# 1NC

## 1NC — Off

### 1NC — CP

#### The United States federal government should establish a comprehensive technology policy that:

* Significantly expands Open-RAN and provides incentives to developing countries to adopt US and indigenously developed advanced technology
* Supports R and D in key tech, provides tax incentives for key building blocks, finances domestic production and scale-up, adopts a competitiveness screen for regulation and establishes reshoring financing

#### Text: The United States federal government should establish equitable tax and redistribution schemes, job-training programs, community investments, and relocate government agencies to economically depressed areas.

#### Plank 1 solves by leveraging the entire international community against China

Patey 21, senior researcher at the Danish Institute for International Studies and author of How China Loses: The Pushback Against Chinese Global Ambitions (Luke, “To Beat China on Tech, Biden Will Have to Learn from It,” *Wired*, https://www.wired.com/story/beat-china-tech-biden/)

But the incoming Biden administration may not be China’s saving grace. President Biden is expected to maintain a hard line against Chinese tech, up America’s own game by pumping billions of dollars into basic research and development, and rally fellow democracies together to promote global technology standards on cybersecurity and digital trade. China’s tech companies may soon find themselves facing both Trump’s restrictions and new competition from an international tech alliance led by the United States. Yet if President Biden is serious about winning the race against China on 5G mobile networks and other new technologies, he will need more than the support of America’s traditional allies; he’ll also need to learn from China’s own global tech expansion and work closer with developing countries in Africa, Latin America, and Asia. Cooperating more closely with the United Kingdom, Japan, and other advanced democracies in Western Europe and East Asia offers the US instant partners in its competition with China. But global economic growth will increasingly come from emerging markets in the coming decades. If America and its allies ignore large and populous economies like Nigeria, Brazil, and Indonesia, they’re certain to lose the long game on tech. Biden will surely ditch Trump’s derogatory language toward the developing world, but he also needs to shake off America’s entrenched reluctance to view the strategic gains possible in engaging these regions. The problem for the Biden administration is that China is already miles ahead of Western competition. For too long, the United States has viewed much of the developing world as overrun by poverty, humanitarian crises, and conflict. Conversely, China has recognized that these regions offer plenty of economic opportunity in trade, investment, and technology cooperation. In the last couple decades, Chinese tech companies have gained first-mover advantage by capturing large market shares in these budding economies and laying the groundwork as a standards-setter for how the next generation of technologies will work. In Africa, for example, after developing a long line of affordable smartphones, the Chinese tech company Transsion now dominates the continent’s mobile phone industry with over 40 percent of total market share. Chinese telecoms Huawei and ZTE built the majority of Africa’s 4th generation mobile networks, and are now carving a similar path in developing 5G mobile networks in Indonesia, Malaysia, and much of Southeast Asia. Guaranteed market share in China and billions in preferential loans for partner countries have allowed China’s telecoms to deeply underprice their competitors. Chinese tech executives also had the foresight to recognize the potential for future growth in these markets. But all is not lost for Biden. China’s geopolitical behavior has caused plenty of self-inflicted damage to its own tech companies. After deadly border clashes last year between Indian and Chinese soldiers, India banned dozens of popular Chinese social media apps, including TikTok and WeChat, over security concerns. This was hardly a small loss: India was TikTok’s largest market with some 200 million active users. China will find it difficult to lead the future of new technologies without India’s 1.3 billion population on board. And along with Australia, Japan, Vietnam, and others, India is also moving to deny Huawei’s involvement in developing 5G mobile networks within its borders. These decisions weren’t the result of Trump’s aggressive diplomacy, but rather grew out of deepening tensions in relations with Beijing. Huawei’s main competitors, such as Sweden’s Ericsson, are looking to fill any gaps left by China’s geopolitical troubles. But some countries also aspire to develop their own capabilities in 5G. Working alongside California-headquartered Qualcomm, the Indian conglomerate, Reliance Industries, is developing its subsidiary Jio Platforms to provide a homegrown solution for India’s 5G mobile networks. On top of partnering with Ericsson and Finland’s Nokia, Vietnam also aims to develop its own 5G mobile networks with its national company Viettel. For President Biden, China’s setbacks in these rapidly growing markets provide new openings the United States and its allies can pursue. See What’s Next in Tech With the Fast Forward Newsletter The Trump administration struggled to get Brazil and other emerging economies to block Huawei from participating in their 5G mobile networks, despite offering to finance equipment from its competitors. Now that Trump is no longer frustrating American allies with trade war threats, the Biden team can negotiate with South Korea, Japan, the European Union, and others to pool resources in order to level the playing field with China. While not all partners in the developing world will fit into the idea of a democratic tech alliance, President Biden should look to the India and Vietnam model and help other nations develop domestic capacities that lower dependencies on Huawei and other foreign providers over time. New open radio access network technology is one way to develop such alternative solutions. Open RAN essentially allows a variety of companies to supply different parts of a telecommunications network, decoupling the hardware from the software, rather than relying on one provider like Huawei or Ericsson. Though still a work-in-progress, this new technology is believed to have the potential to undermine Huawei’s cost advantage by dramatically lowering the necessary investment to develop 5G networks. European telecom service providers Orange and Vodafone are already introducing such networks in Africa and beyond. The United States is also realizing the possibilities for Open RAN. Late last year, amid political turmoil surrounding Trump’s election defeat, a bipartisan bill quietly passed the US House, unlocking $750 million in funding to accelerate Open RAN development and deployment. In the face of fierce Chinese competition, the next step will be to work with Japan, the United Kingdom, and other allies to explore how to push this new technology forward and make it amenable to emerging market demands. But Open RAN is no silver bullet to Biden’s Huawei challenge. Its potential will only be fully realized in the mid and long run, after high integration costs, security gaps, and other problems are worked out. It should not distract from finding new ways to compete with China in traditional mobile networks. If President Biden is serious about beating China in a global tech race, he will need to learn from the Chinese experience and reverse America’s longstanding failure to see the strategic gain from engaging the developing world on technology. The new administration must not follow Trump’s playbook page by page. Its egregious approach to crippling Chinese competition did little to win over new partners. By offering tech solutions that spur on new growth and development, President Biden can harness the power and ingenuity of America and its allies to outcompete China.

#### Plank 2 solves through a robust industrial strategy

Atkinson 20, founder and president of ITIF. Atkinson’s books include: Big Is Beautiful: Debunking the Myth of Small Business (MIT, 2018), Innovation Economics: The Race for Global Advantage (Yale, 2012), and The Past and Future of America’s Economy: Long Waves of Innovation That Power Cycles of Growth (Edward Elgar, 2005). Atkinson holds a Ph.D. in city and regional planning from the University of North Carolina, Chapel Hill, and a master’s degree in urban and regional planning from the University of Oregon. (Robert, “The Case for a National Industrial Strategy to Counter China’s Technological Rise,” *ITIF*, <https://itif.org/publications/2020/04/13/case-national-industrial-strategy-counter-chinas-technological-rise>)

KEY TAKEAWAYS

China has long posed a stark techno-economic challenge in the advanced industries that are most critical to America’s economic wellbeing and national security. To overcome that threat, policymakers must break free of conventional economic thinking. Trade and foreign policy measures are necessary, but not enough. America needs a robust domestic strategy, too—and it cannot be limited to generic policies to expand “factor inputs” like science, education, and infrastructure. America needs a national strategy that fortifies traded-sector tech industries that are “too critical to fail,” such as advanced machinery, aerospace, biopharma, electrical equipment, semiconductors and computing, software, transportation and more. To develop and implement a national industrial strategy, the federal government will need to significantly strengthen its institutional capabilities to conduct thorough sectoral analysis. Congress should act in four areas: support for R&D targeted to key technologies, tax incentives for key building blocks of advanced production, financing for domestic production scaleup, and adding a competitiveness screen for regulation. All these programs should be aligned with U.S. allies wherever possible. Without a robust industrial strategy to bolster its advanced industries, America will likely experience a steady erosion in its competitive position—akin to the UK’s path in the 1960s and 70s—and a concurrent rise in populist fervor. OVERVIEW Economic pundit Robert Reich once wrote that “industrial policy is one of those rare ideas that has moved swiftly from obscurity to meaninglessness without any intervening period of coherence.” But after 40 years of obscurity and meaninglessness, the concept is now gaining credence for one main reason: China. Elected officials and others from both sides of the political aisle have become increasingly concerned in recent years that China will overtake the United States as the world’s technology leader, with dire consequences for America’s prosperity and national security. And the COVID-19 pandemic, with its disruptions of supply chains, has put U.S. dependency on China in the news on an almost daily basis. Yet while efforts to push back against Chinese “innovation mercantilism” are needed, such steps, even if successful—which is increasingly doubtful—will not be enough. It is time for the federal government to put in place a national industrial strategy that focuses on supporting key industries critical to America’s economic vitality, public health, and national security: in other words, industries that are “too critical to fail.” Unfortunately, when it comes to industrial strategy, our institutional structures are holdovers from the Cold War era while our thinking remains stuck in the 1990s’ free-market, globalist-based Washington Consensus. It is time for a new way of thinking about national security, economic competitiveness, and advanced technology, coupled with new institutions that can effectively develop and implement a national industrial strategy in conjunction with our allies. As such, as Congress considers further stimulus in response to the COVID-19 crisis, it should focus on actions that will not only spur short-term growth and recovery, but also ensure long-term competitive and economic resilience. It is time for the U.S. government to put in place a proactive and targeted national industrial strategy, focused on supporting key industries critical to America’s economic and national security. This report provides the “why, what, and how” of a national industrial strategy—explaining why advanced industrial competitiveness is important, particularly vis-à-vis China; what is the nature of the U.S. advanced industry competitiveness challenge and why markets acting alone are not enough to address the challenge; what a strategy should look like, both institutionally and substantively, and how policymakers should approach developing one; and finally, why common objections to such a strategy are misguided. While trade and foreign policy responses need to play a key role in any overarching strategy to address the China challenge, this report focuses only on proactive, domestic measures the United States can take to have a better chance of retaining, expanding, and making advanced technology industries more resilient in the face of Chinese competition.1 These recommendations include:

* Congress should task the administration with creating a national advanced industry strategy, as Sens. Chris Coons (D-DE), Jeff Merkley (D-OR), Marco Rubio (R-FL), and Todd Young (R-IN) have proposed.
* Congress should establish a unit within the National Institute of Standards and Technology (NIST) to monitor and analyze U.S. domestic production capabilities in advanced industry sectors and their supply chains.
* Congress should significantly expand funding for research related to key technologies, including, among others, artificial intelligence, biopharmaceuticals, robotic and autonomous systems, and semiconductors, and target it to maximize commercialization of these technologies in the United States.
* Congress should establish a Competitiveness Tax Credit, providing a tax credit of 45 percent of all business investments made in the United States in R&D, skills training, and global standards setting, and a 25 percent credit for expenditures on new equipment and software, with expenditures in excess of 75 percent of base-period expenditures qualifying for the credit.
* Congress should support the establishment of an industrial investment bank to drive advanced production scale-up in America, as well as a reshoring incentive fund to encourage relocation from China to the United States of production in critical industries.
* These efforts should be coordinated with our allies, and as such, the federal government should work to establish a joint U.S.-EU-Japan Technology Alliance.

WHY ADVANCED INDUSTRY COMPETITIVENESS IS IMPORTANT The competitiveness of advanced, traded-sector establishments is a key component of healthy economies, and why dozens of nations have implemented strategies to bolster advanced industry competitiveness. There are at least five reasons why policymakers should focus on these sectors. First, advanced traded sectors are critical to America’s trade performance, accounting for 60 percent of U.S. exports.2 More competitive sectors mean a lower trade deficit and a higher value of the dollar relative to other currencies. The former is important because a lower trade deficit means less foreign debt owed by future generations. The latter matters because a stronger dollar means cheaper imports and a higher living standard now. Given the debate over the role of the value of the dollar in competitiveness, it is important to understand that the goal is not a weak dollar; the goal is globally competitive robust advanced traded sectors. If these sectors are competitive, and if the value of the dollar is determined by market forces rather than by foreign government policy, the dollar’s value will be high because sectors are competitive and the U.S. is exporting as much as—or more—than it imports. As such, U.S. currency policy should be focused not on keeping the dollar high or low, but rather on letting the price reflect market conditions (including by fighting foreign currency manipulation). However, U.S. economic policy should work to ensure these market conditions include having the most globally competitive advanced industries. Second, advanced traded sectors are a key source of high-wage jobs, including for non-college-educated workers. Workers in advanced industries earn 80 percent more than average, while workers without college degrees earn 57 percent more in high-tech industries.3 Third, a strong advanced technology sector is a source of growth and vitality for the macroeconomy. For example, 35 percent of U.S. economic growth came from 75 intellectual property (IP)-intensive industries.4 In this sense, having healthy and growing advanced technology traded sectors is akin to the Fed cutting interest rates: They provide a stimulus for continued growth. When advanced industries decline, they generate a headwind for economic growth, in part because spending by their workers and non-traded-sector suppliers falls. Fourth, these sectors give nations needed flexibility and resilience in the face of global challenges. Strength in a broad array of advanced technology sectors makes it easier to respond to external threats to supply chains, either from natural disasters like pandemics, or from actions by other nations to intentionally harm or exert leverage over the United States. Finally, advanced traded sectors and many of the technologies associated with them are critical to America’s ability to field a robust military force, particularly as China’s technological capabilities and efforts at “civil-military fusion” advance.5 As a recent Department of Defense (DOD) report on the defense industrial base stated, “To provide for our national security, America’s manufacturing and defense industrial base must be secure, robust, resilient, and ready.”6 And while much of the U.S. defense capability could once be provided principally by defense contractors, today, advancements in technology require “spin on” from the commercial sector. This is why Mike Griffin, undersecretary of defense for research and engineering, wrote, “Superiority in these [commercial] technologies…is the key to deterring or winning future conflicts.”7 And with the loss of advanced manufacturing capabilities to overseas locations over the last two decades, this makes it harder not just to produce needed technologies, but even to develop them. As Bonvillian, Van Atta, and Windham wrote in a report on the Defense Advanced Research Projects Agency (DARPA), “For the DARPA model agencies to be cut off from these innovation system capabilities, and unable to rely on a strong U.S. manufacturing base for rapid prototyping and innovative production, spells a major potential challenge to their ability to develop and implement hard technologies.”8 This is one reason DOD launched its Defense Innovation Unit to work with the private sector, and is supporting 8 of the 14 Manufacturing USA institutes.9 As such, the ability to defend the nation’s interests comes not only from traditional defense firms in sectors such as aerospace, shipbuilding, and munitions, it also comes from firms in dual-use sectors such as software, materials, machine tools, industrial automation systems, semiconductors, and technology hardware. Moreover, even other sectors, such as consumer electronics and autos, while not directly defense related, contribute to the overall technical capabilities and production resilience of the U.S. economy, in part by supporting science, technology, engineering, and mathematics (STEM) workers and technologically sophisticated suppliers.

#### Plank 3 solves better than antitrust.

Lambert 20, Wall Family Chair in Corporate Law and Governance @ the University of Missouri Law School. (Thomas A., 4-17-2020, “The Case Against Legislative Reform of U.S. Antitrust Doctrine”, Legal Studies Research Paper Series, Research Paper No. 2020-13, pg. 10-11, <https://ssrn.com/abstract=3598601>)

The non-buyer/seller harms emphasized by so-called Neo-Brandeisians42—job losses, community impairment, wealth inequality, harms to democracy—fall into the second and third categories: they are better addressed by bodies of law other than antitrust, or best left unremedied.43 Wealth inequality is better handled through tax and redistribution schemes; harms to democracy, by campaign finance rules and restrictions on lobbying (and, most fundamentally, by limiting discretionary government power so that it cannot be used to procure private advantages for politically connected firms—a key reason not to create a new agency to regulate digital platforms).44 Job losses and harms to communities from the failure of smaller, less efficient businesses may be somewhat mitigated by job-training programs, community investments, and the relocation of government agencies to economically depressed areas. At the end of the day, though, obsolescence is a consequence of economic development; there will always be some losses when new and better displaces old and less good. Using antitrust to protect economic laggards is sure to reduce welfare in the long run. In the end, then, none of the harms emphasized by critics of the consumer welfare standard justifies abandoning the standard in favor of an approach that would pursue multiple goals.

