market power. Modest changes will suffice: by incorporating presumptions that certain behaviors are likely to reduce competition, making it clear that showing a **risk** of a reduction in competition is sufficient, emphasizing that anticompetitive effects include price and quality and innovation competition, and legislating to overrule recent problematic court decisions, Congress can make a meaningful difference. And we need to consider forward-looking rules and legislation that will enhance competition. We have ample precedent. The 2004 FCC rule allowing consumers to “port” their phone numbers to competing carriers gave consumers the economic power to reward those with lower rates and better service. It forced incumbent carriers to compete like never before. Those sorts of tools—portability and interoperability—can help restore markets to a competitive equilibrium.

### 2AC --- States CP --- F/L

#### 3. Link to net ben

Bulman-Pozen 16 (Jessica, Associate Professor, Columbia Law School, EXECUTIVE FEDERALISM COMES TO AMERICA, 102 Va. L. Rev. 953, June, lexis)

As I have suggested, executive federalism grows out of the political polarization of our times. Hyperpolarized parties gridlock Congress and further empower the executive branch, but they also create strong links across the state-federal divide. n172 These links may enable something like party government through state-federal cooperation among co-partisans, enhancing the ability of the federal executive and certain states to act. At the same time, the state-federal connection amplifies opportunities for partisan resistance and contestation. If state and federal executives seek each other out because of partisan affinity, their collaborations tend also to bring in other state actors with opposing positions.

#### 4. Gets struck down

\* Yes about automobiles but says that decision will be applied to state laws to invalidate them

**Hauenschild, 21** (Jonathon Hauenschild, Jonathon Paul Hauenschild, J.D. is the director for the ALEC Task Force on Communications and Technology. Mr. Hauenschild has his Bachelor of Arts in History from Thomas Edison State College and is a 2007 graduate, magna cum laude, of the Oak Brook College of Law. He is licensed to practice law in California, and is admitted to various federal district courts, the U.S. Court of Appeals for the Ninth Circuit and the U. S. Supreme Court., 3-31-2021, accessed on 8-18-2021, American Legislative Exchange Council, "Can State Courts Exercise Jurisdiction Over Online Marketplaces or Individual Sellers?", https://www.alec.org/article/can-state-courts-exercise-jurisdiction-over-online-marketplaces-or-individual-sellers/)//Babcii

A recent Supreme Court case could have a significant impact for online marketplaces and the individual sellers who rely on them. The case, entitled Ford Motor Co. v. Montana Eighth Judicial District Court went into detail over the question of whether a state court could exercise jurisdiction over an automobile manufacturer. The ultimate result was not controversial—all eight justices participating in the decision believed the state courts could exercise jurisdiction. The controversial aspect of the decision rested in “why” the courts could exercise jurisdiction. Within the back and forth between the majority opinion, authored by Justice Kagan, and the concurring opinions, one by Justice Alito and the other by Justice Gorsuch, raises serious questions for online platforms such as Ebay, Etsy, Amazon, and others that rely on independent sellers. Jurisdiction is nothing more than a court’s ability to hear and decide cases that will bind both parties. State courts, traditionally, have authority to decide cases either when a defendant lives within the state or when the defendant is, somehow, connected to it. Jurisdiction gets a bit trickier when a company, rather than an individual, is the defendant. For a company to be “at home” within a state, it must either have its headquarters, its “principal place of business,” or be incorporated there. Alternatively, the company must have some deliberate, and continuous, contacts with the state—in legalese, courts will ask if a company has “**purposefully availed itself**” of a particular state. A typical example is that of a car manufacturer. In the Ford Motor Company case, the company is incorporated in Delaware, has its headquarters in Detroit, and manufacturers vehicles in states like Kentucky. Despite this, Ford authorizes dealerships across the country, in nearly every state. Because of this, the courts ruled that courts in states like Montana and Minnesota could exercise jurisdiction over the company. The example breaks down, though, when considering ecommerce and online marketplaces. Online marketplaces are not like traditional malls or shopping centers. Instead, they provide an opportunity for individuals to sell products across the country and across the globe. Many online marketplaces do not set up storefronts across the country or in a specific state. Most, if not all, of the individual sellers do not intentionally sell products to consumers in Montana, Georgia, Tennessee, and so on. But by virtue of the marketplaces existing virtually, individual sellers can reach consumers in those states simply by listing a product for sale. The **majority in Ford** would claim these types of contacts are “random, isolated, or fortuitous,” but the concurring opinions disagree. Justice Gorsuch recounted the judicial historical analysis of jurisdiction, pointing out that a company purposefully availed itself of a state market if it sent agents to the state, advertised in local media, or developed a network of on-the-ground dealers. He followed this up by wondering, in a digital age, what presence or purposeful availment looks like. In so doing, Justice Gorsuch claimed that “**new technologies** and new schemes to **evade** the process server [and thus **jurisdiction**] will always be with us.”

#### b. States are insufficient

Dr. Heath P. Tarbert 21, JD and JSD from University of Pennsylvania Law School, Master of Studies and Doctor of Philosophy in Comparative Law from Oxford University, “Self-Regulation in the Derivatives Markets: Stability Through Collaboration”, Northwestern Journal of International Law & Business, 41 NW J. Int'l L. & Bus. 175, Winter 2021, Lexis

2. International Harmonization

Another area where government action is necessary relates to international harmonization. While SROs are often adept at formulating cross-border principles and standards with other SROs, 150 the government--and particularly a federal agency--is critical to advancing harmonized regulatory systems with foreign governmental counterparts. An example is the recent harmonization of certain swap data reporting efforts. In proposing and finalizing a new system for data reporting by swap dealers and swap data repositories, the CFTC has worked to harmonize its framework with that of the European Securities and Markets Authority (ESMA). 151 As data is inherently borderless and because swap dealers and swap data repositories often must report data to both the CFTC and ESMA, harmonizing reporting requirements where appropriate can produce significant cost savings and efficiencies for market participants.

