# 1NC---Round 6

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#### Multilat CP

#### The United States federal government should establish and advocate a framework for contingent international cooperation that adopts the principle of separating platforms from commerce for platforms in the private sector.

#### The CP’s framework multilateralizes antitrust---explicit reciprocity bypasses generic barriers AND spills over to deep economic integration

Dr. Daniel Francis 21, Climenko Fellow and Lecturer on Law at Harvard Law School, Doctorate of Laws Degree from the NYU School of Law, Master of Laws Degree from Harvard University, JD from Trinity College at Cambridge University, Former Deputy Director of the Federal Trade Commission, “Choices and Consequences: Internationalizing Competition Policy after TPP”, in Megaregulation Contested: The Global Economic Order After TPP, Ed. Kingsbury, Revised 8/26/2021, p. 40-48

B. Between Contracts and Networks: Frameworks

Another dichotomy that dominates the integration of competition policy pertains to the forms of internationalization, which in the competition policy space have generally been dominated by contract-style treaties on the one hand and by open networks on the other.166 Between these two models lies what seems to be an under-utilized alternative, which I call a “framework for contingent cooperation.”

[FOOTNOTE] 166 This binary view dominates the literature. See, e.g., Edward M. Graham, “Internationalizing” Competition Policy: An Assessment of the Two Main Alternatives, 48 Antitrust Bull. 947, 949 (2003) (“[M]echanisms [for antitrust internationalization] range from bilateral treaties creating arrangements for cooperation between or among national competition law enforcement agencies to informal working arrangements among agencies.”); Eleanor M. Fox, International Antitrust and the Doha Dome, 43 Va. J. Int’l L. 911, 912 (2003) (contrasting “horizontalism” with “globalism”); Anu Piilola, Assessing Theories of Global Governance: A Case Study of International Antitrust Regulation, 39 Stan. J. Int'l L. 207, 247 (2003) (“Rather than drafting overarching multilateral agreements on antitrust laws, cooperation efforts in the immediate future are more likely to succeed in managing existing diversity and promoting voluntary convergence based on approximation of domestically applied standards. Networks of antitrust authorities are well-suited to facilitate this process of cooperation and voluntary convergence.”). [END FOOTNOTE]

A “framework” in the sense that I am using that term is a facilitative arrangement that does not constitute a treaty under international law,167 and which does not carry the charge of international legal obligation, but which involves an exchange of specific and reciprocally contingent commitments by participant jurisdictions to engage in mutually beneficial conduct. Specifically, each party states that it will extend certain benefits to each other party so long as each other does likewise; the parties may also create supplementary mechanisms to monitor and/or adjudicate compliance with these commitments.168

A framework of this kind is not a treaty: it is what Kal Raustiala calls a “pledge,”169 and what Charles Lipson calls an “informal” agreement,170 involving no legal obligation, and it involves no commitment of the parties’ reputation for law-abiding behavior.171 On the other hand, it differs from an open, information-sharing network because it precisely specifies behavioral commitments, and because each of the parties shares an understanding that concrete consequences will promptly follow—exclusion from the benefits provided by others—if its behavior materially deviates from the terms of the commitment.172 A framework is therefore essentially a specific declaration of intention to engage in conduct that benefits others, contingent upon parallel behavior by other participating states, without obligatory status under international law.

This is, in some sense, the direct opposite of the approach typically taken in competition policy chapters in trade agreements. The provisions of competition policy chapters partake of the substance of treaty law, but are generally framed in broad terms rather than specifics, and generally do not reflect a shared understanding that specific consequences will attend breach. By contrast, frameworks do not bind in international law, are framed in specific terms than aspirational generalities, and reflect an understanding that the benefits of cooperation will be withdrawn in the event of violation.

Contingent cooperation thus depends for its effectiveness primarily upon three important dynamics. The first and most important of these is the rationality of strategic cooperation. A familiar mainstream view holds that to a significant extent states behave in international society in ways that rationally serve their interests.173 And when cooperation over a series of interactions is overall in the interests of each member of a group, but when each member faces a rational incentive to defect from the terms of cooperation in individual cases, familiar economic theory teaches that a strategic cooperative equilibrium can be maintained among the parties.174 In contingent cooperation, each party understands that if it defects materially from the terms of the framework, the other participants will withdraw the excludable benefits of cooperation, and this provides the incentive to comply.175

Contingent cooperation can be made more stable by the introduction of certain structures designed to monitor compliance (just as with a cartel among private companies).176 This might among other things involve the creation of a central “facilitator” that is responsible, in a general sense, for obtaining, collecting, and processing information necessary to sustain a cooperative equilibrium.177 Depending on the purpose and scope of the cooperation project, this could include (for example): reviewing the text of laws, regulations, and policy documents for consistency with the terms of the framework; conducting peer-review-style evaluations and certifications; hosting voluntary dispute resolution processes, including mediation and/or arbitration, to determine whether and when the framework has been violated; or even receiving and handling complaints of violations ombudsman-fashion (i.e., receiving the complaint, giving the subject of the complaint an opportunity to respond, and publishing findings and conclusions). A central facilitator could also go beyond a policing function and offer a common forum for certain forms of cooperation and information sharing. The nature of such broader functions, and the extent to which they would be useful or desirable, would depend on the nature and purpose of the cooperation.

The second dynamic that powers contingent cooperation is the normative appeal of the project itself. The point here is not unlike what Gráinne de Búrca calls “mission legitimacy”: the normative force of the underlying purpose of a cooperative project, and specifically the power of that normativity to secure the acceptance and cooperation of those who participate.178 Parties joining projects of contingent cooperation can be expected to be in some sense self-selecting: they join such endeavors because, in part, they are genuinely committed to promoting and achieving the ends that the project represents, and they embrace the project of cooperation as worthwhile.179 It may sound a little naïve to suggest that a project of cooperation may be more likely to “stick” if it has some normative appeal to the participating polities, but legal scholarship has long recognized that states do what they undertake to do more often than strictly rational analysis would predict.180 And I think the proposition that genuine commitment to a goal can contribute to compliance is in truth somewhat less naïve than the converse idea that compliance is just as likely without it.

The third source of a framework’s effectiveness is to be found in the acculturative and socializing effects of interaction in an environment in which values and practices are shared and reinforced as normative, and in which attention is paid to the existence and nature of violations. There is a rich and complex literature on the ways in which states, state actors, and the individuals within them may be “socialized” or “acculturated” by repeated engagement with others through common institutions and shared environments of normativity, eventually contributing to the emergence of obligations with genuine normative force.181 Jutta Brunnée and Stephen Toope have pointed out ways in which the force of legal obligation itself arises from shared communities of practice grounded in social reality and shared understandings, not formal commitments.182 As they put it, “[s]tability may be aided by explicit articulation of a norm in a text, but it is ultimately dependent upon [an] underlying shared understanding and a continuous practice of legality.”183

Participation in an endeavor of contingent cooperation may help to engender the development of such understandings and practices, and these may contribute to the effectiveness of the framework. In the longer term, this may even result in the creation of a legal instrument. But this progression is not necessary for acculturation to exert a reinforcing effect: for, as Anu Bradford accurately notes, there is no reason to think that “the pathway from nonbinding to binding rules” is an inevitable or even a natural one.184

The distinctive value of a framework is that it provides a low-cost way for jurisdictions to explore and participate in possible arrangements of mutual benefit that depend upon shared concrete understandings regarding future behavior, but without bearing the burden of an obligation under international law, without running the reputational risk of having to break a treaty, and without facing the domestic hurdles (or political scrutiny) that a treaty would necessitate.185 Use of such a framework may help to reduce the concerns grounded in political morality that might otherwise attend inter-jurisdictional action in sensitive areas:186 to use a term I have coined elsewhere, as contingent practices from which states could withdraw at any time, frameworks would benefit from considerable resources of “exit legitimacy.”187

Frameworks are not suited to every application. They seem particularly apt for types of international cooperation that generate excludable benefits for other participants and can be reasonably well monitored: in the sphere of competition policy, for example, this would include commitments to provide nondiscriminatory access to procurement markets as well as many forms of antitrust cooperation (including cooperation with one another’s investigations, coordination of enforcement activity, the operation of joint filing systems for merger review and cartel leniency programs, and so on). Certain guarantees of nondiscriminatory treatment by SOEs could also be extended on a selective basis. On the other hand, contingent cooperation is much less suitable for projects that require strong and highly credible guarantees of commitment from the participants (in which case a traditional treaty-contract would seem more appropriate188) or groups of parties still lacking the prerequisite agreement on the terms and ambit of desirable cooperation. Nor is it suitable in the absence of sufficient confidence in the ability or incentive of other parties to deliver on their commitments: in these cases, open dialogue and information exchange through a network would seem preferable. Nor, obviously, is it a good fit for projects in which the benefits of cooperation are non-excludable.189 To pick an obvious example, contingent cooperation would not recommend itself as a natural choice for an international project to introduce SOE discipline: the benefits are non-excludable (there is no obvious way to withdraw them selectively in the event of defection) and compliance is very difficult to monitor, so the use of a framework is unlikely to make much of a contribution.190

#### Only harmonized transnational antitrust solves the case---compliance and competition require streamlining the regulatory drag of conflicting legal systems, but the plan’s ad hoc unilateralism proliferates it

Camilla Jain Holtse 20, Associate General Counsel in Maersk Line, LL.M in European Law from King’s College, Master’s Degree from University of Aarhus, “Navigating Through Uncertain Waters—The Importance of Legal Certainty, Predictability, and Transparency in Future Antitrust Enforcement”, Journal of European Competition Law & Practice, Volume 11, Issue 8, October 2020, p. 446-447

I. Global developments suggest increased need for legal certainty in rulemaking and enforcement

Companies today operate in an increasingly globalised world, interconnected via digital platforms and ecosystems. The technological revolution is accelerating at an ever-increasing speed. It promises to fundamentally alter both the competitive landscape and the tools by which competition is regulated. Against this backdrop, the world is facing substantial environmental challenges with mounting pressure on businesses to change the way they operate, including an increasing need for firms to collaborate to achieve social goals and increased efficiency that no one firm could achieve independently.

While some progress has been made towards a unified view of competition law, companies are also facing rising geopolitical tensions that have led to protectionist measures and the pursuit of industrial policy objectives under the guise of competition law enforcement. Concepts including national security, full employment, and ‘fair’ or ‘level’ pricing frequently introduce domestic protection concerns into traditional economic tests. With the proliferation of competition regimes, now well over 100, the potential for regulatory drag on the global markets increases exponentially. Having spent the last two decades as competition counsel, I can say with certainty that the complexity of the legal landscape and uncertainty and unpredictability as to compliance with competition law regulations have increased dramatically in recent years both at a global and EU level. Companies are struggling to achieve legal competition law compliance despite consistent efforts including scaling up their compliance departments.

As our markets continue to evolve in the face of technology and sustainability and other social goals, it is now more important than ever for the European Commission (‘the Commission’) to ensure legal certainty, both in rulemaking and in enforcement. The costs associated with uncertainty should not be underestimated, particularly as the Commission considers new enforcement tools designed to address competition structures and practices that may fall outside of traditional economic analyses. Not only is transparency and predictability vital for the proper functioning of the European Economic Area, but it would also send a much-needed signal to the rest of the world. Conversely, if, in any new enforcement system transparency and predictability do not prevail, the Commission’s efforts would likely serve to indirectly legitimise non-transparent and unpredictable protectionist systems in other countries, not founded on the rule of law and due process.

Even if one of the key roles of the Commission is to enforce competition law, it is important to keep in mind that competition policy and enforcement are tools of economic policy. Implemented well, competition policy can stimulate economic growth and competitiveness but, if not, it can be a significant regulatory brake on investment, economic development, and sustainability advances.

#### Normative convergence through antitrust harmonization prevents Extinction

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A. The international political environment

At the root of international political theory is the fundamental maxim that relations between sovereign nations in the absence of mitigating factors is characterized by intense competition, mutual distrust, the inability to make credible commitments, and war.20

[FOOTNOTE] 20 Political scientists characterize the international system as “anarchic.” In the absence of world government (or other mitigating force), competition between states is largely unregulated by external laws or enforcement. The world is characterized by mistrust, the inability to contract, and the ultimate reliance on a state’s own devices. See THOMAS HOBBES, LEVIATHAN 80 (Edwin Curley ed., 1994) (in the state of nature “the condition of man . . . is a condition of war of everyone against everyone”). In fuller terms:

There is no authoritative allocator of resources: we cannot talk about a ‘world society’ making decisions about economic outcomes. No consistent and enforceable set of comprehensive rules exists. If actors are to improve their welfare through coordinating their policies, they must do so through bargaining rather than by invoking central direction. In world politics, uncertainty is rife, making agreements is difficult, and no secure barriers prevent military and security questions from impinging on economic affairs.

ROBERT O. KEOHANE, AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY 18 (1984). Efficiency-enhancing gains from trade are difficult to appropriate because trade itself (and any other form of exchange or agreement between nations) is characterized by the absence of credible commitments to future behavior. And underlying the problem is the ever-present threat of the use of force. See, e.g., Kenneth N. Waltz, Anarchic Orders and Balances of Power, in NEOREALISM AND ITS CRITICS 98, 98 (Robert O. Keohane ed. 1986) (“The state among states . . . conducts its affairs in the brooding shadow of violence . . . . Among states, the state of nature is a state of war.”). Although this dire characterization of the international environment is, of course, a stylized approximation of the real world—there are always overlying constraints on sovereign behavior in the form of norms, reputational effects, and customary international law, HEDLEY BULL, THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS (1977)—it is a useful and widely accepted heuristic for crafting a theory of international politics. [END FOOTNOTE]

As one commentator notes, “Nations dwell in perpetual anarchy, for no central authority imposes limits on the pursuit of sovereign interests.”21 And states are “unitary actors who, at a minimum, seek their own preservation and, at a maximum, drive for universal domination.”22 As a result, states operating on the international stage are unable to judge the sincerity of each others’ stated intentions when those intentions are contrary to this manifest interest. Because of self-help rules, states are forced in the main to assess their own security environment by assessing the capabilities of competitors, downplaying their motives. Given that the nature of the competition can implicate the fundamental survival of one (or more) of the actors, actions taken by one state to improve its own security must necessarily decrease the security of its competitor; in the absence of mitigation, security is a zero-sum game.23 In a world where cooperation is exceedingly difficult (because there is no authority to enforce agreements, nor any basis for assessing the reliability of another state’s commitments), international relations are characterized by a continuous race to the bottom, a mindless arms race rather than the opportunity to realize gains from cooperation.

It is obvious that not all relations between states are characterized by the security dilemma, however. Canada, for example, shares an unprotected border with the most powerful nation in the world without degenerating into a destructive and costly arms race. By some mechanism, then, Canada must be able reliably to judge U.S. intentions, even absent the apparent ability by the United States credibly to bind itself to a nonaggressive policy toward Canada. The key to mitigating the pressures of the security dilemma is the ability to distinguish a state with aggressive and expansionist tendencies from a benign one.24 States can be distinguished by their fundamental type. They can be classified as “revisionist,” that is, they seek to subvert the dominant order, or they can be classified as “status quo,” that is, they seek to support it.25 But, as noted, a state’s ability to judge another’s intentions (as opposed simply to counting its armaments) is extremely tenuous and comes at great cost. In fact, political science offers few well-understood mechanisms for judging a state’s propensity for aggression.

At the same time, hegemonic states have an abiding interest in spreading and maintaining their dominant worldview.26 Not only is it imperative that dominant states receive credible signals about other states’ intentions, but it is also important that dominant states attempt to inculcate their norms within other states that, over time, might mount credible challenges to the dominant states’ security.27 The spread of hegemony through internalization of norms occurs for three reasons. First, states with similar institutions and sympathetic domestic norms are simply better and more reliable trading partners, and it is in the hegemon’s economic interest to instill its norms.28 Second, states with defensive military postures and that adhere to the status quo present significantly less security risk to dominant states.29 And finally, the hegemon has a normative interest in the spread of its culture, its worldview, and its norms.30 This conception of the playing field upon which states interact leads to the conclusion that, entirely apart from the immediate and substantial economic benefits to a state from well-ordered interactions with other states, hegemonic states also have a national security and a normative interest in the information to be gleaned from the fact that these interactions are, in fact, well ordered.

In the absence of centralized enforcement, privately held and nonverifiable information as to a state’s fundamental type is the critical problem in assessing motives.31

[FOOTNOTE] 31 See KEOHANE, supra note 20, at 31 (“Order in world politics is typically created by a single dominant power [or hegemon].”). States are consequently classified as one of two types, “revisionist” or “status quo,” based on their acceptance and adherence to the political norms, institutions, and rules created by the hegemon. Status quo states are those that try to improve their condition from within the framework of the accepted world order. Revisionist states, by contrast, seek to gain position both by working outside that order and by working to subvert the hegemonic order itself. For instance, the existing world order is generally accepted to be that created by the United States after World War II. It comprises a liberal international economic order, the use of multilateral institutions (such as the United Nations and the WTO), negotiation for dispute resolution rather than the threat of violence, and the promotion of liberal democratic moral norms. See, e.g., Schweller, supra note 24, at 85; HANS J. MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE 32 (1948). Trade disputes between status quo states (like tariff disputes between the United States and Europe) are resolved through peaceful negotiation rather than the threat of war. Although status quo states do not entirely eschew the use of violence, they typically seek international authorization and legitimization before employing military force, as in the multilateral operations in Iraq, Kosovo, and Afghanistan. Revisionist states, on the other hand, such as North Korea, Iran, and China, will more readily use military force as a bargaining tool and are more reluctant fully to participate in transparent military, economic, and political negotiations. [END FOOTNOTE]

States wishing to escape the pressures of the security dilemma and engage in cooperative behavior need a means of conveying their preferences to others in a credible manner. There are, in general, two means by which such information can be transmitted: states can either bind themselves in such a way that they are unable to deviate from a stated behavior (known as “hands tying” in Schelling),32 or they can signal their intention to engage in a specified course of action by incurring costs sufficiently large that they discourage the misrepresentation of preference.33

International institutions can play a crucial role in facilitating the transmission of this information.34 In particular, international agreements over the terms of trade, even without binding supranational enforcement authority, provide a means for states to bind themselves to a desirable course of behavior in the short run and, more importantly, to signal their acquiescence to the ruling world order in the long run. Because compliance with treaty obligations often requires signatories to alter their domestic laws to reflect the terms of the treaty, the costs of compliance can be substantial. In the short run, to the extent that states enforce their domestic laws they can bind themselves to a certain course of behavior. In the long run, a state’s willingness to incur the substantial costs of changing its laws, both the transaction costs inherent in changing domestic laws and the even more substantial costs in domestic political capital, signals a willingness to engage other states on the terms set by the reigning international power. Moreover, there may be unintended effects, as changes in domestic laws result in a new set of domestic incentives to which actors respond, and new windows of opportunity may open up through which policy entrepreneurs can push for the internalization of new norms.35 Competition laws in particular are susceptible to this mode of analysis.

Most nations have adopted competition laws as a way to actualize (as well as to symbolize) a degree of commitment to the competitive process and to the prevention of abusive business practices . . . . The introduction of competition laws and policies has also gone hand in hand with economic deregulation, regulatory reform, and the end of command and control economies.36

The surest way to remove the threat of war, increase wealth, conserve resources, and protect human rights is through fundamental agreement between all states (or at least effective agreement between verifiably status quo states) under a normative umbrella that promotes all of those values. This normative convergence can be effected through the stepwise internalization of the sorts of economic and democratic values inherent in international economic liberalization, perhaps most notably through the adoption of principled international antitrust standards.37

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#### Trade DA

#### The plan sends a protectionist shockwave that ends the last semblance of global free trade

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INTRODUCTION

Trump. Le Pen. Brexit. Protectionist rhetoric has consumed the international political stage. Western countries and their leaders were once the drivers of economic globalization, relying on free-market speeches and the prospect of removing trade barriers to appeal to their constituents. 1They pointed fingers at other countries engaging in or encouraging protectionist behavior and challenged them in the court of public opinion and elsewhere to stop their antics. The "our country first, world trade after" mentality was widely politicized and vilified. Now, it seems that Western national leaders are championing the very protectionism that they once criticized. 2

Although a system of truly free world trade has never been perfected, past world leaders have eliminated most of the protectionist trade mechanisms that once ran rampant in the international economy. They did so by implementing multilateral and bilateral trade agreements. These webs of agreements have bolstered decades of support for free trade, or at least some version of it. By and large, tariff policies and other forms of protectionism were either eliminated or dramatically reduced. [\*118] Now, as we have seen in the media, when a government imposes a tariff, it becomes a rather extreme political statement which sends a shockwave of significant global consequences.

Protectionism did not end when the age of overbearing tariff policies did, despite then-leaders' best efforts to vilify it. Rather, the end of the tariff era forced nations to achieve protectionist goals through more subtle trade vehicles, like antitrust law. 3So, the recent resurgence of protectionist rhetoric should mean that these subtle trade vehicles, including antitrust law, will be relied on more heavily. It is a fear of many that antitrust law may become overused and inequitably applied to achieve and combat protectionist aims.

Notwithstanding the recent uptick in tariff threats, it is unlikely that all Western leaders will revamp or terminate the trade agreements set forth by their predecessors and bring back the kinds of tariff policies that once existed in their place. Although in the United States ("U.S."), President Trump recently imposed tariffs on steel imports, it appears that his intent is to limit this behavior to a specific industry rather than institute a widespread policy favoring the use of tariffs generally. 4To remedy bad behavior in a specialized set of industries is not to instigate a global paradigm shift. This purpose is underscored by his use of the national security exemption, which is largely interpreted as being used for individual situations rather than general policy schemes. 5 Many still hope that his course of action will be retracted and is merely a strong negotiation tactic. However, there is no doubt that Trump is far more comfortable than past leaders with subverting the status quo on trade relations.

Trump is not the only high-profile leader flirting with staunch protectionism. Western leaders in the E.U. appear to be growing more comfortable than their predecessors with considering similar policies. However, Western lawmakers themselves do not seem as persuaded by the statements of their leadership. The general sentiment among international policymakers is that there has been too much political wherewithal spent on loosening international trade barriers to take actions [\*119] that could counteract that progress. 6Presidential actions taken because of dissatisfaction with current global trade relations aside, a complete overhaul of trade agreements may be too daunting and difficult a task, especially absent ample political support in legislative bodies.

Given the anticipated continuation of cooperative trade agreements and the proliferation of protectionist rhetoric as the new norm of public opinion, leaders will be forced to rely on existing avenues to meet protectionist aims. Again, we find ourselves relying squarely on antitrust law, the more subtle and widely accepted mechanism of restricting trade, to address perceived inequities. In the words of the World Trade Organization ("WTO"), "once formal trade barriers come down, other issues become more important." 7 Among the important issues lies antitrust law. Antitrust and competition laws can form a subtle trade barrier resulting in the imposition of tariff-like measures.

Antitrust law can be enforced to reach protectionist aims and to combat them. It is a tool that allows nations to achieve individual protectionist aims without undermining the future of trade between countries and the cooperative framework underpinning the relatively delicate global free trade enjoyed today. However, the perception of enforcement of antitrust laws as an abusive and solely protectionist mechanism may cause the death of even the smallest semblance of international free trade that remains in the international marketplace today.

#### Nuclear war

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Four structural forces will shape the future of International Relations: globalization (but without liberal rules, institutions, and leadership)1; multipolarity (the end of American hegemony and wider distribution of power among states and non-states2); the strengthening of distinctive, national and subnational identities, as persistent cultural differences are accentuated by the disruptive effects of Western style globalization (what Samuel Huntington called the “non-westernization of IR”3); and secular economic stagnation, a product of longer term global decline in birth rates combined with aging populations.4 These structural forces do not determine everything. Environmental events, global health challenges, internal political developments, policy mistakes, technology breakthroughs or failures, will intersect with structure to define our future. But these four structural forces will impact the way states behave, in the capacity of great powers to manage their differences, and to act collectively to settle, rather than exploit, the inevitable shocks of the next decade.

Some of these structural forces could be managed to promote prosperity and avoid war. Multipolarity (inherently more prone to conflict than other configurations of power, given coordination problems)5 plus globalization can work in a world of prosperity, convergent values, and effective conflict management. The Congress of Vienna system achieved relative peace in Europe over a hundred-year period through informal cooperation among multiple states sharing a fear of populist revolution. It ended decisively in 1914. Contemporary neoliberal institutionalists, such as John Ikenberry, accept multipolarity as our likely future, but are confident that globalization with liberal characteristics can be sustained without American hegemony, arguing that liberal values and practices have been fully accepted by states, global institutions, and private actors as imperative for growth and political legitimacy.6 Divergent values plus multipolarity can work, though at significantly lower levels of economic growth-in an autarchic world of isolated units, a world envisioned by the advocates of decoupling, including the current American president. 7 Divergent values plus globalization can be managed by hegemonic power, exemplified by the decade of the 1990s, when the Washington Consensus, imposed by American leverage exerted through the IMF and other U.S. dominated institutions, overrode national differences, but with real costs to those states undergoing “structural adjustment programs,”8 and ultimately at the cost of global growth, as states—especially in Asia—increased their savings to self insure against future financial crises.9

But all four forces operating simultaneously will produce a future of increasing internal polarization and cross border conflict, diminished economic growth and poverty alleviation, weakened global institutions and norms of behavior, and reduced collective capacity to confront emerging challenges of global warming, accelerating technology change, nuclear weapons innovation and proliferation. As in any effective scenario, this future is clearly visible to any keen observer. We have only to abolish wishful thinking and believe our own eyes.10

Secular Stagnation

This unbrave new world has been emerging for some time, as US power has declined relative to other states, especially China, global liberalism has failed to deliver on its promises, and totalitarian capitalism has proven effective in leveraging globalization for economic growth and political legitimacy while exploiting technology and the state’s coercive powers to maintain internal political control. But this new era was jumpstarted by the world financial crisis of 2007, which revealed the bankruptcy of unregulated market capitalism, weakened faith in US leadership, exacerbated economic deprivation and inequality around the world, ignited growing populism, and undermined international liberal institutions. The skewed distribution of wealth experienced in most developed countries, politically tolerated in periods of growth, became intolerable as growth rates declined. A combination of aging populations, accelerating technology, and global populism/nationalism promises to make this growth decline very difficult to reverse. What Larry Summers and other international political economists have come to call “secular stagnation” increases the likelihood that illiberal globalization, multipolarity, and rising nationalism will define our future. Summers11 has argued that the world is entering a long period of diminishing economic growth. He suggests that secular stagnation “may be the defining macroeconomic challenge of our times.” Julius Probst, in his recent assessment of Summers’ ideas, explains:

…rich countries are ageing as birth rates decline and people live longer. This has pushed down real interest rates because investors think these trends will mean they will make lower returns from investing in future, making them more willing to accept a lower return on government debt as a result.