### 1NC — DA

#### FTC fraud prevention is funded now---unexpected demands trade off

Bilirakis et al. 21 (Gus Michael Bilirakis is an American lawyer and politician serving as the U.S. Representative for Florida's 12th congressional district since 2013; Hon. Noah Joshua Phillips is a Commissioner at the Federal Trade Commission; Hon. Lina Khan is the Chair of the Federal Trade Commission, “Transforming the FTC: Legislation to Modernize Consumer Protection,” *Committee on Energy and Commerce*, 6/28/21, <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-transforming-the-ftc-legislation-to-modernize-consumer>)

Gus Bilirakis (3:12:44): Thank you. Our committee has worked extensively in a bipartisan manner to protect consumers from fraud and scams. Mr. Carter's Combating Pandemic Scams Act was enacted at the beginning of the year thanks to all of our leadership here. Representive Blunt Rochester's Fraud and Scam Reduction Act, as well as Representative Kelly's Protecting Seniors from Emergency Scams Act both cleared our chamber with bipartisan support this year. My bill, HR 2672, the FTC Reports Act, would require the FTC to report on fraud against our seniors. Commissioner Philips, how important is the work the FTC staff does to protect Americans from scams? Noah Josuha Phillips (3:13:33): Congressman, thank you for your question. The work we do to protect American consumers against frauds and scams, is our bread and butter as an agency. There is no work that makes me feel better as a commissioner, when we watch our ability to find bad guys, or taking money from American consumers, dipping into their life savings, and get that money back to them. So the work that you have done on the committee to provide funding, to provide tools for us to go after scam artists, is critical. And I think that needs to continue with the agency. Gus Bilirakis (3:14:05): Thank you, and Chair Khan, again, as you pursue other initiatives, when staff and resources be shifted away from the fraud program, which is so essential in preventing bad actors from harming our constituents? That's the question, please. Lina Khan (3:14:22): Sorry, could you repeat the question - when should services be shifted... Gus Bilirakis (3:14:26): Yes, of course. As you pursue other initiatives, when staff and resources be shifted away from your fraud program, which is so essential in preventing bad actors from harming our constituents? Lina Khan (3:14:40): Well, of course, we're always limited by the appropriations bills when it comes to thinking through how we're delegating resources across the agency. In certain instances, I think there are exigent needs that can arise in certain aspects. Gus Bilirakis (3:14:54): But you don't anticipate moving money from the fraud program, is that correct? Lina Khan (3:15:00): Not especially, but I mean, I think overall, we are trying to look through the prism of managerial efficiency and trying to understand how we can best use our resources, especially given some of the exigent circumstances and so we'll be continuing to make those determinations. Gus Bilirakis (3:15:15): I suggest that you not because this is such a very important program. Commissioner Wilson, can you elaborate on why the FTC Reports Act would also prove beneficial to increasing much needed transparency and the flow of information within the commission?

#### Unplanned expanded enforcement drains finite resources from existing priorities

Dafny 21, Professor of Business Administration at the Harvard Business School and the John F. Kennedy School of Government, and former Deputy Director for Healthcare and Antitrust in the Bureau of Economics at the Federal Trade Commission. Professor Dafny’s research focuses on competition in health care markets, and the intersection of industry and public policy. (Leemore, “The Covid-19 Pandemic Should Not Delay Actions to Prevent Anticompetitive Consolidation in US Health Care Markets,” *Pro Market*, <https://promarket.org/2021/06/10/covid-pandemic-consolidation-pandemic-monopoly/>)

However, as Commissioner Rebecca Slaughter, the current acting FTC chair has noted, these efforts have “faced resistance, with two of these recent victories only coming after district court setbacks.” Blocking a horizontal merger, even when it appears to be an “open and shut” case to a layperson, requires extraordinary resources, including large investigation and litigation teams, as well as economic and other subject matter experts who must analyze the transaction, lay out the case for blocking the merger, and rebut arguments advanced by Defendants’ attorneys and experts. To pick a recent example, consider the proposed merger of two hospital systems in the Memphis area, which the FTC filed to block in November 2020. Based on the FTC’s complaint, the merger would have reduced the number of competing systems from four to three and created a system with over a 50 percent market share. In the face of litigation, the parties abandoned the deal—consistent with this being a straightforward case. Although the FTC prevailed without a trial, it took nearly a year from the merger announcement to the abandonment. Over that period, the FTC likely devoted thousands of staff hours to the investigation and lawsuit and expended substantial taxpayer resources on expert witnesses. The higher the payoff from the merger for the merging parties—and the payoff in the case of an increase in market power can be substantial—the greater the incentive for defendants to invest extraordinary resources to fight a merger challenge. Even if there is only a middling (and in some cases, small) chance of getting a merger through, it may well be in the parties’ interest to see if they can prevail, absorbing the agencies’ (i.e., DOJ and FTC’s) scarce resources in that attempt and preventing them from devoting those resources to investigate other transactions or anticompetitive practices. The substantial resources required to challenge transactions, paired with stagnating enforcement budgets, may explain why authorities have elected not to challenge some horizontal transactions they would likely have challenged in previous eras. Using data on a wide range of industries, antitrust scholar John Kwoka documents that enforcers rarely raise concerns about changes in market structure that used to draw scrutiny—that is, mergers that yield five or more market participants.

#### Fraud funds terror operations

Tierney 18, George & Mary Hylton Professor of International Relations; Director Global Research Institute (GRI) (Michael, “#TerroristFinancing: An Examination of Terrorism Financing via the Internet,” International Journal of Cyber Warfare and Terrorism, vol. 8, no. 1, 01/2018, pp. 1–11)

2. TERRORIST FINANCING AND THE INTERNET

As mentioned, terrorists’ use of the internet has become a major concern for security officials across the world in recent years. Like many other users, terrorists have found that the internet is an invaluable tool to share information quickly, in order to disseminate ideas and link up with likeminded individuals (Jacobson, 2010; Okolie-Osemene & Okoh, 2015). In this manner, terrorists use the internet for a variety of purposes, including recruitment, propaganda, and financing. As scholars have also noted, the internet is an attractive option for extremists due to the security and anonymity it provides (Jacobson, 2010). Yet while there have been a growing number of studies completed on the ways in which terrorist organizations use the internet to recruit and indoctrinate others, there has been relatively little focus on the methods by which terrorists finance themselves through online activities. Some researchers have attempted to fill gaps in this area by broadly studying internet aspects of terrorism financing. However, research on this particular aspect of terrorism financing still appears to be lacking, with little focus on new methods of terrorist financing via the internet or a marrying of strategies to combat online financing trends available to practitioners in the field.

For instance, Sean Paul Ashley (2012) assessed the mobile banking phenomenon, which is prevalent in regions such as the Middle East and Africa, and provides extremists with the ability to easily connect to the internet and remit funds around the world. The decentralization of this kind of banking, due to the fact that brick-and-mortar facilities are not needed to conduct transactions, has allowed terrorist financiersto more efficiently move funds while avoiding detection from authorities. Other researchers,such as MichaelJacobson (2010), have studied the waysin which terrorists engage in cyber-crime to raise and move funds. For example, Jacobson (2010) found that online credit card fraud was a fairly major source of terrorist financing. By stealing a victim’s private credit information, terrorists are able to co-opt needed funds and provide support to themselves or their counterparts. Yet as James Okolie-Osemene and Rosemary Ifeanyi Okoh (2015) note, the internet is mostly used to augment and assist activities which occur in the physical world. In this way, it would appear that the internet is far more useful as a means to move funds globally in support of terrorism, rather than simply as a method to raise funds.

#### Nuclear war---cash is key

Hayes 18, Executive Director of the Nautilus Institute for Security and Sustainability, Ph.D. in Energy and Resources from the University of California-Berkeley, Professor of International Relations at RMIT University (Dr. Peter J., “Non-State Terrorism and Inadvertent Nuclear War”, NAPSNet Special Reports, 1/18/2018, <https://nautilus.org/napsnet/napsnet-special-reports/non-state-terrorism-and-inadvertent-nuclear-war/>)

The critical issue is how a nuclear terrorist attack may “catalyze” inter-state nuclear war, especially the NC3 systems that inform and partly determine how leaders respond to nuclear threat. Current conditions in Northeast Asia suggest that multiple precursory conditions for nuclear terrorism already exist or exist in nascent form. In Japan, for example, low-level, individual, terroristic violence with nuclear materials, against nuclear facilities, is real. In all countries of the region, the risk of diversion of nuclear material is real, although the risk is likely higher due to volume and laxity of security in some countries of the region than in others. In all countries, the risk of an insider “sleeper” threat is real in security and nuclear agencies, and such insiders already operated in actual terrorist organizations. Insider corruption is also observable in nuclear fuel cycle agencies in all countries of the region. The threat of extortion to induce insider cooperation is also real in all countries. The possibility of a cult attempting to build and buy nuclear weapons is real and has already occurred in the region.[15] Cyber-terrorism against nuclear reactors is real and such attacks have already taken place in South Korea (although it remains difficult to attribute the source of the attacks with certainty). The stand-off ballistic and drone threat to nuclear weapons and fuel cycle facilities is real in the region, including from non-state actors, some of whom have already adopted and used such technology almost instantly from when it becomes accessible (for example, drones).[16]

Two other broad risk factors are also present in the region. The social and political conditions for extreme ethnic and xenophobic nationalism are emerging in China, Korea, Japan, and Russia. Although there has been no risk of attack on or loss of control over nuclear weapons since their removal from Japan in 1972 and from South Korea in 1991, this risk continues to exist in North Korea, China, and Russia, and to the extent that they are deployed on aircraft and ships of these and other nuclear weapons states (including submarines) deployed in the region’s high seas, also outside their territorial borders.

The most conducive circumstance for catalysis to occur due to a nuclear terrorist attack might involve the following nexi of timing and conditions:

1. Low-level, tactical, or random individual terrorist attacks for whatever reasons, even assassination of national leaders, up to and including dirty radiological bomb attacks, that overlap with inter-state crisis dynamics in ways that affect state decisions to threaten with or to use nuclear weapons. This might be undertaken by an opportunist nuclear terrorist entity in search of rapid and high political impact.
2. Attacks on major national or international events in each country to maximize terror and to de-legitimate national leaders and whole governments. In Japan, for example, more than ten heads of state and senior ministerial international meetings are held each year. For the strategic nuclear terrorist, patiently acquiring higher level nuclear threat capabilities for such attacks and then staging them to maximum effect could accrue strategic gains.
3. Attacks or threatened attacks, including deception and disguised attacks, will have maximum leverage when nuclear-armed states are near or on the brink of war or during a national crisis (such as Fukushima), when intelligence agencies, national leaders, facility operators, surveillance and policing agencies, and first responders are already maximally committed and over-extended.

At this point, we note an important caveat to the original concept of catalytic nuclear war as it might pertain to nuclear terrorist threats or attacks. Although an attack might be disguised so that it is attributed to a nuclear-armed state, or a ruse might be undertaken to threaten such attacks by deception, in reality a catalytic strike by a nuclear weapons state in conditions of mutual vulnerability to nuclear retaliation for such a strike from other nuclear armed states would be highly irrational.

Accordingly, the effect of nuclear terrorism involving a nuclear detonation or major radiological release may not of itself be *catalytic* of *nuclear* war—at least not intentionally–because it will not lead directly to the destruction of a targeted nuclear-armed state. Rather, it may be catalytic of non-nuclear war between states, especially if the non-state actor turns out to be aligned with or sponsored by a state (in many Japanese minds, the natural candidate for the perpetrator of such an attack is the pro-North Korean General Association of Korean Residents, often called Chosen Soren, which represents many of the otherwise stateless Koreans who were born and live in Japan) and a further sequence of coincident events is necessary to drive escalation to the point of nuclear first use by a state. Also, the catalyst—the non-state actor–is almost assured of discovery and destruction either during the attack itself (if it takes the form of a nuclear suicide attack then self-immolation is assured) or as a result of a search-and-destroy campaign from the targeted state (unless the targeted government is annihilated by the initial terrorist nuclear attack).

It follows that the effects of a non-state nuclear attack may be characterized better as a *trigger* effect, bringing about a *cascade* of nuclear use decisions within NC3 systems that shift each state increasingly away from nuclear non-use and increasingly towards nuclear use by releasing negative controls and enhancing positive controls in multiple action-reaction escalation spirals (depending on how many nuclear armed states are party to an inter-state conflict that is already underway at the time of the non-state nuclear attack); and/or by inducing concatenating nuclear attacks across geographically proximate nuclear weapons forces of states already caught in the crossfire of nuclear threat or attacks of their own making before a nuclear terrorist attack.[17]

### 1NC — CP

#### The United States federal government ought to initiate notice-and-comment rulemaking to establishing a standard of protection of competition as the purpose of antitrust law and implement the results pursuant to Administrative Procedure Act protocol.

#### The plan’s unannounced, unconditional mandate locks out public input and violates due process---turns solvency.

Chopra & Khan 20, \*Rohit, MBA, Commissioner, Federal Trade Commission; & \*\*Lina M., JD, current chair of the Federal Trade Commission, Counsel of the Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary. (2020, "The Case for “Unfair Methods of Competition” Rulemaking," *University of Chicago Law Review*, Vol. 87 Iss. 2, Article 4, pg. 359-367, Accessible at: <https://chicagounbound.uchicago.edu/uclrev/vol87/iss2/4>)

I. THE STATUS QUO: AMBIGUOUS, BURDENSOME, AND UNDEMOCRATIC?

Antitrust law today is developed exclusively through adjudication. In theory, this case-by-case approach facilitates nuanced and fact-specific analysis of liability and well-tailored remedies. But in practice, the reliance on case-by-case adjudication yields a system of enforcement that generates ambiguity, unduly drains resources from enforcers, and deprives individuals and firms of any real opportunity to democratically participate in the process.