For example, the CFTC's efforts to bring its swap data reporting system into greater harmony with international coordination efforts has led to the publication of a CFTC Technical Specification, which contains 128 reportable data fields. 152 The Technical Specification streamlines hundreds of prior fields that were previously required by swap data repositories operating without clear CFTC guidance. This change will enable the CFTC to receive the data it needs to perform its regulatory functions while at the same time reducing duplicative reporting burdens for entities subject to [\*203] multiple jurisdictions. In proposing revisions to the swap data reporting rules, the Chairman of the CFTC stated:

As it stands today, a market participant with a swap reportable to the CFTC might also have to report the same swap to the SEC, the European Securities and Markets Authority (ESMA), and perhaps other regulators as well. The global nature of our derivatives markets has led to the preparation and submission of multiple swap data reports, creating a byzantine maze of disparate data fields and reporting timetables. Market participants should not incur the costs and burdens of reporting a grab-bag of dissimilar data for the very same swap. That approach helps neither the market nor the CFTC: conflicting data reporting requirements make regulatory coordination more difficult, preventing a panoramic view of risk. 153

Resolving situations like this requires significant federal action to coordinate with and align regulatory requirements and technical standards with foreign regulators. 154 While SROs can be very effective at constructing international standards, they lack the ability to place the imprimatur of the United States government, as a sovereign nation, on negotiations and regulatory efforts. In contrast, CFTC action in the swap data reporting context has given assurances to other regulators that harmonization efforts have the backing of the United States government. This is important not only for the mechanics of promulgating rules, but also for international comity: federal support for collaborative efforts sends a strong signal to foreign governmental counterparts that can lay the groundwork for future cooperation.

Signaling aside, there is a practical reason to prefer government action in the international harmonization space. Just as states and localities do not negotiate treaties, 155 leaving regulatory harmonization efforts primarily to federal agencies is important to produce a unified and holistic message. The numerous exchanges in the derivatives space--each an SRO in its own right--have varying interests and priorities that could complicate efforts to place them in charge of harmonization efforts with overseas regulators. The ability of the CFTC to speak with one voice on behalf of the U.S. derivatives markets when negotiating and collaborating with foreign regulators is a clear benefit of federal action in the international space.

#### c. Fed key --- Lack of oversight means states will run with the CP to splinter the internet

Huddleston & Adams 19 [Jennifer is the Director of Technology and Innovation Policy at AAF. Her research focuses on the intersection of emerging technology and law. s Managing Director, Ian Adams leads Clean Energy Trust’s efforts to identify new innovations and investment opportunities and works to develop new initiatives to support early-stage innovation. Ian also supports Clean Energy Trust’s portfolio, serving as a board observer for five companies. Prior to joining CET, Ian served as an aide to the U.S. Secretary of Energy and worked at the White House. "Potential Constitutional Conflicts in State and Local Data Privacy Regulations." https://regproject.org/wp-content/uploads/RTP-Cyber-and-Privacy-Paper-Constitutional-Conflicts-in-Data-Privacy-final.pdf]

These negative effects are compounded by the uncertainty created for covered entities, possible inconsistencies in enforcement between states, 14and overly broad definitions of germane terms (particularly “personal information”) Even slight inconsistencies among states are likely to frustrate consumer expectations,15 as well as the companies subject to them, by introducing confusion about what rights exist and what rules apply when trying to comply.16

Ultimately, while these proposals may be well-intentioned attempts by state lawmakers to provide a solution in the absence of federal action, sub-national data privacy laws have the potential to create a disruptive mesh of inconsistent, but always applicable, standards that splinter the internet and raise costs.17

### 2AC --- DPA CP --- F/L

**2. Perm---do counterplan---prohibitions can be conditional.**

**FISCR 16**, per curiam opinion for the US Foreign Intelligence Surveillance Court of Review, “In re Certified Question of Law,” 858 F.3d 591, Lexis

**It is clear from** the text of **the pen register provisions** in title 18, read as a whole**, that Congress understood** that **some content information might be intercepted in the course of executing a valid pen register order**. **One** of those **provision**s **is 18 U.S.C. § 3121(c). The statute states:**

[\*599] (c) Limitation. A government agency authorized to install and use a pen register or trap and trace device under this chapter or under State law shall use technology reasonably available to it that restricts the recording or decoding of electronic or other impulses to the dialing, routing, addressing, and signaling information utilized in the processing and transmitting of wire or electronic communications so as not to include the contents of any wire or electronic communications.

18 U.S.C. § 3121(c).

**That language requires the government to use "reasonably available" technology to avoid recording content information. But the prohibition is conditional, requiring the government to use such restricting technology only if it is "reasonably available."** Thus, by requiring the use of "technology reasonably available" to restrict recording and decoding of intercepted information to dialing information, Congress recognized that such technology might not be available or might not achieve the objective with perfect accuracy.

**DPA is uncertain.**

Scott **Lincicome 21**, senior fellow in economic studies at the Cato Institute, 4-26-21, "Shining Much-Needed Light on the Defense Production Act," Cato Institute, https://www.cato.org/blog/how-many-more-kodaks-are-there

**Despite the very real economic, political, and** even **geopolitical questions raised by the DPA**, however, **the law** (pandemic invocations of which involve billions of taxpayer dollars and occasionally government force) **does not permit a legitimate, independent** **assessment of past actions because it contains** essentially **no procedural guidance** **or requirements**. The aforementioned CRS report notes, for example, that:

[T]here is no standing requirement for publishing DPA actions, and no centralized repository where they are collected.… **It is unclear** **which executive agency leads** overall **efforts under DPA authority, in response to the pandemic.** **Reporting on DPA activities remains dispersed** **among multiple agency sources and appears incomplete. In addition, it is not clear under which authorities agencies are undertaking certain DPA attributed activities, such as DOD’s redirection of Title III funds, or DOJ’s enforcement of antihoarding/​price gouging**.

**My** own independent **research counts** at least **64 invocations of the DPA** since March 27, 2020**, totaling tens of billions of taxpayer dollars**. This list, however, remains incomplete, with transparency subject primarily to the parties’ decisions to disclose their transactions, often in response to intense public scrutiny.