Other factors that make investors similarly pessimistic include rising global inequality and the slowdown in productivity growth…

This decline in real interest rates matters because economists believe that to overcome an economic downturn, a central bank must drive down the real interest rate to a certain level to encourage more spending and investment… Because real interest rates are so low, Summers and his supporters believe that the rate required to reach full employment is so far into negative territory that it is effectively impossible.

…in the long run, more immigration might be a vital part of curing secular stagnation. Summers also heavily prescribes increased government spending, arguing that it might actually be more prudent than cutting back – especially if the money is spent on infrastructure, education and research and development.

Of course, governments in Europe and the US are instead trying to shut their doors to migrants. And austerity policies have taken their toll on infrastructure and public research. This looks set to ensure that the next recession will be particularly nasty when it comes… Unless governments change course radically, we could be in for a sobering period ahead.12

The rise of nationalism/populism is both cause and effect of this economic outlook. Lower growth will make every aspect of the liberal order more difficult to resuscitate post-Trump. Domestic politics will become more polarized and dysfunctional, as competition for diminishing resources intensifies. International collaboration, ad hoc or through institutions, will become politically toxic. Protectionism, in its multiple forms, will make economic recovery from “secular stagnation” a heavy lift, and the liberal hegemonic leadership and strong institutions that limited the damage of previous downturns, will be unavailable. A clear demonstration of this negative feedback loop is the economic damage being inflicted on the world by Trump’s trade war with China, which— despite the so-called phase one agreement—has predictably escalated from negotiating tactic to imbedded reality, with no end in sight. In a world already suffering from inadequate investment, the uncertainties generated by this confrontation will further curb the investments essential for future growth. Another demonstration of the intersection of structural forces is how populist-motivated controls on immigration (always a weakness in the hyper-globalization narrative) deprives developed countries of Summers’ recommended policy response to secular stagnation, which in a more open world would be a win-win for rich and poor countries alike, increasing wage rates and remittance revenues for the developing countries, replenishing the labor supply for rich countries experiencing low birth rates.

Illiberal Globalization

Economic weakness and rising nationalism (along with multipolarity) will not end globalization, but will profoundly alter its character and greatly reduce its economic and political benefits. Liberal global institutions, under American hegemony, have served multiple purposes, enabling states to improve the quality of international relations and more fully satisfy the needs of their citizens, and provide companies with the legal and institutional stability necessary to manage the inherent risks of global investment. But under present and future conditions these institutions will become the battlegrounds—and the victims—of geopolitical competition. The Trump Administration’s frontal attack on multilateralism is but the final nail in the coffin of the Bretton Woods system in trade and finance, which has been in slow but accelerating decline since the end of the Cold War. Future American leadership may embrace renewed collaboration in global trade and finance, macroeconomic management, environmental sustainability and the like, but repairing the damage requires the heroic assumption that America’s own identity has not been fundamentally altered by the Trump era (four years or eight matters here), and by the internal and global forces that enabled his rise. The fact will remain that a sizeable portion of the American electorate, and a monolithically pro- Trump Republican Party, is committed to an illiberal future. And even if the effects are transitory, the causes of weakening global collaboration are structural, not subject to the efforts of some hypothetical future US liberal leadership. It is clear that the US has lost respect among its rivals, and trust among its allies. While its economic and military capacity is still greatly superior to all others, its political dysfunction has diminished its ability to convert this wealth into effective power.13 It will furthermore operate in a future system of diffusing material power, diverging economic and political governance approaches, and rising nationalism. Trump has promoted these forces, but did not invent them, and future US Administrations will struggle to cope with them.

What will illiberal globalization look like? Consider recent events. The instruments of globalization have been weaponized by strong states in pursuit of their geopolitical objectives. This has turned the liberal argument on behalf of globalization on its head. Instead of interdependence as an unstoppable force pushing states toward collaboration and convergence around market-friendly domestic policies, states are exploiting interdependence to inflict harm on their adversaries, and even on their allies. The increasing interaction across national boundaries that globalization entails, now produces not harmonization and cooperation, but friction and escalating trade and investment disputes.14 The Trump Administration is in the lead here, but it is not alone. Trade and investment friction with China is the most obvious and damaging example, precipitated by China’s long failure to conform to the World Trade Organization (WTO) principles, now escalated by President Trump into a trade and currency war disturbingly reminiscent of the 1930s that Bretton Woods was designed to prevent. Financial sanctions against Iran, in violation of US obligations in the Joint Comprehensive Plan Of Action (JCPOA), is another example of the rule of law succumbing to geopolitical competition. Though more mercantilist in intent than geopolitical, US tariffs on steel and aluminum, and their threatened use in automotives, aimed at the EU, Canada, and Japan,15 are equally destructive of the liberal system and of future economic growth, imposed as they are by the author of that system, and will spread to others. And indeed, Japan has used export controls in its escalating conflict with South Korea16 (as did China in imposing controls on rare earth,17 and as the US has done as part of its trade war with China). Inward foreign direct investment restrictions are spreading. The vitality of the WTO is being sapped by its inability to complete the Doha Round, by the proliferation of bilateral and regional agreements, and now by the Trump Administration’s hold on appointments to WTO judicial panels. It should not surprise anyone if, during a second term, Trump formally withdrew the US from the WTO. At a minimum it will become a “dead letter regime.”18

As such measures gain traction, it will become clear to states—and to companies—that a global trading system more responsive to raw power than to law entails escalating risk and diminishing benefits. This will be the end of economic globalization, and its many benefits, as we know it. It represents nothing less than the subordination of economic globalization, a system which many thought obeyed its own logic, to an international politics of zero-sum power competition among multiple actors with divergent interests and values. The costs will be significant: Bloomberg Economics estimates that the cost in lost US GDP in 2019- dollar terms from the trade war with China has reached $134 billion to date and will rise to a total of $316 billion by the end of 2020.19 Economically, the just-in-time, maximally efficient world of global supply chains, driving down costs, incentivizing innovation, spreading investment, integrating new countries and populations into the global system, is being Balkanized. Bilateral and regional deals are proliferating, while global, nondiscriminatory trade agreements are at an end.

Economies of scale will shrink, incentivizing less investment, increasing costs and prices, compromising growth, marginalizing countries whose growth and poverty reduction depended on participation in global supply chains. A world already suffering from excess savings (in the corporate sector, among mostly Asian countries) will respond to heightened risk and uncertainty with further retrenchment. The problem is perfectly captured by Tim Boyle, CEO of Columbia Sportswear, whose supply chain runs through China, reacting to yet another ratcheting up of US tariffs on Chinese imports, most recently on consumer goods:

We move stuff around to take advantage of inexpensive labor. That’s why we’re in Bangladesh. That’s why we’re looking at Africa. We’re putting investment capital to work, to get a return for our shareholders. So, when we make a wager on investment, this is not Vegas. We have to have a reasonable expectation we can get a return. That’s predicated on the rule of law: where can we expect the laws to be enforced, and for the foreseeable future, the rules will be in place? That’s what America used to be.20

The international political effects will be equally damaging. The four structural forces act on each other to produce the more dangerous, less prosperous world projected here. Illiberal globalization represents geopolitical conflict by (at first) physically non-kinetic means. It arises from intensifying competition among powerful states with divergent interests and identities, but in its effects drives down growth and fuels increased nationalism/populism, which further contributes to conflict. Twenty-first-century protectionism represents bottom-up forces arising from economic disruption. But it is also a top-down phenomenon, representing a strategic effort by political leadership to reduce the constraints of interdependence on freedom of geopolitical action, in effect a precursor and enabler of war. This is the disturbing hypothesis of Daniel Drezner, argued in an important May 2019 piece in Reason, titled “Will Today’s Global Trade Wars Lead to World War Three,”21 which examines the pre- World War I period of heightened trade conflict, its contribution to the disaster that followed, and its parallels to the present:

Before the First World War started, powers great and small took a variety of steps to thwart the globalization of the 19th century. Each of these steps made it easier for the key combatants to conceive of a general war. We are beginning to see a similar approach to the globalization of the 21st century. One by one, the economic constraints on military aggression are eroding. And too many have forgotten—or never knew—how this played out a century ago.

…In many ways, 19th century globalization was a victim of its own success. Reduced tariffs and transport costs flooded Europe with inexpensive grains from Russia and the United States. The incomes of landowners in these countries suffered a serious hit, and the Long Depression that ran from 1873 until 1896 generated pressure on European governments to protect against cheap imports.

…The primary lesson to draw from the years before 1914 is not that economic interdependence was a weak constraint on military conflict. It is that, even in a globalized economy, governments can take protectionist actions to reduce their interdependence in anticipation of future wars. In retrospect, the 30 years of tariff hikes, trade wars, and currency conflicts that preceded 1914 were harbingers of the devastation to come. European governments did not necessarily want to ignite a war among the great powers. By reducing their interdependence, however, they made that option conceivable.

…the backlash to globalization that preceded the Great War seems to be reprised in the current moment. Indeed, there are ways in which the current moment is scarier than the pre-1914 era. Back then, the world’s hegemon, the United Kingdom, acted as a brake on economic closure. In 2019, the United States is the protectionist with its foot on the accelerator. The constraints of Sino-American interdependence—what economist Larry Summers once called “the financial balance of terror”—no longer look so binding. And there are far too many hot spots—the Korean peninsula, the South China Sea, Taiwan—where the kindling seems awfully dry.

### OFF

#### Aerojet DA

#### The Lockheed-Aerojet merger will be approved soon because of existing antitrust precedent, but it’s a politicized test of the FTC

Marcus Weisgerber 21, Global Business Editor at Defense One, “Lockheed’s Proposed Aerojet Rocketdyne Purchase Sets Early M&A Test for Biden”, Defense One, 3/21/2021, https://seniordownsizingsolutions.com/rs1kstuq/frank-kendall-northrop-grumman

The Biden administration’s approval — or disapproval — of Lockheed Martin’s planned $4.4 billion acquisition of rocket engine maker Aerojet Rocketdyne could shape defense industry consolidation for years to come.

If approved, the deal would mean the absorption of the last independent American weapons-grade rocket maker. All U.S. rockets would be produced by Northrop, which bought Orbital ATK in 2018, and Lockheed, the world’s largest defense contractor. It would also turn Lockheed into a key supplier of Raytheon Technologies, its major rival in the missiles sector.

Lockheed executives told investors on a Monday morning call that the acquisition would allow the company to deliver weapons to the military faster and cheaper than it can today.

“This helps position us for even greater growth, in hypersonics, missile defense and space, which are key elements of the national defense strategy,” Lockheed CEO Jim Taiclet said.

Taiclet, who became Lockheed’s CEO in June, also cited flat U.S. defense spending projections as a reason for the sale.

“They're going to be asked to do more in these areas with a flattening budget,” Taiclet said. “Having a more efficient supplier and a more robust supplier ... in uncertain economic times is a positive for the Department of Defense and for NASA.”

The proposed deal — which is expected to close in late 2021 — comes two years after Northrop Grumman acquired rocket maker Orbital ATK, a deal stoked industry consolidation fears. The Federal Trade Commission put conditions on the deal that Northrop had to supply solid rocket motors to competitors.

“Our overall expectation is that that may be the same lens through which this particular transaction is viewed because of the similarities there,” Taiclet said.

Still, Boeing claimed Northrop’s buying Orbital ATK prevented it from entering a bid for an $85 billion contract to build new intercontinental ballistic missiles. That left Northrop as the only bidder.

Orbital ATK, now part of Northrop, and Aerojet Rocketdyne are the only two U.S. makers of the solid rocket motors used in ICBMs and missile interceptors.

“The proposed purchase of Aerojet Rocketdyne (AJRD) by Lockheed Martin (LMT) is the first test of the Biden Administration and its views on defense sector consolidation and structure,” Capital Alpha Partners analyst Byron Callan said in a Monday note to clients. “It may take weeks and months before those views are known.”

Loren Thompson, a consultant and defense industry analyst with the Lexington Institute, said Lockheed’s acquisition of Aerojet would create more competition for solid rocket motors.

“Aerojet Rocketdyne will now have the same kind of financial resources to draw on as Orbital did when it joined Northrop, assuring that both domestic suppliers of large solids can remain active in military and civilian markets,” Thompson wrote Monday in Forbes.

A number of government organizations — including the Defense Department — are involved in the regulatory approval process. When Lockheed acquired helicopter-maker Sikorsky in 2015, Frank Kendall, who served as the Pentagon’s top weapons buyer during the Obama administration, expressed concerns that the deal would reduce competition. Kendall is reportedly under consideration to become Biden’s deputy defense secretary.

#### The plan causes compensating denial of the deal

William E. Kovacic 20, Professor at the George Mason University School of Law, JD from Columbia University, BA from Princeton University, “Keeping Score: Improving the Positive Foundations for Antitrust Policy”, University of Pennsylvania Journal of Business Law, Volume 23, Issue 1, 23 U. Pa. J. Bus. L. 49, Lexis

THE POLITICAL ASSAULT ON THE FTC

From the late 1960s through the 1970s, the FTC pursued an extraordinarily ambitious agenda of competition and consumer protection matters. Significant antitrust litigation included challenges to dominant firm misconduct and collective dominance, distribution practices, horizontal restraints, and facilitating practices. Many matters involved powerful economic interests, and in a number of cases the Commission sought structural relief in the form of divestitures or the compulsory licensing of [\*75] intellectual property. In 1974, the agency also initiated a program that required certain large firms to provide "line-of-business" data concerning a range of performance indicators.

In the same period, the Commission used a mix of litigation and rulemaking to transform its consumer protection agenda. Through policy guidance and litigation, the agency introduced its advertising substantiation program that required firms to have support for factual claims made in their advertisements. The Commission initiated over twenty-five rulemaking proceedings and promulgated final rules involving a broad collection of product and service sectors.

As a group, the FTC's competition and consumer protection initiatives aroused fierce opposition from the affected firms and industries, which contested the agency's actions in court and before Congress. The complaints of industry resonated with a large, powerful bipartisan coalition of legislators who criticized the Commission's activism, proposed various measures to curb the agency's authority, and ultimately adopted a number of restrictions in The Federal Trade Commission Improvements Act of 1980 [\*76] (FTC Improvements Act). In 1980, bitter opposition to elements of the FTC's competition and consumer protection programs led Congress to allow the FTC's funding to lapse, forcing the agency to temporarily cease operations. Perhaps emboldened by the weak political support the Commission enjoyed before 1981, when the Democrats controlled the White House and both chambers of Congress, the Reagan administration briefly resumed the assault on the agency's funding. In January 1981, David Stockman, Ronald Reagan's first Director of the Office of Management and Budget (OMB), launched a short-lived effort to eliminate funding for the FTC's competition policy program.

The congressional and executive branch officials who criticized the FTC in this period advanced two positive claims to justify recommendations for withdrawing authority or funding for the Commission. One claim was that the agency's choice of competition and consumer protection programs had contradicted congressional guidance about how the FTC should use its authority and resources. Many legislators complained that the agency had disregarded the legislature's preferences and used its powers in ways that Congress never contemplated to fall within the FTC's remit. As Congress considered bills in 1979 to limit the Commission's powers, Congressman [\*77] William Frenzel captured the prevailing legislative mood:

It is bad enough to be counterproductive and therefore highly inflationary, but the FTC compounds its sins by generally ignoring the intent of our laws, and writing its own laws whenever the whimsey strikes it . . .

Ignoring Congress can be a virtue, but the FTC's excessive nose-thumbing at the legislative branch has become legend. In short, the FTC has made itself into virulent political and economic pestilence, insulated from the people and their representatives, and accountable to no influence except its own caprice.

The Commission, Frenzel concluded, was "a rogue agency gone insane."

The accusation of Commission disobedience figured prominently in Senate deliberations on the 1980 FTC Improvements Act. In less flamboyant but still pointed terms, the chief Senate sponsors of the FTC Improvements Act said restrictions were necessary to curb the agency's unauthorized adventurism. Senator Howard Cannon explained: "The real reason that we have proposed this legislation for the FTC is because the Commission appeared to be fully prepared to push its statutory authority to the very brink and beyond. Good judgment and wisdom had been replaced with an arrogance that seemed unparalleled among independent regulatory agencies."

The accusation of disregard for congressional will soon echoed in statements by high level officials in the newly arrived Reagan administration. OMB Director Stockman recited a variant of this theme in an appearance before a House of Representatives Committee early in 1981 to address his proposal to eliminate funding for the agency's competition mission. Stockman said, " . . . in recent years the FTC has served the public interest very poorly, in major part because it has sought to expand its power and influence beyond that envisioned by Congress."

Beyond generalized claims of institutional disobedience, the accusation of disregard for congressional will was invoked to justify proposals to impose restrictions on specific FTC initiatives. For example, in the fall of [\*78] 1979, the Senate Commerce Committee held hearings on a proposal by Senator Howell Heflin to eliminate the FTC's power to order divestiture or other forms of structural relief in non-merger cases. This was a shot across the bow of the FTC's pending "shared monopoly" cases involving the breakfast cereal and petroleum refining sectors, where the FTC had requested structural relief (divestitures and, in the cereal case, compulsory trademark licensing) to restore competition. Congress did not adopt the Helfin proposal, but the idea of eliminating or restricting the FTC's power to seek divestiture remained a serious threat to the agency. Roughly a year after the Commerce Committee hearings on the Heflin amendment, on the day before the balloting in the 1980 presidential elections, Vice-President Walter Mondale appeared at a campaign rally in Battle Creek, Michigan (the headquarters of the Kellogg Company). The Vice-President assured his audience that, if he and President Jimmy Carter were reelected, the Carter administration would seek legislation to ban the FTC from obtaining divestiture in the breakfast cereal shared monopolization case.

A second, related claim was that the FTC had abandoned any adherence to sound administrative practice and descended into utterly irrational decision making. The agency was not merely disobedient ("rogue") but [\*79] crazy ("insane"), as well. Here, again, Congressman Frenzel pungently made the point. The FTC, Frenzel said, "is a king-sized cancer on our economy. It has undoubtedly added more unnecessary costs on American consumers who it is charged with protecting, than any other half dozen agencies combined." David Stockman's initial broadside against the Commission in February 1981 echoed this sentiment. In a newspaper interview, Stockman said the FTC "is a passel of ideologues who are hostile to the business system, to the free enterprise system, and who sit down there and invent theories that justify more meddling and interference in the economy."

The accusation of disobedience and the diagnosis of insanity fit poorly, or at least awkwardly, with the positive record of the FTC's activities in the 1970s. As discussed immediately below, the rogue agency story clashes with the many instances, especially between 1969 and 1976, in which congressional committees and key legislators directed the agency to carry out an aggressive, innovative enforcement program against major commercial interests. In 1969, numerous legislators endorsed the view of two external studies that the FTC had used its authority timidly and ineffectively. Leading members of Congress demanded that the agency [\*80] transform its competition and consumer programs or face extinction. Congress described the content of the desired transformation in several ways. At a high level, oversight committees and individual legislators called for a dramatic boost in the agency's appetite to undertake ambitious, risky projects--to replace a cautious, risk-avoiding decision calculus with a bold philosophy that erred in favor of intervention and used the agency's elastic powers innovatively. Congress's admonition to be aggressive and use power expansively emerged again and again in confirmation proceedings and routine oversight hearings. During hearings in 1970 to confirm Caspar Weinberger to be the Commission's new chair, Senator Warren Magnuson, Chairman of the Senate Commerce Committee, told the nominee to "maintain the right kind of morale by recruiting strongly and expanding . . . Trade Commission programs in order to perform the job well." In setting out this charge, Magnuson seemed to recognize that the FTC would have to be steadfast in resisting backlash--including from Congress--that would emerge as the FTC went about "expanding" its programs. The Commerce Committee Chairman said Congress was calling on the FTC to perform "tasks that require a great deal of attention and a great deal of fortitude not to respond to any pressures that come from any place."

Weinberger's successor, Miles W. Kirkpatrick, received similar, and even more explicit congressional guidance, to apply the Commission's powers broadly and aggressively. In 1969, Kirkpatrick had chaired a blueribbon American Bar Association panel whose report recommended the FTC implement an ambitious antitrust agenda that involved significant doctrinal, operational, and political risks. In his appearances as FTC chair before [\*81] congressional committees, Kirkpatrick often heard legislators applaud the risk-preferring approach of the ABA study. In Kirkpatrick's first appearance before the Commission's Senate Appropriations subcommittee in 1971, the Subcommittee Chairman, Senator Gale McGee, provided the following guidance:

I think this is one of the Federal commissions that has a much larger responsibility and capability than sometimes it has been willing to live up to for reasons of congressional sniping at it in some respects or pressures put on it through the industry and the like.

Too often it has been either shy or bashful. . . . That is why we were having a rather closer look at your requests just in the hopes of encouraging you, if anything, to make mistakes, but I think the mistakes you are to make ought to be mistakes in doing and trying rather than playing safe in not doing.

I believe that is the most serious mistake of all . . . you are not faulted for making mistakes. You may be for making it twice in a row, for not learning properly but, we would rather you make a mistake innovating, trying something new, rather than playing so cautiously that you never make a mistake. . . .

In his appearance before the same subcommittee a year later, Senator McGee observed with approval that Kirkpatrick had "responded to the criticism . . . by both Mr. [Ralph] Nader and the American Bar Association by moving aggressively against some of the major industries in the United States." Recognizing that the approach he described could elicit opposition from affected business interests, McGee promised that he and his colleagues would exercise best efforts to watch the agency's back: "[I]f you step on toes you are going to catch flak for it, but I hope we will be able to push this even more aggressively by backing you more completely with the kind of help that I think you require." McGee closed the proceedings with [\*82] militant instructions:

"Stay with it and flex your muscles, clinch your fists, sharpen your claws, and go to it. We think this is desperately important in the interest of the Congress, whose creature you are, and the consumer whose faith and substantive capabilities in surviving hang very heavily upon what you succeed in doing."

Kirkpatrick served as the FTC's chair for just over twenty-nine months. The Commission's new chair, Lewis Engman, received the same policy guidance that Congress had provided Weinberger and Kirkpatrick. At Engman's confirmation hearing before the Senate Commerce Committee early in 1973, Senator Frank Moss observed:

Under . . . Weinberger and Kirkpatrick, the Commission has taken on new life beginning with the search for strong and imaginative, rigorous developers and enforcers of the law and reaching out with innovative programs to restore competition and to make consumer sovereignty more than chamber of commerce rhetoric.

With evident approval, Moss recounted how the FTC had "stretched its powers to provide a credible countervailing public force to the enormous economic and political power of huge corporate conglomerates which today dominate American enterprise." The members of the Senate Commerce Committee, Moss concluded, "consider it one of our solemn duties to protect the Commission from economic and political forces which would deflect it from its regulatory zeal." Member after member of the Commerce Committee echoed Moss's message to Engman. Senator Ted Stevens, an Alaska Republican, told the nominee, "I am really hopeful that . . . you will become a real zealot in terms of consumer affairs and some of these big business people will complain to us that you are going too far. That would be the day, as far as I am concerned."

The FTC got the message. The words and actions of Weinberger, Kirkpatrick, Engman, and other FTC leaders in this period reflected a preference for boldness, aggressiveness, innovation, and zeal. In a letter to Senator Edward Kennedy in July 1970, Weinberger reported that the FTC was trying "to make the most of that other resource given to us by Congress [\*83] -- our statutory powers." Weinberger said the Commission had "encouraged the staff to make recommendations to us which will probe the frontiers of our statutes," had made progress in "[p]robling the outer limits" and "exploring the frontiers" of the agency's authority, and had shown it "is receptive to novel and imaginative provisions in orders seeking to remedy unlawful practices." In a speech to a professional association in 1971, Kirkpatrick reported that the Commission was "moving into 'high gear' in the task of preserving and promoting competition in the American economy." He said he and his fellow board members "fully intend to be in the vanguard of exploration of the new frontiers of antitrust law."

By mid-1974, the FTC had launched several significant cases involving monopolization and collective dominance, including pathbreaking shared monopolization cases against the breakfast cereal and petroleum refining industries. With these matters underway, Engman in 1974 appeared at a congressional hearing of the Joint Economic Committee and received criticism that the FTC had been insufficiently active in challenging monopolies. The Joint Committee's chairman, Senator William Proxmire, told Engman "the FTC, like a number of other regulatory agencies seems to concern itself with minor infractions of the law, and to spend much of its time on cases of small consequence." Perhaps astonished to hear that cases to break up the nation's leading breakfast cereal manufacturers and petroleum refiners involved minor infractions or matters of small consequence, Engman replied, "The Federal Trade Commission today is very aggressive. . . . We have seen a total turnaround in terms of the types of matters which are being addressed by the Bureau of Competition."

[\*84] Beyond general policy exhortations to exercise power boldly and to err on the side of intervention, of doing too much rather than too little, Congress in the early to mid-1970s instructed the Commission to focus attention on specific commercial sectors and competitive problems within them. In the face of severe fuel shortages and price spikes for petroleum products in the early 1970s, numerous legislators demanded that the FTC conduct investigations and challenge the conduct of large, integrated petroleum companies. Many insisted that the FTC use its competition mandate to force integrated refiners to deal on equitable terms with independent refiners and distributors. The Commission's decision to file the Exxon shared monopoly case, which sought extensive horizontal and vertical divestiture remedies, can be explained as a response to these demands. In the same period, Congress applied strong pressure upon the FTC to examine and correct what it believed to be serious structural obstacles to effective competition in the food manufacturing industry. Here, also, the agency's decision to prosecute the shared monopolization case against the country's leading producers of ready-to-eat breakfast cereals can be seen as a response to this concern and faithful to the congressional prescription that the FTC use novel, innovative approaches to cure competitive problems. In these and other matters, the Commission explored the frontiers of its powers in the development of new cases.

When one aligns the guidance of Congress in the early to mid-1970s about the appropriate content of FTC policy making with the FTC's activity in the decade, it is apparent that the critique of the agency as disobedient to legislative will is a fiction, or at least badly misleading. A more accurate positive depiction of events in the 1970s is that the Commission faithfully followed legislative instructions given from 1970 up through the mid-1970s about the appropriate philosophy and means of enforcement, and that, as the decade came to a close, Congress changed its mind about what the FTC [\*85] should do and how it should do it. As described below in Section IV.D., that change in legislative temperament and the response by Congress to industry backlash against the FTC's program have important implications for how the FTC plans programs and selects projects in the future. Accurate positive analysis reveals that the agency was not disobedient to Congress but was inattentive to the operation of a political feedback loop that exposes Congress to industry pressure once the FTC implements programs that involve significant economic stakes and endanger powerful commercial interests.