One reason that antitrust adjudication suffers from these shortcomings is that courts analyze most forms of conduct under the “rule of reason” standard. The “rule of reason” involves a broad and open-ended inquiry into the overall competitive effects of particular conduct and asks judges to weigh the circumstances to decide whether the practice at issue violates the antitrust laws. Balancing short-term losses against future predicted gains calls for “speculative, possibly labyrinthine, and unnecessary” analysis and appears to exceed the abilities of even the most capable institutional actors.1 Generalist judges struggle to identify anticompetitive behavior2 and to apply complex economic criteria in consistent ways.3 Indeed, judges themselves have criticized antitrust standards for being highly difficult to administer.4 And if a standard isn’t administrable, it won’t yield predictable results. The dearth of clear standards and rules in antitrust means that market actors face uncertainty and cannot internalize legal norms into their business decisions.5 Moreover, ambiguity deprives market participants and the public of notice about what the law is, thereby undermining due process—a fundamental principle in our legal system.6

**[BEGIN FOOTNOTE 6]**

6. See FCC v Fox Television Stations, Inc, 567 US 239, 253 (2012). A lack of fair notice raises constitutional due process concerns. As the Supreme Court has explained, fair notice concerns arise when a law or regulation “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” Id (citations omitted)

**[END FOOTNOTE 6]**

Decades ago, former Commissioner Philip Elman observed that case-by-case adjudication “may simply be too slow and cumbersome to produce specific and clear standards adequate to the needs of businessmen, the private bar, and the government agencies.”7 Relying solely on case-by-case adjudication means that businesses and the public must attempt to extract legal rules from a patchwork of individual court opinions. Because antitrust plaintiffs bring cases in dozens of different courts with hundreds of different generalist judges and juries, simply understanding what the law is can involve piecing together disparate rulings founded on unique sets of facts. All too often, the resulting picture is unclear. This ambiguity is compounded when the Supreme Court assigns to lower courts the task of fleshing out how to structure and apply a standard, potentially delaying clarity and certainty for years or even decades.8

The current approach to antitrust also makes enforcement highly costly and protracted. In 2012, the American Bar Association (ABA) published the report of a task force that sought to “study ways to control the costs of antitrust litigation and enforcement.”9 The task force, the authors explained, was “a response to concerns” about both “the costs imposed on businesses by the American system of antitrust enforcement” and “the length of time required to resolve antitrust issues both in litigation and in enforcement proceedings.”10 Out-of-control costs undermine effective antitrust enforcement by agencies and private litigants, but may advantage actors who profit from anticompetitive practices and can treat litigation as a routine cost of business. Professor Michael Baye and Former Commissioner Joshua Wright have noted that generalist judges may be ill-equipped to independently analyze and assess evidence presented by economic experts.11 Because determining the legality of most conduct now involves complex economic analysis, courts have effectively “delegate[d] both factfinding and rulemaking to courtroom economists,” making courtroom economics “not just inevitable but often dispositive.”12 In fact, paid expert testimony now is often “the ‘whole game’ in an antitrust dispute.”13

Paid experts are a major expense. Some experts charge over $1,300 an hour, earning more than senior partners at major law firms.14 Over the last decade, expenditures on expert costs by public enforcers have ballooned.15 In a system that incentivizes firms to spend top dollar on economists who can use ever-increasing complexity to spin a favorable tale, the eye-popping costs for economic experts can put the government and new market entrants at a significant disadvantage.16

Another component of the burden is that antitrust trials are extremely slow and prolonged.17 The Supreme Court has criticized antitrust cases for involving “interminable litigation”18 and the “inevitably costly and protracted discovery phase,”19 yielding an antitrust system that is “hopelessly beyond effective judicial supervision.”20 That it can easily take a decade to bring an antitrust case to full judgment means that by the time a judge orders a remedy, market circumstances are likely to have outpaced it.21 The same 2012 ABA report suggested that lengthy, costly litigation may be contributing to reduced government-enforcement efforts over time relative to the expansion of the US economy.22

Lastly, the current approach deprives both the public and market participants of any real opportunity to participate in the creation of substantive antitrust rules.23 The exclusive reliance on case-by-case adjudication leaves broad swaths of market participants watching from the sidelines, lacking an opportunity to contribute their perspective, their analysis, or their expertise, except through one-off amicus briefs.24 Nascent firms and startups are especially likely to be left out—despite the vital role they play in the competition ecosystem—given that they do not comprise a significant portion of the parties represented in litigated matters, and they usually lack the resources to engage in amicus activity. Furthermore future entrants, whose interests should be carefully considered in all aspects of competition law and policy, have no voice.

Firms, entrepreneurs, workers, and consumers across our economy vary wildly in their experiences and perspectives on market conduct. Enforcement and regulation of business conduct can more successfully promote competition when it incorporates more voices and evidence from across the marketplace.

#### Fidelity to notice-and-comment [N&C] solves.

Chopra & Khan 20, \*Rohit, MBA, Commissioner, Federal Trade Commission; & \*\*Lina M., JD, current chair of the Federal Trade Commission, Counsel of the Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary. (2020, "The Case for “Unfair Methods of Competition” Rulemaking," *University of Chicago Law Review*, Vol. 87 Iss. 2, Article 4, pg. 367-370, Accessible at: <https://chicagounbound.uchicago.edu/uclrev/vol87/iss2/4>)

We see three major benefits to the FTC engaging in rulemaking under “unfair methods of competition,” even if the conduct could be condemned under other aspects of antitrust laws. As we describe above, the current approach generates ambiguity, is unduly burdensome, and suffers from a democratic participation deficit. Rulemaking can benefit the marketplace and the public on all of these fronts.

First, rulemaking would enable the Commission to issue clear rules to give market participants sufficient notice about what the law is, helping ensure that enforcement is predictable.43 The APA requires agencies engaging in rulemaking to provide the public with adequate notice of a proposed rule. The notice must include the substance of the rule, the legal authority under which the agency has proposed the rule, and the date the rule will come into effect.44 An agency must publish the final rule in the Federal Register at least thirty days before the rule becomes effective.45

These procedural requirements promote clear rules and provide clear notice. As the Supreme Court has stated, a “fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.”46 Clear rules also help deliver consistent enforcement and predictable results. Reducing ambiguity about what the law is will enable market participants to channel their resources and behavior more productively and will allow market entrants and entrepreneurs to compete on more of a level playing field.

Second, establishing rules could help relieve antitrust enforcement of steep costs and prolonged trials. Identifying ex ante what types of conduct constitute “unfair method[s] of competition” would obviate the need to establish the same exclusively through ex post, case-by-case adjudication. Targeting conduct through rulemaking, rather than adjudication, would likely lessen the burden of expert fees or protracted litigation, potentially saving significant resources on a present-value basis.47

Moreover, establishing a rule through APA rulemaking can be faster than litigating multiple cases on a similar subject matter. For taxpayers and market participants, the present value of net benefits through the promulgation of a clear rule that reduces the need for litigation is higher than pursuing multiple, protracted matters through litigation. At the same time, rulemaking is not so fast that it surprises market participants. Establishing a rule through participatory rulemaking can often be far more efficient. This is particularly important in the context of declining government enforcement relative to economic activity, as documented by the ABA.48

And third, rulemaking would enable the Commission to establish rules through a transparent and participatory process, ensuring that everyone who may be affected by a new rule has the opportunity to weigh in on it, granting the rule greater legitimacy.49 APA procedures require that an agency provide the public with meaningful opportunity to comment on the rule’s content through the submission of written “data, views, or arguments.”50 The agency must then consider and address all submitted comments before issuing the final rule. If an agency adopts a rule without observing these procedures, a court may strike down the rule.51

This process is far more participatory than adjudication. Unlike judges, who are confined to the trial record when developing precedent-setting rules and standards, the Commission can put forth rules after considering a comprehensive set of information and analysis.52 Notably, this would also allow the FTC to draw on its own informational advantage—namely, its ability to collect and aggregate information and to study market trends and industry practices over the long term and outside the context of litigation.53 Drawing on this expertise to develop rules will help antitrust enforcement and policymaking better reflect empirical realities and better keep pace with evolving business practices.

Given that the FTC has largely neglected this tool, some may question the Commission’s authority to issue competition rules and the legal status these rules would have.54 Indeed, a common misconception is that this authority is extremely limited because FTC rulemaking is subject to the extensive hurdles posed by the Magnuson-Moss Warranty–Federal Trade Commission Improvements Act55 (“Magnuson-Moss”). In reality, Magnuson-Moss governs only rulemakings interpreting “unfair or deceptive acts or practices.”56 For rules interpreting “unfair methods of competition,” the FTC has authority to engage in participatory rulemaking pursuant to the APA. Several antitrust scholars have affirmed this authority, and the Appendix lays out further background on and discussion of it.57

#### Democracy solves extinction.

Twining 21, PhD, president of the International Republican Institute, former director of the Asia Program at the German Marshall Fund. (Daniel, 10-10-2021, "America must double down on democracy", *The Hill*, <https://thehill.com/opinion/campaign/575693-america-must-double-down-on-democracy>) \*language edited

The hard truth is that a world that is less free is one that is less secure, stable and prosperous. The greatest dangers to the American way of life emanate from hostile autocracies. There are no quick fixes, but the best antidotes to the challenges of great-power conflict, terrorism and mass migration of desperate refugees lie in the building of inclusive democratic institutions — and working with allied democracies to sustain the free and open order that China, in particular, wishes to replace with a world that’s safe for autocracy. The conventional wisdom that authoritarianism has popular momentum is wrong. No one anywhere is taking to the street to demand more corrupt governance, the adoption of one-man rule, a stronger surveillance state, or greater intervention by malign foreign powers. Democratic freedoms are unquestionably under assault in many nations. Autocrats are aggressive precisely because of the growing demands for change in their more modern, connected societies — and the rising risk that middle classes in nations such as China and Russia will not be willing forever to forfeit political rights for prosperity. American retrenchment and isolationism compound the danger. It would be nice to live in a world where failed states and dictatorships were a problem for someone else to worry about. But rather than producing stability, Western retreat only emboldens autocrats in ways that amplify dangers to American national security. We know that violent extremism flourishes under state failure and dictatorship. Broken states become breeding grounds for extremist groups because they leave vacuums that terrorists are only too happy to fill. In nations without democratic accountability, citizens become drawn to the only forms of expression available to them, which are often violent and extreme. The good news is that we have billions of allies around the world: citizens on every continent chafing for greater freedom and dignity. They do not want U.S. military-led nation-building. They want peaceful support for their independent efforts to create democratic space in systems distorted by overweening government control, dangerous governance gaps and foreign malign influence. The free world cannot be neutral in the face of autocracy’s resurgence. Rather, it should play to its strengths. The appeal of democratic opportunity is a strategic asset for the United States — despite our own shortcomings — because people around the world similarly aspire to live in societies that guarantee justice, rights and dignity. America’s closest allies are democracies. Democracies don’t fight each other, export violent extremism, or produce the conflicts that drive mass migration. Democracies are better partners in fighting terrorism, human trafficking and poverty, as well as establishing reliable trading relationships. Open societies incubate the technologies that will help solve the world’s most pressing problems, including climate change. Citizens can hold leaders accountable when they fall short, and democratic institutions are stronger than any [individual] ~~man~~ — as America itself witnessed after the assault on the U.S. Capitol on Jan. 6.

### 1NC — T

#### Business practices are ongoing conduct defined by the behaviors of many market participants

MacIntosh 97 (KERRY LYNN MACINTOSH-Associate Professor of Law, Santa Clara University School of Law. B.A. 1978, Pomona College; J.D. 1982, Stanford University. “LIBERTY, TRADE, AND THE UNIFORM COMMERCIAL CODE: WHEN SHOULD DEFAULT RULES BE BASED ON BUSINESS PRACTICES?” *William and Mary Law Review*, vol. 38, no. 4, May 1997, p. 1465-1544. HeinOnline accessed online via KU libraries, date accessed 8/27/21)

These new and revised articles reflect a strong trend toward choosing default rules4 that codify existing business practices.5 [[BEGIN FOOTNOTE 5]] 5. In this Article, the term "business practices" is used to refer to practices that emerge over time as countless market participants exercise their freedom to engage in profitable transactions. For an account of the evolution of business practices, see infra Part II. As used here, "business practices" is broader and less technical than "trade usage," which the Code narrowly defines as "any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question." U.C.C. § 1-205(2). [[END FOOTNOTE 5]] This is particularly true of the recent revisions to Articles 3 (Negotiable Instruments), 4 (Bank Deposits and Collections) and 5 (Letters of Credit).

**Prohibition requires forbidding a practice—the plan is only a hindrance**

**Van Eaton** et al **17** (Joseph Van Eaton, Gail Karish Gerard Lavery Lederer, lawyers for BEST BEST & KRIEGER, LLP. Michael Watza, KITCH DRUTCHAS WAGNER VALITUTTI & SHERBROOK, “BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D.C”, COMMENTS OF SMART COMMUNITIES SITING COALITION, March 8, 2017 , https://tellusventure.com/downloads/policy/fcc\_row/smart\_communities\_siting\_coaltion\_comments\_mobilitie\_8mar2017.pdf)

2. What are at issue legally are prohibitions and effective prohibitions, and not hindrances, as the Commission seems to suggest in its Notice. The term “prohibit” is not defined in the Act, but it has an ordinary meaning: to formally forbid (something) by law, rule, or other authority; or to “prevent, stop, rule out, preclude, make impossible.” A mere “hindrance” “is simply not **in accord with** the ordinaryand fairmeaning” ofthe termprohibit,104 and can provide no basis for additional Commission intrusions on local authority over wireless facilities. Much of what Mobilitie complains about is a “hindrance” at most (and usually a hindrance magnified by its own actions).

**Only per se illegality prohibits a practice---rules of reason prohibit anticompetitive effects for individual acts, or instances of ‘practice.’**

Stevens 90 (John Paul Stevens- Justice, Supreme Court of the United States, “FTC v. Superior Court Trial Lawyers Ass'n,” 493 U.S. 411, Lexis

LEdHN[3C] [3C]LEdHN[14] [14]Equally important is the second error implicit in respondents' claim to immunity from the per se rules. In its opinion, the Court of Appeals **assumed** that the antitrust laws permit, but do not require, the condemnation of price fixing and boycotts without proof of market power. 15 The opinion further assumed that the **per se rule** **prohibiting** such activity "is only a rule of 'administrative convenience and efficiency,' **not** a **statutory command**." 272 U.S. App. D. C., at 295, 856 F. 2d, at 249.This statement contains two errors. HN10 [\*\*\*\*42] The per se [\*433] rules are, of course, the product of **judicial** interpretations of the Sherman Act, but the rules nevertheless have the same force and effect as **any other** **statutory** commands. Moreover, while the per se rule against price fixing and boycotts is indeed **justified** in part by "administrative convenience," the Court of Appeals erred in describing the prohibition as justified **only** by such concerns. The **per se rules** also reflect a **long-standing judgment** that the **prohibited practices** by their **nature** have "a substantial potential for impact on competition." Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2, 16 (1984).

[\*\*\*\*43] LEdHN[15] [15]As we explained in Professional Engineers, HN11 the rule of reason in antitrust law generates

"two complementary categories of antitrust analysis. In the first category are **agreements** whose nature and necessary effect are **so plainly anticompetitive** that **no** elaborate **study** of the industry is needed to establish their illegality -- they are 'illegal **per se.'** In the second category are agreements whose competitive effect can only be evaluated by analyzing the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed." 435 U.S., at 692.

[\*\*\*873] "Once experience with a particular kind of restraint enables the Court to predict with confidence that the rule of reason will condemn it, it has applied a conclusive presumption that the restraint is unreasonable." Arizona v. Maricopa County Medical Society, 457 U.S. 332, 344 (1982).

[\*\*781] LEdHN[16] [16] [\*\*\*\*44] The per se rules in **antitrust** law serve purposes analogous to per se restrictions upon, for example, **stunt flying** in congested areas or **speeding**. Laws prohibiting stunt flying or setting speed limits are justified by the State's interest in protecting human life and property. Perhaps **most** violations of such rules **actually** cause **no harm**. No doubt many **experienced** drivers and pilots can operate much more safely, even **at prohibited speeds**, than the average citizen.

[\*434] If the especially skilled drivers and pilots were to paint messages on their cars, or attach streamers to their planes, their conduct would have an expressive component. High speeds and unusual maneuvers would help to draw attention to their messages. Yet the laws may nonetheless be **enforced** against these skilled persons **without proof** that their conduct was **actually harmful or dangerous**.

In part, the justification for **t**hese per se rules is rooted in administrative convenience. They are also **supported**, however, by the observation that every speeder and every stunt pilot poses **some threat to the community**. An unpredictable event may overwhelm the skills of the best driver or pilot, even if the [\*\*\*\*45] proposed course of action was entirely prudent when initiated. A bad driver going slowly may be more dangerous that a good driver going quickly, but a good driver who obeys the law is safer still.

#### Independently, prohibitions are distinct from remedies that only block the anticompetitive elements of a practice, rather than the practice itself.