#### 8. diseases don’t cause extinction

Owen Cotton-Barratt 17, et al, PhD in Pure Mathematics, Oxford, Lecturer in Mathematics at Oxford, Research Associate at the Future of Humanity Institute, 2/3/2017, Existential Risk: Diplomacy and Governance, https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf

For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.38 None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic.

One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39

### 2AC --- Econ DA --- F/L

#### 2. Lack of leadership is worse --- China and India will completely cut off our companies AND global patchwork hurts business confidence

Gold, 21 (Ashley Gold, Ashley Gold is a tech and policy reporter at Axios, covering regulators and Big Tech., 4-28-2021, accessed on 10-18-2021, Axios, "The world regulates Big Tech while U.S. dithers", https://www.axios.com/world-tech-regulation-8d96502a-1400-4439-9ca8-c73ee4594a3b.html)//Babcii

What they're saying: "When the United States is acting as if it is the democratic force for how to regulate technology to counter techno-authoritarianism, that's kind of a ridiculous statement when there's very little technology regulation and there's **no federal** privacy **law**," Justin Sherman, a fellow at the Atlantic Council, told Axios.

**China and India's moves to cut off access to U.S. companies** and balkanize their Internet **entirely are especially troublesome**, experts warn, underscoring the need for the EU and U.S. to cooperate.

Leaders of major U.S. **tech companies have been warning about the consequences of this fragmented approach to tech policy** across the world and **asking the U.S. to step up.**

"It's the multiplication of divergent, often inconsistent national policies that **makes it become very challenging to operate global platforms in a world of increasing fragmentation from a regulatory perspective,**" Google's Karan Bhatia, head of global policy, said in an interview.

#### 4. Growth is slowing --- AND business confidence and investment is thrashed --- It won’t recover until well into 2022

Pickert, 10/28 (Reade Pickert, Reade Pickertis a business newsreporter based out ofNew York City. She is currently a Cross-Asset Reporter for Bloomberg., 10-28-2021, accessed on 11-5-2021, Fortune, "U.S. GDP rises just 2% as COVID and supply chain issues hampers economic growth", https://fortune.com/2021/10/28/us-gdp-rises-2-percent-as-covid-and-supply-chain-issues-hampers-economic-growth/)//Babcii

U.S. **economic growth slowed more than expected** in the third quarter to the softest pace of the pandemic recovery period as snarled supply chains and a surge in COVID-19 cases **throttled** spending and investment. Gross domestic product expanded at a 2% annualized rate following a 6.7% pace in the second quarter, the Commerce Department’s preliminary estimate showed Thursday. The deceleration reflected a sharp slowdown in personal **consumption**, which grew at just a 1.6% pace after a rapid 12% jump in the prior period. **Shortages, transportation bottlenecks, rising prices and the Delta variant** of the coronavirus weighed on both goods and services spending. The median forecast in a Bloomberg survey of economists called for a 2.6% increase in GDP. U.S. stock index futures held gains, while the dollar fell and Treasury yields rose. The latest data underscore how unprecedented **supply constraints are holding back the U.S. economy**. Understaffed and short of necessary materials, producers are struggling to keep up with demand. Service providers, who face similar pressures, fared better than manufacturers during the quarter despite the pickup in infections. While supply chain **challenges are expected to linger well into 2022**, subsiding COVID-19 infections and elevated savings should support stronger household spending in the final three months of the year. “Looking ahead, we see a stronger pace of growth in the fourth quarter on a rebound in household spending, albeit with downside risk from supply chain dislocations and shortages that could be a constraint for the economic expansion over coming months,” Rubeela Farooqi, chief U.S. economist at High Frequency Economics, said in a note. Persistent supply constraints paired with other reopening effects have also driven up prices for a variety of products, spurring concerns about the breadth and duration of the recent spike in inflation. The personal consumption expenditures price index excluding food and energy costs, an inflation measure followed closely by Federal Reserve officials, remained elevated, growing an annualized 4.5% last quarter after a 6.1% jump in the prior three months. How **companies see** it “We don’t see the raw material or the inflation environment slowing down in any way.” —[3M](https://fortune.com/company/3m) Co. CFO Monish Patolawala, Oct. 26 earnings call “Consistent with the broader market, we are experiencing inflation pressure... Next year we anticipate a more challenging inflation environment.” —[General Electric](https://fortune.com/company/general-electric) Co. CFO Carolina Dybeck Happe, Oct. 26 earnings call “I think the headwinds and the **increased** distribution **costs will certainly be with us into 2022**.” —[Kimberly-Clark](https://fortune.com/company/kimberly-clark) Corp. CFO Maria Henry, Oct. 25 earnings call “On the cost side of the equation... **we do not see any meaningful improvement until well into 2022**.” —[Sherwin-Williams](https://fortune.com/company/sherwin-williams) Co. CEO John Morikis, Oct. 26 earnings call “The risks are clearly now to longer and more persistent bottlenecks and thus to higher inflation,” Fed Chair Jerome Powell said last week. “We now see higher inflation and the bottlenecks lasting well into next year.” Inflation-adjusted **business investment cooled** from the rapid pace of growth seen over the past year as manufacturers struggled to fulfill orders. Non-residential fixed investment rose an annualized 1.8%. Both outlays for structures and equipment declined on an inflation-adjusted basis, while the value of intellectual property surged. The slowdown in consumer spending reflected weaker motor vehicle expenditures which subtracted 2.39 percentage points from GDP during the quarter. Automakers have been struggling to boost production and inventory amid computer chip shortages.