Nor does a careful study of the positive record of the 1970s show that the FTC policy making was "insane." Measured by its contributions to institution-building, the Commission did many things that epitomize good public administration. It carried out important organizational and personnel reforms that upgraded its operations and personnel. As explained more fully below, the agency also improved its mechanisms for setting priorities and selecting projects to achieve them and strengthened investments in policy research and development (including a program to evaluate the effects of completed cases). The FTC successfully carried out new regulatory duties entrusted by Congress in the 1970s; most notable was the implementation of the premerger notification mechanism that Congress created in the Hart-Scott-Rodino Antitrust Improvements Act of 1976. In all of these areas, the Commission of the 1970s made enduring enhancements to the institution and set important foundations for successful programs that followed in the next forty years. An insane agency could not have done so.

[\*86] Another focal point for attention in assessing the FTC's performance in the 1970s was the quality of its substantive agenda. Was the FTC's substantive program in the 1970s "insane"? Many Commission competition and consumer protection initiatives in the 1970s encountered grave problems. FTC efforts to execute the bold, innovative, risk-preferring program that Congress had called for earlier in the decade generated a number of serious project failures. Insanity, on the part of individual leaders or the institution as a whole, does not explain the failures. These outcomes have more prosaic causes whose understanding is important to the future formulation of competition policy. Chief among the FTC's flaws were a lack of historical awareness about the political hazards associated with undertaking an agenda of bold, innovative cases against powerful commercial interests; inadequate appreciation for the demands of bringing large numbers of difficult cases and promulgating ambitious trade regulation rules would impose on the agency's improving but uneven human capital; and underestimation of the change in the center of gravity of economic learning that supports the operation of the U.S. antitrust system. As described below, many of these failings are rooted in weaknesses in the FTC's knowledge in the 1970s of the positive record of its past enforcement experience.

B. The Inadequate and Misdirected Enforcement Activity Narrative

Like the hyperactivity narrative described above, the inadequate activity narrative relies heavily on enforcement data to support the view that the federal antitrust agencies have brought too few cases overall and, when filing cases, have focused resources on the wrong types of matters.

Implicit or explicit assumptions about the level of enforcement activity have provided a central foundation in the modern era for broad normative claims of poor system performance. One collection of inadequacy critiques attacks federal enforcement program of the Reagan administration -- a period characterized by what one journalist described as an "almost total abandonment of antitrust policy." In 1987, in discussing Reagan-era [\*87] federal antitrust enforcement, Professor Robert Pitofsky said the DOJ and the FTC had produced "the most lenient antitrust enforcement program in fifty years." Professor Milton Handler remarked that in the Reagan era "a policy of nonenforcement has set in, much to the distress of those who believe that without antitrust the free market cannot remain free." Professors Lawrence Sullivan and Wolfgang Fikentscher observed, in addressing the treatment of civil nonmerger matters, "enforcement ceased."

A second body of commentary assails the work of the federal agencies in the George W. Bush administration. For example, in 2008, during his campaign to gain the Democratic Party's nomination for the presidency, Barack Obama said the George W. Bush administration "has what may be the weakest record of antitrust enforcement of any administration in the last half-century." The Obama statement did not compare activity levels across all administrations over the 50-year-long comparison period, but the statement suggested that the general claim was based on variations in activity over time.

A third version of the inadequacy narrative marks the beginning of the decline of effective enforcement at the outset of the George W. Bush administration and extending through the present.

A fourth variant writes off the entire period from roughly 1980 onward as an antitrust catastrophe. After noting that for most of the 20th century "antitrust enforcement waxed or waned depending on the administration in office," Professor Robert Reich recently wrote that "after 1980 it all but [\*88] disappeared." He added that Presidents Bill Clinton and Barack Obama "allowed antitrust enforcement to ossify, enabling large corporations to grow far larger and major industries to become more concentrated."

Presented below are categories of arguments that rely upon specific assertions about the positive record of modern antitrust enforcement. These arguments make positive claims regarding either the amount of activity, the reasons for observed behavior, or both.

GENERAL CRITICISMS OF ANTITRUST ENFORCEMENT: BORK, REAGAN, AND THE DESTRUCTION OF U.S. COMPETITION POLICY

Many commentators have offered explanations for why federal antitrust enforcement became inadequate after the late 1970s. One major positive explanation is that the modern Chicago School of antitrust analysis, grounded largely in the writings of Robert Bork, inspired a severe retrenchment of enforcement at the DOJ and the FTC and led the federal courts to narrow antitrust doctrine since the late 1970s. A major focus of this discussion of the causes for changes in enforcement involves rules governing the treatment of dominant firms.

A second cause offered to explain a redirection of enforcement is the ascent to the presidency of Ronald Reagan and his appointment of permissive leadership to the DOJ and the FTC. The Reagan administration [\*89] is said to have inherited a generally well-functioning antitrust enforcement system and run it into the ground.

The Chicago School, Bork-centric, and Reagan-centric explanations for policy change can be misleading due to mischaracterizations of what took place and their tendency to omit other forces that had helped narrow the scope of antitrust enforcement. Bork and the Chicago School unmistakably have exerted a significant impact upon modern antitrust policy, but the retrenchment of antitrust enforcement in some areas cannot accurately be attributed to them entirely or, for a number of important developments, even principally. Many proponents of the inadequacy narrative make little or no mention of the role of modern Harvard School scholars, such as Philip Areeda and Donald Turner, in leading courts and enforcement agencies to move the antitrust system toward a less interventionist stance.

Areeda and Turner encouraged courts to forego reliance on noneconomic goals in deciding antitrust cases. The two Harvard scholars also advocated the adoption of stricter procedural and doctrinal screens to counteract what they perceived to be flaws in the U.S. system of private rights of action. The inadequacy narrative often overlooks the influence of the modern Harvard School and thus misses how much the permissiveness of modern antitrust policy reflects the Harvard School's concern that private rights of action over-deter legitimate business conduct by dominant firms. [\*90] This yields a faulty positive diagnosis of the forces that have reduced the reach of the U.S. antitrust regime. As noted below, understanding how the institution-grounded limitations proposed by the modern Harvard School have imposed greater demands on plaintiffs has important implications for government plaintiffs seeking to devise a strategy to reclaim doctrinal ground lost since the 1970s.

Similar imprecision and omission characterize the portrayal of the Reagan administration as the force that swung antitrust policy away from a sensible interventionist equilibrium and gave it a durably noninterventionist orientation. Some elements of the Reagan-centric narrative turn events 180 degrees around from their positive roots. More significant, the narrative does not address how badly the Congress and the White House had damaged the FTC's stature and operations before Ronald Reagan took office in late January 1981. By the end of 1980, the Commission had been shoved into the equivalent of political bankruptcy by a Congress and a White House under the control of the Democratic Party.

By treating the 1980 presidential election as the cause of an abrupt change in federal antitrust enforcement policy, the Reagan-centric inadequacy narrative fails to grasp the significance of the political assault, led by Democrats, against the FTC in the late 1970s. Recognition of how the FTC's relationship with Congress changed over the course of the 1970s forces one to confront the question of why an agency that enjoyed powerful congressional support through much of the decade came to grief so quickly. The episode has a sobering cautionary lesson for contemporary policy making: it demonstrates how quickly congressional attitudes can change once powerful business interests affected by FTC actions bring their [\*91] resources to bear upon Congress, and how turnover in the legislature can erode vital political support. An accurate positive account of the 1970s suggests that an agency should strive to complete its cases and rulemaking initiatives as expeditiously as possible, lest long lags between the start and conclusion of matters expose the agency to debilitating political backlash. This policy making prescription becomes apparent only by forming an accurate picture of what happened to the FTC in the 1970s.

CHICAGO-SCHOOL INSPIRED FOCUS ON PRICE EFFECTS

Critics of modern FTC and DOJ law enforcement often state that the federal agencies focus entirely on price and output effects in selecting and prosecuting cases. This tunnel-visioned approach is said to ignore important considerations involving the harmful effects of business behavior on quality and innovation.

In 2019, in a newspaper op-ed, Rana Fordoohar, a journalist who covers the tech sector, stated: "But monopoly policy in America is currently driven by "Chicago School" thinking, which espouses the idea that as long as consumers aren't paying too much for a good or service, all is well." In August 2020, Joshua Brustein, a business journalist, said: "For decades, antitrust enforcers have centered on the consumer welfare standard, which defined price increases as the only valid focus of antitrust action."

Like the portrayal of activity levels, these positive descriptions of the policy concerns that have guided FTC and DOJ law enforcement are faulty. The claim that the federal antitrust agencies since the late 1970s have focused solely upon price and output effects overlooks the many important instances in which innovation and other quality-related effects were paramount in FTC and DOJ decisions to challenge mergers and bring nonmerger cases. Among other areas from the 1980s to the present, the DOJ and the FTC have emphasized innovation effects in analyzing competitive effects in deals involving defense contractors and transactions [\*92] in the health care sector.

[FOOTNOTE] See, e.g., Joint Statement of the Department of Justice and the Federal Trade Commission on Preserving Competition in the Defense Industry (Apr. 12, 2016) ("In the defense industry, the Agencies are especially focused on ensuring that defense mergers will not adversely affect short- and long-term innovation crucial to our national security. . . ."); Daniel L. Rubinfeld & John Haven, Innovation and Antitrust Enforcement, in DYNAMIC COMPETITION AND PUBLIC POLICY 65 (Jerry Ellig ed., 2001) (discussing DOJ emphasis on innovation-related effects in antitrust enforcement, including the Department's challenge to Lockheed Martin's effort to purchase Northrop Grumman in the late 1990s); William E. Kovacic, Competition Policy Retrospective: The Formation of the United Launch Alliance and the Ascent of SpaceX, 27 GEO. MASON L. REV. 863, 867-68, 899-900 (2020) [hereinafter Competition Policy Retrospective] (discussing centrality of innovation issues in modern antitrust analysis of aerospace and defense mergers). [END FOOTNOTE]

INADEQUATE ENFORCEMENT AGAINST DOMINANT FIRM MISCONDUCT

A recurring critique of modern U.S. federal enforcement is the failure of the DOJ and the FTC to police dominant firm misconduct. In 2002, Professor Robert Pitofsky wrote that "during the Reagan years, there was no enforcement whatsoever" against attempts to monopolize and monopolization. At a conference in 2009, Professor Harvey Goldschmid observed that during the George W. Bush presidency "there has been no enforcement" of Section 2 of the Sherman Act.

In a wide-ranging attack upon federal antitrust enforcement since the 1970s, Jonathan Tepper and Denise Hearn concluded:

The evidence confirms the death of antitrust. When surveying merger challenges, [Professor Gustavo] Grullon found that enforcement of Section 2 of the Sherman Act fell from an average of 15.7 cases per year from 1970-1999 to less than 3 over the period 2000-2014. . . . The recent failure to enforce antitrust is horrifying, considering how industries have become more concentrated every year.

In May 2018, Senator Richard Blumenthal and Professor Tim Wu [\*93] authored an op-ed piece that recited similar statistics: "Enforcement of the antimonopoly laws has fallen: Between 1970 and 1999, the United States brought about 15 monopoly cases each year; between 2000 and 2014, that number went down to just three."

Each of these statements about the amount of federal enforcement activity is incorrect. The Reagan antitrust agencies did not bring many cases involving attempted monopolization or monopolization, but the number exceeded what Professor Pitofsky called "no enforcement whatsoever". The number of FTC attempted monopolization and monopolization cases initiated from 2001 through 2008 exceeded what Professor Goldschmid called "no enforcement." From 1970 through 1999, federal enforcement of Section 2 of the Sherman Act and the enforcement of Section 5 of the FTC Act to challenge collective dominance or single-firm exclusionary conduct did not exceed four cases per year - a notably lower rate of activity than the number of cases per year reported by Senator Blumenthal and Professor Wu ("about 15 cases each year") and the number for the same period reported by Jonathan Tepper and Denise Hearn (15.7 cases per year).

[\*94] INADEQUATE MERGER ENFORCEMENT

Inadequacy narratives frequently use categorical statements about activity levels to demonstrate weaknesses in federal merger enforcement. In a discussion of Reagan administration antitrust policy, Professor Eleanor Fox observed that "U.S. federal merger enforcement ground to a halt." In the 2010 edition of their antitrust casebook, Professor Robert Pitofsky, Professor Harvey Goldschmid, and Judge Diane Wood observed that there was "no enforcement at all against vertical or conglomerate mergers during the Bush Administration." In a recent book discussing U.S. antitrust policy, Professor Tim Wu observed that the DOJ in the George W. Bush administration "did not block any major mergers."

The factual claims contained in these assessments are incorrect. Federal merger enforcement during the Reagan administration did not grind to a halt. The George W. Bush Administration did not challenge large numbers of vertical mergers, but the number was greater than the "no enforcement at all" amount claimed by Professor Pitofsky, Professor [\*95] Goldschmid, and Judge Wood. During the Bush administration, the DOJ sued and blocked mergers involving General Dynamics/Newport News Shipbuilding (nuclear submarine design and production) and United Airlines/US Airways (airline transportation services). Given the significance of the merging parties and the importance of the economic sectors at issue, competition law experts, in responding to Professor Wu, likely would score these proposed transactions as "major" mergers.

C. How Narratives Predicated Upon Mistaken Positive Assumptions Distort Understanding About the Functioning of the U.S. Antitrust Regime

Should the competition policy community of academics, advocacy groups, government officials, and practitioners care about these and other inaccurate depictions of federal enforcement activity? Indeed, they should. There is a danger that the fractured positive accounts of past activity will be taken as true and inform the debate about the future of competition policy. There is a fast-expanding literature that contends, as Professor Daniel Crane puts it, that "antitrust enforcement has drifted toward near-oblivion, with potentially dire consequences for our economy, and society more generally." The portrayal of inert federal agencies as abandoning a sensible earlier custom of robust enforcement is a particularly important pillar of modern calls for sweeping reform.

Failure to Learn from Earlier Enforcement Activities. A major hazard of the inadequacy narratives and their dismal depiction of modern antitrust policy is that they impede the learning by which an antitrust agency improves over time. If it is assumed as a fact that the federal antitrust enforcement [\*96] policy was devoid of useful activity for the past forty years or longer, then there is no point in looking for positive accomplishments. A listener who accepts as true the claim that nothing happened, or that what happened was the work of an insane agency, reasonably might conclude that there is nothing worth emulating from the earlier period.

There is a serious cost to embracing the excessive activity narrative or the inadequate activity narrative as resting on sound positive foundations. By writing off the relevant eras as a wasteland, one ignores noteworthy policy developments that modern analysts can use to guide policy going forward. Merger enforcement provides an example. If federal merger enforcement actually ground to a halt between 1981 and 1988, there would be no merger challenges to study. Yet the federal enforcers blocked a number of deals in this period and, in some instances, the government gained favorable judicial decisions that provide clues about how to formulate successful challenges in the future.

Perhaps the most notable of the government's merger litigation victories in the 1980s was the FTC's successful challenge to Hospital Corp.'s effort to acquire Hospital Affiliates International, Inc. and Health Care Corp. The Commission argued that the acquisitions would reduce competition by enabling the surviving firms to coordinate behavior more effectively with regard to pricing and other terms of service. The 117-page opinion for the Commission by Commissioner Terry Calvani is a textbook model of superb opinion-writing, what the Seventh Circuit called a "model of lucidity." Commissioner Calvani carefully set out the arguments of complaint counsel and the defendants, reviewed the precedent and literature regarding the coordinated effects theory of harm, and displayed [\*97] the type of erudition and expertise that is offered as a justification for entrusting antitrust adjudication to an expert administrative body.

Every commissioner who is assigned to write an opinion for the FTC should feel an obligation to read the Calvani Hospital Corp. decision to see the quality of analysis and style of presentation that can impress a court of appeals favorably. Rather than dismiss the period since 1980 as a barren era in federal enforcement, the advocates for a major expansion of intervention should assemble an accurate positive record of every decision and every initiative that can help them achieve their ends.

In the face of a demanding judiciary, the FTC will need every advantage it can obtain, including footholds provided by enforcement measures undertaken from the early 1980s forward. If proponents of fundamental change treat the past forty years as an empty space in antitrust policy, they will walk past precedents and practices that would advance their cause. If one assumes that timidity bordering on cowardice gripped the federal agencies after 1999, there is likewise no point in considering how the FTC in the 2010s achieved considerable success in three consecutive trips to the Supreme Court in antitrust cases - the first time the Commission had won three straight cases before the high court since the 1960s - or bothering to understand what mix of strategy and advocacy (and, perhaps, luck) made it possible.

The analysis of innovation issues provides another example of how an accurate grasp of the positive record can help build a new program. Consider the claim, noted above, that the federal agencies brought no vertical merger cases between 2001 and 2008. An observer who embraced this view is likely to overlook the FTC's decision to block the proposed merger of Cytyc and Digene. The Commission's analysis of this transaction teaches a lot about how to analyze innovation markets that reach back to the earliest stages of an R&D pipeline.

Adherence to the view that modern antitrust policy has ignored [\*98] innovation effects in merger analysis and in nonmerger cases likewise will miss important sources of insight. The experience of the two federal agencies since the early 1980s in reviewing aerospace and defense industry mergers illuminates how to analyze innovation issues and formulate successful merger challenges in dynamic, high technology sectors. The federal government's analysis of these transactions has been representative of a larger awareness that innovation concerns should be decisive, or at least equal in importance to price effects, in a significant number of merger reviews and nonmerger matters.

Diagnosing the Obstacles to Litigation Success and Overcoming Them. A second and closely related reason to resist faulty positive accounts of past experience is that they obscure the path to possible litigation success in single-firm monopolization cases. In the FTC's unsuccessful Rambus case, the U.S. Court of Appeals for the District of Columbia relied heavily on a Supreme Court decision ( NYNEX Corp. v. Discon, Inc. ) that was premised in part on concerns about overdeterrence that might arise from private treble-damage law suits. The FTC might have argued to the D.C. Circuit that the Commission, as a federal government agency, was a responsible steward of the public trust and need not be bound by doctrines designed to confine private litigants. Future attempts to use litigation to condemn dominant firm conduct, and extend the reach of antitrust oversight, might emphasize the distinctive role of public enforcement and, perhaps, resort more extensively to the FTC's administrative adjudication process.

In other words, seeing more clearly the foundations of defendant-friendly doctrine indicates what litigation strategy (i.e., premised on the distinctive role of the public prosecutor and the special capacity of the FTC's administrative process) promises the greatest prospects for success in what is today a daunting judicial environment. To use litigation to expand the zone of potential intervention, the Commission will need to study and build [\*99] upon litigation successes such as McWane, Inc. v. FTC, where the Commission prevailed on a monopolization theory of liability before a court of appeals that has not always been a favorable forum for the review of Commission antitrust cases. If one assumes, as some commentators suggest, that the federal agencies brought no monopolization cases in the past twenty years, then one is unlikely to look for or study McWane - to recognize the doctrinal footholds it provides for future cases, to analyze how the agency assembled a convincing factual record, and, more generally, to see how the agency can replicate the success in the future.

Setting a Common Foundation for Debate About Future Antitrust Enforcement. A third reason to remedy the uncertain grasp of the past is its importance to the modern debates about the proper direction for the U.S. antitrust system. Without a common understanding of what actually happened in the past, how can policy makers and commentators make sound normative judgments about what the U.S. enforcement agencies should do in the future? Professor Douglas Melamed recently has posited that the contestants in the modern debate about antitrust policy often talk past each other and do not engage on questions crucial to deciding whether and how much to modify current antitrust policy, or to create new competition policy instruments and institutions. It is doubtful that what Professor Melamed calls two largely disconnected "conversations" can be joined up without a better common understanding of what actually has taken place. In so many ways, accurate comprehension of what happened is the essential foundation for the processes of interpretation (What explains the behavior in question? What is its significance?), evaluation (Was the behavior good or bad?), and refinement (What should we do next time?).

Think of it in terms of teaching a class. Suppose the bases for the grade in the course are (a) regular attendance in class, (b) contributions to class discussion, and (c) performance on an end-of-term examination. Before we determine the quality of the student's work and assign a grade, we need first to agree about whether the student showed up for class, spoke in class, and turned in an exam. Modern discourse about U.S. competition law indicates a lack of agreement on equivalents of these basic predicates for a normative assessment of the performance of the antitrust enforcement system.

Appreciating How Institutional Arrangements Shape Substantive [\*100] Outcomes. Both of the inadequacy narratives described above lapse into describing the U.S. antitrust system as regularly succumbing to irrational (or, as Representative Frenzel put it, insane) swings in behavior, from wild overreaching in the 1970s and in earlier periods of antitrust history to excessive restraint from the late 1970s to the present. In their positive description of why events transpired as they did, the inadequacy narratives focus heavily on the role of agency leadership and personality. For example, the excessive enforcement narrative portrays federal enforcement officials in the 1960s as possessed by a deranged opposition to mergers and depicts Michael Pertschuk, the FTC's chairman from 1977-1981, as a singularly malevolent force who drove the agency off the rails. The inadequate enforcement narrative damns William Baxter, who chaired the DOJ Antitrust Division from 1981 through 1983, and James C. Miller III, who chaired the FTC from 1981 to 1984, as irrational extremists with no fidelity to norms that promote sound policy making.

The abilities and instincts of individual leaders are undoubtedly important to the success of a competition authority. Yet the personality-driven explanation for agency behavior overlooks the role that institutional arrangements have played in shaping outcomes - for example, by moderating policy impulses of some leaders and creating structures and mechanisms (such as a program of ex post evaluation of agency decisions) that improve policy making regardless of who is in charge. The single-minded focus on personalities also obscures the extent to which various institutional arrangements played central roles in the agency's achievement of successful policy outcomes. In short, one loses the ability to develop a [\*101] better sense of what accounts for policy successes and failures. Replacing a supposed pariah with a presumed miracle worker may not improve the status quo by much if deep-seated institutional weaknesses are major sources of observed policy failures.

#### Blocking the merger obliterates containment of hypersonic threats from Russia and China

Don Nickles 21, Chairman and CEO of The Nickles Group LLC, Former United States Senator, Former Director of Chesapeake Energy and Valero Energy, Degree in Business Administration from Oklahoma State University, “Why Lockheed's Acquisition of Aerojet Will Be A 'Boon for U.S. Innovation'”, Politico, 3/22/2021, https://www.politico.com/news/2021/03/22/lockheed-aerojet-acquisition-477491

The proposed acquisition by defense prime contractor Lockheed Martin of propulsion provider Aerojet Rocketdyne is facing some criticism due to alleged concerns that it would give Lockheed an unfair competitive advantage on missile and missile defense contracts.

Raytheon Technologies in particular has publicly complained that the combination would leave it dependent on a direct competitor for much of the propulsion in its missile offerings. Indeed, Aerojet Rocketdyne is a supplier of solid rocket motors and also is a source of defense technologies including hypersonic engines and the propulsive Divert and Attitude Control System that steers missile defense kill vehicles.

Such concerns ignore the important benefits, including the increased competition, which will result from this merger. And, Lockheed Martin has made it clear that Aerojet Rocketdyne will remain a merchant supplier, so these benefits will flow to all customers, including the U.S. government.

More importantly, the Lockheed-Aerojet merger will be a boon for U.S. innovation and competitiveness at a time when it faces growing threats from increasingly capable adversaries like China and Russia.

There are significant national advantages to bringing Aerojet Rocketdyne under the corporate roof of a prime contractor with $65 billion in annual revenue. Broadly speaking, it will provide financial stability for the propulsion provider while making more resources available for research and development in key technology areas.

As a stand-alone company with $2 billion in annual revenue, Aerojet Rocketdyne’s financial fortunes are tied to a few large programs that are subject to shifting political winds and the whims of prime contractors. A large program cancellation or a prime’s decision to change suppliers could substantially weaken the company, leaving it vulnerable to a takeover on unfavorable terms.

A well-resourced defense contractor like Lockheed Martin, by contrast, could be expected to invest in Aerojet Rocketdyne’s core propulsion capabilities. One area likely to see substantial investment is hypersonic weaponry, where the nation by some estimates has fallen behind Russia and China.

Moreover, by bringing a key link of its supply chain in house, Lockheed Martin will be positioned to offer better prices to its government customers and the transaction also will lead to efficiencies and innovation that will benefit the whole industry.

Such national benefits are not unique to the proposed Lockheed Martin-Aerojet Rocketdyne deal. Consider, for example, what United Technologies Corp. said in announcing its planned merger with none other than Raytheon, a deal which closed last year:

"By joining forces, we will have unsurpassed technology and expanded R&D capabilities that will allow us to invest through business cycles and address our customers' highest priorities,” said then-UTC chair and CEO Greg Hayes, who now sits at the helm of the combined company. “Merging our portfolios will also deliver cost and revenue synergies that will create long-term value for our customers and shareowners."

One of the public comments about the Lockheed Martin-Aerojet Rocketdyne deal is rooted in a commonly held assumption that vertical integration, in which primes take ownership of supply chains, stifles competition by giving these companies excessive marketplace clout. That view is myopic, especially in industries that are highly dynamic such as the defense industry.

Consider the case of United Launch Alliance, the Boeing-Lockheed Martin joint venture that until about a decade ago had a de facto monopoly on the business of launching operational U.S. government satellites. That monopoly was toppled by SpaceX, which builds some 85 percent of the components for its Falcon rockets, notably the engines, in house.

Experts have long cited SpaceX’s vertically integrated structure as the source of the company’s competitive strength, in large part because it eliminates supply chain profit margins. SpaceX founder Elon Musk has applied the same in-sourcing strategy in building up his Tesla electric car company, which has put U.S. industry at the forefront of a global trend in automobile manufacturing.

Vertical integration has been a fact of life in the aerospace and defense industry since the early 1990s, when the end of the Cold War triggered a wave of consolidation that continues today. On the propulsion side, a flurry of activity over a three-year period starting in 2001 reduced the number of U.S. solid rocket motor providers from five to just two: Aerojet Rocketdyne (then known as Aerojet); and ATK.

That situation lasted until 2014, when ATK merged with rocket and satellite maker Orbital Sciences Corp. to create the vertically integrated Orbital ATK. Less than five years later, Orbital ATK was acquired by aerospace and defense giant Northrop Grumman, a direct competitor to Lockheed Martin with nearly $37 billion in annual revenue.

Already the dominant supplier of large-diameter solid rocket motors, ATK can now draw on the resources of Northrop Grumman to advance its capabilities and boost competitiveness. Northrop Grumman recently won the prime contract for the nation’s next-generation ICBM, the Ground Based Strategic Deterrent, ensuring a healthy workload for its solid rocket motor business for years to come and ratcheting up the competitive pressure on Aerojet Rocketdyne.