Jo Seldeslachts et al. ‘7. Professor of Industrial Organization at KU Leuven and a Senior Research Fellow at DIW Berlin, with Joseph A. Clougherty and Pedro Pita Barros. “Remedy for now but prohibit for tomorrow: the deterrence effects of merger policy tools.” https://www.ssoar.info/ssoar/bitstream/handle/document/25862/ssoar-2007-seldeslachts\_et\_al-remedy\_for\_now\_but\_prohibit.pdf;jsessionid=A244005110FDB5816E0347D9F1B75436?sequence=1

Let us now think about the differences between the two antitrust actions of prohibitions and remedies.7 In the case of a prohibition, the penalty for proposing a merger with significant anti-competitive problems involves the full prohibition of the merger: both the pro-competitive and the anti-competitive profits for merging firms are negated by the prohibition. The throwing out of the pro-competitive profits along with the anti-competitive profits is important, as this brings about the punitive measure that Posner (1970) acknowledges as being crucial for deterrence. The big difference between remedies and prohibitions is that remedies attempt to identify and eliminate the anti-competitive elements of a merger. In essence, the merging firms are able to hold on to the pro-competitive elements of the merger—so they keep (ΠPC), but the anti-competitive elements of the merger (ΠAC) are negated by the remedial action. If an antitrust authority imposes remedies, then the disincentive for firms to propose anti-competitive mergers is clearly lower. In short, prohibitions seemingly involve more deterrence than do remedies, as prohibitions represent larger punishments.

#### They violate by establishing a new standard, not prohibiting something directly — at best, they are effects T

#### VOTE NEG:

#### FIRST---Ground---balancing tests devastate core links, because they allow the practice when it’s beneficial. AND, creates a moving target, because the disallowed behavior is context-dependent. And bidirectionality---rule of reason creates legally protected practices

#### “Per se” is the only shot at unique links—topical affs impose rules not standards

Crane 7 Daniel A. Crane is Assistant Professor, Benjamin N. Cardozo School of Law, Yeshiva University, Rules Versus Standards in Antitrust Adjudication, 64 Wash. & Lee L. Rev. 49 (2007), https://scholarlycommons.law.wlu.edu/wlulr/vol64/iss1/3

In recent years, there has been a marked transition away from rules and toward standards in collaborative conduct cases. This occurred in an obvious way beginning in the 1970s as the Burger and then Rehnquist courts overruled Warren court precedents that had condemned a variety of business agreements as per se illegal. As common business practices such as vertical territorial allocations, 37 maximum resale price setting, 38 expulsions of members from industry associations, 39 and manufacturer acquiescence in a retailer's demand to terminate a competing retailer that was deviating from the manufacturer's MSRP40 went from the per se rule to the rule of reason, the domain of rules shrunk and the domain of standards grew. Significantly, the Court declined the Chicago School's call to move vertical restraints from per se illegality to per se legality. In State Oil, Justice O'Connor-who is also fond of balancing tests in constitutional law 4 -went out of her way to make clear that the Court was not holding "that all vertical maximum price fixing is per se lawful.' 42 Vertical restraints would still require scrutiny, but under the multi-factored rule of reason. The transition from rules to standards did not take place solely due to a juridical shift of particular business practices from one category to another. Instead, the entire judicial rhetoric of antitrust has moved in a more nuanced, standard-based direction over the past few decades. With few exceptions, 43 the courts have stopped creating new categories of per se illegal conduct, even though commercial circumstances and practices evolve over time and litigation frequently explores new areas of commercial behavior. Since the mid-1970s, the Supreme Court seems to have frozen the canon of per se illegal practices, without necessarily pushing all other behavior into rule of reason. Instead, arguably beginning with National Society of Professional Engineers v. FTC'4 in 1978, the Court adopted what later became known as the "quick look" approach. In subsequent cases like NCAA v. Board ofRegents45 and California 46 Dental Ass'n v. FTC, the Court described the quick look approach as involving an initial court determination, based on a "rudimentary understanding of economics, ' , 47 that the practice at issue has obvious anticompetitive effects, which puts the defendant to the burden of immediately putting forth a 48 procompetitive justification for the practice.

#### SECOND---limits---they lead to a wave of legal standard affs that avoid generics

## 1NC — Solvency

### 1NC — AT: ProCo

#### Adopting a new standard triggers regulatory capture and zeroes compliance

Melamed 20, Professor of the Practice of Law, Stanford Law School. (A. Douglas, “ANTITRUST LAW AND ITS CRITICS”, 83 ANTITRUST L.J., pg. 15-16, <https://lisboncouncil.net/wp-content/uploads/2020/11/MELAMED-Antitrust-Law-and-Its-Critics.pdf>)

Perhaps more important, the institutions of antitrust law are not well suited to address multiple and often conflicting objectives. Antitrust law is enforced on a case-by-case basis. Were antitrust law to serve multiple objectives, it would need criteria to guide decisions in the many instances when those objectives would conflict. There is, however, no algorithm for weighting inequality or political power, on the one hand, against economic welfare, on the other.86 There is not even a common metric for measuring them. Absent such a metric or algorithm, antitrust decisions would necessarily be arbitrary and perceived as arbitrary.

That would have three serious costs. First, if antitrust decisions are perceived as arbitrary, the widespread legitimacy of antitrust law would erode. The antitrust laws were first passed in 1890, and the most important statutory provisions are more than one hundred years old. It is not an accident that populist critics have expressed their concerns largely in antitrust terms. The perpetuation of that legitimacy cannot be taken for granted.

Second, if antitrust decisions are perceived as being arbitrary, they will be more easily subject to regulatory capture because there will not be seemingly principled bases to cabin antitrust decision making. The beneficiaries of a regime susceptible to capture are likely to be the powerful, not the powerless. Ironically, therefore, adding equality and dispersion of economic and political power to the objectives of the antitrust laws could prove detrimental to those very objectives.

The third and perhaps most important cost is rooted in the general application and decentralized enforcement of antitrust law. 87 Antitrust law applies to almost all businesses, and it can be enforced by at least 52 government entities and any entity that has been harmed by an antitrust violation. Antitrust law thus has a widespread effect on business conduct throughout the economy. Its principal value is found, not in the big litigated cases, but in the multitude of anticompetitive actions that do not occur because they are deterred by the antitrust laws, and in the multitude of efficiency-enhancing actions that are not deterred by an overbroad or ambiguous antitrust law.

If antitrust law is perceived as being arbitrary, it will provide a far less certain guide to business conduct. The effect might be disregard of antitrust law in circumstances in which it seems unpredictable. More likely, the effect will be excessive caution by businesses uncertain about the consequences of aggressive or novel forms of competition. The effectiveness of antitrust law in promoting competition and economic welfare will be seriously impaired.

## 1NC — Innovation

### 1NC — AT: Innovation

#### US tech sector is dominant---only antitrust crushes it

Moore 8-6-2021, MA, economics, syndicated columnist. (Stephen, "Moore: US tech sector keeps besting the world", *Boston Herald*, <https://www.bostonherald.com/2021/08/06/moore-us-tech-sector-keeps-besting-the-world/>)

Take a bow, America. It’s official and irrefutable: The U.S. is blowing out the rest of the world in tech leadership. No other country in the world comes anywhere close in tech innovation and the dominance of our made-in-America 21st-century companies. The Nasdaq index of once-small technology companies reached 15,000 last week. Only a few years ago, that index stood at 5,000. Yes, these companies have tripled in their market cap value — and that doesn’t include the dividends that have been paid out to large and mom-and-pop shareholders in America and across the planet. We are told constantly that China is catching up and achieving remarkable digital-age leaps forward in biotechnology, artificial intelligence, green energy, robotics, 5G technologies and microchips. The value of America’s 12 most valuable companies today in terms of stock valuation is well over $10 trillion. Those red, white and blue companies from Silicon Valley to the “Silicon Slopes” of Utah to Boston to northwest Arkansas are worth roughly as much as all of the Chinese publicly traded companies combined. Firms such as Google — many of which didn’t even exist 30 years ago — have made millionaires off your next-door neighbor. Ordinary people are getting rich beyond anyone’s imagination 50 years ago, thanks to American innovation and inventiveness. Risk-taking, old-fashioned can-doism is a hallmark of this unrivaled success story that has never been matched anywhere at any time in world history. Almost all of this is a tribute to American financial markets that allocate capital in hyperefficient ways. Capitalists doing a spectacular job of allocating capital efficiently is our secret sauce to financial and technological success. I am always mystified when highly successful Wall Street investors can’t explain how it is they add value and sometimes concede that they are just unnecessary middlemen. Even Warren Buffett, one of the greatest of all time, expresses guilt about his billions, as if he and other great financiers are economic parasites. No. Steering financial resources to winners like Google, not losers like Solyndra, makes everyone in America richer. Meanwhile, few politicians have any clue of how capital markets create wealth and jobs and shared prosperity in America. If they did, they would appreciate that without capitalists and capital, there is no enterprise — no material progress. They would instantly understand the economic ~~lunacy~~ of increasing taxes on capital gains and dividends, wealth taxes, and, worst of all, death taxes that threaten the future survival of family-owned businesses. Cutting, not raising, the U.S. capital gains tax would be far wiser if we want America to maintain and widen our competitive lead and keep winning globally. The arrogant fools in the administration of President Biden believe that to keep America No. 1 technologically, we need to have a multibillion-dollar government-run slush fund with the politicians picking winners and losers with other people’s money. China does this, and so does Japan, and it has never worked. One of the most famous stories of government-as-investment banker was when the Tokyo government’s brain trust recommended that Honda not get in the business of making cars. Here in the U.S., the political class has made a $150 billion bet on wind and solar power since the late 1970s, and in return, that has produced only a small sliver of our energy needs. Even more inexplicable is the movement in America coming from senators such as Democrat Elizabeth Warren on the left and Josh Hawley of Missouri on the right to break up our tech companies. Why? Because, evidently, they are too good at what they do. They make too much money. They have too many customers and too many advertisers. Put aside for a moment the rancid political persuasions of some of these leftist Silicon Valley CEOs. Somehow, the left and right agree that building a superior product and even crafting entire new industries is a punishable offense. God forbid. The rest of the world — the Chinese, Indians, Japanese and especially the technologically inferior Europeans — would love to hobble American titans and tax away their profits. The role of the U.S. government should be to repel the foreign attacks. Crazily, the Biden administration has given the green light to foreigners pillaging American companies. This doesn’t put America first. So, can America’s tech dominance continue to blow away the foreign competition for decades to come? Bet on it. That is, unless we are foolish enough to decapitate our own industries through regulation, antitrust policies and raising tax rates on success. The challenge for U.S. supremacy is coming from Washington, D.C., not China.

#### Concentrated big tech solves AI development

Foster & Arnold 20 — Dakota Foster (Visiting Researcher, Georgetown’s Center for Security and Emerging Technology; B.A., Amherst College); Zachary Arnold (Research Fellow, Georgetown’s Center for Security and Emerging Technology; J.D., Yale Law School); “Antitrust and Artificial Intelligence: How Breaking Up Big Tech Could Affect the Pentagon’s Access to AI;” Georgetown Center for Security and Emerging Technology Issue Brief; May 2020; <https://cset.georgetown.edu/publication/antitrust-and-artificial-intelligence-how-breaking-up-big-tech-could-affect-pentagons-access-to-ai/>

Today, the private sector dominates this domain of AI innovation. Other actors, including government funders and academic researchers, play an important role—especially in basic research—but at the application stage, the private sector generally consolidates critical inputs of data, computing power, and human capital, then applies them to real-world needs. In some cases, such as with Project Maven—where Google built AI-enabled image recognition programs for the Pentagon—the Pentagon is the customer; more often, AI products and conceptual breakthroughs developed by the private sector, from autonomous vehicles to image and speech recognition platforms, are (or could be) adapted for national security use.

Because most U.S. AI innovation currently occurs in the private sector, and at least some of this innovation pertains to the Pentagon, the Pentagon needs the private sector.22 Large tech companies, from Google, Apple and Amazon to slightly lower-profile giants such as IBM, Intel and Qualcomm, form the foundation of the private-sector AI innovation ecosystem. For example, Google, Facebook, Microsoft, Apple, and Amazon generate the most AI patents with a “significant competitive impact” worldwide, according to analysis by economic consultancy EconSight.23 The McKinsey Global Institute reports that large, digitally oriented tech companies worldwide spent $20-$30 billion on AI in 2016, 90 percent of which went toward R&D and deployment; for comparison, the Pentagon plans to spend $4 billion on AI and machine learning R&D in FY2020.24 Private-sector AI companies are especially dominant in applied research and experimental development.25

AI innovation would presumably continue in some form without Big Tech, but the data indicates that breaking up the largest tech companies would fundamentally change the broader AI innovation ecosystem. Such action would create unpredictable, but likely significant, trickle-down effects on AI applications in specific domains, including national security.

Shifting Incentives

In order to use AI for America’s strategic advantage, the Pentagon requires more than an innovative private sector. It must induce private companies to build defense-relevant AI products, acquire those AI innovations through procurement, and prevent those same products from diffusing to U.S. adversaries. In other technological domains, such as aerospace, the Pentagon has long relied on the private sector for procurement and holds significant leverage over industry. Its sheer scale and budget make it the defense industry’s primary consumer. In 2017, for example, 70 percent of Lockheed Martin’s sales went to the U.S. federal government.26 Historically, this financial leverage has incentivized companies to meet the Pentagon’s demands and build to its requirements.27

But these incentives do not exist with AI: while AI is a priority for the Pentagon, the Pentagon is not a priority for AI companies. In general, the largest U.S. tech companies do not rely on government contracts and have relatively little need for Pentagon funding.28 As a result, their research and products do not reflect defense priorities, and they have relatively little incentive to engage deeply in the government procurement process. Even in a future, AI-centric world, we expect large-scale, commercially oriented tech companies to play a critical role in AI innovation, and the Pentagon to remain a minor customer. As such, the Pentagon may rely on other firms —from defense-focused startups to traditional defense contractors—to translate general AI advances into defense-relevant products.

The Pentagon’s access to these cutting-edge, national security-relevant AI products hinges on private sector cooperation. This willingness will drive whether it sells to the Pentagon, shapes its technologies in accordance with DOD priorities, and complies with DOD terms of acquisition—including, potentially, by safeguarding the same products from U.S. competitors and adversaries.29 We need to understand how antitrust enforcement might affect these dynamics, as well as private-sector innovation more broadly.

#### Emerging tech won’t tip the balance of power.

Gilli 19, Senior Researcher in the Research Division, NDC. (Andrea, Feb. 2019, “Preparing for ‘NATO-mation’: the Atlantic Alliance toward the age of artificial intelligence”, *NDC Policy Brief*, No. 4, pg. 3, Accessible at: http://nato-70.upt.pt/wp-content/uploads/2019/04/Preparing\_NATO\_mation.pdf)

Military transformation and emerging technologies

A second, and related, issue is the risk that, in the age of intelligent machines, AI, ML and BD may easily enable any actor to catch up, or even outpace, its adversaries in military terms. Here too, skepticism is warranted. First of all, these two concerns logically contradict each other. If we are witnessing a military transformation based on dual-use, general-purpose technologies such as AI, ML and BD that can be easily exploited in battle, then no actor can achieve a significantly enduring military advantage – at the tactical, operational or strategic level – as competitors can quickly catch up or deploy effective counter-systems.8

Next, military power is more than hardware. Tactical fluency and operational competence are in fact extremely important for victory on the battlefield – along with other variables. There is no reason to believe that this will change anytime soon, as warfare, war and by extension strategy are inherently adversarial: winners succeed because they defeat their adversaries – i.e., they neutralize enemy counter-measures, tactics, systems and innovations. Possessing capable hardware is thus, per se, not sufficient and, at times, not even necessary for winning. Commercial technologies offer great potential but are easily vulnerable to even basic counter-measures as they are not designed for combat.

By the same token, emerging technologies – whether developed for commercial or military applications – face performance trade-offs that constrain their immediate military utility. The French Marine Nationale’s mid-19th century bid to offset British naval superiority is telling: the steam engine granted independence from wind but suffered from limited endurance; iron hulls could not keep afloat when hit; and, explosive shells had shorter ranges than solid shots. When mature, these technologies ultimately transformed naval warfare, but it took almost a century for this to happen.9

There is no reason to believe that with AI, ML and BD things will be different. When it comes to software, in fact, even subtle and apparently minor details lead to catastrophic failure: because of simple mistakes in data gathering or processing such as automatic path control, military platforms may end up exceeding their maximum depth or altitude ceilings and thus expose themselves to almost certain mission failure. Software already represents the primary source of procurement delays and cost overruns. As software becomes more central in weapon systems, the problems it creates can only exponentially increase. Additionally, through generative adversarial networks (GNAs), actors can increasingly feed compromised data into enemy systems to negatively affect tactical performance or operational success. Competent armed forces will thus deploy intelligent machines only in so far as the risks, problems and constraints they face are, slowly and progressively, addressed.