#### 7. Business formation is useless for the general economy

Bagrie, 18 (Cameron Bagrie, Cameron Bagrie is the Managing Director of Bagrie Economics. Cameron has been an economist for 20 years. For over 11 years he was the Chief Economist at ANZ. He has also worked as an economist at the National Bank, Treasury and Statistics New Zealand., 8-9-2018, accessed on 8-21-2021, The Spinoff, "Business confidence is a hopeless indicator. But that doesn’t mean the economy isn’t in trouble", <https://thespinoff.co.nz/business/09-08-2018/business-confidence-is-bullshit-but-that-doesnt-mean-the-economy-isnt-in-trouble/)//Babcii>

The economy is headed for recession if you believe the readings from business confidence. Thankfully we can largely ignore business confidence readings. We can’t ignore other survey measures though that are saying growth has slowed and the official statistics are showing the same. The last three quarterly GDP prints have been 0.6, 0.6 and 0.5% and we only have data up to March 2018. That’s annualised growth in the low 2’s and a dip below 2% now looks likely. We have the potential for a growth pothole. That is becoming a concern as the wheels of the economy need to be turning and tax revenue coming in the door for social agenda demands to be met. A whopping net 45% of firms are pessimistic about the general economy according to the ANZ Business Outlook survey. That’s a level last seen around the global financial crisis. Of course, no one really believes things are that bad. We can’t blame the global scene as other countries would be seeing massive falls in confidence too if that was a key factor. Other countries are not. The New Zealand Institute of Economic Research (NZIER) is showing weak readings for business confidence within their Quarterly Survey of Business Opinion (QSBO) too. The good news is that business confidence is hopeless as an economic indicator. The correlation with economic growth is poor and I largely ignore business confidence readings. Changes in direction can provide some insightful information – whether things are picking up or slowing down, but not the levels. Businesses tend to be more upbeat regarding general confidence about the economy under a blue flag as opposed to a red one. Business confidence averaged minus 18 between 2000 and 2007. The economy (measured by real gross domestic product) grew on average by more than 3.5% per year. Yep, confidence was negative, but growth was positive. So, we ignore business confidence as an economic indicator. This is nothing new. It’s surprising headline business confidence figures receive so much attention.

#### 8. Decline doesn’t cause war

Dr. Stephen M. Walt 20, Robert and Renée Belfer Professor of International Relations at Harvard University, PhD in International Relations (with Distinction) from Stanford University, MA in Political Science from the University of California, Berkeley, “Will a Global Depression Trigger Another World War?”, Foreign Policy, 5/13/2020, https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”

Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

### 2AC --- Infra DA --- F/L

#### 1. No passage --- House passage is aff UQ --- Dems gave up all leverage to Manchin --- he will kill the bill or at the very least cut the warming parts

McLaughlin, 11/7 (Ted McLaughlin, Political analyst, 11-7-2021, accessed on 11-7-2021, Blogarama, "Progressives Gave Manchin Complete Control Of BBB Bill", https://www.blogarama.com/government-blogs/37455-jobsanger-blog/41345346-progressives-gave-manchin-complete-control-bbb-bill)//Babcii

The biggest opponents were Joe **Manchin** and Krysten **Sinema** -- Senate Democrats. President Biden told progressives that he believed Manchin and Sinema would vote for the $1.7 trillion version of the bill, but neither has actually publicly **said they would vote for it** -- and **Manchin has been very vocal about opposing** elements of **it**. The only real power that progressives in the House **had was their refusal to pass the infrastructure bill until the BBB bill was also passed** (and both Manchin and Sinema want infrastructure passed, because they had negotiated it with GOP). But by passing the infrastructure bill before the BBB bill, and without getting public assurances from Manchin (and Sinema), **the progressives have given up the only leverage they had.** Now Joe Manchin has complete control over the Build Back Better bill, and he can do what he wants with it (because Democrats can't pass it without his vote). Let's be clear about one thing. **Joe Manchin is not a moderate. He's a conservative** -- and conservatives do not care about making things easier for anyone (but the rich and corporations). They want the status quo to remain intact. And Manchin's statements show that is what he wants. **He doesn't want transformative change.** He will undoubtably try to amend the House version of the BBB bill, and he has the power to do that. The 50 Republicans will be happy to help him cut large portions out of the bill. They won't vote for it in the end, but they'll love to help Manchin make it a much worse and less effective bill. Manchin doesn't like paid family leave, so he'll likely cut it from the bill. **Manchin has millions invested in fossil fuels** (especially coal), so he'll likely **cut out the climate change portions of the bill.** Manchin's daughter is the CEO of a Big Pharma company, so he'll likely cut out the negotiating of drug prices. **And he probably won't stop there**. He's already said the bill would create an entitlement society.

#### 2. BUT Link is redundant --- Time and PC not key --- There’s no deadline and obviously they won’t just give up

Kilgore, 11/1 (Ed Kilgore, Ed Kilgore is a political columnist for New York magazine and the managing editor of the Democratic Strategist, an online magazine., 11-1-2021, accessed on 11-5-2021, Intelligencer, "What Is Congress Even Doing Right Now? A Brief Guide.", https://nymag.com/intelligencer/article/infrastructure-reconciliation-debt-ceiling-congress-2021-schedule.html)//Babcii

What’s the real **deadline**?

Congress has now twice dealt separately with the one real deadline embedded in the infrastructure bill: surface transportation dollars whose authorization expired on September 30 and was then extended until October 30. It has now been extended to December 3, the same day the stopgap spending bill funding most federal operations is due to expire.

Other than that, **there’s no real deadline for the** infrastructure **bill**. If it fails to pass the House, it would join the many efforts at a [bipartisan infrastructure bill in the Trump administration](https://nymag.com/intelligencer/2018/01/6-times-trump-derailed-his-own-infrastructure-plan.html) that never found traction.

The Budget Reconciliation Bill

Both the Senate and the House have passed on strict party-line votes a budget resolution for FY 2022 that authorizes a budget reconciliation bill of up to [$3.5 trillion](https://nymag.com/intelligencer/2021/09/reconciliation-spending-bill-usd3-5-trillion-manchin-sinema-democrats-infrastructure.html). But because any one Senate Democrat or any three House Democrats could sink the legislation by withholding their votes, negotiations over the size and shape of the package have been complex and at times fractious.

What’s the holdup?