As it happens, Northrop Grumman tapped Aerojet Rocketdyne for a smaller but significant role on its GBSD team, demonstrating that primes will join forces with competitors when it makes business sense.

Perhaps a better example — one that directly refutes assertions that competition requires subcontractor independence — is Northrop Grumman’s role in the Space Force’s all-important launch services program, where it supplied solid rocket motors for ULA’s Vulcan rocket even as it vied for that business with its own OmegA vehicle. In a similar vein, Blue Origin’s entry into that competition with its New Glenn vehicle didn’t stop it from supplying the main engine for Vulcan, which ultimately won the biggest share of launches.

The defense industry is replete with examples of companies supplying hardware and technology to rivals, even for programs where they compete head-to-head. Another relevant example: Raytheon in 1998 won a lucrative contract to supply missile defense kill vehicles incorporating DACS technology that at the time was supplied by Boeing — a competitor for that same contract.

For acquisitions that raise questions about access to critical capabilities, government regulators sometimes require consent decrees that commit the buyer to make these technologies available to competitors at market rates and to wall off proprietary information they might obtain in the process. In recent years, antitrust agencies have not shied away from investigating and enforcing compliance with consent decrees, including in the defense industry. There is no reason to think that would change in the future.

Some observers view the Lockheed Martin-Aerojet Rocketdyne merger as an early test of the Biden administration’s antitrust enforcement policies, and regulators will no doubt scrutinize it thoroughly to ensure competition is preserved. But there’s much more at stake here: This is about how the administration intends to deal with growing threats posed by peer and near-peer adversaries, who have eroded many of the technological advantages this nation has long taken for granted.

If the U.S. is to retake, and maintain, the lead in areas like hypersonic weaponry, a healthy and vibrant propulsion industry featuring players competing on a level playing field is essential. Regulators and policymakers should view this merger through that lens and render their decision accordingly.

#### Nuclear war

Dr. Richard H. Speier 17, Adjunct Staff with the RAND Corp, Founded the Office of Non- Proliferation Policy at the DOD, Recipient of the Meritorious Civilian Service Medal as the “Father of the MTCR,” now Consults in the Washington DC area; George Nacouzi, Senior Engineer at the RAND Corporation, Supports Projects within PAF (Project Air Force) and NSRD (National Security Research Division), Carrie A. Lee, Researcher at RAND, and Richard M. Moore, Researcher at RAND. 2017. “Hypersonic Missile Nonproliferation: Hindering the Spread of a New Class of Weapons.” RAND. https://www.rand.org/pubs/research\_reports/RR2137.html

Strategic Implications of Hypersonic Weapons Compressed Timelines The U.S. military uses an acronym to describe the decisionmaking and action process cycle: OODA (Observe, Orient, Decide, Act). These four steps take time, and hypersonic missiles compress available response time to the point that a lesser nation’s strategic forces might be disarmed before acting. As an illustration of the time required to act with respect to an existential missile threat, the Nuclear Threat Initiative organization estimated a timeline for a U.S. response to a massive Russian intercontinental ballistic missile (ICBM) attack, as follows:9 • 0 minutes—Russia launches missiles • 1 minute—U.S. satellite detects missiles • 2 minutes—U.S. radar detects missiles • 3 minutes—North American Aerospace Defense Command (NORAD) assesses information (2 minutes max) • 4 minutes—NORAD alerts White House • 5 minutes—first detonations of submarine-launched ballistic missiles • 7 minutes—locate president and advisers, assemble them, brief them, get decision (8 minutes max) • 13 minutes—decision • 15 minutes—transmit orders to start launch sequence • 20 minutes—launch officers receive, decode, and authenticate orders • 23 minutes—complete launch sequence (2 minutes max) • 25 minutes—Russian ICBM detonations. This timeline is not, of course, representative of two hostile parties in closer proximity or with less effective warning systems than Russia and the United States. Nor is it representative of less-than-Armageddon possibilities. However, for adjacent enemies within a 1,000-km range, a hypersonic missile traveling at ten times the speed of sound could cover that distance and reduce response times to about six minutes.10 Targets As discussed earlier, hypersonic missiles increase the threat over current generations of missiles in cases where the target nation has missile defenses. The targets in such nations would primarily be high value and heavily defended. Prime targets could include destroying a nation’s leadership and command and control, referred to as “decapitation,” to prevent the target nation from responding with an effective follow-on attack. Other key targets could be carrier strike groups, with the objective of striking a key blow or pushing the naval formation further from the coast. And, because of their time sensitivity, strategic forces and storage facilities for weapons of mass destruction (WMDs) could warrant hypersonic attack. Implications for Targeted Nations Any government faced with the possibility that hypersonic missiles would be employed against it—particularly in a decapitating attack— would plan countermeasures, many of which could be destabilizing. For example, countermeasures could include devolution of strategic forces’ command and control so that lower levels of authority could execute a strategic strike, which would obviously increase the risk of accidental strategic war; or strategic forces could be more widely dispersed— a tactic risking greater exposure to subnational capture. An obvious measure would be a launch-on-warning posture—a hair-trigger tactic that would increase crisis instability. Or the target nation could adopt a policy of preemption during a crisis—guaranteeing highly destructive military action. To be sure, such measures could be invoked against threats from current types of missiles.11 But, for nations with effective ballistic mis- sile and/or cruise missile defenses in the time frame when hypersonic missiles might proliferate, the hard choices would be forced when facing hypersonic threats. Advanced nations with adequate resources could take other steps against hypersonic threats. They could strengthen the resilience of their command and control, harden the siting of their strategic forces, and make a deterrent force mobile or sea-based. These tactics may or may not be effective, especially for lesser nations. And they certainly will be expensive—putting them out of reach of some. Even for major powers, the proliferation of hypersonic missiles will create new threats by allowing lesser powers to hold them at risk of effective missile attacks especially against “unhardened” targets, e.g., cities. Over the coming decades, the ability of a lesser nation with a handful of ICBMs to threaten major powers will continue to decrease as wide area missile defenses continue to improve. However, HGVs and HCMs will be more difficult to defend against. Implications for Major Powers The ability of hypersonic missiles to penetrate advanced missile defenses will increase the risks for nations with such defenses. Lesser powers with hypersonic weapons may see these weapons as a deterrent against greater power intervention, and feel free to pursue potentially destabilizing regional agendas. Moreover, lesser nations with hypersonic missiles could affect the force deployments of major powers. As noted above, carrier strike groups might be pushed further out to sea or an intervening power’s regional military bases might become exposed to more effective attacks. The Broader Picture of Increased Risk The ability of hypersonic forces to penetrate defenses and compress decision time could aggravate the instabilities in regions that are already tense—for example, Iran-Israel and North Korea–Japan. Conflicts in these regions could evolve to include major powers aligned on opposite sides. An Israel-Iran conflict, with the United States and much of Europe aligned with Israel and Russia and perhaps China aligned with Iran, would create new paths for escalation to an even-larger conflict. The basic roles of external actors would not necessarily change—the alignments would stay the same—but external powers might suddenly find themselves in a more-unstable situation in which their patron states are increasingly trigger-happy. As noted previously, lesser powers could gain influence over major powers by threatening a hypersonic attack. At the least, lesser powers might be emboldened if they saw themselves as possessing a deterrent against major power intervention. Finally, because hypersonic weapons increase the expectation of a disarming attack, they lower the threshold for military action.

### OFF

#### Regulation CP

#### The United States federal government should

#### increase regulatory prohibitions that adopt the principle of separating platforms from commerce for platforms in the private sector.

#### create a Digital Platform Agency responsible for industry-specific regulation of platform separation and require that platforms in the private sector are separate from commerce.

#### give all relevant regulatory agencies authority to cooperate with foreign antitrust agencies.

#### Regulation solves without ‘antitrust’ or FTC involvement

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A. Antitrust and Regulation as Policy Alternatives

A variety of institutions can govern economic competition. Decentralized, capitalist economies generally rely on markets themselves to provide the incentives and discipline necessary to keep prices low, output high, and innovation moving forward. 8 But sometimes market forces alone cannot ensure efficiency and economic welfare--for example, when the market structure has changed due to mergers or the rise of a dominant firm, or when the market is an oligopoly susceptible to parallel conduct or collusion. In such cases, governance of competition by a nonmarket institution might be warranted. Because concentrated markets or even monopolies can arise for good reasons related to efficiency, innovation, and consumer preference, the governance of competition more often involves vigilance than liability or injunctions. Then-Judge Stephen Breyer, long [\*1926] a leading scholar of antitrust and regulation, described the best situation as being an unregulated, competitive market in which "antitrust may help maintain competition." 9

Antitrust law aims to prevent the improper creation and exploitation of market power on a case-by-case basis while avoiding the punishment of commercial success justly earned through "skill, foresight and industry." 10 Thus, competition authorities like the FTC and the DOJ's Antitrust Division review mergers, investigate single-firm conduct, and prosecute collusion. 11 Private plaintiffs can pursue civil antitrust liability through suits in the federal courts. 12 To win their claims, enforcement agencies and private plaintiffs bear the burden of showing that the effect of a firm's activity is "substantially to lessen competition, or to tend to create a monopoly," 13 or to constitute a "contract, combination, . . . or conspiracy" in restraint of trade, 14 or to "monopolize, or attempt to monopolize" any line of business. 15

Antitrust is not, however, the only institution through which government addresses competition concerns and market failures. Congress can give regulatory agencies authority to intervene where they see the need to address competition and market structure--and Congress has often done so. With such statutory authority, "[i]n effect, the agency becomes a limited-jurisdiction enforcer of antitrust principles." 16 For example, the Department of Transportation (DOT) has jurisdiction to approve transfers of routes between airlines carriers, giving it a role in reviewing airline mergers. 17 The 1992 Cable Act gave the FCC authority [\*1927] to limit the share of the national cable market that a single operator could serve, thereby giving the agency some control over the industry's market structure. 18 The FCC has long regulated market entry and, through its control over license transfers, reviewed mergers and acquisitions in several sectors of the telecommunications industry. More recently, the FCC issued, 19 and then repealed, 20 "network neutrality" regulations intended to preserve ease of entry and a level playing field for digital services. The Food and Drug Administration (FDA), Securities and Exchange Commission (SEC), Department of Energy, and numerous other federal agencies have various powers that directly affect competition. 21 State regulation can be important as well in governing competition, particularly in the insurance and healthcare industries. 22

In contrast to the case-by-case approach of antitrust, regulation typically imposes ex ante prohibitions or requirements on business conduct. The Telecommunications Act of 1996, for example, required incumbent local telephone companies to grant new competitors access to parts of their networks and prohibited incumbents from refusing to interconnect calls from their customers to customers of competing networks. 23 With the rule in place, the FCC bore no burden of proving that a specific instance of network access was necessary for competition, or that a specific denial of interconnection would harm competition. In contrast [\*1928] to antitrust, where the burden of proving liability is on the agency, under a regulatory regime the burden of seeking a waiver from regulation or challenging an agency's enforcement decision is usually on the regulated party.

Antitrust and regulation therefore present alternative approaches to governing competition and addressing market failures. 24 The government can review individual mergers under the antitrust laws, as it does in most markets, or it can set rules that impose clear, ex ante limits on the extent of concentration, as the FCC did for media ownership under the Communications Act. 25 Government can investigate under the antitrust laws whether a firm has monopoly power that it has "willful[ly]" acquired or maintained other than "as a consequence of a superior product, business acumen, or historic accident." 26 Alternatively, with authority from Congress an agency can regulate how much of a market a single firm can serve, as the FCC tried to do with cable companies, 27 or require firms to dispose of key assets in order to promote competition in a relevant market, as the DOT has done with airline slots. 28

#### DPA regulation effectively spurs tech competition without setting an antitrust precedent

Tom Wheeler 20, Visiting Fellow in Governance Studies at the Center for Technology Innovation, Phil Verveer, Senior Fellow at the Shorenstein Center on Media, Politics and Public Policy at the Harvard Kennedy School, and Gene Kimmelman, Senior Fellow at the Shorenstein Center on Media, Politics and Public Policy at the Harvard Kennedy School, “The Need for Regulation of Big Tech Beyond Antitrust”, Techtank – Brookings Institution Blog, 9/23/2020, https://www.brookings.edu/blog/techtank/2020/09/23/the-need-for-regulation-of-big-tech-beyond-antitrust/

Enforcement of the antitrust statutes is an important tool for the protection of competitive markets. Yet, it is a blunt instrument unable to reach many nuanced competition and consumer protection issues created by the digital economy. It is inherently uncertain in outcome, reliably lengthy in process, and an after-the-fact response rather than a broad-based set of rules.

Without a doubt, Big Tech has delivered wonderous new capabilities. However, the “move fast and break things” mantra of Silicon Valley has meant that digital companies move fast and make their own rules. Antitrust statutes reflect a time when markets were relatively stable because technology was relatively stable. Today, the rapid pace of digital technology means companies can move rapidly to advantage themselves by exploiting consumers and eliminating potential competition.

Regulation, done with agility, can be an important refinement to the blunt force of the antitrust laws while being able to protect competition and consumers alike. It is not enough, however, to re-task industrial era federal agencies to oversee the digital giants. These agencies are full of dedicated professionals, but they operate on precedents and procedures built for another era when technology and innovation moved at a slower pace. In place of such industrial era muscle memory, we need a purpose-built federal agency with digital DNA.

Congress has traditionally created new expert agencies to oversee new technology platforms. Whether the Interstate Commerce Commission (railroads), Federal Communications Commission (broadcasting), Federal Aviation Administration (air transport), Consumer Financial Protection Bureau (finance), or any other of the alphabet agencies, the precedent is clear: new technologies require specialized oversight. In our report, “New Digital Realities; New Oversight Solutions” we conclude such regulation in the digital era warrants creation of a Digital Platform Agency to establish public interest expectations that promote fair market practices while being agile enough to deal with the rapid pace of digital technology.

Such an agency should be governed by a new congressionally established digital policy built on three pillars:

* Risk management rather than micromanagement: rigid industrial era utility-style regulation is incompatible with today’s rapid pace of technological change. Regulation should be based on risk-targeted remedies focused on market outcomes.
* Restoration of common law principles: for hundreds of years common law has required those providing services to anticipate and mitigate harmful effects (a “duty of care”), as well as providing access to essential services (a “duty to deal”). Oversight of Big Tech need do nothing more than reinstate such expectations.
* Agile regulation: in lieu of top-down dictates, the new agency should be the forum to involve the industry in developing enforceable behavioral standards similar to fire and building codes. Such codes introduce innovation-promoting agility to the oversight process while protecting consumers and competition.

The existing agencies of government are based on statutes and structures that reflect the relatively stable markets and relatively stable technology of the late industrial era. These policies and procedures, however, have been ambushed by the digital future.

The solution to the public interest challenges posed by Big Tech is to embrace its differences and enable subject matter experts to substitute the public interest for corporate interests. While antitrust enforcement is important, the companies can no longer be permitted to make their own rules. It is time for purpose-built federal oversight of the dominant force in our lives and our economy.

### OFF

#### T Per Se

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

Kerry Lynn Macintosh 97, 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?,” 38 Wm. & Mary L. Rev. 1465, Lexis

These new and revised articles reflect a strong trend toward choosing default rules 4 that codify existing business practices. 5 [FOOTNOTE 5 BEGINS] 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). [FOOTNOTE 5 ENDS] This is particularly true of the recent revisions to Articles 3 (Negotiable Instruments), 4 (Bank Deposits and Collections) and 5 (Letters of Credit).

#### ‘Prohibition’ must ban anticompetitive practices without exception

E. Norman Veasey 95, Chief Justice on the Delaware Supreme Court, “Snell v. Engineered Sys. & Designs”, Supreme Court of Delaware, 669 A.2d 13, 17-18, 1995 Del. LEXIS 338, 9/13/1995, Lexis

The interpretation of the statute is aided by the synopsis to a recent amendment to Section 2825. This synopsis states [\*\*12] that the amendment "clarifies the limitations on the public use of the word engineering by those not authorized to practice engineering for the general public." 68 Del. Laws, c. 24 (emphasis added). Had the General Assembly intended to ban all uses of the word "engineer" by those not certified, it would have been more logical for it to have used the word "prohibition" (or the equivalent) rather than the word "limitations" in the synopsis. Section 2825 must be analyzed, therefore, with the understanding that it bans only uses of the term "engineer" which would "lead to the [\*18] belief that such person is entitled to practice engineering"--i.e., a misleading use of any derivative of the word "engineer."

#### That means the only topical mechanism is to apply per se illegality

John Paul Stevens 90, 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 these 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.

#### Vote:

#### 1) GROUND---key to link uniqueness and a unidirectional topic. Fringe standards dodge topic links, AND they can pick a broader but more permissive standard, making the topic bidirectional.

#### 2) LIMITS---too many possible standards, each requiring distinct answers, makes the topic unmanageably large.

## CASE

### Advantage 1

#### The plan spills over, decimating business confidence and overall economic recovery

Trace Mitchell 21, Policy Counsel at NetChoice, JD from the George Mason University, Antonin Scalia Law School, Former Research Associate at the Mercatus Center at George Mason University, BA in Political Science and Government from Florida Gulf Coast University, “Weaponizing Antitrust to Attack Big Tech Is a Bad Idea”, Morning Consult, 3/3/2021, https://morningconsult.com/opinions/weaponizing-antitrust-to-attack-big-tech-is-a-bad-idea/

From the House Judiciary report calling for dramatic antitrust reform to federal antitrust regulators and state attorneys general initiating lawsuits against Facebook and Google, government officials are once again calling for more aggressive antitrust enforcement to go after America’s tech businesses.

And while critics from all sides are reaching for any and all tools to go after “Big Tech,” weaponizing antitrust will only end up harming American consumers and the American economy at a time when we’re still trying to keep our heads above water.

Using antitrust to go after American tech won’t stop at Silicon Valley. Every sector of our economy will be at risk of politically motivated antitrust enforcement. And that won’t just hurt consumers searching for information on Google or shopping for products on Amazon — America’s economy could lose its global competitiveness amid a global pandemic.

In fact, the recent cases against Google from the Department of Justice and state attorneys general are a great example of just how this misuse of antitrust could harm Americans across the country and halt innovation in its tracks.

These suits conveniently forget how consumers benefit from Google’s suite of products in attempts to claim that Google unfairly monopolized the search and search advertising markets. Even worse, by claiming consumer harm, the government fails to truly grasp what consumers actually want.

You see, under the consumer welfare standard, antitrust enforcement is built to focus on what consumers want and whether consumers benefit. When the government argues Google is harming Americans because its products are preinstalled and even the default search engine on Apple, the government forgets that American consumers don’t think this is a problem.

The vast majority of search users prefer Google to its competitors. And through preinstallation, we get free-to-use products, quick searches and near-limitless information in an integrated system with the click of a mouse. It isn’t a problem; it’s a time saver. Further, because Google can reinvest in developing more user-friendly tech in a preinstalled ecosystem, we get interoperable apps that make our experience that much more convenient and intuitive. And even if consumers do want a different app, they can fix this problem with no heavy leg work or travel — just the swipe of a finger.

But if the government gets its way, the message could be disastrous for innovation: Even if your business benefits Americans and improves the user experience, the government can still put a target on your back. Not to mention, the government would be more likely to put a target on your back if you’re large and politically disfavored. Consumers across the internet and the American economy would be hurt and left without more accessible and more affordable technology as options.

We should be working to reward, not punish, innovation. Otherwise, the next Google may just decide it isn’t worth the time and effort.

Similarly, the Federal Trade Commission’s recent case against Facebook also puts the wants of policymakers above the actual interests of consumers.

Here, the government claims that Facebook harms consumers by acquiring and then integrating services like Instagram and WhatsApp. So harmful, the Federal Trade Commission says, that Facebook must divest from these services, even if that would harm American consumers, innovation and entrepreneurship for decades to come.

But this is not a case of consumer harm or bad behavior — Facebook’s acquisition of Instagram and WhatsApp helped ensure that consumers’ desires were prioritized. Through millions of investment dollars into research and development, Facebook turned good services into great services that consumers actively keep coming back to.

Through relentless product improvement, WhatsApp became a free-to-use platform and Instagram became one of the most successful photo-sharing social media apps in the world. In both cases, consumers benefited from convenient and state-of-the-art advancements. No longer do we have to pay to use messaging or search through multiple results to shop our influencer feed.

As it stands, the Federal Trade Commission case could splinter one successful tech company into multiple, less efficient organizations, setting a precedent that could affect every American industry. Consumers would not only lose Facebook’s free-to-use services but also potentially the next big clothing brand or the next hit microbrewed beer.

By impeding mergers, the sheer fear of potential antitrust enforcement would shutter the doors on small businesses from all sectors of the economy. So much investment in innovation is built on the possibility of being acquired by a larger player. Entrepreneurs and innovators from manufacturing, automotive and tech alike would be left with an unfortunate takeaway — succeed and benefit consumers, but not too much.

And with an economy still struggling to recover, the absolute last thing we need is to leave consumers without innovative and affordable choices, small businesses without key investment opportunities and our economy without a competitive edge globally.

But by weaponizing antitrust, we’ll get neither thoughtful intervention nor consumer benefits. Instead, the United States will lose ground to foreign competitors and American consumers will ultimately pay the price.

#### American tech dominance is high. Only antitrust threatens it.

Abbott ’21 [Alden Abbott, Paul Redmond Michel, Adam Mossoff, Kristen Jakobsen Osenga, and Brian O’Shaughnessy; March 10; the Federal Trade Commission’s General Counsel (2018-2021), adjunct professor at George Mason University, J.D. from Harvard Law School, M.A. in economics from Georgetown University; Retired Chief Judge and United States Circuit Judge of the United States Court of Appeals for the Federal Circuit; Law Professor at George Mason University; Law Professor at the University of Richmond; chair of Dinsmore’s IP Transactions and Licensing Group; the Regulatory Transparency Project, “Aligning Intellectual Property, Antitrust, and National Security Policy,” <https://regproject.org/wp-content/uploads/Paper-Aligning-Intellectual-Property-Antitrust-and-National-Security-Policy.pdf>]

The U.S. government has recognized that “5G is a critical strategic technology [such that] nations that master advanced communications technologies and ubiquitous connectivity will have a long-term economic and military advantage.”8 The U.S. has had a substantial technological edge over our military and intelligence rivals in foundational R&D for 5G and other next-generation technologies. U.S. companies have long been leaders in the development of previous generations of core mobile standards (2G, 3G, 4G, and LTE). This technological leadership has made it possible for U.S. companies to ensure the security and integrity of the hardware and software products that make up the backbone of the U.S. telecommunication systems. This leadership must continue for the U.S. government to more effectively anticipate potential security risks and take the necessary steps to protect national security.9

Despite this history of clear technological leadership, there are causes for concern. First, a very small number of U.S. companies have made the investments in the overwhelming majority of the R&D necessary to develop 5G.10 Historically, U.S. companies have heavily invested in R&D, which has propelled the U.S. into leadership positions in critical standard development organizations working on foundational next-generation technologies like 5G.11 U.S. companies like Qualcomm play a significant and important role in this process through innovation, patenting, and standard setting, but they are not alone in the global community of high-tech companies.12 Backed by their nations’ leadership, Chinese and Korean companies have also invested heavily in developing the core technologies for 5G.13

The willingness of U.S. companies to invest in R&D is threatened, however. The development of 5G is a bit like a race, with the companies who develop the best technology coming out ahead. While U.S. companies are savvy and talented competitors in this race, aggressive and unwarranted use of antitrust law by U.S. regulators, as well as by foreign antitrust authorities, threatens to put obstacles in these companies’ paths and hinder their ability to lead.

#### Antitrust destroys competitiveness and cements Chinese dominance.

Robert D. Atkinson 21, President of the Information Technology & Innovation Foundation, founding member of the Polaris Council who advices the U.S. Government Accountability Office’s Science, Technology Assessment, and Analytics team, Ph.D. in City and Regional Planning from the University of North Carolina, Chapel Hill, “Antitrust Can Hurt U.S. Competitiveness,” Wall Street Journal, 07-05-2021, <https://www.wsj.com/articles/antitrust-can-hurt-u-s-competitiveness-11625520340>

When it comes to technology and the economy, the U.S. is grappling with two contradictory goals: competing with China in advanced technology industries and ramping up antitrust enforcement against leading U.S. tech companies.

Antimonopoly advocates argue that we can have our cake and eat it too. Go ahead and break up big tech, they say; we can still compete with China. But there is a long history of U.S. antitrust actions against technology companies, and the results suggest regulators should exercise caution.

Consider the case of Western Electric, AT&T’s equipment subsidiary. By the early 1920s, it had factories in Austria, Belgium, Canada, China, Germany, France, Italy, Japan, the Netherlands, Russia and the U.K. But because AT&T relied on it exclusively for equipment, in 1925 the Justice Department threatened AT&T with breakup unless it divested Western Electric’s foreign assets, creating International Telephone & Telegraph and ultimately giving birth to robust foreign-owned competitors.

Antitrust regulators also pressured AT&T’s Bell Labs in the early 1950s to license its newly invented transistor technology. That spurred innovation because it helped emerging companies such as Texas Instruments and Fairchild. But because of government pressure, AT&T also licensed its technology, almost for free, to foreign companies. This eventually enabled Sony to take global leadership from the U.S. in consumer electronics, and it gave a major leg up to Europe’s Ericsson and Siemens.

The U.S. also used to be the global leader in television technology thanks to the Radio Corp. of America, the pathbreaker in color television. But in the 1950s the Justice Department required RCA to let other U.S. companies use its patents at no charge. RCA had long relied on licensing revenue, so it started making money where it could—in Japan. “RCA licenses made Japanese color television possible,” technology historian James Abegglen has written.

In 1972, the Federal Trade Commission brought a similar antitrust suit against Xerox, the world’s then-leading producer of copier technology thanks in part to its Silicon Valley-based innovation incubator Xerox PARC. Evidently unimpressed, the head of the FTC’s Bureau of Competition F.M. Scherer said he would be “dissatisfied if Xerox’s market share isn’t significantly diminished in several years.” To that end, the FTC forced Xerox to give up its blueprints and other discoveries, allowing an estimated 1,700 patents to make their way to Xerox competitors. Sure enough, Xerox lost half its market share—mostly to Japanese firms such as Canon, Toshiba and Sharp. Xerox’s only viable path to survival was to strengthen its alliance with Fuji, creating a new giant, Fuji Xerox.

Two years later in 1974, the Justice Department targeted AT&T again, forcing it to break up over the objections of Commerce Secretary Malcolm Baldridge that the suit jeopardized America’s leadership position. This was the death knell for Bell Labs, arguably the most innovative organization that has ever existed.