This brings us to a final consideration. In order to address these very risks, problems and constraints, investments in a broad range of fields are also needed so as to counterbalance investments by enemies and adversaries. Improving all the underlying technologies related to AI, ML and BD, learning about their potential, integrating them into existing military platforms and exploiting them for maximum strategic, operational or tactical effectiveness require time, human capital, institutional backing, technological competence and financial resources. In other words, the idea that countries can quickly exploit the technologies of the fourth Industrial Revolution for building military power seems exaggerated.10

#### No military applications for AI

Elsa Kania 18, Adjunct Fellow with the technology and national security program at CNAS, 4/19/18, “The Pursuit of AI Is More Than an Arms Race,” https://www.defenseone.com/ideas/2018/04/pursuit-ai-more-arms-race/147579/

However, the concept of an “arms race” is too simplistic a way to think of the coming AI revolution. To confront its challenges wisely requires reframing the current debates.

First and foremost, AI is not a weapon, nor is “artificial intelligence” a single technology but rather a catch-all concept alluding to a range of techniques with varied applications in enabling new capabilities. Just in the near term, the utility of AI in defense may include the introduction of machine learning to cyber security and operations, new techniques for cognitive electronic warfare, and the application of computer vision to analyze video and imagery (as in Project Maven), as well as enhanced logistics, predictive maintenance, and more.

Despite the active research and development underway, these technologies remain nascent and brittle enough that “fully autonomous” weapons (or even cars) are hardly imminent. Moreover, militaries – even those that care less about laws and ethics – may be unwilling to relinquish human control due to the risks.

## 1NC — Inequality

### 1NC — AT: Inequality

#### BUT Market concentration can’t explain inequality or wage stagnation, and antitrust won’t solve.

Bivens et al. 18, \*PhD, director of research at the Economic Policy Institute; \*\*PhD, MA, distinguished fellow at EPI; \*\*\*PhD, MSc, EPI’s vice president. (Josh, Lawrence Mishel, and John Schmitt, 4-25-2018, "It’s not just monopoly and monopsony: How market power has affected American wages", *Economic Policy Institute*, https://www.epi.org/publication/its-not-just-monopoly-and-monopsony-how-market-power-has-affected-american-wages/)

This paper highlights some empirical findings from the new literature on the effect of labor and product market concentration on wages. We address three questions about market concentration that have not always been placed front and center in this literature. The first question is, “Does concentration adversely affect wages at a point in time?” The second question is, “Has concentration grown over time?” The third question is, “Can growing concentration by itself explain a significant portion of the change in wage trends in recent decades?” We find there is evidence to answer “yes” to the first and second questions but not the third. To be clear, the failure to answer affirmatively to the third question is not a criticism of these studies. The studies are not claiming that rising concentration alone can explain wage stagnation or inequality. Yet too many readers have taken these studies’ findings to this conclusion.

Finally, this paper makes two broader points about market power. First, market concentration is not the only source of power—particularly employer power—in markets. Second, even unchanged employer power (like that conferred by market concentration) can play a role in growing wage suppression and inequality if it is accompanied by a collapse of workers’ market power. The new literature on market concentration tells us a lot about employer power, but further exploration of what has happened to workers’ market power remains a key research agenda.

This paper highlights the need to tackle sluggish wage growth and rising inequality with a broad menu of policy interventions that go beyond those provided by competitive models to focus on employer and worker power, and even beyond the antitrust agenda suggested by focusing exclusively on market concentration.

Following are our key conclusions:

Labor market concentration is negatively correlated with wages, but the scope of its downward pressure on wages is limited.

New research shows that labor market concentration is negatively correlated with wages. However, the effect of labor market concentration is comparatively modest when scaled against what we consider the most significant wage trend in recent decades: the growing gap between typical (median) workers’ pay and productivity.

The new literature on market concentration has not yet provided concrete empirical estimates of a key labor market trend of recent decades—rising compensation inequality. This should be a priority for this research agenda in the future.

The new concentration literature does allow us to estimate the effect of market concentration on the share of overall income claimed by labor compensation. These estimates suggest that concentration has not risen enough, nor is its effect on labor’s share of income strong enough, to account by itself for an economically important share of the divergence between economywide productivity and the typical worker’s pay in recent decades.

The new research on labor market concentration implies that this concentration reduced wage growth by roughly 0.03 percent annually between 1979 and 2014, a decline that would explain about 3.5 percent of the total divergence between the median worker’s pay and economywide productivity over the same period.

One important study shows that the “average” labor market is “highly concentrated.” But differences between measures of concentration of the average labor market and the labor market experienced by the average worker have important implications for how to assess the impact of labor market concentration on long-term wage trends. In other words, many labor markets suffer from high degrees of concentration, but most people work in labor markets with only low-to-moderate degrees of concentration.

Nonetheless, labor market concentration is a particular challenge for rural areas and small cities and towns. This is an important finding for those looking to provide economic help to residents of those areas.

#### So many alt causes to this advantage — every single plank to the Adv CP is an example

#### Inequality doesn’t harm growth

Brad **Plumer 13**, reporter covering climate change, energy policy and other environmental issues for The New York Times, 12-5-2013, "Is inequality bad for economic growth?," Washington Post, https://www.washingtonpost.com/news/wonk/wp/2013/12/05/is-inequality-bad-for-economic-growth/

Perhaps the most interesting paper here is economist Jared Bernstein's exploration (pdf) of whether rising income inequality in the United States is bad for economic growth. His conclusion: There are compelling reasons to believe that inequality can harm growth, but it's surprisingly difficult to prove this

[marked]

is happening. That doesn't mean that rising inequality is benign or that there isn't a link — it's just hard to establish empirically, perhaps because of how many other factors are at play. "When you’re trying to figure out the relationship between two extremely complex variables, it’s always going to be tricky," says Bernstein, the former chief economist to Vice President Biden. Economists used to think that income inequality was a necessary condition for growth, at least in emerging economies — the famous Kuznets curve suggests that inequality should rise sharply at first, and then the benefits of productivity become more widely shared over time. But this doesn't appear to describe the United States since the 1970s. Income inequality has soared, but the benefits of productivity growth haven't flowed as widely. So in recent years, some economists — and even groups like the International Monetary Fund — have started wondering if high levels of inequality might even be detrimental to growth. The theories are often elegant. But, as Bernstein details in his paper, empirical support remains difficult to tease out, particularly in the case of the United States. Here's a rundown: Theory #1: High inequality leads to under-investments in education. This was an idea put forward by economist Joseph Stiglitz. Inequality of income leads to inequality of education. Lower-income kids end up in lower-quality schools and are less able to go on to college. The result: The workforce as a whole ends up less productive overall than it would be in a more equitable economy. But how do you prove this? It's true that wealthier families tend to spend more on educational materials — books, tutors, art and music lessons. And the gap in college completion rates between students in the top and bottom income brackets in the United States has grown over time (see chart). Growing inequality of income does seem to be leading to more inequality of education. The trouble comes in establishing a connection between this and economic productivity. As Bernstein notes, citing an index from the Federal Reserve Bank of San Francisco, the quality of the U.S. workforce actually appears to have improved since 1979. This could be for unrelated reasons — the workforce is getting older and more experienced and overall educational opportunities are growing. So we can't disprove theory #1. But we can't yet prove it, either. Theory #2: High inequality leads to policies that hurt growth. This is mainly a theory about politics. As income inequality grows, more and more resources are concentrated in the hands of the wealthiest. So, the idea goes, the wealthiest are better able to steer policies in directions that protect inequality at the expense of growth. (Say, high-income tax cuts instead of investments in infrastructure and R&D.) This obviously needs to be fleshed out a bit more, however — we'll return to it in a bit. Theory #3: High inequality leads to lower levels of consumer spending. Consumer spending makes up about 70 percent of the U.S. economy. And lower-income people have a greater propensity to spend their income than wealthier people do. So, if more and more of the nation's income is concentrated at the very top, that could depress overall demand and weaken economic growth. Simple, right? But at first glance, this doesn't hold up well, either. As the chart on the right shows, real per capita spending in the United States has continued to rise even as income inequality has gone up since 1979. And, Bernstein notes, it's hard to find a relationship even after running simple regressions or accounting for time lags. On the other hand, there may be more to this story. Since 2000, inequality has grown, middle-class incomes have stagnated, and poverty has stayed stubbornly high. Yet consumption kept growing — in part because there was a surge of borrowing and a housing bubble. So that brings us to a fourth theory... Theory #4: Inequality can lead to credit bubbles and financial crises. It's also possible to combine theories #2 and #3 above and tell a story about how inequality can lead to destructive financial crises such as the one we had in 2008. It goes like this: Incomes at the top grow. Incomes at the bottom stagnate. That creates a lot of demand for cheap credit — people at the lower end borrow more to keep afloat, while those at the top end have plenty to lend. At the same time, income inequality begins to warp politics. One example: The University of Chicago's Marianne Bertrand and Adair Morse have found that members of Congress in districts with higher levels of income inequality were more likely to vote for a 1992 bill that greatly expanded credit for housing. That was true even after controlling for ideology. Put it all together — a surging demand for credit, a push for looser financial rules — and it's relatively easy to imagine how a nation could end up with asset bubbles and financial crises. This was a theory floated by the International Monetary Fund in 2011, which suggested that when income inequality runs rampant, people on the lower end tend to borrow more. That excess debt, in turn, increases the odds of a major financial crisis. Bernstein notes that there's a lot of circumstantial evidence that supports this story — including a recent paper by Barry Cynamon and Steven Fazzari establishing many of the details. "But the empirical problem, and it's a [is] big one," Bernstein tells me, "is that you can also see many of these trends evolving in periods where there isn't as much inequality. So I'm not sure we have this one completely nailed down."

#### Income inequality doesn’t cause nationalism

Bosancianu 17 (Constantin Manuel Bosancianu, Doctoral School of Political Science, Central European University, Nador u. 9, H-1051 Budapest, Hungary “A Growing Rift in Values? Income and Educational Inequality and Their Impact on Mass Attitude Polarization”, Social Science Quarterly , Volume 98, Issue 5, November 2017, Pages 1587–1602, Accessed 3/3/18, N.G.)

The analyses presented so far have tended to refute the hypotheses I have outlined in the beginning: economic inequality is not associated with increased attitude polarization, regardless of whether I examine the dispersion, bimodality, or consolidation of Left-Right self-placement with respect to income groups in the population. Although for dispersion and bimodality the estimates for income inequality tend to be in the direction expected, they are not statistically significant once educational inequality is controlled for. A conservative interpretation, pending a larger sample, is that there is no significant association between inequality and attitude polarization. The evidence is in line with analyses from the context of the United States, finding little connection between inequality and income-based partisan sorting (Dettrey and Campbell, 2013) or polarization in preferences for redistribution between income groups (Luttig, 2013). The models presented in the previous section also offer a refutation of the RD framework, inasmuch as it applies to mass attitude polarization, as well as of the political economic models presented in the beginning. Rising income inequality neither increases nor decreases the level of attitude polarization in a country; rather, the two appear to be unconnected. The reasons for this have already been presented: it is unlikely for small-to-medium shifts in inequality over a period of 20–30 years to be properly assessed by individuals who most often than not have difficulties naming members of the government, or the parties that form the governing coalition. A recent set of studies confirms that individuals in the United States and Australia woefully underestimate the degree of economic inequality in their society (Norton and Ariely, 2011; Norton et al., 2014). If this insight holds for other nations as well, it is to be expected that variations in attitude polarization are not connected in any way to the level of income inequality in the country. An additional contribution of the analysis conducted here is the strong cross-national impact that educational inequality has on attitude polarization: when controlling for it, the effect of income inequality on either attitude dispersion or bimodality largely disappears. Although economic inequality has been included in a variety of models used to predict attitudes toward redistribution, turnout, political engagement, or social trust, my analysis reveals that treating inequality as a completely exogenous factor is likely to yield biased findings. The effect of educational inequality is likely felt on both income inequality and attitude polarization, but, unlike the former, it does not depend on unrealistic expectations concerning the ability of voters to recognize glacial trends in inequality over decade-long periods. Most likely, educational inequality exerts an impact by shaping the socioeconomic circumstances of individuals at different educational levels, which, in turn, influences their prevailing policy orientations and values, particularly with respect to redistributive issues. These attitudes are some of the more important questions over which political competition is carried out, and form the foundation of Left-Right identification: the extent to which income differences result in harder work and a boost in productivity, or constitute a social harm; the extent to which government intervention in the economy maintains equality in the provision of goods and services, or rather leads to inefficiency and financial waste. Larger educational inequality leads to a growing divergence in these attitudes, which could subsequently make way for increased social tensions and breakdown in civil debate if allowed to continue unabated. The findings offer an additional cautionary tale for studies that attempt to model in vacuo the impact of income inequality on any individual-level political behavior or attitude.8 A wide range of factors can be presumed to be causes of both income inequality and attitude shift: changes in the population structure or in the relative importance of economic sectors, or the policies that have brought about welfare state retrenchment (an externality of which is educational inequality). Lack of proper consideration for the sources of economic inequality, and for the potential influences of these sources on the phenomenon to be explained, cannot produce an adequate picture of the true effects of inequality on democratic dynamics. As I have shown here, controlling for what could be considered a causal determinant of income inequality, the impact of the Gini index on attitude polarization largely disappears.

# 2NC

## T — Per Se

#### It’s a distinction with a difference---‘rule of reason’ and ‘per se’ have precise meanings AND access literature with completely different base assumptions.

Beschle 87 (Donald L. Beschle- Associate Professor of Law, The John Marshall School of Law. B.A., 1973, Fordham University; J.D., 1976, New York University School of Law; LL.M., 1983, Temple University School of Law. March. CURRENT TOPIC IN ANTITRUST: "What, Never? Well, Hardly Ever": Strict Antitrust Scrutiny as an Alternative to Per Se Antitrust Illegality., 38 Hastings L.J. 471)

In response to recent attacks on per se rules, courts have clung to the term and to its absolutism by steadily narrowing the definitions of the types of behavior subject to those rules. The result has been not only much confusion, with words being used to designate things far narrower than their commonly understood meanings, but also the application of permissive rule of reason treatment to some behavior which, while not meriting absolute prohibition, clearly deserves careful antitrust analysis.

The proper response to this confusion is to retain the valid insight of per se jurisprudence, that certain types of behavior should be treated as more suspect than others, while abandoning the indefensible absolutism of the term "per se." However, since terms carry with them not only precise meanings, but also more general attitudes, "per se" must be replaced with a term which does not carry the permissive connotations which have become associated with the "rule of reason."

The best available term for this new test is strict antitrust scrutiny. The use of such a term, and the type of analysis it suggests, is well known in constitutional law, where it by no means is associated with leniency. When faced with conduct which would traditionally be labelled per se illegal under the antitrust laws, courts should apply strict antitrust scrutiny. They should ask whether the defendant can carry the heavy burden of demonstrating that its conduct is narrowly tailored to achieve a procompetitive end. By replacing a system which places absolute prohibitions on types of conduct which can be defined so narrowly as to be irrelevant with a system which places, not absolute prohibitions, but heavy negative presumptions, on a larger set of behaviors, strict scrutiny should, on the whole, lead to more vigorous antitrust enforcement.