Democrats need unanimous support in the Senate and near-unanimous support in the House to get a reconciliation bill enacted. Two senators, [Joe Manchin and Kyrsten Sinema](https://nymag.com/intelligencer/2021/09/watching-joe-manchin-and-kyrsten-sinema-is-all-so-depressing.html), have separately objected to the $3.5 trillion price tag and multiple provisions in the bill that have been slowly emerging in congressional committees and in a series of negotiations. House and Senate progressives are resistant to the kind of major shrinkages in size and scope that centrists in both Houses are demanding, think $3.5 trillion is significantly too low, and that investments in [climate change](https://nymag.com/intelligencer/2021/10/are-fears-of-2022-losses-driving-house-democrats-to-retire.html) and anti-income inequality measures they expected the bill to encompass are nonnegotiable. A small but potentially key group of House progressives is insisting on immigration liberalization provisions that the Senate parliamentarian has twice deemed non-germane to budget legislation under the arcane Byrd Rule governing provisions that can be included in reconciliation bills.

There are separate [strategic disagreements](https://nymag.com/intelligencer/2021/10/democrats-shouldnt-half-ass-joe-bidens-agenda.html) among Democrats as to whether a reduction in the price tag of the bill should be accomplished via fewer key investments or shortened timelines (e.g., expiration dates well before the ten-year maximum “window” for reconciliation provisions). At this point negotiators seem to be leaning towards broader provisions with shortened timelines.

When do they say it will be done?

Now that Democrats have **blown past** the **September 30** and **October 31** deadlines Pelosi set for a reconciliation deal and an infrastructure vote (and an implicit deadline of getting it all done in time to influence the [Virginia gubernatorial race](https://nymag.com/intelligencer/2021/10/youngkin-dodges-insurrection-flag-rally-held-on-his-behalf.html) that concludes on **November 2), no one is setting new deadlines**, though there’s optimistic talk of it all coming together any day now. The biggest problem now may be the insistence among some House progressives on seeing the actual legislative text of a reconciliation bill before allowing the infrastructure bill to come to a vote. That takes time, and also may incur a delay in order to get a formal “score” (i.e., spending/revunue estimate) from the Congressional Budget Office.

If a “framework” agreement isn’t enough to clear the infrastructure bill, then you can expect Democrats to begin stipulating later holidays like Thanksgiving, Christmas, or even **New Year’s** to get this key chore done. **They aren’t going to give up since B**uild **B**ack **B**etter **represents a critical measure** of the success or failure of Biden’s presidency so far.

#### 4. No PC or focus tradeoff --- Antitrust is under the radar

**Cadelago and McGraw**, 7-19-**21** (Christopher and Meredith, “‘It’s ceding a lot of terrain to us’: Biden goes populist with little pushback,” accessed 8-5-21, <https://www.politico.com/news/2021/07/19/biden-populist-antimonopoly-500100>)

When President Joe Biden unveiled a series of sweeping executive orders to combat monopoly power, the response from Republicans was notable — because there was barely one at all.Not long ago, a Democratic administration taking unilateral action to rein in corporations on everything from non-compete agreements to prescription drug affordability would have engendered fury from elected conservatives. Yet over the last week, few Republicans were **warning** that Biden’s actions would severely (hurt) ~~kneecap~~ business or slow the economic recovery. And inside the White House, the relative silence was not just noticed but seen as **vindication**. “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 (silent) ~~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.”

#### 5. Bills are compartmentalized

Edwards ‘2k (George; March 2000; Professor of Political Science at Texas A&M University, Director of the Center for Presidential Studies; Presidential Studies Quarterly, Vol 30. No 1. “Building Coalitions,” p. 6;)

Besides not considering the full range of available views, members of Congress are not generally in a position to make trade-offs between policies. Because of its decentralization, Congress usually considers policies serially, that is, without reference to other policies. Without an integrating mechanism, members have few means by which to set and enforce priorities and to emphasize the policies with which the president is most concerned. This latter point is especially true when the opposition party controls Congress.

#### 6. Federal infrastructure investment creates tradeoffs that decrease overall investment

**Gribbin, 19** (D.j. Gribbin, Gribbin holds a B.A. and J.D. from Georgetown University, is a member of the Virginia Bar, and was a licensed broker dealer,, 3-27-2019, accessed on 4-19-2021, The Agenda, "Three reasons to think twice about an infrastructure bill ", https://www.politico.com/agenda/story/2019/03/27/infrastructure-funding-bill-000886/)//Babcii

The “coupon effect”

The prospect of federal **funding** can **dampen state and local funding**. While voters [overwhelmingly support](https://news.gallup.com/poll/226961/news-public-backs-infrastructure-spending.aspx?g_source=link_NEWSV9&g_medium=TOPIC&g_campaign=item_&g_content=In%2520the%2520News%3a%2520Public%2520Backs%2520More%2520Infrastructure%2520Spending) increased infrastructure spending, their strong preference is that [someone else pay for it](http://www.rasmussenreports.com/public_content/business/general_business/december_2017/americans_don_t_give_infrastructure_high_marks_but_don_t_want_to_pay_to_fix_it). This dynamic makes it difficult for state and local leaders (who own 90 percent of governmental infrastructure) to turn to their electorate and **ask for a tax or fee increase** if the federal government is offering “free” funding.

This dynamic can be called the “coupon effect.” Imagine if shoppers in the market for a new suit were told that there is a small likelihood they will receive a coupon for 80 percent off their next suit purchase. **Consumers will** rationally **engage in** what economists call **strategic delay** and postpone their purchase in the hope of receiving a coupon, even if the chance of getting the coupon is very small. Every time a consumer considers heading to the store and buying a suit, he will ask, “But what if a coupon arrives tomorrow?” As a result, many will continue to delay until their suits (or our infrastructure) become unacceptably shoddy and worn.

In my experience, the prospect of federal funding has this same impact on state and local leaders considering a tax or user fee increase to expand or improve the quality of their infrastructure. This dynamic was clearly apparent in Kentucky in 2014, for instance. That year, a [candidate for the U.S. Senate](http://alisonforkentucky.com/newsroom/press-releases/grimes-rebuild-bridge-cut-deficit/) encouraged the communities around the Brent Spence Bridge (connecting Cincinnati and Covington, Ky.) to oppose a toll increase, because if elected, she would get the federal government to pick up the $2.6 billion tab to replace the bridge. Her campaign successfully increased opposition to tolling. Yet five years later, the [debate](https://www.wdrb.com/in-depth/kentucky-weighs-tolls-for-large-interstate-projects/article_f810d234-3a02-11e9-93dd-a3ddf06b89d1.html) on how to fund the bridge is still unresolved, and the probability of full federal funding is still just about zero (notwithstanding the fact that the state is represented by the Senate majority leader, who is married to the Secretary of Transportation).