None of this is to say that antitrust authorities should be passive or turn a blind eye to anticompetitive behavior. But they should recognize that firms’ size can be an important factor in their ability to innovate. Rather than rely on market share as the alarm bell that signals the need for antitrust enforcement, regulators should focus more on firms’ conduct, and they should look first to behavioral remedies, not structural ones. Antitrust analysis should also consider that tech companies compete globally, not nationally, so cutting them down to size usually has significant economic consequences.

The Federal Communications Commission has provided a model for the behavioral approach by conducting a series of inquiries starting in 1970 to investigate the convergence of telephone and computing services and establish rules enabling competition among established and upstart players across sectors that are increasingly intertwined. U.S. courts also provided a model in judgments against Microsoft, which compelled it to let other companies more easily integrate their software into Windows.

As policy makers now consider competition issues related to today’s large technology firms, they would be well advised to learn from this history. With Chinese internet and tech companies waiting in the wings, aggressive antitrust actions against U.S. leaders run the risk of giving a new generation of foreign rivals the boost they need to dominate global markets, just as Japanese and European firms have benefited in the past.

#### It specifically destroys startups that they said are key to innovation.

Lauren Feiner 21, News Associate at CNBC, “Start-ups will suffer from antitrust bills meant to target Big Tech, VCs charge,” CNBC, 07-24-2021, <https://www.cnbc.com/2021/07/24/vcs-start-ups-will-suffer-from-antitrust-bills-targeting-big-tech.html>

When venture capitalists invest in a start-up, their goal is to make a large return on their spend. While most start-ups fail, VCs bank on the minority having large enough exits to justify their rest of their investments.

An exit can occur through one of two means: through an acquisition or by going public. When either of these events occurs, investors are able to recoup at least some of their money, and in the best case scenario, reap major windfalls.

About ten times as many start-ups exit through acquisitions as through going public, according to the NVCA. Venture capitalists say that number shows just how important it is to keep the merger path clear.

The top five tech firms aren’t the only ones scooping up tech deals. Amazon, Apple, Facebook, Google and Microsoft have accounted for about 4.5% of the value of all tech deals in the U.S. since 2010, according to public data compiled by Dealogic.

Reform advocates have pointed to some acquisitions, like that of Instagram by Facebook, as examples of companies selling before they have the chance to become standalone rivals to larger firms. But VCs say that’s often not the case.

“They all think they could be public companies one day, but the realities are, it’s not realistic for most of these companies to achieve the size and scale to survive the public markets as of today,” said Michael Brown, general partner at Battery Ventures.

While going public is a often the goal, VCs say it can be impractical for start-ups for various reasons.

First, some start-ups may simply not have a product or service that works long-term as a standalone business. That doesn’t mean their technology or talent isn’t valuable, but just means it could be most successful within a larger business.

Kate Mitchell, co-founder and partner at Scale Venture Partners, gave the example of a company called Pavilion Technologies that made predictive technology for manufacturers and agriculture, which sold to manufacturing company Rockwell Automation in 2007.

“That’s a company that just couldn’t get to escape velocity,” she said of Pavilion. “Because they were selling globally to large plants, we couldn’t figure out how to sell the technology cost effectively.”

It was still a useful technology, but needed the infrastructure of a larger business to accelerate further, she said. After Rockwell acquired it, it became incorporated into its offerings and several employees stayed for years.

Sometimes, she said, an acquisition is a last resort before bankruptcy, and at least helps investors get some of their money back.

“It is better that they’re sold for even 80 cents on the dollar than that they go bankrupt,” she said.

In addition, going public can be difficult. The IPO process is expensive and VCs said that small cap companies often struggle on the public market in part because of the lack of analyst coverage of such businesses.

Clate Mask, co-founder and CEO of venture-funded email marketing and sales platform Keap, said greater merger restrictions on the largest companies would likely “change the calculus” for start-ups. But the shift would not be between getting and acquired and going public. Instead, he said, it could make entrepreneurs think harder about whether to raise venture funding at all.

“When you have capital behind you, you can think and operate differently,” he said, adding that entrepreneurs can take more risks with that backing.

Loss of investment and innovation

Several VCs told CNBC they were worried about the trickle-down effect that merger restrictions on the largest firms would have on the entire entrepreneurial ecosystem.

Their fear is that if companies no longer have enough viable exit paths, institutional investors that back VCs — like endowments and pension funds — will shift their money elsewhere. In turn, VCs will have fewer funds to dole out to entrepreneurs, who may see less reason to take the risk of starting a new company.

The ultimate concern is for a loss of innovation, they say, which is exactly what lawmakers are hoping to fend off with merger restrictions on the largest buyers.

“If you restrict the potential to generate exciting rewards and returns from investment, entrepreneurs could find other things to do with their time,” said Patricia Nakache, general partner at Trinity Ventures.

Nakache said placing restrictions on the largest tech firms’ ability to make acquisitions could actually discourage entrepreneurs from building companies that compete with their core businesses. That’s because many entrepreneurs like having a back-up plan incorporating possible acquirers if they can’t go public. With greater uncertainty about whether the Big Tech companies could be potential buyers, they may seek to build businesses outside of the largest players’ core offerings, she said.

VCs also warned that without the biggest players in the mix, sale prices for start-ups would drop significantly.

#### No solvency---best studies prove size doesn’t impact competitiveness, and separation decreases global influence.

Mark Jamison 20, Nonresident Senior Fellow at the American Enterprise Institute, Gunter Professor of the Public Utility Research Center at the University of Florida’s Warrington College of Business, Ph.D. in Economics from the University of Florida’s Warrington College of Business, “Breaking up Big Tech will not help the US innovate or compete with China,” American Enterprise Institute, 08-19-2020, <https://www.aei.org/technology-and-innovation/breaking-up-big-tech-will-not-help-the-us-innovate-or-compete-with-china/>

Facebook and Google have argued that breaking them up would damage US competitiveness with China. Vanderbilt Law Professor — and former advisor to Sen. Elizabeth Warren (D-MA) — Ganesh Sitaraman and former Federal Communications Commission Chairman Tom Wheeler (now at the Brookings Institution) take exception. Sitaraman argues in Foreign Affairs that breaking up Big Tech companies would bolster US national security. Wheeler writes that US tech innovation would improve if Big Tech companies were required to make their data assets available to rivals.

It is an open question how regulation might affect whatever competition there might be between the US and China, but Sitaraman and Wheeler are wrong. Sitaraman seems unaware of the five decades of academic research showing that market structure — the number and relative sizes of firms in a market or industry — does not determine the amount of innovation. Wheeler also seems unaware of how markets for ideas work. Here are my explanations.

Regulation and market structure

Both Sitaraman and Wheeler assume that government regulation can define an industry’s market structure, but they are wrong for two reasons.

First, more regulation results in industries having larger firms, not smaller ones, and it also lowers labor productivity. This has been confirmed in several economic studies (see examples here, here, and here). Regulations raise the cost of a firm being in business, which means firms need to be larger to cover those fixed costs.

The other reason is that the economics of social media, search, and e-commerce, etc. have determined today’s market structures. Breaking up the companies wouldn’t repeal these economic realities, so the current market structure would reemerge, except with possibly even larger firms.

Market structure and innovation

Sitaraman assumes that less concentrated markets are more innovative. Decades of scholarly research have shown that this isn’t the case.

In the mid-20th century, some economists believed that monopoly markets would produce more innovations than competitive markets. The argument was that a monopoly could capture more profits from innovation than a firm in a competitive market could, so monopoly markets gave more innovation.

But in the 1960s, economists began testing the hypothesis. Studies examined whether an individual firm’s size or the relative sizes of firms in an industry affected research and development or innovation. The Organisation for Economic Co-operation and Development recently released a paper summarizing the research. The summary finds that the relationships vary over time and across industries, so the best conclusion is that firm size and market structure cannot be used to affect innovation.

Ideas and data

Wheeler believes that innovation comes from companies analyzing data and selling products. Actually, in the tech space, more and more innovations are coming from decentralized, small-scale innovators. This pattern was discovered in academic research about 20 years ago and still holds.

What is happening is that innovators develop ideas for products and demonstrate their potential value. In a few instances, such as in the case of Facebook, the innovator forms a business and succeeds. But more often than not, the innovators sell their company or at least their product to an enterprise that has a proven business model. This was probably the situation with Instagram, which had a great idea and a weak business model at best before selling to Facebook, which then turned the idea into a profitable business.

Wheeler also appears to believe that if a company is unable to uniquely profit from the data it captures, the company will capture extensive data anyway. I have heard many times the argument that profits don’t matter, such as in the net neutrality debates. But the arguments are always made by people who care very much about the profitability of their retirement savings. So I think they know they are wrong.

Market structure and geopolitical competitiveness

Sitaraman also believes that smaller firms would be less likely to want to enter the Chinese market and would thus avoid being compromised by China’s influence. This might be true, but if it is, then it is also true that the US firms would be less active in all global markets, which would decrease US influence. Since part of the rivalry between the US and China is likely to include global influence, retracting US companies from the global economy would certainly decrease US competitiveness.

What’s to be done?

Clearly, some writers need to spend more time reviewing the literature: The flaws in Sitaraman’s and Wheeler’s analyses were refuted long ago by scholarly research. It would also be helpful if advocates for hands-on control of companies were humbler in their beliefs that they fully understand businesses and can redesign them at will.

#### Big companies are inevitable

Steve Denning 21, Senior Contributor at Forbes, formerly held management positions at the World Bank, “Why Biden’s War On Big Tech Is Misguided,” Forbes, 07-11-2021, https://www.forbes.com/sites/stevedenning/2021/07/11/why-bidens-attack-on-big-tech-is-misguided/?sh=42b3681261e0

We are living in a new economic age—the age of digital—and digital giants are an emblem of this fact. They reflect the immense benefits and revenue that digital can generate, in the exponential growth that digital enables and in the competitive threat they represent to traditionally managed firms.

Bigness is an inherent in the digital economy. “In markets with highly scalable assets,” write Haskell and Westlake write in Capitalism Without Capital, (Princeton, 2017) “the rewards for runners-up are often meager. If Google’s search algorithm is the best and is almost infinitely scalable, why use Yahoo’s? Winner-takes-all scenarios are likely to be the norm.” Breaking up Google into ten little Googles, requiring users to go to a different little Googles for different kinds of searches, would destroy much of the ease and convenience of Google.

#### Separation fails---there is no solution that preserves the incentive to innovate.

Gilbert ’21 [Richard J; March; Economics Professor at UC Berkeley; Information Economics and Policy, “Separation: A Cure for Abuse of Platform Dominance?” vol. 54]

There is no single formula to address concerns about the alleged abuse of market power by these platforms. Separation is an alternative to behavioral remedies of the type imposed by the European Commission in the Google Shopping case. These behavioral remedies have accomplished little to restore competition that the EC alleged was harmed by Google’s search algorithms. Separation has the potential to be a more effective remedy to restore competition allegedly harmed by the conduct of a platform owner, but separation raises many questions, including the platforms that require separation, the services that must be separated, the terms and governance of separation requirements, and procedures to evaluate appeals from line-of-business restrictions.

Structural separation is administratively feasible for some platform activities, such as the sale of merchant and proprietary products on Amazon’s online retail platform or the separation of Google’s Ad Manager from its other products and services. Some past acquisitions could be unwound. Functional separation is another alternative for some services. Amazon could establish an ethical wall between its proprietary sales and sales by independent merchants. However, structural or functional separation does not necessarily eliminate incentives for discrimination and Amazon’s use of non-confidential information obtained from sales of products on its platform can benefit consumers. For many other platform services, it is unlikely that structural or functional separation would prove to be more consumer-friendly than the line-of-business restrictions imposed on AT&T by FCC regulation and the 1984 Modified Final Judgment, which ultimately collapsed under the weight of numerous waiver requests and were replaced by the 1996 Telecommunications Act.

Courts have avoided structural remedies in part because they are difficult to implement and potentially harm corporate, shareholder, and labor interests (Waller, 2009). Yet the threat to dissolve a corporate structure can deter some future anticompetitive conduct precisely because it has disruptive consequences. For separation to serve this deterrence function, it should punish conduct that has clear and substantial anticompetitive effects and is likely to be repeated in the future absent the threat of dissolution. However, the deterrence benefit from structural or functional separation is limited for digital platforms. There is disagreement about the conduct by digital platforms that warrants harsh punishment and about effective remedies for allegedly harmful conduct. Although antitrust liability and remedy are separate concepts, it is questionable whether conduct should be liable for antitrust enforcement if enforcers cannot fashion a workable remedy for the challenged conduct (Melamed, 2009). Furthermore, many of the alleged concerns related to conduct by the major digital platforms are specific to particular business models and therefore punishments would not necessarily deter other types of conduct by the platforms.

Antitrust is a critical enforcement tool despite the difficulties of crafting effective remedies to restore or deter anticompetitive conduct. Merger enforcement can and should prevent platforms from increasing their market power or using acquisitions to eliminate nascent competitors. Monopolization law can address abuses of monopoly power, which can occur at many different levels in the chain of activities engaged by digital platforms. Along with antitrust oversight from properly designed consent decrees, the threat of monetary penalties can be an effective deterrent for anticompetitive conduct, but they must be large enough to make the conduct unprofitable, which is not the case today.

Antitrust enforcement cannot solve all of the problems raised by the concentration of market power in the digital economy. Public policy for the digital economy requires a mix of institutional approaches, including regulations, to promote competition in ways other than structural or functional separation, such as by requiring platforms to share data that create a barrier to new competition, along with stronger antitrust enforcement to address abuses of market power.

The most important lesson for structural separation of the major digital platforms gained from the history of telecommunications deregulation and other reforms is the trade-off between encouraging competition and innovation. The breakup of AT&T into separate functional and geographic units imposed by the 1984 MFJ promoted competition in some sectors of the industry that had been highly regulated. The decree arguably also stifled some innovations by erecting a wall between local telecommunications services, long distance, and enhanced information services when technology was eroding the distinctions between these services. There are no simple structural solutions that both preserve the incentive and ability of platforms to innovate and protect rivals from the consequences of that innovation.

#### China can’t gain tech dominance---other countries fill in, even without the US.

Michael D. Swaine 21, Director of the East Asia program at the Quincy Institute, Ph.D. in Government from Harvard University, “China Doesn’t Pose an Existential Threat for America,” Foreign Policy, 04-21-2021, https://foreignpolicy.com/2021/04/21/china-existential-threat-america/

Some observers claim that Beijing could somehow set standards in critical technology areas and install tech hardware around the world, to the extent that China would be able to relegate the United States to a permanently inferior status in both the commercial and military realms, thus threatening the very existence of the country. This is also highly unlikely.

Chinese companies are certainly participating in standard-setting in key areas, including 5G. But this process is highly competitive globally, and U.S., Asian, and European companies all hold major portions of the standards and the standard-essential patents that undergird the global technology ecosystem. There is little if any chance that Chinese companies could come to dominate this process. Many tech experts state that the most likely worst-case outcome of Chinese gains regarding standards and hardware would be a fragmented technology ecosystem that would impoverish all countries, not give China a level of power that would enable it to vanquish the United States.

More realistically, Beijing might over time exclude high-tech companies in the United States and other countries from its market, which might make it difficult for them to continue to grow and innovate. And Chinese financing power and supply chains could conceivably create a kind of “turnkey” solution in some developing countries that lock them into a Chinese tech ecosystem. But such developments would come nowhere near to constituting an existential threat to the United States, given the global reach of non-Chinese high-tech companies and the overall limited reach of any Chinese high-tech ecosystem in the developing world in the face of such competition.

#### Alt causes to digital authoritarianism---State department resources, OBOR.

#### And no impact---China isn’t trying and couldn’t scale up if they did.

Michael D. Swaine 21, Director of the East Asia program at the Quincy Institute, Ph.D. in Government from Harvard University, “China Doesn’t Pose an Existential Threat for America,” Foreign Policy, 04-21-2021, https://foreignpolicy.com/2021/04/21/china-existential-threat-america/

Finally, the latter set of supposedly existential normative or ideological threats consists of many elements, including Beijing’s possible overturning of the so-called global liberal international order, Chinese influence operations aimed at U.S. society, the export of China’s political values and state-directed economic approach, and its sale of surveillance technologies and other items that facilitate the rise or strengthening of authoritarian states. These threats all seem hair-raising at first glance. But while significant, they are greatly exaggerated and do not rise to the level of constituting an existential threat.

Beijing has little interest in exporting its governance system, and where it does, it is almost entirely directed at developing countries, not industrial democracies such as the United States. In addition, there is no evidence to indicate that the Chinese are actually engaged in compelling or actively persuading countries to follow their experience. Rather, they want developing nations to study from and copy China’s approach because doing so would help to legitimize the Chinese system both internationally and more importantly to Beijing’s domestic audience.

In addition, the notion that Beijing is deliberately attempting to control other countries and make them more authoritarian by entrapping them in debt and selling them “Big Brother” hardware such as surveillance systems is unsupported by the facts. Chinese banks show little desire to extend loans that will fail, and the failures that do occur are mostly due to poor feasibility studies and the incompetence and excessive zeal of lenders and/or borrowers. Moreover, in both loan-giving and surveillance equipment sales, China has shown no specific preference for nondemocratic over democratic states.

Even if Beijing were to attempt to export its development approach to other states, the actual attractiveness of that approach would prove to be highly limited. The features undergirding China’s developmental success are not replicable for most (if any) countries. These include a high savings rate; a highly acquisitive and entrepreneurial cultural environment; a state-owned banking system and nonconvertible currency; many massive state-owned industries that exist to provide employment, facilitate party control over key sectors, and drive huge infrastructure construction; and strong controls over virtually all information flows. Moreover, such a model (if you can call it that) is almost certainly not sustainable in its present form, given China’s aging population, extensive corruption, very large levels of income inequality, inadequate social safety net, and the fact that free information flows are required to drive global innovation.

Although China’s combination of economic reform policies and authoritarian political system has been around since the early 1980s, not a single nation has adopted that system either willingly or under Chinese compulsion. There are certainly many authoritarian states and fragile democracies on China’s periphery, but none of them were made that way by China.

### Advantage 2

#### No modeling---other countries see US antitrust as irrational, even if we get things right.

William E. Kovacic 15, Professor of Law and Policy at George Washington University, former General Counsel for the Federal Trade Commission, J.D. from Columbia University, “The United States and Its Future Influence on Global Competition Policy,” George Mason Law Review, Vol. 22, 2015, accessed via Lexis

One force that reduces the perceived legitimacy of the U.S. system is a widely accepted narrative, reflected in popular discourse and scholarly commentary, which portrays federal enforcement as irrational and unstable. 65 [\*1172] In this interpretation of modern U.S. enforcement history, antitrust policy undergoes recurring erratic shifts, with a small number of lucid intervals. For the most part, the irrationality narrative suggests that U.S. antitrust policy embraced unsupportable extremes of over-enforcement in the 1960s and 1970s, under-enforcement from 1981 to 1988 and 2001 to 2008, and achieved a sensible, balanced equilibrium only from 1993 to 2000 and 2009 to the present. 66 This accounting of antitrust history raises a troublesome question: why should any jurisdiction outside the U.S. respect a system that has lost its mind in roughly 41 of the past 55 years?

Policy-making in the irrationality narrative is sharply discontinuous, and the enforcement institutions have little evident capacity for self-assessment or correction over time. 67 Individual leaders count for everything, and institutional arrangements fail to discipline policy-making; 68 appoint a wise official and you get good results, but pick a zealot and the agency swerves toward frantic hyperactivity or utter indolence. The irrationality narrative is the public policy equivalent of an interpretation of Formula One racing that attributes the outcome in races entirely to the driver and treats the quality of the car and supporting team as largely irrelevant.

The irrationality account of U.S. enforcement history derives power from the stature of the narrators. Despite its unreliable reading of U.S. experience, the narrative's academic pedigree is daunting. Some of the greatest scholars in U.S. competition law have contributed to the story. If nonentities constructed the narrative, foreign observers would dismiss it out of hand. Instead, the narrative of irrationality and instability, often presented with the metaphor of a wildly swinging pendulum, originated and developed in the work of some of the field's most influential commentators. On many occasions outside the U.S., I have heard enforcement officials, practitioners, and scholars speak of the irrationality narrative as though it were an established truth. To these observers, the stature of the scholars who popularized the irrationality narrative invariably lends verisimilitude to the story.

As described below, the irrationality narrative of the U.S. system serves the aims of the right and the left in the debate about federal enforcement policy. For those who favor more intervention or less intervention, alike, the image of a system dangerously out of control serves to frame their own "sensible" policy proposals. By this technique, the narrator emerges as the voice of wisdom in a crazed policy environment.

[\*1173] The architecture of the modern irrationality narrative took shape in 1978 when Professor Robert Bork published the first edition of his transformative treatise, The Antitrust Paradox. 69 Professor Bork's central thesis was that "modern antitrust has so decayed that the policy is no longer intellectually respectable." 70 Each institution with a role in the implementation of the antitrust laws--the courts, the Congress, and the federal enforcement agencies--caused the decay. On antitrust matters, the Congress displayed the mentality of "the sheriff of a frontier town" who "did not sift evidence, distinguish between suspects, and solve crimes, but merely walked the main street and every so often pistol-whipped a few people." 71 With few exceptions, the courts embraced a view of antitrust law that "teaches the necessity for government intervention when no such necessity exists, and even when intervention is positively harmful." 72 Without regard to adverse economic effects, the DOJ and the FTC "must continually press on to fresh territory, seeking theories that broaden the application of the law and make violations easier to establish." 73

In Professor Bork's telling, the implementing institutions were capricious, reckless, or bent upon self-aggrandizement. 74 As a group, the institutions have gone mad, for they have no tendency or, perhaps, any capacity to reflect on their experience, identify error, and make corrections. 75 Instead, the U.S. antitrust system had "an inbuilt thrust toward greater severity or further extension." 76 Nothing, Professor Bork warned, seemed able to contain the destructive march of intervention: "This process has no obvious stopping point." 77

The image of a system out of control served Professor Bork's rhetorical aims; it showed the urgency for reform by presenting a system in shambles. The image also distorted (more mildly, misread) current trends substantially. When The Antitrust Paradox appeared in January 1978, each institution Professor Bork rebuked--the Congress, the courts, and the federal enforcement agencies--had taken steps to rebalance the antitrust system. 78 The adjustments came slowly, but they were coming, nonetheless. If Professor Bork had acknowledged that the seemingly out-of-control institutions [\*1174] were making important adjustments, his book would have lost some (maybe much) of its force.

A second decisive contribution to the irrationality narrative came in the late 1980s and early 1990s from one of Professor Bork's harshest critics, Professor Robert Pitofsky. Though Professor Pitofsky scorned Professor Bork's calls for a vast retrenchment of antitrust enforcement, he used his own version of the irrationality narrative while setting out a more interventionist agenda. 79 Describing federal merger enforcement from the early 1960s through the early 1990s, Professor Pitofsky wrote:

American antitrust policy has tried to balance possible threats to competition against merger benefits, but remarkably, has careened from one extreme to another in this balancing process. For example, the United States had by far the most stringent antimerger policy in the world in the 1960s, striking down mergers among small firms in unconcentrated markets. By the 1980s, the United States maintained an extremely lenient merger policy, regularly allowing billion dollar mergers to go through without government challenge, even when they involved direct competitors. 80

Like Professor Bork in The Antitrust Paradox, Professor Pitofsky presented a system run amok. Federal policy "careen[s] from one extreme to another," like an automobile with an impaired driver swerving across the centerline. 81 No institutional feature in the U.S. system provided needed balance. 82

In Professor Pitofsky's version of the narrative, the solution to the aberrant enforcement behavior came by way of appointments--including his own--to the federal agencies. 83 In 2002, after chairing the FTC from 1995 to 2001, Professor Pitofsky said federal merger control by the late 1990s "stopped careening from aggressive enforcement based in some part on a populist ideology to minimalist enforcement based on hostility to the core assumptions of antitrust . . . ." 84 Under the Clinton Administration's appointees, federal policy stopped "careening," avoiding the extremes of an overheated, populist-inspired activism of the 1960s and the "minimalist" program of the Reagan presidency with its "hostility to the core assumptions of antitrust." 85

For Professor Pitofsky, like Professor Bork, the narrative of a system gripped by irrational, erratic variations in behavior served an important instrumental purpose. The portrayal of a regime swinging wildly between extremes allowed Professor Pitofsky to claim the role--as suggested in the [\*1175] title of his 2002 article, Antitrust at the Turn of the Twenty-First Century: A View from the Middle--of the wise centrist. 86 Professor Pitofsky underscored the rationality of his own program by juxtaposing it against the irrationality of his predecessors. 87 Clinton Administration antitrust officials strove to claim the mantle of wise centrism. 88 As the following passage from an essay in The Economist in 2000 shows, they framed their program as a sensible middle way between the irrational interventionism of the 1960s and 1970s and the inactivity of the 1980s:

It helps that [DOJ Assistant Attorney General Joel] Klein and his counterpart at the FTC, Robert Pitofsky, have been deliberately low-key in talking about their activities, claiming that they are modest and in the legal mainstream of legal thought and economics. They concede that they have been more interventionist than the laissez-faire ideologues of the Reagan years, but they say they are nothing like the trust-busting zealots of the 1960s who saw evil in every big company or merger. 89

In reporting on the Clinton administration strategy, The Economist presents the federal enforcement policy just as the DOJ and FTC leadership wished: a "modest" and "mainstream" program standing between two eras of irrationality; one guided by "trust-busting zealots" and the other led by "laissez-faire ideologues." 90

Taken on its own terms, the irrationality interpretation of U.S. antitrust history provides a grim picture of the American system. One should be wary of a system that intermittently has lucid policymaking intervals, but its normal state is irrationality. If everything depends on the appointment of wise centrists to head the agencies, nothing good can happen when the [\*1176] choice of DOJ or FTC leadership is not so inspired. Because personalities are decisive, when the wise centrists depart, nothing in the institutions themselves can prevent the system from returning quickly to bad old habits.