**Only per se illegality forbids practices---rules of reason forbid acts which fail a balancing test.**

**Beschle 87** (Donald L. Beschle-Associate Professor of Law, The John Marshall School of Law. B.A., 1973, Fordham University; J.D., 1976, New York University School of Law; LL.M., 1983, Temple University School of Law. March. CURRENT TOPIC IN ANTITRUST: "What, Never? Well, Hardly Ever": Strict Antitrust Scrutiny as an Alternative to Per Se Antitrust Illegality., 38 Hastings L.J. 471)

None of these positions has been accepted by the courts, possibly due to the apparent intent of Congress to maintain strict sanctions against resale price maintenance. 145 However, if antitrust theorists continue to criticize the anomaly of treating only one form of vertical restraint as per se illegal, the most likely way this conflict will be resolved is by the Supreme Court reversing its position on vertical price fixing. With respect to **tying** arrangements, legislative support of **unwavering prohibition** is **less recent**, if not less clear, and the Court has already come **close** to **abandoning the per se concept**. Four Justices already support rule of reason treatment for such practices. 146 Given the likely changes in the composition of the Court in the near future, **rule of reason** analysis may be adopted as the test for tying arrangements as well as other vertical restraints. 147

Less attention has been paid in recent literature to per se rules involving boycotts and horizontal market division. With respect to boycotts, this sanguinity may reflect the perception that the surviving per se rule is so limited that it has relatively little impact on antitrust enforcement. 148 Few significant cases have involved **horizontal** market division, unaccompanied by price fixing, since the unambiguous classification of such **practices** as per se illegal in 1972. 149 Still, some have criticized the application of **per se rules** in these cases. Topco remains, in the view of some, a classic example of how horizontal market division can occasionally have procompetitive results. 150

Only with respect to the classic per se offense, horizontal price fixing, has criticism been rare. Nevertheless, an occasional voice has been raised to argue that per se analysis should be abandoned even with respect [\*500] to this "hard core" Sherman Act violation. 151 Although there is little reason to believe that courts will seriously reconsider the designation of horizontal price fixing as per se illegal, the mere existence of such arguments indicates the strength of the movement against per se analysis. Even when criticism of per se rules does not lead to their explicit abandonment, it helps to create an atmosphere in which the surviving per se rules are continually narrowed through judicial circumscription. The expanded use of the **rule of reason** leads, then, to **more permissive** judicial **treatment** for those types of conduct **once** treated as **clearly anti-competitive**. 152

Of course, the critics of per se analysis have not had the field entirely to themselves. Those advocating strict application of the Sherman and Clayton Acts have counterattacked, putting forward both relatively narrow defenses of particular per se rules 153 and broad defenses of the concept of per se illegality. 154 Some advocates of broad application of per se rules argue that economic efficiency is the dominant goal of antitrust analysis and attempt to demonstrate that efficiency is not promoted by practices traditionally labelled per se illegal. 155 Others contend that efficiency must yield to, or at least share the spotlight with, other values that call for strict application of antitrust prohibitions even in the face of possible efficiency losses from such enforcement. 156

It is not surprising that defenders of the per se concept are losing ground, both in the academic literature and in the courts. This situation, however, is much less a reflection of any defect in the general position advocating vigorous antitrust enforcement than an indication of a fundamental flaw in the concept chosen to implement that position. From the earliest days of antitrust, advocates of vigorous enforcement have made strong and appealing arguments for listing certain types of conduct as [\*501] clearly and invariably forbidden. 157 Not only would this categorization make enforcement of the antitrust laws quicker and more certain, it would also serve to deter far more anticompetitive behavior. Certainty and judicial economy are no doubt valid concerns, and vigorous enforcement of the antitrust laws is certainly consistent with the spirit of the public and the legislators who adopted them. 158

But the use of the concept of per se illegality has been unfortunate. To the extent that the term means what it says -- that certain practices will invariably be illegal -- it is difficult to defend. If a practice is to be classified as invariably illegal, it should be so designated only upon a showing that it will always (or at least almost always) cause harm outweighing any benefits which it may produce. Some courts have so held, stating that the per se label will be reserved for practices which will always, or almost always, fail the standard test of antitrust analysis, the rule of reason. 159

Absolutes, however, even when qualified with the word "almost," are hard to prove. In an area as complex as the effect of concerted business practices on competition, numerous counterexamples, both hypothetical and actual, may be advanced to rebut the contention that any such practice invariably injures competition. To defend per se illegality, then, is to defend something almost inevitably indefensible. The only possible way to defend the concept effectively is to resort to the course currently being taken by the Supreme Court: to narrow the categories so far as to make the question of categorization almost as complex as full rule of reason analysis. At that point, the defense of the per se concept becomes merely an exercise in semantics.

If the concept of per se illegality is indefensible, except when so refined as to make it largely irrelevant, why continue to defend it at all? Why not simply abandon the field to the rule of reason? It seems clear that the battle over the per se rules is **less** a clash over those **specific rules** than a battle over **basic attitudes toward antitrust enforcement**. For better or worse, per se rules have become linked in most minds with **vigorous** enforcement; to **favor one** is to **favor the other**. The **rule of reason**, on the other hand, is associated with a **tolerant** attitude toward antitrust defendants. Rule of reason analysis often -- perhaps **usually** -- leads to a [\*502] finding of **no liability**. Its complexity and uncertainty can deter plaintiffs from even attempting to challenge behavior which many would say should be challenged. Since, to so many, rule of reason analysis means a type of antitrust enforcement under which **much anticompetitive activity** will be **permitted**, per se analysis is defended, not so much for its own virtues, but rather because of fears of the permissive nature of its sole obvious rival.

**A standard *REMVOES A PROHIBITION.* Only per-se is a prohibition**

**Seita and Tamura 94** (Alex Y. Seita, Professor of Law, Albany Law School of Union University. B.S. 1973, California Institute of Technology; J.D. 1976, M.B.A. 1980, Stanford University, & Jiro Tamura, Associate Professor of Law, Keio University. B.A. 1981, M.A. 1983, Keio University; LL.M. 1985, Harvard University, [“The Historical Background of Japan's Antimonopoly Law,” 1994 U. Ill. L. Rev. 115, 177-178](https://advance.lexis.com/api/document/collection/analytical-materials/id/3S3T-WD60-00CW-508X-00000-00?page=177&reporter=8130&cite=1994%20U.%20Ill.%20L.%20Rev.%20115&context=1516831))

The combined effort of business and bureaucrats led to a further weakening of the AML in 1953. 411 The 1953 Amendments made the following major changes in the AML to reduce or eliminate various restrictions on business activities: (1) deletion of the **prohibition** against certain concerted activities; 412 (2) deletion of the prohibition  [\*178]  against private control organizations; 413 (3) deletion of the restriction on undue substantial disparities in bargaining power; 414 (4) deletion of the restriction on debenture holding; 415 (5) restriction on stockholding, interlocking directorates, mergers, or transfers of business only when they substantially restrained competition or employed unfair business practices; 416 and (6) approval of resale price maintenance contracts, depression cartels, and rationalization cartels under certain conditions. 417 All of the changes served to lessen or potentially lessen competition.

Upon the elimination of the restriction on undue substantial disparities in bargaining power, for example, economic concentration of power in and of itself was no longer a problem for business. The **elimination** of the **prohibition** against certain concerted activities meant that cartel behavior was **no longer illegal per se**. Most significantly, the authorization of depression and rationalization cartels under the Antimonopoly Law, with JFTC permission, **legalized cartels** under **certain conditions**. 418 Thus **the rule of reason**, **rather than per se illegality**, now governed cartel behavior. 419

#### These are the two poles of antitrust

Kovacic 21, \*Global Competition Professor of Law and Policy, George Washington University Law School; Visiting Professor, Dickson Poon School of Law, King’s College London; Non-Executive Director, United Kingdom Competition and Markets Authority (William, “THE FUTURE ADAPTATION OF THE PER SE RULE OF ILLEGALITY IN U.S. ANTITRUST LAW,” Columbia Business Law Review, Lexis)

Judicial interpretation of the U.S. antitrust statutes can be seen as a struggle to resolve the tension between achieving accuracy through the application of standards and gaining, where appropriate, the clarity and predictability associated with rules.

Start FN 31

See PolyGram Holding, Inc., 136 F.T.C. 310, 326 (2003) (Muris, Chairman) (“[A]djudicatory tribunals have struggled to attain an appropriate balance between achieving accuracy in individual cases, which generally requires fuller inquiry, and streamlining the law’s administration, which usually involves making simplifying assumptions and foregoing elaborate analysis when the conduct at issue ordinarily poses grave competitive dangers.”); Crane, supra note 21, at 52 n.11; Leon B. Greenfield & Daniel J. Matheson, Rules Versus Standards and the Antitrust Jurisprudence of Justice Breyer, ANTITRUST, Summer 2009, at 87, 87 (reviewing the rules versus standards debate in analyzing the opinions of a jurist who has focused on tradeoffs between the two approaches to formulating legal commands); Antitrust Section, MONOGRAPH NO. 12, supra note 21, at 50–55 (in context of formulation of rules for merger policy, discussing efforts to balance costs of flexibility and simplicity); see also generally Wolfgang Kerber, ‘Rules vs. Standards’ or Standards as Delegation of Authority for Making (Optimally Differentiated) Rules, in INTERNATIONALISIERUNG DES RECHTS UND SEINE ÖKONOMISCHE ANALYSE [INTERNATIONALIZATION OF THE LAW AND ITS ECONOMIC ANALYSIS] 489 (Thomas Eger et al. eds., 2008)

End FN 31

The discussion below sets out highlights in the evolution of Supreme Court § 1 jurisprudence and variations in its reliance over time on rules or standards. As reflected in modern decisions, U.S. doctrine has recognized an analytical continuum whose boundaries are set by a rule of categorical condemnation (per se illegality) and an elaborate, factintensive assessment of reasonableness.32 Within these boundaries operate intermediate tests that employ hybrid adaptations of per se rules and more elaborate analytical methods. Although scholars have identified antecedents for the modern continuum model across 130 years of Sherman Act jurisprudence, Supreme Court decisions sometimes have wanted for nuance and precision in setting out the content of the rule of reason and its abbreviated treatment: rules of per se illegality for conduct that tends in most instances to destroy competition.33

## CP — Advantage

#### The United States federal government should —

#### Provide financial incentives to private businesses to implement strategies of attribution

#### Initiate de-escelation strategies after attacks have occurred including limiting retaliatory potential

#### Develop a strategy for minor cyber responses to cyber attacks

#### Publicly announce that the United States will fully retaliate to cyber attacks but never enforce a policy of full spectrum retaliation

#### Ban the adoption of internet-connected technology in NC3 and other vulnerable assets, and retroactively apply this

#### First planks solve retaliation and attribution

**Hennessey 17** – (Susan Hennessey, Managing Editor of Lawfare and a Fellow in National Security Law at the Brookings Institution; “Deterring Cyberattacks”; Foreign Affairs; D.A. January 9th 2021, [Published November/December 2017]; <https://www.foreignaffairs.com/reviews/review-essay/2017-10-16/deterring-cyberattacks>)

NEXT STEPS

To avoid a repeat of the 2016 fiasco, the United States must chart a new course shaped by a higher tolerance for strategic risk. For starters, Washington must articulate clearer lines. The Obama administration’s cyberstrategy presented ambiguity as a deterrent tactic, claiming that a lack of specificity would discourage states from simply tailoring their malicious activities to avoid crossing lines. But experience has demonstrated that aggressive adversaries considered that zone of ambiguity to be a zone of impunity. Although setting clearer lines does risk encouraging some additional below-the-threshold activity, containing behavior in that space is a better outcome than allowing more serious violations to go unchecked.

Likewise, the United States should be more consistent and proactive in publicly attributing attacks. When officials fail to point fingers for fear of revealing sources and methods, they offer U.S. adversaries plausible deniability. Strong attribution and statements that unambiguously link retaliation to corresponding offenses are important steps toward shaping and enforcing the norms necessary to govern state conduct in cyberspace.

Finally, the United States must cease to be inhibited by the fear of sparking escalatory cycles. Stronger responses to hacking, such as counterattacks and aggressive sanctions, do carry significant risks, but Washington can no longer rely on a do-nothing or do-little approach. Cyber-deterrence policy must reflect the reality that failing to respond in the face of an attack is itself a choice with consequences.

#### The last planks solve proactive deterrence

O’Hanlon 17 — Michael; Director of Research in Foreign Policy, Co-Director at the [Center for Security, Strategy, and Technology](https://www.brookings.edu/center/center-for-security-strategy-and-technology/), [Africa Security Initiative](https://www.brookings.edu/project/africa-security-initiative/). (“Cyber threats and how the United States should prepare” Brookings. June 14, 2017. <https://www.brookings.edu/blog/order-from-chaos/2017/06/14/cyber-threats-and-how-the-united-states-should-prepare/>)

Panelists were first asked about the biggest problem in the cyber realm in the Department of Defense. Leigher suggested the United States needs to better address the human side of the cyber security problem, including the frequent security breaches that take place today. Jones proposed that the Department of Defense needs either to eliminate compliance reports or to use technology to automate compliance reports to give people time to patch security vulnerabilities and fix the network. Ramcharan argued that the broader civilian infrastructure and its vulnerabilities require attention, not just the infrastructure devoted to DoD systems.

Miller highlighted a particular strategic problem that characterizes current cyber vulnerabilities: “death by a thousand hacks,” including the Iranian attacks on Wall Street, North Korea’s hack on Sony Pictures, Chinese cyber thefts of intellectual and personal property, and the Russian hack of the recent U.S. election. These could consistently distract the United States and compromise the economy and communication systems. Miller also pointed to the need for a long-term deterrence campaign aimed at each of the actors attacking the United States, along with the use of offensive cyber instruments and other tools of foreign policy.

Miller further raised that the U.S. military is already “an internet of things.” Miller explained the multidimensional nature of vulnerabilities today: There could be problems in the computer chips embedded in weapon system platforms; there could also be major vulnerabilities in critical infrastructure on which the U.S. military depends for transportation and sustained logistical support. Disruptions to command and control capabilities that, in time of war, could leave military forces disconnected from each other—or falsely directed to shoot in erroneous directions or otherwise carry out inadvertent and harmful activities—could also result from various forms of sophisticated hacking. Miller concluded that the combination of attacks on civilian infrastructure—in vital domains such as electricity, water and sewage, transportation, and financial activities, many of which are also crucial to military operations—along with its military vulnerabilities, the United States could experience a situation where a major actor (e.g. Russia or China) could have the capacity to both harm the economy and attempt to blunt U.S. military responses to an aggression.

Miller and DSB coauthors believe vulnerabilities are still worsening today and that they will likely continue to get worse until we take the problem much more seriously. In their eyes, a sustained effort in cyber protection is urgently needed.

A number of other key points were made.  Again, Ramcharan emphasized the importance of protecting civilian infrastructure. He explained that the tactics and techniques being applied to cyber warfare today are widely accessible and often fairly easy to employ.  Today, low-cost, low-entry, and often low skill-set methods are used to attack.

Leigher explained present-day vulnerabilities by observing that earlier generations of military systems engineers were not too concerned about cyber security.  He expressed alarm that even a limited, discrete cyberattack on a key part of a major platform like a ship could incapacitate the entire thing, causing mission failure. For example, an attack that disabled the ship’s propulsion could lead to catastrophic results.

Jones explained that by writing better code, using various kinds of red teams, and scrutinizing carefully from the very beginning, reliability and resilience could be dramatically improved.

In conclusion, going forward, Miller suggested that the United States needs to do three things:

Prioritize and invest in resilience for nuclear strike systems and for long-range conventional platforms.

Work hard on the critical infrastructure and maintain a threshold so that terrorist groups and lesser powers (e.g. North Korea and Iran) do not have the capability of holding the nation at risk through cyberattacks.

Develop a playbook of sorts, in advance, to guide response to significant cyberattack.

## Adv — Solvency

## Adv — Innovation

## Adv — Inequality

#### Bosancianu’s data is responding to Solt directly

Bosancianu 17 (Constantin Manuel Bosancianu, Doctoral School of Political Science, Central European University, Nador u. 9, H-1051 Budapest, Hungary “A Growing Rift in Values? Income and Educational Inequality and Their Impact on Mass Attitude Polarization”, Social Science Quarterly , Volume 98, Issue 5, November 2017, Pages 1587–1602, Accessed 3/3/18, N.G.)