While further study needs to be done, the coupon effect could actually result in **a net decrease in infrastructure funds**, especially when **coupled with** the challenges of [**substitution**](https://www.cbo.gov/system/files?file=2018-08/54371-workingpaper_1.pdf)**; states** **and local** governments receiving an influx of federal dollars frequently substitute the new federal dollars for funds previously allocated to infrastructure and transfer their dollars to other policy priorities. As a result, a dollar in new federal infrastructure spending does not necessarily result in an additional dollar available for infrastructure.

The current non-federal to federal ratio of infrastructure spending is 3:1. Thus, if a 30 percent increase in federal spending (along with celebrations that the coupon is in the mail) dampened by 11 percent non-federal spending increases, our nation would be left with **a net national decrease in infrastructure funding.**

The goal of infrastructure policy should be a significant increase in infrastructure funding overall. As counterintuitive as it sounds, an increase in federal funding could work counter to that goal.

#### 7. The bill makes warming worse by funding logging --- That results in a net increase in emissions and destroys CCS

Garrity, 21 (Mike Garrity, Mike Garrity is the Executive Director of the Alliance for the Wild Rockies., 9-28-2021, accessed on 11-5-2021, Daily Montanan, "Infrastructure and budget bills contain provisions which will make climate change worse – Daily Montanan", <https://dailymontanan.com/2021/09/28/infrastructure-and-budget-bills-contain-provisions-which-will-make-climate-change-worse/)//Babcii>

In so many ways the future hangs in the balance as Congress debates the $3.5 trillion budget **reconciliation** bill **and** $1 trillion **infrastructure bill**. Although **encouraging** the use of more **electric** vehicles and increasing **solar and** wind **energy** will definitely **reduce** the amount of **carbon** we emit into the atmosphere, there are also **huge problems** that **will**, in fact, **make the earth hotter.**

The budget reconciliation bill adds an astonishing $16 billion dollars to the Forest Service’s current budget, most of **which would go for logging** – removing nature’s best, cheapest and most effective **mechanism for filtering carbon dioxide** from the atmosphere. This ignores that the Forest Service already has a billion dollars in its existing budget to subsidize commercial logging. The infrastructure bill not only gives the Forest Service an additional $3 billion, **it mandates logging 30 million acres of national forests** over the next 15 years – an area larger than the entire state of Pennsylvania!

Even worse, it also exempts many **new logging projects and oil and gas pipeline expansion** over public lands from environmental analysis, public review and comment, and the ability for citizens – who own these lands – to legally object to the projects.

Logging makes forest fires worse

Contrary to the myth held by many politicians, logging doesn’t stop large wildfires – it actually increases the threat.

In 2016 the largest wildfire analysis ever done found that forests with the most logging and the fewest environmental protections actually [had the highest levels of fire intensity](https://esajournals.onlinelibrary.wiley.com/doi/full/10.1002/ecs2.1492). Why? Because logging opens up the forest allowing more sunlight and wind which dries out forests and makes them more flammable. Dense, mature forests burn less intensely than those that have been logged because they have higher canopy cover and more shade, which creates a cooler, more moist forest. The biggest fires in the West this year were in heavily logged “managed” forests.

We can’t fireproof forests

Logging does not fireproof a forest or make it more resilient to wildfire. As Dr. Philip Higuera, associate professor of fire ecology at the University of Montana noted: “Studies have shown logged areas and young forest plantation projects have little beneficial effect on wildfire spread and can actually aggravate fire growth in some cases.”

We can fireproof homes

Instead of spending more money logging, Congress should concentrate on helping people who live in forested environments to fireproof their homes from the threat of wildfire. Having non-flammable roofs and decks and reducing most vegetation next to homes has proven to be far more effective against wildfires than logging done miles from the nearest structures.

**Logging Emits More Carbon than Coal**

[Logging in the U.S. currently emits at least 723 million metric tons of CO2 annually](https://static1.squarespace.com/static/6081e0cffa954b3aedd821c7/t/6151c8a4d448400716e572bc/1632749755444/JMP+Report-4.pdf), which is over 14% of total U.S. greenhouse gas emissions, and is **more than the commercial and residential sectors combined**. The logging industry is **the number one source of greenhouse gas emissions** in Oregon. Clearcutting more forests to combat global warming is like saying we need to burn more coal to fight climate change. The Infrastructure and Reconciliation **bills, if passed in their current form, would increase** annual **carbon dioxide emissions** from logging **by 48%,** pushing emissions from logging well over 1 gigaton per year.

In order to reduce global warming we need to quit burning fossil fuels, but we also need to focus on reforestation – not more deforestation – because the atmosphere is already over-loaded with carbon dioxide. Forests pull that **excess carbon dioxide from the atmosphere**. As Secretary of Agriculture Vilsack recently said: “Our forests and grasslands are one of our nation’s greatest treasures and one of the most effective natural carbon captures that exist to help combat the effects of climate change.”

#### 8. Warming doesn’t trigger extinction

* peer-reviewed journal shows IPCC exaggeration
* history proves resilience
* no extinction- warming under Paris goals
* rock breaking strategy could offset warming

IBD 18 [Investors Business Daily, Citing Study from Peer reviewed journal by Lewis and Curry, “Here's One Global Warming Study Nobody Wants You To See”, 4/25/18, https://www.investors.com/politics/editorials/global-warming-computer-models-co2-emissions/]

Settled Science: A **new study published in a peer-reviewed journal finds** that **climate models exaggerate** the global warming from CO2 emissions by as much as 45%. If these findings hold true, it's huge news. No wonder the mainstream press is ignoring it.