As the quotation presented above illustrates, the wise centrism story acquires force if periods of thoughtless extremism bracket the sensible policy era. As developed by Professor Pitofsky and other antitrust scholars, the irrationality narrative derives its power from the system's tendency to embrace extremes. 91 Dramatic variations in performance demonstrate the absence of thoughtful policy-making. The narrator seems sane by comparison if all others appear to be deranged. Professor Pitofsky's article in 2002 about the future of antitrust policy used this framing technique. 92 He wrote that "during the Reagan years, there was no enforcement whatsoever against non-horizontal mergers and joint ventures, boycotts, minimum resale price maintenance, exclusive dealing contracts, tie-in sales, attempts to monopolize, and monopolization." 93

The passage quoted above highlights two recurring features of the irrationality narrative. First, Professor Pitofsky's statement uses sweeping, categorical language ("no enforcement whatsoever") to describe the period of extreme inactivity. 94 In the 2002 article and in other papers, Professor Pitofsky made strong claims of inactivity to portray the Reagan Administration antitrust program as a gross departure from good practice. 95 Second, the portrayal of events, though written with the utmost self-assurance, often cannot withstand fact-checking and is verifiably incorrect. 96

[\*1177] Professor Pitofsky has plenty of esteemed company in telling the U.S. irrationality story by making bold claims belied by actual enforcement experience. As noted above, Professor Bork's denunciation of antitrust policy circa 1978 ignored important doctrinal and policy developments that fit poorly with a system out of control. 97 The story of horrible decay is less compelling if the asserted flaws are not so horrible. Other accounts of U.S. enforcement experience by the field's leading commentators include claims that during the Reagan Administration "merger enforcement ground to a halt," 98 that antitrust "[e]nforcement ceased," 99 and that the DOJ and the FTC "did not file a single vertical case." 100 Why did the U.S. system lose its mind? The answer, say two of America's best scholars, is that "extremists" took control of the enforcement agencies. 101 Experts in the U.S. might excuse these descriptions of federal enforcement as careless hyperbole. In my experience, foreign observers are more likely to take them at face value.

The story of U.S. antitrust policy in the 1980s is considerably more complex. Crucial factual tenets of the irrationality narrative are unsupportable. Merger enforcement never halted, 102 enforcement never ceased, 103 and vertical restraints cases (at least a few) still appeared. 104 To look beyond the categorical statements of inactivity and recount enforcement developments [\*1178] accurately would reveal a more thoughtful enforcement program at work. There is a major difference, for example, between saying a merger enforcement program has disappeared, and saying that boundaries have been reset, but policed actively.

Would a fuller, more accurate account of federal enforcement trends over time reveal intense debate about the proper direction of policy? Of course. Has policy shifted across administrations, especially after a regime change? No doubt. Yet, liberated from the irrationality narrative's determination to accentuate the magnitude of changes and cast decision-makers as senseless extremists, a more faithful account of U.S. federal enforcement history would portray adjustments as more gradual and nuanced, in most cases, than the irrationality narrative suggests. The discipline imposed by institutional arrangements, not simply patterns in leadership appointments (whether irrational officials or prudent centrists), would account for refinements over time.

#### Everyone looks to the EU, not the US for antitrust.

Bradford et al. 19, Anu Bradford, Henry L. Moses Professor of Law and International Organization at Columbia Law School; Adam Chilton, Professor of Law and Walter Mander Research Scholar at the University of Chicago Law School; Katerina Linos, Professor of Law and Faculty Co-Director in the Miller Institute for Global Challenges and the Law at the University of California, Berkeley School of Law; Alexander Weaver, Associate at Linklaters LLP, J.D. from Columbia Law School, “The Global Dominance of European Competition Law Over American Antitrust Law,” Journal of Empirical Legal Studies, Vol. 16, 2019, https://scholarship.law.columbia.edu/faculty\_scholarship/2513

The Europeanization, rather the Americanization, of global competition law is notable because the US has a considerably longer history of using competition law. Indeed, the United States the Sherman Act long before the EU and its competition laws were conceived. The US has also been an influential leader in competition economics and law alike, spearheading early efforts to adopt competition law regimes in many parts of the world—including in the EU. However, after the EU adopted its own competition law, it eventually eclipsed the US as the leader in providing the template for the global expansion of competition laws, marginalizing the US’s global influence in the decades that followed. In other fields, such as corporate law, thousands of articles have been devoted to debating whether there’s a race to the top or the bottom, what mechanisms drive the race, whether shareholders or managers benefit, and more (e.g., Romano 1987; Roe 2003).11 However, because the literature on the world’s competition regimes is in its infancy, a key contribution of this article is to document that there exists a global regulatory race in the area of competition law, and that the EU is clearly winning it.

We also advance a set of explanations for why the European model has come to predominate. First, a set of “push factors” explains the EU’s ability to effectively externalize its laws. The EU’s competition law dominance can be partially traced to the EU’s conscious efforts to expand its regulations through a myriad of trade, association, and other political agreements. The EU has required many countries seeking greater market access or closer political association to adopt competition laws. In addition, as Bradford (2012) outlines in “The Brussels Effect,” the EU has the greatest ability to shape foreign jurisdictions’ laws given that the companies often apply the most stringent regulatory standard—typically the EU standard—across their global operations to capture the benefits of uniform production while maintaining compliance worldwide. Second, the EU competition law model also spreads due to strong “pull factors.” In many countries, domestic politics are more conducive to EU-style competition laws, which accommodate more diverse policy goals and defer less to markets and more to governments’ ability to correct market failures. Another major pull factor is the EU’s tendency to promulgate more precise and detailed rules, making them easier to copy in the absence of technical expertise in the adopting country.

Our findings have several implications. First, our results offer evidence of the EU’s outsized influence in regulating global markets. This narrative stands in contrast to many critics who have declared the end of the EU’s influence and ability to shape outcomes globally as its relative economic and political power wanes. Second, our results suggest that, although the law and economics movement may have had a large influence on the development of America’s antitrust law and policy, it may have had a more modest influence on the development of competition policy in the rest of the world (Bradford et al. 2020). Third, and more generally, our analysis illustrates the ability of a single jurisdiction to attract countries with starkly different characteristics into its orbit, vesting it with a sizable regulatory influence that spans economic, linguistic, and political boundaries. Out of this dynamic, a new form of globalization of norms emerges—globalization emerging as a result of EU’s unilateralism as opposed to multilateralism. Finally, beyond illuminating the regulatory influence in the competition law context, our results speak more broadly to the literature on regulatory competition, diffusion of norms, and legal transplants. Competition between the European and US regulatory schemes has been prominent in many areas, ranging from privacy (Schwartz 2013; Schwartz and Peifer 2017), to chemicals (Scott 2009), to finance (Gadinis 2010), to discrimination law (Linos 2010), to name but a few. Documenting the specific pathways through which the EU has succeeded in externalizing its models thus contributes to a broad range of fields and advances the diffusion literature, which to date has primarily focused on countries receiving foreign models and not on the entities promoting them.

#### Alt causes---countries other than the US dominates

Michael Kwet 20, Visiting Fellow of the Information Society Project at Yale Law School, “A Digital Tech New Deal to break up Big Tech,” Al Jazeera, 10-26-2020, https://www.aljazeera.com/opinions/2020/10/26/a-digital-tech-new-deal-to-break-up-big-tech

After “restoring competition” to the tech economy, those who will dominate as “new market entrants” on the “open” internet will still be companies from richer countries: the US, European powers, China, etc, not low-income countries like Zimbabwe, Bolivia or Cambodia. And within low-income countries, the well-resourced classes will capture any new market opportunities that an antitrust push in the US may open.

# 2NC---Round 6

## Multilat CP

## Regulation CP

## Advantage 1

### o/v

#### Decline turns the case---agencies will cease enforcement during the downturn

Anika Dandekar 21, Political Science at University of California, San Diego, “Politics of Antitrust Enforcement: The Influence of Ideology and Party Control on Regulatory Behavior”, Senior Thesis, 3/29/2021, https://polisci.ucsd.edu/undergrad/departmental-honors-and-pi-sigma-alpha/A.Dandekar\_Senior-Honors-Thesis.pdf

1.3.3 Bureaucratic Approach

Some scholars have tried to explain varying antitrust by changing makeup or preferences of regulatory agencies themselves.

Some suggest that the agencies respond to external factors. Amacher et al. (1985) examined FTC enforcement of the Robinson- Patman Act and found that it was influenced by economic conditions, decreasing during business contractions and increasing during periods of expansion. They suggested that this means "the FTC moves to cushion producer losses" during hard economic times, but transfers "wealth to consumers" during economic upswings. Lewis-Beck (1979) found that while small increases in the division's budget did not reduce anticompetitive behavior, a major increase in the division's budget might significantly stem merger activity because of a "threshold effect”.

### U---Yes Biz Con---2NC

#### Business confidence is strong, driving economic recovery

Michael Halloran 9-14, M.B.A. from Carnegie Mellon University, Former Aerospace Research Engineer, Equity Strategist; Janney, “Despite Potential Headwinds, Key Labor Market Indicators Bode Well for the Economy,” https://www.janney.com/latest-articles-commentary/all-insights/insights/2021/09/14/despite-potential-headwinds-key-labor-market-indicators-bode-well-for-the-economy

However, we remain encouraged by the recovery that has been unfolding since the economy began reopening. We continue to see improvement in important cyclical sectors of the economy while consumers are historically healthy and still have pent-up demand. Business confidence has rebounded with strong corporate profits that should support further capital spending and hiring (there are now more job openings than there are unemployed people by a record amount).

We expect to see further improvement in the international backdrop, supported by unprecedented fiscal and monetary stimulus and accelerating rates of vaccination. Although the impact of the Delta wave is still being felt, recent evidence confirms the effectiveness of vaccines in limiting deaths and hospitalizations. With the pace of vaccination now picking up in the areas most impacted by this wave—Asia and Australia—the case for fading headwinds leading to improving economic growth later this year remains positive.

The signals from financial markets themselves remain positive. Despite consolidating last week, stocks remain near record highs while the 10-year Treasury remains well above the lows of earlier this summer when concerns about Delta first emerged.

These factors support our view of a durable economic recovery from the pandemic that should continue supporting stock prices. A healthy labor market is a critical element for a sustainable recovery that supports profit growth and last week’s news from the labor market remains encouraging.

### Link---2NC

#### Even targeted antitrust sends a broad signal of aggressive overregulation

Raymond J. Keating 21, Chief Economist for the Small Business & Entrepreneurship Council and Adjunct Professor in the MBA Program at the Townsend School of Business at Dowling College, “Antitrust Fictions (and Actions) Will Have Real, Negative Economic Consequences”, SBE Council, 6/18/2021, https://sbecouncil.org/2021/06/18/antitrust-fictions-and-actions-will-have-real-negative-economic-consequences/

It needs to be understood that while supposedly targeting so-called “Big Tech,” these intrusive regulations and substantial costs would fall on competitors as well, thereby actually discouraging competition in technology markets. For good measure, moving ahead with his kind of hyper-antitrust regulation of tech firms lays the groundwork for doing so in other industries, such as in retail, energy, health and medical sectors, and so on. This is what Senate anti-trust crusaders hope to accomplish.

The message is clear: Beware entrepreneurs, businesses and investors if you become too successful or if you cross certain political constituencies. The government stands ready to punish you via intrusive and costly regulation.

#### The plan’s abrupt expansion creates major uncertainty that disrupts business planning

Alden F. Abbott 21, Senior Research Fellow at the Mercatus Center of George Mason University, J.D. from Harvard Law School and M.A. in Economics from Georgetown University, “Competition Policy Challenges for a New U.S. Administration: Is The Past Prologue?”, Concurrences: Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

12. But recent suggestions put forth in an October 2020 House Judiciary Subcommittee on Antitrust majority report (HJSMR) [12] and in a November 2020 report by the Washington Center for Equitable Growth (WCEGR) [13] (coauthored by various prominent critics of Trump administration antitrust enforcement who served in the Obama administration) would go far beyond application of existing antitrust law to big digital platforms. In particular, the HJSMR proposes taking a highly regulatory approach to digital platforms, including imposing “[s]tructural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” [14] The WCEGR also endorses the use of rulemaking (and, in particular, FTC rulemaking) to tackle significant problems of competition. [15] Rushing into rulemakings on platforms (especially without a clear showing of market failure) poses major risks, however, including, in particular, the creation of disincentives to invest in platform-specific innovation; and the interference with potential efficiency-seeking transactions by platform operators and suppliers of complements (in light of inevitable government second-guessing of platform-related business decision-making). The JBA antitrust team may wish to keep such potential costs in mind in setting competition policy vis-à-vis digital platforms.

13. To address the perceived growth and abuse of market power that are said to afflict the American economy, the HJSMR and WCEGR have also proposed to amend and thereby “toughen” the core antitrust statutes, to alter burdens of proof in litigation, and to bestow a substantial increase in resources on federal antitrust enforcers. [16] The problem of scarce agency resources has long been highlighted by enforcement agency leadership, and certainly merits attention. The call for dramatic systemic change in antitrust enforcement norms, however, should be approached cautiously, with a jaundiced eye. In our common-law-based antitrust system, a major disruption to long-familiar statutory schemes would generate major uncertainty regarding antitrust enforcement principles and substantially disrupt business planning for an indeterminate amount of time. Many welfare-enhancing transactions could be sacrificed. The harm to consumer and producer welfare due to lost socially beneficial business initiatives would be hard (if not impossible) to measure, but nonetheless real. It is certainly possible that such losses would outweigh (perhaps substantially) whatever welfare gains might flow from statutory enforcement “reform.” In other words, it should not casually be assumed that “more and different” antitrust would be an unalloyed benefit. As in all other areas of law enforcement, likely costs as well as purported benefits should be central to the antitrust public policy calculus. (Costs would include, of course, the likelihood and magnitude of “false positives” under the new enforcement regime, not just the reduction in socially beneficial transactions.)

### AT: Aff S/ Econ

#### Bolstering consumer demand is key and their ev says that’s unlikely to last

UK is BLUE

1AC Manyika ’21 [James; Chair and Director @ McKinsey Global Institute; and Michael Spence; Philip H. Knight Professor and Dean Emeritus @ Stanford University's Graduate School of Business; “A Better Boom: How to Capture the Pandemic's Productivity Potential,” *Foreign Affairs* 100(4), p. 107-117; AS]

Surprising as it may seem, out of the deepest economic crisis since World War II could come a new era of productivity gains and prosperity. Whether that happens will depend largely on the decisions that governments and businesses make as they prepare to exit the pandemic in the coming months. In the short and medium term, the prospects for increased productivity-and prosperity-are encourag2 ing, as the United States and other countries spend heavily on economic recovery and businesses reap the benefits of digitization. But the outlook is less optimistic over the long term, since governments cannot spend indefinitely and consumer and investment spending may not fill the gap.

Governments and businesses must therefore seek to create the conditions for sustained productivity growth and prosperity, in particular by facilitating the diffusion of technological and organizational innovations and bolstering consumer demand. Out of a major global crisis could come a major jolt of productivity growth-but only if policymakers and business leaders make the most of this moment.

THE PRODUCTIVITY PARADOX

The history of productivity growth can be understood as a succession of technological revolutions, from the steam engine to the computer. Each offered the promise of accelerated productivity and economic growth, and each eventually delivered. But there has often been a delay between innovation and adoption, and another between adoption and economic impact. The economist Robert Solow summed up these apparent discrepancies in a 1987 article in The New York Times Book Review, writing, "You can see the computer age everywhere but in the productivity statistics." His formulation became known as "the Solow paradox."

But then came the revolution in information and communication technologies between 1995 and 2005, a decade in which the Solow paradox was temporarily resolved. Widespread adoption of these technologies was accompanied by a simultaneous acceleration in productivity, which grew at an annualized rate of 2.5 percent in the United States, a full percentage point faster than the rate between 1970 and 1995. Companies invested heavily in information and communication technologies and reorganized their operations and managerial practices around them. They did so out of the desire to gain a competitive edge, but also because of relatively robust consumer demand for their products.

Productivity growth accelerated in several sectors as a result, driving growth in the U.S. economy as a whole. This period was characterized by an unusual combination of large spurts in productivity growth in a few big sectors employing many workers, such as retail and wholesale, and even larger productivity growth in smaller sectors, such as those that produced computers and electronic products. In both bi and small sectors, there was a virtuous cycle of employment growth to meet demand and even faster growth in the value of the output from these sectors. The value of outputs across all sectors of the economy grew by 3.4 percent per year between 1995 and 2005, whereas the total number of hours worked grew by only 0.9 percent per year.

But the boom did not last. Between 2005 and 2019, annual productivity growth in the United States fell by more than half, to 1.0 percent. In the aftermath of the 2008 global financial crisis, from 2010 to 2019, it was even lower, at 0.6 percent. Unlike the United States, z European countries had not experienced rapid productivity gains in the 1995-2005 period, but they did experience the postcrisis decline. r Between 2010 and 2019, annual productivity growth fell below one percent in France, Germany, and the United Kingdom.

The Solow paradox was back. After a decade of rapid productivity gains, the information technology revolution had reached a point of diminishing returns. But the next wave of technology-the digitization of processes, big data and analytics, cloud computing, the Internet of Things-was not yet ready to fill the gap. Despite early breakthroughs in image recognition and natural language processing, few firms had begun to make use of artificial intelligence technologies, and digitization was proceeding slowly. We estimated, based on a sector-by sector assessment, that in 2015, the United States had reached only 18 percent of its digital potential and Europe had reached only 12 percent. Moreover, a gap had opened up between the firms that were digital leaders and those that were digital laggards-a gap that other researchers found was correlated with a gap in labor productivity.

This gap in technology adoption was widening at a time of weak consumer demand for goods and services, in large part due to the aftereffects of the financial crisis. Firms scaled back their investments, and fewer new businesses were created. Making matters worse, the share of income that flowed to top earners and the owners of capital increased, while the share that went to labor decreased, further weakening demand.

Across the United States and Europe, the vast majority of sectors experienced declines in productivity growth. Only four percent of all sectors recorded productivity jumps in 2014, compared with an average of 18 percent of sectors that achieved substantial increases in productivity in the previous two decades. Growth in gross value added-a measure of a firm's or a sector's contribution to GDP-declined from 3.4 percent annually between 1995 and 2005 to 1.8 percent between 2005 and 2019. Growth in hours worked remained roughly unchanged, at 0.7 percent, throughout both periods.

These two very different periods of economic activity in the United States reveal much about the underpinnings of productivity growth. It stems first and foremost from the widespread adoption of technological innovations, especially general-purpose technologies such as electricity and the Internet. But it also stems from the managerial innovation and reorganization of functions and tasks that occur when firms adopt new technologies. Both of these processes must spur leaps in productivity growth in many sectors, or at least in a few large ones, so that productivity jumps in the economy as a whole. Finally, adoption and reorganization within and across sectors must be driven by competition, which incentivizes firms to innovate and helps spur technological diffusion.

Not all productivity growth is created equal, however. Productivity growth can be achieved through gains in the volume or value of outputs for a given number of hours worked, or it can come about as a result of a reduction in hours worked for a given output. Often both happen at the same time. But it is when the former exceeds the latter that a virtuous cycle is created in which innovation and investment generate growth in employment and wages, which in turn generates demand for increased (or more valuable) output. This is what happened during the period from 1995 to 2005. When the latter source of productivity growth exceeds the former, however, a vicious cycle results in which firms reduce labor costs faster than they grow the volume or value of their outputs, which in turn puts pressure on employment and incomes.

POST-PANDEMIC POTENTIAL

The pandemic has primed advanced economies for another period of rapid productivity growth. It is too early to say for sure whether such growth will be the product of a virtuous or a vicious cycle, but signs point to the former. Despite uncertainty, stress, and plummeting economic activity in the early days of the covID-19 crisis, many firms boldly deployed and used new general-purpose technology-especially digital technology-in ways that have driven virtuous productivity gains in the past. In October 2020, we surveyed 900 C-suite executives in various sectors and countries and found that many had digitized their business activities 20 to 25 times as fast as they had previously thought possible. Often, this meant shifting their businesses to online channels, since roughly 60 percent of the firms we surveyed experienced a significant increase in customer demand for online goods and services as a result of the pandemic.

Before the pandemic, e-commerce was forecast to account for less than a quarter of all U.S. retail sales by 2024. But during the first two months of the covID-19 crisis, e-commerce's share of retail sales more than doubled, from 16 percent to 33 percent. And that growth did not just reflect brick-and-mortar firms setting up shop online for the first time. Firms that were already highly digitized before the pandemic significantly expanded their online capabilities to meet the surge in demand. They also reorganized their operations, including their logistics, to complement what they were doing digitally-for example, by expanding their direct-to-home delivery capabilities.

Businesses also strove to become more efficient and agile. In Europe and North America, nearly half of the respondents to our survey said that they had reduced their operating expenditure as a share of revenue between December 2019 and December 2020. Two-thirds of senior executives said they had increased investment in automation and artificial intelligence, whether to help warehouse and logistics operations cope with higher e-commerce volumes or to enable manufacturing plants to meet surging demand. Many companies used technology to reduce the physical density of their workplaces or to enable contactless service-for instance, by expanding self-checkout in grocery stores and pharmacies and employing online ordering apps for restaurants and hotels. Other businesses, such as meatpacking and poultry plants, accelerated the deployment of robotics to reduce their need for labor. If there was one lesson from the pandemic, it was that digital capability and resilience go hand in hand.

But even as the arrival of vaccines has made it possible to imagine a return to relative normalcy in parts of the developed world, continued digitization and the adoption of other technological innovations promise to deliver still more productivity gains. The largest of these gains-roughly an additional two percentage points per year-could come in the health-care, construction, information technology, retail, pharmaceutical, and banking sectors. In health care, for instance, accelerating the use of telemedicine beyond the pandemic could drive incremental productivity growth for years. According to one recent U.S. poll, 76 percent of patients expressed interest in using telemedicine in the future, and industry experts project that the services for 20 percent of health-care spending could be delivered virtually-up from 11 percent before the pandemic. Other sectors, including automotive, travel, and logistics, show less-but still substantial-potential for productivity growth as a result of more flexible task scheduling, leaner operations, and smarter procurement.

Overall, these innovations and organizational changes could accelerate productivity growth by around one percentage point per year between now and 2024 in the United States and the six large European economies that we analyzed (France, Germany, Italy, Spain Sweden, and the United Kingdom). This gain would result in a productivity growth rate twice as high as the rate after the 2008 global financial crisis, and in the United States, it would expand per capita GDP by roughly $3,500 by 2024. That would be a stunning outcome, but it will hinge on continued technology adoption by firms and the maintenance of robust demand.

Even more productivity gains could be on the horizon thanks to other advancements. The accelerating revolution in biology, for instance, could transform sectors from health care and agriculture to consumer goods, energy, and materials. Biological innovation has already enabled the rapid development of new vaccines for covID-19. Equally impressive revolutions in energy could make possible the widespread adoption of solar and wind power, especially in light of recent progress toward better (and cheaper) batteries. Artificial intelligence is also advancing rapidly, but is still a long way from being deployed widely across companies and sectors. When and if that happens, the productivity gains could be enormous.

FOLLOW THE DIGITAL LEADER

Future gains in productivity, even those that boost overall growth, are likely to be uneven. We analyzed metrics that have the potential to unleash future productivity growth-such as research-and-development spending, revenue, capital expenditures (including digital expenses), and mergers and acquisitions-and found that especially in the United States, a small number of large superstar firms accounted for a disproportionately large share of the activity in all these categories. From the third quarter of 2019 to the third quarter of 2020, U.S. superstars (defined as the top ten percent of firms by profit) saw much shallower declines in capital expenditures and revenue than did other companies. During the same period, U.S. superstars spent $2.6 billion more on R & D than they did the previous year, while all other firms spent just $1.4 billion more.

If this investment, innovation, and technology adoption gap between superstars and the rest of the large firms and smaller, less profitable firms persists, any post-pandemic acceleration in productivity growth could fall short of its potential. Small and mediumsized enterprises have been hit disproportionately hard by the covID-19 crisis. As a result, many of them are unable to make big investments in future productivity and are therefore liable to fall even further behind the superstars. This is what happened in the aftermath of the 2008 global financial crisis, when only a minority of companies achieved productivity growth.

But there is room for cautious optimism about the ability of nonsuperstars to close some of the gap. Before the pandemic, the superstars tended to be highly digitized and innovative in their managerial approaches, as well as more profitable and resilient. They were therefore better placed to weather and even take advantage of the shock. But as the hardest-hit firms and sectors recover, and as early digital adaptors demonstrate the enormous potential of these technologies, many of the digital laggards could begin to catch up. Indeed, in another survey of executives we conducted in December 2020, about 75 percent of respondents in North America and Europe said they expected investment in new technologies to accelerate substantially between 2020 and 2024, up from 55 percent between 2014 and 2019. This expected uptick was similar across firm sizes.

Another reason for optimism is that in 2020, a year that saw the darkest economic days of the pandemic, 24 percent more new businesses were created in the United States than in 2019. Europe lagged behind the United States on this metric, with new business creation staying roughly flat in 2020 in France, Germany, and the United Kingdom and declining by more than 15 percent in Italy and Spain. If the American increase in business dynamism persists, however, it should contribute to more productivity growth.

Investment, innovation, and technology adoption are only one-half of the virtuous cycle of productivity growth, however. The other half is demand for the expanded output that results-in other words, income growth from increased productivity has to flow to people who will spend that additional money. In the short term, the outlook for demand is good, especially for countries that have made progress toward vaccinating their populations and could be among the first to open up their economies. Pent-up demand and savings from the pandemic could be unleashed all at once, resulting in a strong initial bounce in demand led by consumers. In the United States, President Joe Biden's $1.9 trillion economic support bill should push demand even higher.

In the medium term, the outlook for demand is also relatively solid, although it will depend on the size, deployment, and longevity of government spending. In the United States, Biden now has set his sights on a large infrastructure package. As his administration shifts its focus from economic relief to investment in productive areas, it could also increase productivity growth by raising demand to match potential supply, creating a high-pressure economy, that is, one with low unemployment and high growth. The outlook in continental Europe, where large-scale government economic support is harder to coordinate, is less certain. Nonetheless, the EU has put in place an unprecedented plan totaling some $900 billion to boost investment in the digital and green energy transitions.

But government spending on this scale will likely be time-limited, making the long-term outlook for demand less rosy.

### Econ---Internals---Biz Con---2NC

#### Studies prove biz con’s key AND depends on perceptions of political stability

Gabriel Caldas Montes 21, PhD Candidate in the Department of Economics at Fluminense Federal University and Fabiana da Silva Dr. Leite Nogueira, PhD in Economics from Universidade Federal Fluminense, Professor of Economics at the Universidade de Vassouras, “Effects of Economic Policy Uncertainty and Political Uncertainty on Business Confidence and Investment”, Journal of Economic Studies, April 2021, Emerald Insights

1. Introduction

The literature on business confidence is vast. If on the one hand some studies indicate that business confidence acts as a leading indicator of macroeconomic activity and influences the economic environment, on the other hand, some studies investigate the determinants of business confidence (Khan and Upadhayaya, 2020).