A recent and dynamic strand of literature has taken notice of a three-decade-long trend of rising income inequality across most advanced industrial democracies and has assembled a thorough record of the multitude of ways in which inequality can disrupt democratic dynamics. The pernicious influence of economic inequality extends both to attitudes, such as feelings of nationalism (Solt, 2011), of religiosity (Solt, Habel, and Grant, 2011), or social trust (Uslaner and Brown, 2005), as well as to the behaviors that these attitudes underpin, such as political participation (Solt, 2008). In this article, I take a step back from the micro-level perspective most often adopted in this literature by focusing on the influence of economic inequality on a macro-level characteristic of democratic public opinion: mass attitude polarization.

# 1NR

## DA — FTC

## DA

#### FTC has sufficient resources now to fight fraud. But they are stretched to capacity.

Soto et al. 21, American attorney and Democratic politician from Kissimmee, Florida, who is the U.S. Representative for Florida's 9th district; Lina Khan is Chair at the FTC; Noah Joshua Phillips is Commissioner at the FTC; Rohit Chopra is Commissioner at the FTC; Christine S. Wilson is Commissioner at the FTC, (Darren, “Transforming the FTC: Legislation to Modernize Consumer Protection,” Committee on Energy and Commerce, 6/28/21, <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-transforming-the-ftc-legislation-to-modernize-consumer>)

Noah Joshua Phillips (5:06:17): Thank you, Congressman, I'd just start with the fact that when I began, our budget was about 309 million, I think, something like that, and the latest congressional budget justification has us at 389. So there's been a substantial increase in the ask, including some funding from Congress. So I think it's important to track how those resources are used. But I do think we can do more with more. That's, that's certainly a true thing. But I think it's important to take care in how we spend what we have.

Darren Soto (5:06:46): Thank you. Commissioner Chopra.

Rohit Chopra (5:06:48): Sir, I think - I know every agency says that they need more resources. But just looking at the data, we are stretched completely to capacity and the rubber band is snapping. And if we need to effectively enforce the law, we need the resources. There are so many laws that Congress has recently passed, whether it's relates to opioids or so many other topics, that the FTC has not brought a single law enforcement action on. That's not just resources. That's also Commissioner accountability. But resources will certainly help.

Darren Soto (5:07:25): Commissioner Slaughter.

Christine Williams (5:07:30): Commissioner Slaughter had to leave, but Commissioner Wilson is here. And I would say that our hard working staff have been even harder working during the last 18 months. They are teleworking but they are working incredibly hard to stay on top of the increase in mergers as well as the increase in COVID scams. And I agree with Commissioner Phillips, it's important to understand how we are spending additional appropriations. But I also know that there are many different areas of the economy where Congress has expressed interest in our being very active and aggressive. And it is difficult to do that unless we have the appropriate resources to do that.

#### Each new structural remedy requires decades of enforcement and litigation

Crandall 1, Senior Fellow in Economic Studies at the Brookings Institution and a Scholar at the AEI-Brookings Joint Center for Regulatory Studies. The author is indebted to Hal Singer, Bruce M. Owen, J. Gregory Sidak, and Clifford Winston for comments and suggestions. Research assistance was provided by Jeffrey West, Ana Kreacic, and Kristin Jaeger“The Failure of Structural Remedies in Sherman Act Monopolization Cases,” https://www.brookings.edu/wp-content/uploads/2016/06/03\_monopoly\_crandall.pdf

The on-going costs of enforcing antitrust decrees can be very large. If an industry is changing rapidly, structural remedies may be difficult to enforce. For instance, it may be difficult to determine the demarcation point between various stages of production that have been separated through vertical divestiture. When television exhibition replaced theatrical exhibition of feature films, for example, would the Paramount defendants be allowed to own television stations, but not theaters? Could the divested Bell operating companies provide Internet service through local Internet Service Providers (ISPs) if the latter sent data packets across LATA boundaries? What if the Bell-owned ISP connected with another entity within its own LATA, who, in turn, sent the data packets to the Internet backbone? Most of the antitrust decrees in the leading cases analyzed below continued in effect for many years, even decades. In many cases, these decrees required the continual supervision by the lower court and often led to appeals to the higher courts. The AT&T decree, in particular, was a structural decree that involved scores of hearings before the District Court and created a backlog of unresolved disputes that had become very large when the decree was finally vacated by 1996 legislation. Approximately 35-40 separate waiver requests were filed per year in the first 8 years of the decree, and by 1993 the average age of pending waiver requests had grown to approximately four years.17 This caseload was due in no small part to the changing nature of the telecommunications industry

#### AND Separations require granular case by case analysis—their author

Khan ’19 [Lina; Chairperson @ Federal Trade Commission, JD @ Yale Law School; “The Separations of Platforms and Commerce,” *Columbia Law Review* 119(4), p. 973-1098 ; date accessed 9/23/21]

These overall numbers, however, offer limited insight into whether— and in what way—dominant platforms are affecting venture capital funding. Even sector-specific figures compiled by the industry database are based on industry classifications that are too generalized for a precise analysis of this question. Establishing high-level causality between platform conduct and investment decisions would prove extremely challenging; there are a significant number of variables at play, and demonstrating but-for causality is tough. Achieving clarity on this question would require granular case-by-case analysis.198

#### It’s inherent in separation—their author

Khan ’19 [Lina; Chairperson @ Federal Trade Commission, JD @ Yale Law School; “The Separations of Platforms and Commerce,” *Columbia Law Review* 119(4), p. 973-1098 ; date accessed 9/23/21]

This Part examines whether integration by dominant platforms gives rise to the sort of harm previously addressed through separations, offers a rough sketch of what a separations framework for digital intermediaries might look like, and identifies the likely challenges and unresolved questions. Ultimately, any separations proposal will require a case-by-case analysis of the relevant market that the platform dominates, the types of network effects and entry barriers that suggest the platform’s market power may be durable, and the potential costs of implementing a separation. Several questions that this Part only briefly engages—such as how to define what constitutes a platform, how to assess the contours of the platform, and how to scope structural separations—invite deeper study.

#### It requires intensive study—their author

Khan ’19 [Lina; Chairperson @ Federal Trade Commission, JD @ Yale Law School; “The Separations of Platforms and Commerce,” *Columbia Law Review* 119(4), p. 973-1098 ; date accessed 9/23/21]

Getting the policy right will require careful case-by-case analysis and further study to assess the relevant tradeoffs. Closer study, moreover, may reveal that the set of contexts that warrant separations is relatively limited. Arriving at the proper set of interventions, however, requires first knowing the full set of available tools.

#### Changing to “protection of competition” requires tons of resources and iterations to make the standards practicable [KU is blue]

1AC Wu, 18 –Columbia University law professor

[Tim, former senior enforcement counsel at the New York Office of the Attorney General, former senior advisor to the Federal Trade Commission, served on the National Economic Council in the Obama and Biden administrations, “After Consumer Welfare, Now What? The ‘Protection of Competition’ Standard in Practice,” Columbia Public Law Research Paper No. 14-608, April 2018, <https://scholarship.law.columbia.edu/faculty_scholarship/2291>, accessed 5-31-21]

D. Preservation of Competition

Some have begun to argue that the “preservation of competition” should be re-recognized as the “end” of antitrust. Even some members of the judiciary have so stated. Without much fanfare, Justice Stephen Breyer, in condemning so-called “pay for delay” settlements in the pharmaceutical industry, did so based on the “potential for genuine adverse effects on competition.”31 Richard Posner writes that “The purpose of antitrust law, at least as articulated in the modern cases, is to protect the competitive process as a means of promoting economic efficiency.”32

As a legal matter, the “protection of competition” standard has the **advantage of much greater support from** congressional intent and **earlier precedent**. It is a challenging, even absurd exercise, to pick a modern economic standard out of the language of the Sherman, Clayton, or Anti-Merger Acts or their legislative histories. The idea that Congress was concerned with “allocative efficiency” in 1890 or even 1914 or 1950 is an economic version of anthropomorphism.33 In contrast, it is no great stretch to say that Congress was interested in the preservation of competition. The Congressional Record does not contain the words “allocative efficiency,” “consumer welfare” or “wealth transfer” but it does repeatedly discuss the choice between competition and monopoly. Here, as just one typical example, is Representative Dick Thompson in 1914: “the one thing we wish to maintain, and retain and sustain, is competition. We want to destroy monopoly and restore and maintain competition.”34

These considerations suggest a return to the “protection of competition” as the recognized goal of American antitrust law. It is a **return**, for, as Barak Orbach makes clear, protection of competition was, **from the 1890s through 1970s**, the **accepted** and restated **goal of** the **antitrust laws**.35 The point was repeated over the decades: In 1904 the Supreme Court said in N. Sec. Co. v. United States that the Sherman Act “has prescribed the rule of free competition among those engaged in ... commerce.”36 In the 50s, it stated in Standard Oil Co. v. FTC, “The heart of our national economic policy long has been faith in the value of competition. In the Sherman and Clayton Acts, as well as in the Robinson-Patman Act, ‘Congress was dealing with competition, which it sought to protect, and monopoly, which it sought to prevent.’”37 And in 1978, the Court observed that “Congress . . . sought to establish a regime of competition as the fundamental principle governing commerce in this country.”38 In short, **to use the “protection of competition” standard is not to break new ground but to return to previous practice**.

C. Protection of the Competition in Practice

This leads us, finally, to our question: **is “**protection of competition**”** or “protection of the competitive process” **too indeterminate** a standard? I think the answer is “**no**,” **because it draws on tests already in use in** antitrust law and practice. Nonetheless, I think that its development will require much further work and practice to arrive at practicable standards. Indeed, this short writing surely does not represent the author’s final thoughts on the matter. What I describe here is a beginning of what I think is an important and indeed essential project for the future of the law.

#### 2. Morale— The plan’s perceived as a fundamental critique of FTC’s legacy---that devastates morale

Kovacic 20, Global Competition Professor of Law and Policy, et al (William, with Allison Jones, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” *The Antitrust Bulletin*, 65.2)

(ii) Respecting and Learning from Past Achievements. In the United States, there is an unfortunate habit of making the case for major reforms by depicting the existing policy making institutions as utterly incompetent, slothful, or corrupt.61 Reform advocates sometimes appear to believe that any recognition that existing institutions sometimes have done good work undermines the case for fundamental reform. There is a perceived imperative to portray the responsible bodies and their leaders as hopelessly inadequate. Electoral campaigns can sharpen this tendency by leading the opposition party to claim that the incumbent administration’s program was an unrelieved failure. In a striking number of instances, this pattern has emerged in discussions of antitrust policy.62 In current discussions about the future of the U.S. antitrust regime, advocates of fundamental reform sometimes portray the federal antitrust enforcement agencies as decrepit -- perhaps to underscore the need for basic change.63 The implication is that, because the antitrust system has failed so miserably, there are few, if any, positive lessons to be derived from experience since the retrenchment of U.S. policy began in the late 1970s, and certainly none since 2000. This style of argument has several potential costs. One danger is that it overlooks genuine accomplishments and, in doing so, ignores experience that suggests how to build successful programs in the future. We offer three examples that deserve close study in building future cases that seek to expand the reach of the antitrust system. The first is the development of the FTC’s pharmaceutical and non-pharmaceutical health care program from the mid-1970s forward. The Commission identified health care as a major priority and devised a strategy that used the full range of the agency’s policy tools – cases, rules, reports, and advocacy – to change doctrine and alter business behavior.64 The affected business enterprises were (and are) economically powerful and politically influential, and they mounted powerful campaigns in the courts and in the Congress to blunt the Commission’s initiatives. The difficulty of the FTC’s program is perhaps most apparent in the case of health care services. The agency had to win cases before courts that displayed skepticism about whether competition had a useful role to play in the delivery of health care, or in any of what are known as the learned professions.65 The FTC also had to outmaneuver an industry that was bent on gaining legislative relief from antitrust scrutiny. Allied with other professional groups, the leading U.S. medical societies came within an inch in the late 1970s and early 1980s of persuading Congress to withdraw the FTC’s jurisdiction to apply the antitrust law to the professions.66 A second example is the FTC’s effort over the past two decades to restore the effectiveness of the “quick look” as an analytical tool in the wake of the Supreme Court’s decision in Federal Trade Commission v. California Dental Association (CDA).67 By 2001, it had become apparent to the FTC’s senior leadership team that CDA had raised doubts about the application of the quick look method of analysis to truncate the assessment of behavior that, while not previously condemned as illegal per se, strongly resembled conduct that antitrust jurisprudence had forbidden categorically.68 The agency responded with a strategy focused on the development of cases that would enable the Commission to use its administrative adjudication authority to persuade courts to reject the broader negative implications of CDA and restore the vitality of the quick look. This initiative ultimately generated court of appeals decisions that upheld the Commission’s effort to treat certain behavior as “inherently suspect” without proving that the defendant possessed market power and to require the defendant to offer cognizable, plausible justifications.69 A third example is the FTC’s successful litigation of three cases before the Supreme Court over the past decade.70 Not since the 1960s has the Commission litigated and won three consecutive antitrust cases before the Supreme Court. Each matter involved difficult issues and featured strong opposition from the defendants and amici. Had the FTC been a “timid” institution, one cannot imagine that it wouild have mounted or sustained these litigation challenges. The programs that accounted for these results were not accidental. Each program began with a careful examination of the existing framework of doctrine and policy to identify desired areas of extension. This stock-taking guided the identification of potential candidates for cases and the application of other policymaking tools.71 Each program built incrementally upon the bipartisan contributions of agency leadership and the sustained commitment of staff across several presidential administrations headed by Democrats and Republicans. If one assumes (as a number of reform proponents assert) that the FTC was a useless body in the modern era, there would be little purpose in studying these examples, or anything else it did, as there would be nothing useful to learn. The paint-it-black interpretation of modern antitrust history makes the costly error of tossing aside experience that might inform the successful implementation of new reforms. A second notable harm from the catastrophe narrative, most relevant to the discussion of human capital, is its demoralizing effect on the agency’s existing managers and staff. To see one’s previous work portrayed as substandard, or worse, tends not to inspire superior effort. It breeds cynicism and distrust where managers and staff understand that the critique badly distorts what they have done. Proponents of basic change must realize that the success of their program to expand antitrust intervention will require major contributions from existing staff and managers.