In the study, authors Nic Lewis and Judith Curry looked at actual temperature records and compared them with climate change computer models. What they found is that the planet has shown itself to be far less sensitive to increases in CO2 than the climate models say. As a result, they say, the planet will warm less than the models predict, even if we continue pumping CO2 into the atmosphere.

As Lewis explains: "Our results imply that, for any future emissions scenario, future warming is likely to be **substantially lower** than the central computer **model-simulated** level projected by the (United Nations **I**ntergovernmental **P**anel on **C**limate **C**hange), and highly unlikely to exceed that level.

How much lower? Lewis and Curry say that their findings show temperature increases will be 30%-45% lower than the climate models say. If they are right, then there's **little to worry about**, even if we don't drastically reduce CO2 emissions.

The planet will warm from human activity, but not nearly enough to cause the sort of end-of-the-world calamities we keep hearing about. In fact, the resulting warming would be **below the target** set at the Paris agreement.

This would be tremendously good news.

The fact that the Lewis and Curry study appears in the peer-reviewed American Meteorological Society's Journal of Climate

lends credibility to their findings. This is the same journal, after all, that recently published widely covered studies saying the Sahara has been growing and the **climate boundary** in central U.S. **has shifted 140 miles to the east** because of global warming.

The Lewis and Curry findings come after another study, published in the prestigious journal Nature, that found the **long-held view that a doubling of CO2 would boost global temperatures** as much as 4.5 degrees Celsius **was wrong.** The most temperatures would likely climb is 3.4 degrees.

It also follows a study published in Science, which found that rocks contain vast amounts of nitrogen that plants could use to grow and absorb more CO2, potentially offsetting at least some of the effects of CO2 emissions and reducing future temperature increases.

# 1AR

## CP

#### ‘The’ is a specifying term.

Random House 6 (Unabridged Dictionary, http://dictionary.reference.com/browse/the)

The (used, esp. before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article a or an): the book you gave me; Come into the house.

#### The USFG doesn’t mean all of the USFG

Words and Phrases, 4   
(Words and Phrases, 2004 (Cumulative Supplementary Pamphlet, v. 16A, p. 42)

[N.D.Ga](http://n.d.ga/). 1986.  Action against the Postal Service, although an independent establishment of the executive branch of the federal government, is an action against the "Federal Government" for purposes of rule that plaintiff in action against government has right to jury trial only where right is one of terms of government's consent to be sued; declining to follow Algernon Blair Industrial Contractors, Inc. v. Tennessee Valley Authority, 552 F.Supp. 872 (M.D.Ala.).  39 U.S.C.A. 201; U.S.C.A. Const.Amend. 7.--Griffin v. U.S. Postal Service, 635 F.Supp. 190.--Jury 12(1.2).

**‘Antitrust law’ includes congress and the courts.**

**USC ’21** [United States Code Annotated; current as of July 2021; Westlaw, “§ 1311 Definitions,” 15 U.S.C.A. § 1311]

(a) **The term “antitrust law” includes:**

(1) Each provision of law defined as one of the antitrust laws by section 12 of this title; and

(2) **Any statute** enacted on and after September 19, 1962, **by the Congress which prohibits, or makes available to the U**nited **S**tates **in any court of the U**nited **S**tates **any** civil **remedy with respect to any restraint upon or monopolization of interstate or foreign trade or commerce**;

**Courts or Congress can enlarge the scope of antitrust prohibitions.**

Donald F. **Turner 90**. Professor of Law, Georgetown University Law Center. "The Virtues and Problems of Antitrust Law," Antitrust Bulletin 35, no. 2 (Summer 1990): 297-310.

However, unsound interpretations of antitrust laws have adverse economic effects. **Court-formulated rules have varied** from time to time over the years **since antitrust statutes were passed, and the scope of antitrust prohibitions were either enlarged or reduced**. While there are extensive disputes as to what the precedents' defects have been and are, it is generally recognized that **antitrust law** has had and still **has** some undesirable **features that the courts or Congress should correct.**

## DA

#### Ignore their optimism --- Manchin is paid off and will kill it

Jones, 9/29 (Sarah Jones, 9-29-2021, accessed on 10-1-2021, Intelligencer, "The Bottomless Emptiness of **Manchema**", <https://nymag.com/intelligencer/2021/09/the-bottomless-emptiness-of-manchema.html)//babcii>