Although many advances have been made, the literature on the determinants of business confidence continues to evolve. Some studies analyze not only the effects of macroeconomic variables, but also the effects of other variables able to create (or reduce) uncertainties, such as corruption (Montes and Almeida, 2017) and monetary policy credibility (Montes, 2013; de Mendonça and Almeida, 2019). These studies reveal that low credibility and high levels of corruption reduce confidence due to the uncertainties that emerge.

Uncertain economic scenarios created by economic policy uncertainty undermine confidence, and affect the decision making of entrepreneurs, who, for example, postpone investment and employment decisions in order to gain more information (Bloom et al., 2018). Regarding the definition of economic policy uncertainty, Al-Thaqeb and Algharabali (2019) points out that “*Policy uncertainty is the economic risk associated with undefined future government policies and regulatory frameworks*” (Al-Thaqeb and Algharabali, 2019, p. 2). Baker et al. (2016) and Al-Thaqeb and Algharabali (2019) suggest that economic policy uncertainty delay economic recoveries during periods of recession as businesses and households postpone their decisions about investment and consumption expenditures due to market uncertainty. Nevertheless, regarding the effects of economic policy uncertainty on research and development (R&D) expenditures and innovation outputs, Tajaddini and Gholipour (2020) find positive relationships for a set of 19 developed and developing countries, thus, contradicting those that claim a negative association between economic policy uncertainty and R&D expenditure.

Since the work of Bloom (2009), and due to existing controversies in the literature, studies investigate the effects of uncertainty shocks on different economic variables (e.g., Baker et al., 2016; Bachmann et al., 2013; Colombo, 2013; Nodari, 2014; Donadelli, 2015; Gulen and Ion, 2015; Moore, 2017; Istiak and Serletis, 2018; Bahmani-Oskooee and Nayeri, 2018; Bahmani- Oskooee et al., 2018; Mumtaz and Surico, 2018; Gholipour, 2019; Greenland et al., 2019; Istiak and Alam, 2019, 2020; Tajaddini and Gholipour, 2020). In general, the findings suggest that macroeconomic variables such as GDP, investment and employment are adversely affected by increased economic policy uncertainty.

The political environment is also a source of uncertainty that affects the economy. Studies provide evidence that the instability of the political environment has negative effects on the economic environment (e.g., Barro, 1991; Alesina and Perotti, 1996; Svensson, 1998; Carmignani, 2003; Aisen and Veiga, 2006, 2013; Durnev, 2010; Zouhaier and Kefi, 2012; Julio and Yook, 2012; Uddin et al., 2017; Azzimonti, 2018; Jens, 2017). These studies show that political instability has negative effects on inflation, GDP and unemployment.

Political uncertainty reflects instabilities on the political scene (i.e., involving politicians). The instabilities arising from the political scenario are associated to uncertainties regarding possible changes in the “rules of the game” and in the functioning of institutions. Hence, the uncertainty related to the political system is a key feature affecting the business environment, which entrepreneurs must consider when deciding, for instance, to start or expand their businesses. The effects of political uncertainty are stronger when firms and politicians have close connections and political favors might be at play.

One can suggest economic policy uncertainty reduces entrepreneurs’ optimism about the future of the economy and their business. Similarly, an uncertain political environment can deteriorate business confidence, producing negative effects on the economic environment. Hence, some important questions arise. Does political uncertainty affect business confidence? Is business confidence affected by economic policy uncertainty? Are political uncertainty and economic policy uncertainty transmitted to investment decisions through business confidence? These questions are particularly important for developing countries since these countries often present higher levels of political uncertainty and economic policy uncertainty.

#### Failure causes bankruptcies and unemployment---it’s unique: confidence is slowly recovering with stable support

Dr. Laurence Boone 20, PhD in Economics from London Business School, OECD Chief Economist, Master Degree in Econometrics from the University of Reading, MAS in Modelization and Quantitative Analysis from Paris X-Nanterre University, “Building Confidence Crucial Amid An Uncertain Economic Recovery”, OECD Interim Economic Report, 9/16/2020, https://www.oecd.org/newsroom/building-confidence-crucial-amid-an-uncertain-economic-recovery.htm

With the COVID-19 pandemic continuing to threaten jobs, businesses and the health and well-being of millions amid exceptional uncertainty, building confidence will be crucial to ensure that economies recover and adapt, says the OECD’s Interim Economic Outlook.

After an unprecedented collapse in the first half of the year, economic output recovered swiftly following the easing of containment measures and the initial re-opening of businesses, but the pace of recovery has lost some momentum more recently. New restrictions being imposed in some countries to tackle the resurgence of the virus are likely to have slowed growth, the report says.

Uncertainty remains high and the strength of the recovery varies markedly between countries and between business sectors. Prospects for an inclusive, resilient and sustainable economic growth will depend on a range of factors including the likelihood of new outbreaks of the virus, how well individuals observe health measures and restrictions, consumer and business confidence, and the extent to which government support to maintain jobs and help businesses succeeds in boosting demand.

The Interim Economic Outlook projects global GDP to fall by 4½ per cent this year, before growing by 5% in 2021. The forecasts are less negative than those in OECD’s June Economic Outlook, due primarily to better than expected outcomes for China and the United States in the first half of this year and a response by governments on a massive scale. However, output in many countries at the end of 2021 will still be below the levels at the end of 2019, and well below what was projected prior to the pandemic.

If the threat from COVID-19 fades more quickly than expected, improved business and consumer confidence could boost global activity sharply in 2021. But a stronger resurgence of the virus, or more stringent lockdowns could cut 2-3 percentage points from global growth in 2021, with even higher unemployment and a prolonged period of weak investment.

Presenting the Interim Economic Outlook, covering G20 economies, OECD Chief Economist Laurence Boone said: “The world is facing an acute health crisis and the most dramatic economic slowdown since the Second World War. The end is not yet in sight but there is still much policymakers can do to help build confidence.”

She added: “It is important that governments avoid the mistake of tightening fiscal policy too quickly, as happened after the last financial crisis. Without continued government support, bankruptcies and unemployment could rise faster than warranted and take a toll on people’s livelihoods for years to come. Policymakers have the opportunity of a lifetime to implement truly sustainable recovery plans that reboot the economy and generate investment in the digital upgrades much needed by small and medium-sized companies, as well as in green infrastructure, transport and housing to build back a better and greener economy.”

### U---Growth---2NC

#### Recovery’s sustainable because CEOs remain confident---new regulatory risks end the upswing

Lananh Nguyen 10-19, Wall Street Reporter for the New York Times, BA from Tufts University, “Wall Street Sees a Record Deal Spree as a Reason for Optimism”, New York Times, 10/19/2021, https://www.nytimes.com/2021/10/15/business/wall-street-banks-earnings-mergers.html

The dealmakers at the nation’s biggest banks are the busiest they’ve ever been. Interest rates are low, private equity firms flush with cash are looking for promising investments, and companies are aggressively pursuing mergers at a breakneck pace.

Wall Street banks announced blockbuster quarterly profits this week from a record wave of transactions that shows no signs of ebbing: Even in the face of surging inflation and shaky consumer sentiment, corporate clients are ready to deal — and bank leaders say that’s a reason to be optimistic about the economic recovery.

“Whenever C.E.O. confidence is high, M&A activity increases,” David M. Solomon, Goldman Sachs’s chief executive, said in an interview Friday after the bank reported third-quarter earnings of $5.38 billion, surpassing analyst forecasts. “The world’s resettled a bit coming out of the pandemic, and that is now giving a lot of companies an opportunity to really take note of where they want to go.” A record $1.6 trillion in mergers and purchases were struck worldwide in the quarter, according to a research report from Refinitiv. That, in turn, set records for advisory businesses across Wall Street: Goldman Sachs and Morgan Stanley tallied record revenues, JPMorgan Chase and Bank of America announced all-time high fees, and Citigroup’s mergers and acquisitions bankers had their best quarter in a decade.

Goldman Sachs has already had the most profitable year in its history — earning $17.7 billion so far — with three months to go. In the most recent quarter, its bankers closed transactions including the $32 billion spinoff of Universal Music Group by the French conglomerate Vivendi and Salesforce.com’s $28.1 billion purchase of Slack Technologies. Those were two of the 10 biggest deals completed in the three-month period ending in September, according to Dealogic.

Morgan Stanley also had two top-10 deals: the chip maker Analog Devices’s $20 billion acquisition of a competitor, Maxim Integrated, and the $12.3 billion purchase of Proofpoint, a cybersecurity company, by the private equity firm Thoma Bravo.

Sharon Yeshaya, Morgan Stanley’s chief financial officer, said the financial, health care and technology industries in the Americas and Europe have been the hottest areas, but momentum was building elsewhere, too.

“What we’re seeing is really strong pipelines,” Ms. Yeshaya said in an interview after the bank reported a jump in profits to $3.7 billion. “The strength is broadening.”

The frenetic pace has persisted despite the economic upheaval caused by the pandemic, trade disputes and geopolitical tension, Matt Toole, director of deals intelligence at Refinitiv, wrote about the record quarter. Buoyant stock markets, low borrowing costs and the emergence of new buyers from special purpose acquisition companies will continue to prop up activity, he wrote.

“With the all-time full-year deal making record broken in less than nine months and five consecutive quarters of more than $1 trillion in M&A activity, we have very little data to make true historical comparisons,” Mr. Toole wrote.

Even so, there are plenty of factors that could put the brakes on. Tougher regulators in the United States, rising prices for goods and services and central banks’ moves to cut back on stimulus efforts “will all contribute to how much further this cycle has to go,” he wrote.

Even as they maintained an optimistic outlook, bank chiefs acknowledged there were many factors that could slow things down, including supply-chain problems that have lasted for months and driven up prices for materials and goods. And economic indicators remain mixed: While bank bosses cited increasing consumer spending as a positive sign, consumer confidence is falling.

Perhaps the biggest potential disrupter remains the Federal Reserve. Officials at the central bank could dial back some of their support measures for the economy as soon as next month, and have begun debating when they might need to raise interest rates to tame inflation.

But Jason Goldberg, an analyst at Barclays, said the uneven recovery just isn’t a major concern for the banks right now, especially when it comes to the deals they’re helping line up. Volatility is historically the biggest hurdle to dealmaking, he said, so analysts are watching the stock market closely. But he expected global deal activity to remain high for some time.

“You’re seeing many companies across industries re-examining their business models coming out of the pandemic,” Mr. Goldberg said. And they have a range of reasons to strike deals, he said: building scale, bolstering their digital operations, smoothing out their supply chains and making use of stockpiled cash.

Mr. Solomon of Goldman Sachs says the number of deals the bank is working to complete is evidence of an “extraordinarily robust” climate. Still, he cautioned that deal making may recede slightly from its breakneck pace.

“We’re clearly recovering coming out of the pandemic, but it’ll be interesting to see the trajectory of the recovery” and what other economic factors come into play, Mr. Solomon said. “But at the moment, with high corporate confidence, that’s having an impact on M&A in a positive way.”

#### Global growth is stable but the next month is key

Eric Winograd 10-29, Senior Vice President and Senior Economist for Fixed Income at Alliance Bernstein, MA in international studies from the Paul H. Nitze School of Advanced International Studies, BA in Asian Studies from Dartmouth College, “For The Global Economy, It's Next Stop... Policy Normalization”, Seeking Alpha, 10/29/2021, https://seekingalpha.com/article/4463112-global-economy-policy-normalization

November is likely to mark the start of a transition phase for the global economy. For almost two years, major central banks have thrown extraordinary waves of support into shoring up economic activity and financial markets against the COVID-19-induced crisis. Now, officials in many countries seem ready to begin the march back toward a more normal policy setting.

At the conclusion of its November 3 policy meeting, we expect the Federal Reserve to announce the start of tapering: reducing the pace of its quantitative easing purchases and signaling a return to using interest rates as the primary monetary policy tool. The Bank of England (BoE) meets the next day, and may raise interest rates - or at least signal that a rate hike is imminent. Many smaller central banks are embarking on the same transition.

Why Start Normalizing Monetary Policy Now?

Why the change? We see both good and bad reasons. The good reason is that the world economy has, by most measures, largely recovered from the trials of the pandemic. US and global gross domestic product (GDP) are well on their way back to, or even above, pre-crisis levels. With growth recovered and likely to remain strong in 2022, there’s not as much need to lean heavily on policy support.

### Competitiveness---UQ---2NC

#### Digital economy strong now---studies.

Baye ’20 [Michael Baye, James Cooper, Kenneth Elzinga, Deborah Garza, Thomas Hazlett, Benjamin Klein, Tad Lipsky, Scott Masten, Maureen Ohlhausen, James Rill, Vernon Smith, Robert Willig, Joshua Wright, and John Yun, with some professors omitted for convenience; May 20; Former Director of the FTC’s Bureau of Economics, Bert Elwert Professor of Business at Indiana University; Former Acting and Deputy Director of the FTC’s Office of Policy Planning; Economics Professor at the University of Virginia; Chair of the Antitrust Modernization Commission, Former Acting and Deputy Assistant Attorney General of the DOJ’s Antitrust Division; Former Chief Economist of the FCC, Economics Professor at Clemson University; Economics Professor at UCLA; Former Acting Director of the FTC’s Bureau of Competition, Former Deputy Assistant Attorney General of the DOJ’s Antitrust Division; Business Economics and Public Policy at the University of Michigan; Former Acting Chairman & Commissioner of the FTC; Former Assistant Attorney General of DOJ’s Antitrust Division; Nobel Laureate in Economics and Professor at Chapman University; Former Deputy Assistant Attorney General for Economics at the DOJ’s Antitrust Division, Economics and Public Affairs Professor at Princeton University; Former Commissioner of the FTC, Law Professor at George Mason University; Former Acting Deputy Assistant Director of the FTC’s Bureau of Economics, Law Professor at George Mason University; “Joint Submission Of Antitrust Economists, Legal Scholars, And Practitioners To The House Judiciary Committee On The State Of Antitrust Law And Implications For Protecting Competition In Digital Markets,” <https://laweconcenter.org/wp-content/uploads/2020/05/house_joint_antitrust_letter_20200514.pdf>]

I. The Digital Economy is Healthy, Competitive, and Benefits Consumers

We do not recount here the extensive literature calling into question claims that market power and concentration have been systematically increasing, resulting in serious consequences for consumers, workers, innovation, economic inequality, and more. 9 At best, we have an incomplete and imperfect understanding of recent market trends; there is undoubtedly more research to do. But the weight of the literature today—much of which is no more than a couple of years old and some of which is still in working paper form—does not support the conclusion that the economy has been trending inexorably toward increased market power and greater consumer harm, especially for the purpose of justifying dramatic legislative changes to the antitrust framework. It is certainly not the case that “any conclusion to the contrary reflects either an incomplete or incorrect understanding of economics and the economic literature from the last several decades.”10

The most recent studies suggest that the observed changes in national-level concentration are brought about by the expansion of more productive large firms into local markets leading to, in these economists’ own words, “more, rather than less, competitive markets.”11 Further, despite occasional claims to the contrary, the literature has not uncovered systematic competition problems in digital markets. The best interpretation of existing evidence is that the deployment of new technology by traditional industries has increased economies of scale and scope and enhanced local competition.12 None of the economic evidence supports claims about generally enhanced market power in markets inhabited by the companies that develop such technological tools.

Prominent economists across the political spectrum have offered similar analyses, all of which serve to call into question the certitude of the assertions underlying the calls for radical antitrust reform.13

The digital economy is rife with competition and innovation, and consumers are benefitting in meaningful and remarkable ways from dynamic rivalry among companies big and small. That does not mean the digital economy is, or should be, immune from antitrust scrutiny. But recent scholarship strongly suggests that competition in that sector of the economy has thrived under the existing antitrust laws, which can and should be applied when those laws are violated.

#### Companies are big because they innovate---lack of innovation is from corporate failure or gross missteps.

Robert D. Atkinson 21, President of the Information Technology & Innovation Foundation, founding member of the Polaris Council who advices the U.S. Government Accountability Office’s Science, Technology Assessment, and Analytics team, Ph.D. in City and Regional Planning from the University of North Carolina, Chapel Hill, “How Progressives Have Spun Dubious Theories and Faulty Research Into a Harmful New Antitrust Doctrine,” Information Technology & Innovation Foundation, 03-10-2021, https://itif.org/publications/2021/03/10/how-progressives-have-spun-dubious-theories-and-faulty-research-harmful-new

Over the past few decades, many firms have gained market share in their industries, so much so that they have been coined “superstar” firms. This phenomenon has been especially true in digital markets wherein the nation’s largest Internet firms have created the platforms that are fueling rapid growth, but it has also occurred across many industries.

Neo-Brandeisians have latched on to this development to allege that the firms’ growing market share is largely due to anticompetitive conduct, rather than inherently superior business performance. They argue that this market power in turn has allowed firms to raise margins and profits, cut spending on innovation, and unfairly preempt competitive challenges. Even when firms have grown due to superior performance, these advocates warn that the firms often preserve their advantage by adopting a variety of anticompetitive practices.

This market power explanation of superstar firms appears to be flawed. Although some firms have gained even more market share, this has generally not been because the firms used market power to succeed, nor does it suggest reduced economic welfare. Rather, in this environment, a few firms appear to have figured out how to be much more innovative and competitive, and have acted effectively on those insights, enabling them to outperform laggard firms. Indeed, there appears to be something about the nature of current process and product technologies and global market operations that enables some firms to perform better than others, creating more public value in the process. Rather than decry this development and attempt to hold back successful firms, advocates should be celebrating it and identifying ways to help lagging firms do better. If there is a policy problem, it is not due to the success of superstar firms. Instead, it is either the failure of laggards to catch up or some gross mistakes, such as BlackBerry’s persistence on smartphones with keyboards paving the way for Apple and Google’s successes.

### Competitiveness---Turn---2NC

#### Chinese companies are ready to pounce.

Loren Thompson 20, Chief Operating Officer of the Lexington Institute, Chief Executive Officer of Source Associates, Ph.D. in Government from Georgetown University, “Inventing Bogus Antitrust Arguments To Bring Down Big Tech Is Bad For National Security,” Forbes, 07-16-2020, https://www.forbes.com/sites/lorenthompson/2020/07/16/inventing-bogus-antitrust-arguments-to-bring-down-big-tech-is-bad-for-national-security/?sh=2a83a1d2784b

Over the last two generations, the U.S. economy has steadily migrated from the production of goods to the delivery of services. Although U.S. manufacturers still dominate in industries such as aerospace and U.S. farmers remain the most productive in the world, their role is the economy is being eclipsed by services.

There are many reasons for this shift, not the least of which are the income and lifestyle aspirations of American workers. Working on a farm or an assembly line is hard, and many—perhaps most—Americans would rather do something else.

The Internet has made that dream possible for a growing number of people, spawning millions of new enterprises and transforming old ones with its unique capacity to stimulate commerce. It is no coincidence that America’s greatest business successes of the new century—companies like Amazon AMZN +0.2% and Alphabet and Facebook FB +1.8%—all depend on the Internet and focus on providing services.

This is a revolutionary trend in business, and unsettling to some. There is a fear that Internet-based enterprises will destroy jobs, evade taxes, invade privacy, spread vices and otherwise cause disruption. Whatever validity these fears may have, they result from the voluntary choices of consumers rather than the business strategies of Big Tech.

It is not common in U.S. political culture to oppose trends set in motion by the behavior of millions of consumers seeking the best solutions to their needs.

Nonetheless, on July 27 some members of the House Judiciary Committee are likely to do precisely that. The committee’s antitrust panel has been investigating the nation’s biggest technology companies for a year, and on that day the CEOs of four of them will appear before the committee: Tim Cook of Apple AAPL -0.9%, Jeff Bezos of Amazon, Mark Zuckerberg of Facebook, and Sundar Pichai of Alphabet (Google GOOGL +3.3%’s parent).

This has never happened before, and it underscores the importance that both political parties assign to restraining potential excesses in an Internet-based economy. Federal law governing the Internet hasn’t changed much since the World Wide Web was in its infancy, so there’s a case to be made for legislative review.

The case for an antitrust inquiry is less convincing. Antitrust law originated over a century ago when industrialists sought to monopolize segments of the economy as a way of assuring profits. The laws were intended to prevent combinations that might weaken competition, discourage innovation and reduce consumer choice.

For instance, Standard Oil, which had come to control 90% of U.S. petroleum refining, was broken up.

The difference between Standard Oil and today’s Internet behemoths, though, is that consumers have plenty of alternatives for what Big Tech provides, and the barriers to new market entrants are not high the way they were for refiners in 1900. Apple, Amazon, Facebook and Alphabet got big because consumers preferred them to other options. That was due in no small part to their continuous innovation.

You really have to twist the intent of antitrust law to make a case against companies like Alphabet’s Google, because its market dominance in search resulted from consumer choice rather than a lack of alternatives. The imposition of antitrust sanctions would amount to punishment for success or mere bigness, rather than a rational application of regulatory power.

Or take the example of Facebook, which, like the other companies testifying on July 27, is the subject of an antitrust inquiry by the government’s executive branch. The main complaint antitrust types seem to have against Facebook is that it supposedly made acquisitions as it grew aimed at dominating social networking.

Exhibit A in this case is the 2012 acquisition of Instagram, which has become phenomenally successful under Facebook’s tutelage. At the time it was bought, though, the company had only 13 employees and no ability to scale to what it has now become. People laughed that Zuckerberg would be willing to pay a billion dollars for such a modest business.

It turned out to be a smart move, but as Instagram took off many younger users shifted their attention from Facebook to the new platform, so there was a downside.

But trying to retrospectively fit the acquisition of Instagram (or WhatsApp, or Oculus VR) into a pattern aimed at restraining competition and squelching innovation is simply misleading. There are plenty of places outside the Facebook family that people can go online to network or game or post photos or get the news, and they all innovate furiously.

The same can be said of all the Big Tech companies. They have to run as fast as they can just to stay where they are. Innovation has been the key to their success, and new market entrants are constantly emerging to challenge that success.

What makes this relevant to national security is that the new entrants increasingly aren’t American, they’re Chinese. The biggest reason U.S. manufacturing has receded since 2000 is the rise of China, and the success of companies like Beijing-based Bytedance—TikTok’s parent—is a signal that China is capable of doing the same thing to U.S. tech companies that it has already done to steel makers and electronics manufacturers.

TikTok was downloaded over 300 million times during the first quarter on 2020, making it the most downloaded app during a single quarter in history. Six of the top ten apps in India, soon to be the world’s most populous country, are Chinese. Indian authorities reversed that trend when they banned Chinese apps after a border skirmish, but America’s Internet-based service providers can expect continuous assaults by Chinese rivals for the foreseeable future.

Beijing is undoubtedly encouraging if not subsidizing such assaults. The contrast between how the Chinese government treats its tech companies and the way Washington treats its own players is hard to miss. Whether we like it or not, companies like Alphabet and Facebook have become the leading purveyors of American ideas and influence to the world. If they are hobbled, Chinese competitors will eagerly take their place.

There is no compelling argument for breaking up or otherwise sanctioning U.S. technology leaders. If you think America’s Big Tech companies have too much power, imagine how it will feel when their successors are run out of the People’s Republic.

### Competitiveness---Turn---Startups

#### Mergers incentivize startup innovation---blocking them destroys all venture capital investment.

Gary Dushnitsky & Daniel Sokol 21, Associate Professor of Strategy and Entrepreneurship at London Business School, Senior Fellow at the Mack Institute for Innovation Management at the Wharton School of the University of Pennsylvania, Ph.D. from New York University; Professor of Law at the University of Florida Levin College of Law, Senior Of Counsel at Wilson Sonsini Goodrich & Rosati, J.D. from the University of Chicago, “Competition laws could be a death knell for startup mergers and acquisitions,” The Hill, 07-22-2021, https://thehill.com/opinion/white-house/564321-competition-laws-could-be-a-death-knell-for-startup-mergers-and

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

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

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

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

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

For the past two decades, acquisitions have constituted the most common entrepreneurial exit for U.S.-based VC-backed innovators. Not only do acquisitions account for the larger number of liquidity events, but they also cover a wide range of low and medium valuations. Why do larger companies acquire smaller ones? Most often, it is to unlock the power of complementary assets. That is, to combine the novel product or service from the startup with distribution channels, manufacturing capabilities, marketing prowess and regulatory expertise of the acquirer. These combinations are key to successfully and rapidly introducing innovation in the market, as has been demonstrated in numerous industries. But the proposed legislation would block a lot of the value creation through complementary assets that a combined company post-merger offers.

A change in merger rules also hurts efforts at diversity and inclusion. Many first-time VC funds introduce investors of more diverse backgrounds. Moreover, the new cadre of venture capitalists make it their mission to support founders of diverse backgrounds. As a result, smaller new funds often pursue innovation in companies, sectors or geographies that have been neglected in the past. Yet, it is these funds and companies that may be most affected by a decrease in rewarding acquisitions.

The proposed legislation may also change the structure of innovation. To the extent that large incumbents are precluded or delayed from accessing the broader universe of entrepreneurial ventures, legislation may create ‘walled innovation gardens.’ Within those walls, new ideas may be cultivated but only pre-selected startups can reach and win incumbents' attention. This runs the risk of stifling innovation (for incumbents) and also can impact scale-up opportunities (for startups) and compensation and longevity of the VC funds that backed them.

For incumbents, the risk is that they draw from a limited pool of innovators and, therefore, miss out on other/better innovations beyond the focal pool. For entrepreneurs, it implies that many would be unable to scale or sell their companies, especially if the acquisition route is blocked. Finally, for VC funds, the shift of incumbents' resources towards corporate venture builders can decrease capital availability and the prospects of future funds in two ways: first, a decrease in established corporations as an important source of limited partners in their funds, and second, a decrease in M&A activity.

The world of entrepreneurship is complex. There is a history of poorly thought-out legal rules negatively impacting business growth and innovation. The proposed antitrust legislation imposing limits on mergers by incumbent firms, motivated by a desire to increase the number of tech firms competing, will instead reduce M&A exit opportunities for founders and the VC investors who back them. It may also decrease the number of new VC funds founded, and could have a disparate impact specifically on social-based investing relating to sustainability and diversity that plays a large role in many first-time funds’ investment decisions. Policymakers should think carefully about these likely impacts before endeavoring to rewrite U.S. antitrust laws.