#### 3. Backlash— Big wins against big players cause FTC wing-clipping

Hyman 14, Workman Chair in Law and Professor of Medicine, University of Illinois, and former special Counsel at the Federal Trade Commission (David A., and William E. Kovacic, Hyman is H. Ross & Helen; Kovacic is Global Competition Professor of Law and Policy, The George Washington University Law School, “Can’t Anyone Here Play This Game - Judging the FTC’s Critics The FTC at 100: Centennial Commemorations and Proposals for Progress: Essays,” George Washington Law Review, 83.6)

The ABA Commission set out three basic guidelines for the FTC's future antitrust work:

(1) Forsake trivia in favor of economically significant matters;123

(2) Emphasize cases involving complex, unsettled questions of competition economics and law, and leave per se cases to the DOJ;124 and

(3) Replace voluntary commitments with binding, compulsory orders. 12 5

Each of these changes certainly sounds sensible, particularly when taken one at a time. After all, who could be against the forsaking of trivia? But, each change involved a shift from a safer law enforcement strategy to a riskier one. The pursuit of economically significant matters galvanizes tougher opposition in litigation and motivates firms to seek out legislative assistance in backing down the agency. Focusing on complex and unsettled areas of the law involves greater litigation risk (because the cases are on the edges of existing doctrine) and exposes the agency more broadly to claims that it is engaged in unprecedented enforcement or sheer adventurism. The pursuit of tougher remedies arouses a stronger defense by respondents and, again, increases efforts to enlist Congress to discipline the FTC. Although the ABA Commission noted the importance of political support and a vigorous chairman who would "resist pressures from Congress, the Executive Branch, or the business community," 1 26 it paid almost no attention to the predictable consequences of having the FTC occupy the risk-heavy end of the spectrum of all possible enforcement matters. The political science literature before 1969 had emphasized the political dangers inherent in the Commission's expansive norms-creation mandate and its broad information-gathering and reporting powers.1 27 For example, Pendleton Herring's study in the mid-1930s about the political hazards facing economic regulatory bod-ies said the agency's mandate placed it in "a precarious position" from the start: The parties coming within [the FTC's] jurisdiction were often very powerful. The more important the business, the wider its ramifications, and the more numerous its allies and subsidiaries, the closer it came within the commission's responsibility. To review the firms with which this agency has had official contacts, especially in its early years, is to go down the roster of big business in this country. Making political enemies was soon found to be an incident in the routine of administration. The discharging of official duties meant interfering with business and often "big business."128 Had it read and absorbed the teaching of the available political science literature, the ABA panel would have had to confront deeper, harder questions about the causes of the FTC's performance. The panel missed (or underestimated) the big issue of politics. Like many blue ribbon studies of government performance, the ABA Report was long on demands for bold action and short on practical suggestions about how to cope with the crushing political backlash that boldness can breed.129 B. The Posner Dissent Posner argued that the FTC would not be able to deliver on the ABA Commission's ambitious agenda because the FTC's leaders and staff lacked the necessary incentives to do so. 130 In his view, FTC Commissioners deliberately avoided confrontation with powerful eco- nomic interests that could frustrate reappointment or deny the board member a suitable landing place in the private sector upon leaving the agency.131 Similarly, FTC staff saw little upside (and considerable downside) to being overly aggressive in enforcing the law.1a2 Posner's assessment was certainly plausible. Government service disproportionately attracts people who plan to stay, and keeping your head down is an excellent way of doing that. "Don't make waves" becomes the default strategy of the lifers, and those who are tempera-mentally unsuited to that approach either self-select out, or are ac- tively encouraged to depart. 33 But matters are not so simple. Regulators that create or adminis- ter a program that threatens major commercial interests can leave government and monetize their expertise by guiding firms through the regulatory shoals.1 34 The prosecution of big cases attracts media at- tention and raises the prominence of the officials who set them in mo- tion. This publicity often translates into attractive offers for post- government employment. Posner also overlooked the emergence of attractive career paths for aggressive enforcement officials outside the private sector. A reputation for toughness would prove to be an asset, not a barrier, for those aspiring to join university faculties, think tanks, or advocacy groups that wanted to add high visibility officials to their ranks. III. SOME LESSONS AND A FEW MODEST SUGGESTIONS People like morality tales. The conventional morality tale in- spired by the ABA Report goes like this: In 1969, the FTC had a long history of existence, but almost nothing else to recommend it.1" The ABA Report accurately diagnosed the problems and laid out a clear agenda for the FTC to redeem itself.136 The FTC followed the recom- mendations in the ABA Report, and the agency was saved. All hail the ABA Commission, and the wisdom of those who served onit.13 Of course, life is more complicated. Unambiguous morality tales are more common in children's books than in real life. 38 A close reading of the record indicates that the pre-1969 FTC was not as aw-ful, and the ABA Report was not as good, as the conventional wisdom would indicate.1 39 We consider the lessons that should be drawn and offer four "modest suggestions that may make a small difference" the next time we encounter a similar situation.140 A. Be Careful What You Demand (Or Wish For) The ABA Commission wanted the FTC to be a fierce and aggressive enforcer/regulator, and it generated a detailed list of all the things the agency had to do to justify its continued existence.141 The FTC responded aggressively to the challenge-but in so doing, it became significantly overextended. In other work, we consider a number of factors that appear to be associated with good agency performance.14 2 One of the most important factors is whether the agency has the capacity and capability to perform the tasks that it has been given (or for which it has assumed responsibility).143 An agency that is overextended will find itself engaged in a constant process of regulatory triage-meaning it is unlikely to do a good job on any of the tasks within its portfolio of responsibilities. It is one thing to launch a single bet-the-agency case and entirely another to launch a half-dozen of those cases and an equal number of significant rulemaking projects simultaneously-let alone staff each case and rulemaking project so as to maximize the likelihood of good outcomes across the entire portfolio.144 The ABA Commission set a high bar for the FTC to clear if it was to remain in business-and the FTC responded with the enforcement equivalent of building and launching an armada of 1,000 ships.145 Little thought was given by the ABA Commission (or by top FTC management) as to whether the agency was up to the task of waging the functional equivalent of multiple land wars in Asia. 146 In particular, the ABA Commission gave no attention to the time it would take the agency to build the highly skilled teams of professionals it would need to perform the ambitious agenda it had recommended. There should have been an express caution that building this capability would take time. Instead, the ABA Report's "one last chance" admonitionl47 led the FTC to take on a daunting agenda before it had the ability to deliver. This consequence arguably is one of the ABA Commission's most unfortunate legacies. The remarkable thing is that the FTC managed to do as well as it did-notwithstanding the Herculean list of labors handed to it by the ABA Commission. B. Leadership Incentives Matter Posner did not think the FTC leadership would ever be able to rouse itself from its stupor.14 8 He also could not envision a set of in- centives that would motivate the FTC to become an activist presence on the regulatory scene. 149 As detailed above, Posner's assessment on both of these issues was wrong.150 But, it does not follow that the FTC's leadership (or the leader- ship of any other agency) is subject to an optimal set of incentives. Agency leadership always faces a choice between consumption and investment-and the stakes are systematically skewed toward con- sumption (in the form of launching new high-profile cases) by the short duration of any given leader's tenure.'51 As one of us noted in another article, the case-centric approach to evaluating agency per- formance-which is what the ABA Commission effectively embraced and encouraged-has a critical vice: It accords no credit to long-term capital investments. It gives decisive weight to the initiation of new cases. This incentive system can warp the judgment of incumbent political appoin- tees who typically serve terms of only a few years. The per- ceived imperative to create new cases can create a serious mismatch between commitments and capabilities, as the si- rens of credit-claiming beckon today's manager to overlook the costs that improvident case selection might impose on the agency in the future, well after the incumbent manager has departed. It is a common aphorism in Washington that agency leaders should begin by picking the low-hanging fruit.... What is missing in the lexicon of Washington poli- cymaking is an exhortation to plant the trees that, in future years, yield the fruit.1 52 [FOOTNOTE 152 BEGINS] 152 Kovacic,supra note 144, at 922; see also Kovacic, supra note 151, at 189 ("[A] short-term perspective may incline the manager to launch headline-grabbing initiatives with inadequate regard for the matter's underlying merits or the ultimate cost to the agency, in resources and reputation, in litigating the case. If the case goes badly, the manager responsible for the take-off rarely is held to account for the crash landing. He can hope the passage of time will dim memories of his involvement, he can blame intervening agents for their poor execution of his good idea, or he can shrug his shoulders and say he was making the best of the fundamentally bad situation that policymakers encounter in the nation's capital."); Timothy J. Muris, Principlesf or a Successful Competition Agency, 72 U. CHi. L. REV. 165, 166 (2005) ("An agency head garners great attention by beginning 'bold' initiatives and suing big companies. When the bill comes due for the hard work of turning initiatives into successful regulation and proving big cases in court, these agency heads are often gone from the public stage. Their successors are left either to trim excessive proposals or even to default, with possible damage to agency reputation. The departed agency heads, if anyone in the Washington establishment now cares about their views, can always blame failure on faulty implementation by their successors."). [FOOTNOTE 152 ENDS] Thus, if anything, the ABA Commission's "do something" recommendations encouraged (and hyper-charged) precisely the wrong incentives. C. Don't Forget About Politics Perhaps the largest failing of the ABA Commission was its failure to anticipate the political risks associated with its recommendations. Academics and do-gooders will enthusiastically lecture all and sundry about how the government exists to promote the general public interest-but decades of research on political economy make it clear that there is not much of a constituency for that mission.153 Indeed, an agency that seeks to promote the general public interest is an agency without any constituency.1 54 Thus, the ABA Commission wound up and sent into battle an agency without any real constituency or political backing, to wage war against a large and politically powerful collection of firms in every sector of the economy. There is no question that the FTC was unlucky, in that many of its most enthusiastic supporters were being voted out of office at the same time the FTC was picking fights with everyone and their brother.155 But, luck aside, if you were trying to create a "coalition of the willing" determined to clip the wings of the FTC, you would be hard-pressed to pick a better strategy than the one selected by the ABA Commission.15 6

#### Only says it’s POSSIBLE--- NOT that the institutional energy exists in the squo. The aff overhauls competition law overnight, which is the OPPOSITE of what their author advocates

1AC Manduca, 19 -- University of Michigan sociology professor

[Robert, “Antitrust Enforcement as Federal Policy to Reduce Regional Economic Disparities,” 2019, <https://journals.sagepub.com/doi/full/10.1177/0002716219868141>, accessed 6-26-21]

Should a more assertive antitrust regime become established, it is quite possible that it will induce beneficial feedback effects that could entrench and expand it relatively quickly. It is important to note that many of these feedback effects would stem from the changes to the marketplace and political arena that result from breaking up firms that are currently consolidated vertically or horizontally into their component pieces. This dynamic suggests that proponents of the new enforcement regime would be wise to push for the full breakup of consolidated companies rather than simply imposing fines or attempting to regulate them through consent decrees. A powerful firm that has just been hit with a major fine is likely to redouble its efforts at political influence; a firm that is split in two will likely find that its successor companies have both less total power and conflicting goals.

**\*\*\*THEIR EV ENDS\*\*\***

Strategic Considerations in Establishing a Reinvigorated Antitrust Regime

Despite the many features that make antitrust enforcement a promising candidate for establishment, it is important that advocates pursue the issue carefully and strategically. Here I briefly discuss some strategic considerations related to the initial establishment of a reinvigorated antitrust regime. These recommendations include embracing the political nature of antitrust enforcement, thinking carefully about the sequencing of enforcement actions, and taking advantage of federalism to force progress at the state level if federal regulators continue with a lax approach. Embrace the political nature of antitrust Antitrust policy is fundamentally a political issue. It centers on questions about resource distribution and power that are at the core of any political system. This means that any attempts to remove it from public debate and treat it as a purely technical question are likely to fail: entrenched interests will continue to correctly see it is as vitally important to their interests, and without a countermobilization bureaucrats will almost certainly succumb to their lobbying. Rather than searching for an illusory econometric magic bullet, supporters of stronger antitrust enforcement should fully embrace its political nature. This means building an antitrust movement that mobilizes a large number of people, uses high-visibility platforms to describe the problems of consolidation—and even the specific harms caused by specific companies—and pressures public figures, both elected and unelected, to take clear stances in favor of competition. Antitrust is an issue with great power to energize everyday consumers and voters, and that power should be utilized. A corollary to the political nature of antitrust is that, as with other political issues, fighting for greater enforcement and campaigning against predatory companies may result in political progress even in instances where the immediate objective is defeated. Just as an initial electoral loss can lay the groundwork for future victories, so each attempt to fight a merger or break up a monopoly moves the national conversation forward, generates awareness of the harms of consolidation, and makes further merger attempts appear more costly to businesses. Careful sequencing to build momentum Because a new antitrust enforcement regime is likely to face substantial pushback from entrenched interests, the initial targets for enforcement actions should be carefully chosen for political as well as legal viability. Enforcers should aim to set precedent and build momentum by choosing targets for enforcement that are in politically precarious positions and that offer the possibility of dividing corporate lobbies.

#### The FTC is an international fraud-fighter

CB 16 (City Bank, “The FTC fights international scams,” <https://www.city.bank/fraud-and-security/news/fraud-and-security/2016/11/01/the-ftc-fights-international-scams>)

The FTC aggressively sues scammers who operate across borders and target people in the US with imposter schemes. For example, a federal court recently temporarily shut down and froze the assets of a tech support operation that directed people to call a boiler room in India for computer help, then pressured them to spend $200 to $400 for useless repair services. That case was one of a dozen similar cases brought by the FTC. The FTC also works with agencies worldwide to boost cooperation against cross border scams. Next month, staff from the Commission’s Office of International Affairs will meet for the fifth time with industry, trade groups, law enforcement and tech experts to continue efforts to thwart fraudsters operating in India. A recent police raid on nine call centers in India shows the benefit of collaboration.

#### SECOND---international reporting and data-sharing

Lake 20, Consumer Education Specialist, FTC (Lisa, “Econsumer.gov: International scam fighter,” <https://www.consumer.ftc.gov/blog/2020/05/econsumergov-international-scam-fighter>)

No; this isn’t an action movie. But new enhancements to econsumer.gov — and a new interactive international dashboard for Consumer Sentinel reports — give the FTC, other government agencies, and people across the globe scam-fighting powers that rival those of an action hero. Econsumer.gov is a site created in 2001 by members of the International Consumer Protection and Enforcement Network (ICPEN), to gather and share consumer complaints about international scams. The FTC leads the econsumer.gov project. One of the new interactive dashboards is based on econsumer.gov reports. It identifies the world’s top fraud locations, as well as reported financial losses from this fraud. The second set of dashboards tracks international reports submitted to the Consumer Sentinel Network. These include reports filed by foreign consumers against U.S.-based companies, and reports filed by U.S. consumers against foreign companies, with data grouped by geographic region.

#### That info-leadership is key

Gordon 3, Professor of Economic Crime Programs Executive Director of the Economic Crime Institute Utica College, et al (Gary, “Identity Fraud: A Critical National and Global Threat,” Economic Crime Initiative, <http://www.lexisnexis.com/presscenter/hottopics/ECIReportFINAL.pdf>)

As John S. Pistole of the FBI noted in his remarks before the House Select Committee on Homeland Security on October 1, 2003, The crucial element in the acceptance of any form of identification is the ability to verify the actual true identity of the bearer of the identification. In today’s post-9/11 world, this element is all the more important because, in order to protect the American people, we must be able to determine whether an individual is who they purport to be. This is essential in our mission to identify potential terrorists, locate their means of financial support, and prevent acts of terrorism from occurring. Identity fraud is a national crisis with global implications. Its pervasiveness must be recognized, especially as a facilitator of crimes that threaten national security, the economy, and personal privacy and security. If identity fraud is not seen as a significant and insidious threat, it will not be dealt with accordingly. Ronald D. Malfi’s statement to the Committee on Homeland Security on October 1, 2003 indicates the enormity of the threat. He outlined the tests conducted by the Office of Special Investigations which showed that fraudulent driver’s licenses and birth certificates were sufficient to gain entry to the United States from Jamaica, Barbados, Mexico, and Canada. During their investigation, they were able to purchase firearms in five states using counterfeit driver’s licenses with fictitious identifiers. They were able to gain access to federal buildings, as well. “In March, 2002, we breached the security of four federal office buildings in the Atlanta area using counterfeit law enforcement credentials to obtain genuine building passes, when we then counterfeited. We were also able to obtain building passes that authorized us to carry firearms in the buildings” (Malfi, 2003). Malfi listed three conclusions: “(1) government officials and others generally did not recognize that the documents we presented were counterfeit; (2) many government officials were not alert to the possibility of identity fraud and some failed to follow security procedures and (3) identity verification procedures are inadequate” (Malfi 2003). Understanding and facing the threat of identity fraud is crucial to solving it. This white paper has focused on exposing the problems that Postole and Malfi discussed in their October 1, 2003 remarks. It continues further, however, and offers recommendations to help combat them. The challenges to solving the problem are many. The key is to authenticate personal identifiers used to procure breeder documents, thus rendering fraudulent identities ineffective. Inherent in that challenge, however, is the need to classify, collect, and share identity fraud data, both domestically and globally, while enhancing the protection of privacy of individuals and meeting the needs of domestic and global commerce, law enforcement, and national security. Meeting those challenges will necessitate strong national leadership in the United States, new methods of collecting and classifying identity fraud, a comprehensive research agenda, and an investment in the research and development of emerging and promising technologies. The same effort must be undertaken on a global scale to facilitate the formulation of best practices for combating identity fraud and enhancing information sharing