Joe Manchin of West Virginia and Kyrsten Sinema of Arizona appear to relish the power they wield over the rest of the party. They are, in effect, holding the president’s priorities hostage to their personal whims. That’s not a new story in politics. But their stubbornness in the face of contemporary challenges reveals the **bottomless emptiness** of their brand of centrist politics. Manchin and Sinema say they are worried about the money, so much so that Manchin has [called](https://apnews.com/article/business-933207cd2af1b1d0969be55aaf3b778a) for a “strategic pause” on the bill. “I, for one, won’t support a $3.5 trillion bill, or anywhere near that level of additional spending, without greater clarity about why Congress chooses to ignore the serious effects inflation and debt have on existing government programs,” he [wrote](https://www.wsj.com/articles/manchin-pelosi-biden-3-5-trillion-reconciliation-government-spending-debt-deficit-inflation-11630605657) in an op-ed for The Wall Street Journal. As countless wonks have pointed out, however, the bill is [largely paid for](https://www.cnn.com/2021/07/21/economy/inflation-biden-infrastructure/index.html) and should have minimal effect on inflation and the national debt. Though it has been [reported](https://www.nytimes.com/2021/09/24/us/politics/carbon-tax-democrats.html) that she is against the tax hikes in the bill, Sinema, as is her wont, **appears reluctant to explain her motivations** to the public. In ongoing one-on-one negotiations with Biden himself, she has reportedly **refused to name a price tag** that is acceptable to her. If there is any genuine policy thinking at all behind her recalcitrance, it has yet to emerge. [News](https://www.nytimes.com/2021/09/27/us/politics/sinema-fund-raiser-social-climate-bill.html) that she is about to raise money from business interests that oppose the budget **bill** has invited speculation that she is doing her donors’ bidding. Meanwhile, the budget’s climate provisions disturb Manchin, who makes a [sizable profit](https://theintercept.com/2021/09/03/joe-manchin-coal-fossil-fuels-pollution/) **from the coal industry**. Perhaps plain old **corruption is at work** here. But there is more to it than that. Everyone involved in this saga, from President Biden down, is making a moral choice. The president’s budget is, like all presidential budgets, a public expression of the administration’s values. Sinema and Manchin have also expressed their values in public, even though these are cloaked in boilerplate rhetoric about inflation and taxes. Sinema’s donors are a reflection of her personal priorities. The same is true for Manchin when it comes to the profit motive. **They’ve chosen their benefactors, not their voters**, as their real constituency. The Build Back Better plan is broadly popular with the American public, Data for Progress [reports](https://www.dataforprogress.org/blog/2021/9/17/the-build-back-better-plan-remains-popular). Certain provisions, like the budget’s investment in home care, are even [more popular](https://www.seiu.org/2021/09/new-poll-81-of-u-s-voters-support-transformative-build-back-better-home-care-investment) than the overall plan, evidence that voters want something more robust than a highway bill. The popularity of the president’s agenda strikes down a key claim put forward, often by moderate Democrats and their defenders: that they’re limited by what their red-state voters want. It’s obvious that **Manchin and Sinema are doing what they want to do**, not what their voters want. Nor are they motivated by what their voters need — a slightly different question that is nevertheless highly relevant to the fate of the Biden budget. The planet is warming, whether Joe Manchin wants to admit it or not. The rampant inequality exposed by COVID can only be solved through greater public spending. If the Democratic Party wants to guarantee a livable future for the public, it is going to have to act while it can. Through their intransigence, these two moderates haven’t just jeopardized what might be Biden’s signature policy achievement. They’ve done more than undermine their party’s electoral future (why should voters support a party that wasted the power they gave it?). They are sacrificing the future itself. And for what? Manchin is genuinely vulnerable to a challenge from the right in a deep-red state, but Sinema is not. In fact, she has practically guaranteed herself a primary challenge that she’s poorly positioned to win. The **Sinema and Manchin** school of politics **defies reality, and common sense** along with it. It has never been more apparent that the real threat to the president is not the left — which has emerged as the strongest defender of the Biden agenda — but the centrists. **They have no vision**. Asked, repeatedly, by the president, their colleagues, and nearly everyone else what it would take for them to support the spending package in question, they have [little to say](https://www.politico.com/news/2021/09/28/manchin-sinema-dems-biden-514574). That’s a telling silence. Some version of the bill may well pass, but these tortured negotiations have exposed the barrenness of their position. Sinema and Manchin have a way of doing politics that redounds to no one else’s benefit, and sometimes not even themselves. They are risking Biden’s legacy, the prospects of their party, and the well-being of the American public for reasons they can’t even articulate. **If only they were capable of shame.**

#### a. They have no influence

Cadelago and McGraw, 7-19-21(Christopher and Meredith, “It’s ceding a lot of terrain to us’: Biden goes populist with little pushback,” accessed 8-5-21, <https://www.politico.com/news/2021/07/19/biden-populist-antimonopoly-500100>)

While elected Republicans have been relatively quiet about Biden’s orders taking aim at corporate power, business groups have not. Neil Bradley, of the U.S. Chamber of Commerce, contended that the action “smacks of a ‘government knows best’ approach to managing the economy,” while the Business Roundtable’s Josh Bolten added it “could undermine rather than enhance U.S. competitiveness.” But the Chamber carries far less weight with Republicans than it has in the past, owing to its decision during the past election to back several Democratic candidates and its repeated breaks with Trump on issues like tariffs and immigration. And unlike during the Obama years — when the Chamber’s opposition to legislative initiatives caused deep alarm inside the administration — the Biden White House has shown no hesitancy around its anti-monopoly platform.

#### Warming doesn’t cause extinction

Sebastian **Farquhar 17** leads the Global Priorities Project (GPP) at the Centre for Effective Altruism, et al., 2017, “Existential Risk: Diplomacy and Governance,” https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf

The most likely levels of global warming are very unlikely to cause human extinction.15 The existential risks of climate change instead stem from tail risk climate change – the low probability of extreme levels of warming – and interaction with other sources of risk. It is impossible to say with confidence at what point global warming would become severe enough to pose an existential threat. Research has suggested that warming of 11-12°C would render most of the planet uninhabitable,16 and would completely devastate agriculture.17 This would pose an extreme threat to human civilisation as we know it.18 Warming of around 7°C or more could potentially produce conflict and instability on such a scale that the indirect effects could be an existential risk, although it is extremely uncertain how likely such scenarios are.19 Moreover, the timescales over which such changes might happen could mean that humanity is able to adapt enough to avoid extinction in even very extreme scenarios. The probability of these levels of warming depends on eventual greenhouse gas concentrations. According to some experts, unless strong action is taken soon by major emitters, it is likely that we will pursue a medium-high emissions pathway.20 If we do, the chance of extreme warming is highly uncertain but appears non-negligible. Current concentrations of greenhouse gases are higher than they have been for hundreds of thousands of years,21 which means that there are significant unknown unknowns about how the climate system will respond. Particularly concerning is the risk of positive feedback loops, such as the release of vast amounts of methane from melting of the arctic permafrost, which would cause rapid and disastrous warming.22 The economists Gernot Wagner and Martin Weitzman have used IPCC figures (which do not include modelling of feedback loops such as those from melting permafrost) to estimate that if we continue to pursue a medium-high emissions pathway, the probability of eventual warming of 6°C is around 10%,23 and of 10°C is around 3%.24 These estimates are of course highly uncertain. It is likely that the world will take action against climate change once it begins to impose large costs on human society, long before there is warming of 10°C. Unfortunately, there is significant inertia in the climate system: there is a 25 to 50 year lag between CO2 emissions and eventual warming,25 and it is expected that 40% of the peak concentration of CO2 will remain in the atmosphere 1,000 years after the peak is reached.26 Consequently, it is impossible to reduce temperatures quickly by reducing CO2 emissions. If the world does start to face costly warming, the international community will therefore face strong incentives to find other ways to reduce global temperatures.