## Advantage 2

### They don’t want it---2NC

#### Developing countries are uninterested in competition policy

Frederic Jenny 20—Professor Of Economics, Essec Business School, Paris, France; Chair Oecd Competition Committee. ("An Essay: Can Competition Law and Policy Be Made Relevant for Inclusive Growth of Developing Countries?," 1-22-2020, from SAGE Journals, https://journals.sagepub.com/doi/full/10.1177/0003603X19898621

The question then is whether and through which process the changes necessary to establish strong and independent competition authorities backed by effective legal provisions allowing them to control or denounce the worst governmental restrictions benefiting politically powerful lobbies or abuses by state-owned firms will take place, as one can doubt that the powerful beneficiaries of the status quo in those countries will have much appetite to adopt competition law frameworks that will reduce their ability to grant protection for political gains and to benefit from corrupt practices. The authors acknowledge the weak interest of governments in Sub-Saharan African nations for the adoption of competition laws. The authors refer to this dilemma (p. 28) when they state (while discussing the West African situation):

In the 1990s, responding to the World Bank conditionality, the West African states eased regulations and began to make laws concerning pricing and firms behavior more market-friendly. The States passed competition laws and established competition authorities. These laws were designed to remove obstructions to competition (…) and to let the market work to get better products and prices. But the national governments were reluctant to relinquish their regulatory roles. They did not want to just stand by when they thought prices were too high. They could not resist intervention. Thus they did not provide much support for independent competition authorities. The colonial history kept its grip and the remnants of French dirigisme hindered a shift to markets. This halting move to markets does much to explain the patterns and trends of West African competition law and policy.

### Dependency Trap---No Modeling---EU---2NC

#### The US can’t overtake the EU---prefer comparative evidence.

Spencer Weber Waller 20, John Paul Stevens Chair in Competition Law at the Loyola University Chicago School of Law, “The Omega Man or the Isolation of U.S. Antitrust Law,” Connecticut Law Review, Vol. 52, 2020, accessed via Lexis

Much of the growing and persistent isolation of U.S. antitrust is a function of history and path dependence. Antitrust in the United States began at the state level in the 1880s with the federal government following a decade [\*195] later with the Sherman Act. 436The open-ended, broadly worded, almost constitutional, language of the Sherman Act was a product of its times and the U.S. common law system. While the United States has been influential to varying degrees in the adoption of other jurisdictions' competition systems, the other systems all were adopted or modified into their modern forms much later and in very different legal and societal climates. 437There is no reason to think that copying the United States was the principal reason for their outcome or evolution. 438

There is every reason to believe that most competition systems around the world have emulated the EU rather than the United States. Competition law is part of the "acquis communautaire" that all member states are required to incorporate into their own national law. 439All current member states have national competition law that closely tracks the competition laws of the EU and may not conflict with its core provisions. 440Special provisions also allow member states to have broader laws regarding abuse of a dominant position. 441

Many of these competition provisions were explicitly adopted by countries in order to facilitate eventual membership in the EU. Other countries adopted EU style provisions out of necessity or choice in connection with their membership in the EU or the European Free Trade Agreement, or to secure preferential trade agreements with the EU. 442Still others have colonial or cultural ties with EU countries that made EU style competition law a more natural fit.

Even Japan and Germany, where the United States exerted more direct influence following the end of World War II, quickly modified their original [\*196] competition laws to fit their indigenous needs and diverged from whatever U.S. roots from which they grew. 443If there is a competition for the hearts and minds of the world's one hundred thirty plus competition systems, the EU has long since acquired a dominant position.

Two recent examples illustrate this type of divergence where very different jurisdictions either adopted or modified their competition laws ultimately adopting language and approaches developed for their national needs more in line with EU competition principles. More than fifteen years ago, China began a systematic study of world competition systems to develop its first competition law as part of the promotion of its socialist market economy. Scholars note that the PRC relied on key EU, and less so U.S., concepts and sources in selecting the rules, procedures, and institutions that best suited their needs. 444

Chile also has modified its competition laws in recent years. The new statutory language echoes that of Articles 101 and 102, even though key concepts remain undefined by guidelines or precedent. For example, Article 3(a), amended in 2016, prohibits agreements or concerted practices that involve competitors and consist of fixing sale or purchase prices, limit production, allow them to assign market zones or quotas, or affect the result of bidding processes, as well as agreements or concerted practices that confer them market power, consist in determining marketing conditions, or that exclude competitors. 445Article 3(b) incorporates the familiar EU notion of abuse of dominance. 446

The dominance of EU style competition policy seems unlikely to abate. Similarly, it is difficult to see which jurisdiction has bucked, or is likely to buck, that trend and adopt the narrow substantive, procedural, institutional, and remedial U.S. approach as its playbook for competition policy.

### Dependency Trap---Alt Causes---2NC

#### Plan doesn’t solve digital divide

Rebecca Fogel 20, Communications Assistant at Urban@UW and CBE Office of Research, “The Digital Divide: Gender and technology in an unequal world,” Urban@UW, 11-06-2020, https://depts.washington.edu/urbanuw/news/the-digital-divide-gender-and-technology-in-an-unequal-world/

All over the world, digital literacy and access to technology are commonly divided along gender and racial lines. During a global pandemic that has forced an even stronger reliance on technology than before, the disproportionate and inadequate access that lower-income women of color face is clear, both around the United States and in the Global South. Many women in cities across the Global South rely on the informal marketplace to buy and sell goods, from soap and toilet paper to clothing and fresh fruit. Access to mobile phones and the internet can provide necessary channels for women to access mobile money for their entire family, as well as emotional support as they shoulder more work in the household (World Bank [web], Feb 2020). With strict lockdowns and restrictions in place during the pandemic, these financial avenues and support systems have been slashed. In the Global South, barriers to digital equity are exacerbated by the availability, or lack thereof, of technological infrastructure, financial constraints, and cultural or institutional norms. In a world where women are commonly disenfranchised, “the digital divide could increasingly prevent women from accessing life-enhancing services for education, health, and financial inclusion in a world that has become virtual overnight” (World Bank [web], June 2020). Stronger and more efficient technological infrastructure in cities across the world will allow anyone, but especially women, to connect to much needed social and financial services, especially during the COVID-19 pandemic.

#### China captures the market

UN 19, “‘Digital divide’ will worsen inequalities, without better global cooperation,” United Nations, 09-04-2019, https://news.un.org/en/story/2019/09/1045572

US and China pull ahead, Africa and Latin America trail behind

The United States and China create the vast majority of wealth in the digital economy, the study reveals, and the two countries account for 75% of all patents related to blockchain technologies, 50% of global spending on the “Internet of Things” (IoT), more than 75% of the cloud computing market, and as much as 90% per cent of the market capitalization value of the world’s 70 largest digital platform companies.

The rest of the world, particularly countries in Africa and Latin America, are trailing considerably behind, and this trajectory is likely to continue, further contributing to rising inequality, said UN Secretary-General António Guterres, in a foreword to the report.

“We must work to close the digital divide” he writes, “where more than half the world has limited, or no access to the Internet. Inclusivity is essential to building a digital economy that delivers for all”.

We must work to close the digital divide, where more than half the world has limited or no access to the Internet António Guterres, UN Secretary-General

Massive increase in data on the horizon

Despite the impact that digital data has already had, the world is still in the early days of the data-driven economy, according to the study, which forecasts a dramatic surge in data traffic in the next few years.

This reflects the growth in the number of people using the Internet, and the uptake of frontier technologies such as blockchain, data analytics, artificial intelligence, 3D printing, IoT, automation, robotics and cloud computing.

Platforms to rule the world

Wealth and power in the digital sphere are increasingly being held by a small number of so-called “super platforms”, comprising the seven global brands Microsoft, Apple, Amazon, Google, Facebook, Tencent and Alibaba.

### Dependency Trap---LIO D---2NC

#### China won’t dislodge the order AND it’s resilient and adaptable, anyway

Jake Sullivan 18, Senior Fellow at the Carnegie Endowment for International Peace, Former National Security Adviser to Vice President Joe Biden and Director of Policy Planning at the U.S. Department of State, J.D. from Yale Law School, March/April 2018, “The World After Trump: How the System Can Endure,” https://www.foreignaffairs.com/articles/2018-03-05/world-after-trump

But the existing order is more resilient than this assessment suggests. There is no doubt that Trump represents a meaningful threat to the health of both American democracy and the international system. And there is a nonnegligible risk that he could drag the country into a constitutional crisis, or the world into a crippling trade war or even an all-out nuclear war. Yet despite these risks, rumors of the international order’s demise have been greatly exaggerated. The system is built to last through significant shifts in global politics and economics and strong enough to survive a term of President Trump.

This more optimistic view is offered not as comfort but as a call to action. The present moment demands resolve and affirmative thinking from the foreign policy community about how to sustain and reinforce the international order, not just lamentations about Trump’s destructiveness or resignation about the order’s fate. No one knows for certain how things will turn out. But fatalism will become a self-fulfilling prophecy.

The order can endure only if its defenders step up. It may be durable, but it also needs an update to account for new realities and new challenges. Between fatalism and complacency lies urgency. Champions of the order must start working now to protect its key elements, to build a new consensus at home and abroad about needed adjustments, and to set the stage for a better approach, before it’s too late.

A RESILIENT ORDER

In a world where the major trends seem to spell chaos, it is fair to place the burden of proof on those who claim that the current order can continue. Yet well before Trump, it had already demonstrated its capacity to adapt to changes in the nature and distribution of power. Three basic factors account for such resilience—and demonstrate why the emphasis now should be on protecting and improving the order rather than planning for the aftermath of its demise.

First, most of the world remains invested in major aspects of the order and still counts on the United States to operate at its center. The passing of U.S. dominance need not mean the end of U.S. leadership. That is, the United States may not be able to direct outcomes from a position of preeminent economic, political, and military influence, but it can still mobilize cooperation on shared challenges and shape consensus on key rules. In the years ahead, although Washington will not be the only destination for countries seeking capital, resources, or influence, it will remain the most important agenda-setter.

Some context is important. The U.S.-led order was built at a unique moment, at the end of World War II. Europe’s and Asia’s erstwhile great powers were reduced to rubble, and a combination of dominance abroad and shared economic prosperity at home allowed the United States to serve as the architect and guarantor of a new order fashioned in its own image. It had not just the material power to shape rules and drive outcomes but also a model many other countries wanted to emulate. It used the opportunity to build an order that benefited itself as well as others, with clear advantages for populations at home and abroad. As the international relations scholar G. John Ikenberry has put it in this magazine, the resulting system was “hard to overturn and easy to join.” The end of the Cold War and the fall of the Soviet Union served to reinforce and extend American preeminence.

This precise state of affairs was never going to last forever. Other powers would eventually rise, and the basic bargain would one day need to be revisited. That day has arrived, and the question now is, do other countries want a fundamentally different bargain or simply some adjustments? A comprehensive 2016 rand analysis found that few powers display an appetite for dismantling the international order or transforming it into something unrecognizable. And while Trump’s election has forced countries to contemplate a world without a central role for the United States, many still view the president as an aberration and not a new American normal, especially given that the United States has bounced back before.

Even China has concluded that it largely benefits from the order’s continued operation. Around the time of Trump’s inauguration, breathless reports interpreted Chinese President Xi Jinping’s comments on an open international economy and climate change as indicators that China planned to somehow take over for the United States. But what Xi was really signaling was that China does not want near-term radical change in the global system, even as it seeks to gain more influence by taking advantage of the vacuum left by Trump. And to the extent that Beijing has set out to construct its own parallel institutions, particularly when it comes to trade and investment, thus far these institutions largely supplement the existing order rather than threatening to supplant it.

#### China’s restrained and won’t cause authoritarianism

Dr. Jessica Chen 19, Associate Professor of Government at Cornell University, Ph.D. from the University of California, San Diego, “A World Safe for Autocracy?”, Foreign Affairs, July/August 2019, https://www.foreignaffairs.com/articles/china/2019-06-11/world-safe-autocracy

Many Western politicians have watched this authoritarian turn at home and search for influence abroad and concluded that China is engaged in a life-and-death attempt to defeat democracy—a struggle it may even be winning. In Washington, the pendulum has swung from a consensus supporting engagement with China to one calling for competition or even containment in a new Cold War, driven in part by concerns that an emboldened China is seeking to spread its own model of domestic and international order. Last October, U.S. Vice President Mike Pence decried China’s “whole-of-government” effort to influence U.S. domestic politics and policy. In February, Christopher Wray, the director of the FBI, went further: the danger from China, he said, was “not just a whole-of-government threat but a whole-of-society threat.” Such warnings reflect a mounting fear that China represents a threat not just to specific U.S. interests but also to the very survival of democracy and the U.S.-led international order. This fear gets the challenge from Beijing wrong. Not since the days of Mao Zedong has China sought to export revolution or topple democracy. Under Xi, the CCP has promoted “the Chinese dream,” a parochial vision of national rejuvenation that has little international appeal. China’s remarkable economic growth under previous leaders came from experimentation and flexibility, not a coherent “China model.” Since 2012, China’s growing authoritarianism and resurgent state dominance over the economy have dashed Western hopes that China would eventually embrace liberalism. And China’s actions abroad have offered alternatives to U.S.-led international institutions, made the world safer for other authoritarian governments, and undermined liberal values. But those developments reflect less a grand strategic effort to undermine democracy and spread autocracy than the Chinese leadership’s desire to secure its position at home and abroad. Its efforts to revise and work around international institutions are the result of pragmatic decisions about Chinese interests rather than a wholesale rejection of the U.S.-led international order. Beijing’s behavior suggests that China is a disgruntled and increasingly ambitious stakeholder in that order, not an implacable enemy of it. In seeking to make the world safer for the CCP, Beijing has rejected universal values and made it easier for authoritarian states to coexist alongside democracies. And within democracies, the CCP’s attempts to squelch overseas opposition to its rule have had a corrosive influence on free speech and free society, particularly among the Chinese diaspora. These are real challenges, but they do not yet amount to an existential threat to the international order or liberal democracy. Successfully competing with China will require more precisely understanding its motives and actions and developing tough but nuanced responses. Overreacting by framing competition with China in civilizational or ideological terms risks backfiring by turning China into what many in Washington fear it already is.

#### No liberal order collapse---it’s durable

Dr. G. John Ikenberry 18, Ph.D. in Political Science from the University of Chicago, Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs, March 2018, “Why the Liberal World Order Will Survive,” Ethics and International Affairs, Vol. 32, No. 1, p. 19-22

But does this vision of power transition truly illuminate the struggles going on today over international order? Some might argue no—that the United States is still in a position, despite its travails, to provide hegemonic leadership. Here one would note that there is a durable infrastructure (or what Susan Strange has called “structural power”) that undergirds the existing American-led order. Far-ﬂung security alliances, market relations, liberal democratic solidarity, deeply rooted geopolitical alignments—there are many possible sources of American hegemonic power that remain intact. But there may be even deeper sources of continuity in the existing system. This would be true if the existence of a liberal-oriented international order does not in fact require hegemonic domination. It might be that the power transition theory is wrong: the stability and persistence of the existing post-war international order does not depend on the concentration of American power.

In fact, international order is not simply an artifact of concentrations of power. The rules and institutions that make up international order have a more complex and contingent relationship with the rise and fall of state power. This is true in two respects. First, international order itself is complex: multilayered, multifaceted, and not simply a political formation imposed by the leading state. International order is not “one thing” that states either join or resist. It is an aggregation of various sorts of ordering rules and institutions. There are the deep rules and norms of sovereignty. There are governing institutions, starting with the United Nations. There is a sprawling array of international institutions, regimes, treaties, agreements, protocols, and so forth. These governing arrangements cut across diverse realms, including security and arms control, the world economy, the environment and global commons, human rights, and political relations. Some of these domains of governance may have rules and institutions that narrowly reﬂect the interests of the hegemonic state, but most reﬂect negotiated outcomes based on a much broader set of interests.

As rising states continue to rise, they do not simply confront an American-led order; they face a wider conglomeration of ordering rules, institutions, and arrangements; many of which they have long embraced. By separating “American hegemony” from “the existing international order,” we can see a more complex set of relationships. The United States does not embody the international order; it has a relationship with it, as do rising states. The United States embraces many of the core global rules and institutions, such as the United Nations, International Monetary Fund (IMF), World Bank, and World Trade Organization. But it also has resisted ratiﬁcation of the Law of the Sea Convention and the Convention on the Rights of the Child (it being the only country not to have ratiﬁed the latter) as well as various arms control and disarmament agreements. China also embraces many of the same global rules and institutions, and resists ratiﬁcation of others. Generally speaking, the more fundamental or core the norms and institutions are—beginning with the Westphalian norms of sovereignty and the United Nations system—the more agreement there is between the United States and China as well as other states. Disagreements are most salient where human rights and political principles are in play, such as in the Responsibility to Protect.

Second, there is also diversity in what rising states “want” from the international order. The struggles over international order take many different forms. In some instances, what rising states want is more inﬂuence and control of territory and geopolitical space beyond their borders. One can see this in China’s efforts to expand its maritime and political inﬂuence in the South China Sea and other neighboring areas. This is an age-old type of struggle captured in realist accounts of security competition and geopolitical rivalry. Another type of struggle is over the norms and values that are enshrined in global governance rules and institutions. These may be about how open and rule-based the system should be. They may also be about the way human rights and political principles are deﬁned and brought to bear in relations among states. Finally, the struggles over international order may be focused on the distribution of authority. That is, rising states may seek a greater role in the governance of existing institutions. This is a struggle over the position of states within the global political hierarchy: voting shares, leadership rights, and authority relations.

These observations cut against the realist hegemonic perspective and cyclical theories of power transition. Rising states do not confront a single, coherent, hegemonic order. The international order offers a buffet of options and choices. They can embrace some rules and institutions and not others. Moreover, stepping back, the international orders that rising states have faced in different historical eras have not all been the same order. The British-led order that Germany faced at the turn of the twentieth century is different from the international order that China faces today. The contemporary international order is much more complex and wide-ranging than past orders. It has a much denser array of rules, institutions, and governance realms. There are also both regional and global domains of governance. This makes it hard to imagine an epic moment when the international order goes into crisis and rising states step forward—either China alone or rising states as a bloc—to reorganize and reshape its rules and institutions. Rather than a cyclical dynamic of rise and decline, change in the existing American-led order might best be captured by terms such as continuity, evolution, adaptation, and negotiation. The struggles over international order today are growing, but it is not a drama best told in terms of the rise and decline of American hegemony. If the liberal international order endures, it will be because it is based on more than American hegemonic order. To be sure, the United States did give shape to a distinctive post-war liberal hegemonic system, and many of its features— including the American-led alliance system and multilateral economic governance arrangements—are themselves quite durable. But the broader features of the modern international order are the result of centuries of struggle over its organizing principles and institutions. Rising states face an international order that is long in the making, one that presents these non-Western developing states with opportunities as well as constraints. The struggles over the existing international order will reshape the rules and institutions in the existing system in various ways. But rising states are not simply or primarily “revisionist” states seeking to overturn the order; rather, they are seeking greater access and authority over its operation. Indeed, the order creates as many safeguards and protections for rising states as it creates obstacles and constraints. For example, the World Trade Organization provides rules and mechanisms for rising states to dispute trade discrimination and protect access to markets. After all, more generally, it was this liberal-oriented international order—its openness and rules—that provided the conditions for China and other rising states to rise. Indeed, if the liberal international order survives, it will be in large part due to the fact that the constituencies for such an order that stretch across the Western and the non-Western worlds are larger than the constituencies that oppose it. We can look more closely at these sources of continuity and constituency.

# 1NR---Round 6

### Missiles---Impact---2NC

#### Each scenario goes global AND it’s most probable

Michael Richardson 13, Visiting Senior Research Fellow at the Institute of South East Asian Studies in Singapore, Former South-East Asia Correspondent of The Age, “Cruise Missile Threat in Asia”, Japan Times, 6/18/2013, https://www.japantimes.co.jp/opinion/2013/06/18/commentary/world-commentary/cruise-missile-threat-in-asia/#.XYY4IkZJFwB

Cruise missiles that are difficult to detect, increasingly fast and capable of carrying nuclear warheads are spreading, especially in Asia, complicating arms control and raising the risk of catastrophic conflict.

Until recently, most concerns have focused on the actual or potential spread of nuclear-tipped ballistic missiles in China, North Korea, India and Pakistan — the four Asian states known to have atomic arms. Ballistic missiles, launched by rocket engines, follow an arc-like trajectory, attaining hypersonic speeds on the downward leg of their guided journey towards a target.

Until now and probably for some time yet, all long-range ballistic missiles, with atomic warheads small enough to fit on them, are deployed exclusively for strategic nuclear deterrence. The five official nuclear weapon states — United States, Russia, China, Britain and France — use their long-range ballistic missiles, whether launched from land, air or sea, to deter possible attacks by other nuclear-armed nations.

Arms control treaties and agreements have tended to focus chiefly on ballistic missiles. However, another type of weapon, the cruise missile, is multiplying. It is proving to be even more difficult to control, partly because in many cases the same highly accurate missile is designed to carry either a conventional high explosive warhead or a nuclear warhead.

This dual role makes it impossible for a nuclear-armed nation facing a cruise missile attack against its territory or warships to know whether the incoming weapons are conventional or nuclear, an uncertainty that could trigger a nuclear response. Dual-role ballistic missiles of less than intercontinental range pose a similar problem.

The U.S. Air Force Global Strike Command reported last month that both China and North Korea were developing nuclear-capable cruise missiles. The U.S. and Russia lead the world with nuclear-capable cruise missiles, weapons launched from long-range bombers or submarines. But India and Pakistan are also developing such missiles. They each have several different types, with different ranges, in service or being flight tested.

Cruise missiles, powered by jet engines, travel low and fast over land or water, making them difficult to detect. They are also relatively small, compared to long-range ballistic missiles.

There are about 1,140 of the nuclear version of the U.S. AGM-86 air-launched cruise missile in America’s nuclear arsenal. In addition, there are about 460 nuclear-capable AGM-129A advanced cruise missiles. The U.S. Air Force says that the streamlined design of the AGM-129A, combined with radar-absorbing material and several other features, make it virtually impossible to detect on radar.

The range of the U.S. AGM-129 A is officially put at almost 3,220 km. However, the nuclear-ready version of Russia’s Raduga Kh-101 air-launched cruise missile, which is due to become operational this year, is designed to have a maximum flight distance of just over 9,650 km, which puts it in the range category of an intercontinental ballistic missile.

The new Chinese and North Korean cruise missiles appeared on a slide of an unclassified briefing given by Lt. Gen. James Kowalski, head of the U.S. Air Force Global Strike Command, on May 7. The slide shows nuclear weapon modernizations in eight of the world’s nine states known to have atomic arms. Only Israel is not shown.

The Chinese cruise missile is the CJ-20 carried by the long-range H-6 bomber. Hans Kristensen, a nuclear weapons specialist with the Federation of American Scientists, said the listing was the first he had seen in an official U.S. publication crediting a Chinese air-launched cruise missile with nuclear capability.

U.S. defense officials say that a Chinese extended range H-6 bomber using the CJ-20 in a land-attack operation could strike targets all over Asia and eastern Russia as well as the U.S. military base hub on Guam island, in the western Pacific. Two-thirds of Russian territory, east of the Ural mountains, is in Asia.

The nuclear-capable North Korean cruise missile listed on the briefing slide is the KN-09 for coastal defense. It reportedly has a range of just 100 to 120 km.

America’s AGM-86 nuclear-tipped cruise missiles travel at just over two-thirds the speed of sound.

Meanwhile, India is looking to its supersonic Brahmos cruise missile, a joint venture with Russia, as the key new weapon that will give it a strategic advantage over its neighbor and long-time rival, Pakistan. The Brahmos is the only known supersonic cruise missile system in service. Its designer, BrahMos Aerospace of Russia, says it travels at two to three times the speed of sound, or approximately one kilometer per second.

In October, India and Russia agreed to produce more than 1,000 Brahmos missiles for the Indian Air Force, Navy and Army. The two sides also decided to jointly develop a hypersonic version of the missile that would fly more than five times the speed of sound.

The Indian missile, which can be launched from the sea, air or land, has a range of about 300 km. It can carry a conventional or nuclear warhead. The high speed of India’s Brahmos cruise missile means it has the potential to carry out prompt strikes on extremist camps inside Pakistan, to be followed by a punitive invasion by the Indian armed forces.

Because India is so much bigger and stronger than Pakistan, the latter has developed short-range ballistic missiles with low-yield nuclear warheads to deter such attacks. Although still to be verified, Pakistan claims it has miniaturized nuclear warheads so that they will also fit on cruise missiles. India also says that its cruise missiles are nuclear-capable.

The short-warning time should either country use such weapons against the other means that escalation into an all-out nuclear exchange could result.

Shyam Saran, convener of India’s National Security Advisory Board, said in April that in a crisis with Pakistan, India would not be the first to use nuclear weapons. He warned that even if India was attacked with relatively small, or tactical, nuclear arms, it would “engage in nuclear retaliation that will be massive and designed to inflict unacceptable damage on its adversary.”

There is a wider warning here for Asian countries with tactical nuclear-tipped cruise or ballistic missiles in operation or planned. If ever used, such weapons could open a Pandora’s Box of horrendous consequences, proving that a limited nuclear war is a contradiction in terms.

#### Lack of effective defense causes automated early-warning---extinction

Nicolò Miotto 21, MA Candidate at the Erasmus Mundus Security, Intelligence & Strategic Studies Program at the University of Glasgow, “Artificial Intelligence and Nuclear Warfare. Is Doomsday Closer? - Cyber Security and AI Series”, The Security Distillery, 7/7/2021, https://thesecuritydistillery.org/all-articles/artificial-intelligence-and-nuclear-warfare-is-doomsday-closer

AI AND NUCLEAR DETERRENCE: ONE STEP FORWARD, TWO STEPS BACK

With the development of state-of-the-art weapons such as hypersonic missiles, the nuclear balance between countries might shift, leading to potential escalation. As deterrence is likely to be undermined, states are considering the deployment of AI-based weapon systems to repristinate the balance.

As of now, no defensive weapon system is capable of intercepting hypersonic missiles. Current designs are capable of striking a target in an average time of 6 minutes as they greatly exceed the speed of sound, reaching speeds at Mach 5 or above with unpredictable trajectories [3]. Hypersonic technology is being tested by global powers such as the U.S., China and Russia [4]. If equipped with nuclear warheads, hypersonic missiles would significantly change nuclear stability between countries, causing tensions between nuclear powers. Analysts agree that only AI-based predictive analysis, combined with cutting-edge technologies such as quantum computing, might provide effective defence systems against hypersonic missiles [5]. If developed, these technologies would constitute the technological tool necessary to re-balance the instability caused by hypersonic missiles.

However, AI-based missile defence systems might bring about more insecurity than the stability they aim to achieve. Indeed, artificial intelligence offensive capabilities might have a disruptive impact on nuclear deterrence. Partially based on the concept of mutual assured destruction (MAD), nuclear deterrence is preserved when no country can conduct a nuclear attack without suffering a second nuclear strike from the enemy [6]. However, this psychological and technical equilibrium might be undermined by the belief that artificial intelligence can provide the capability of targeting and destroying all enemies’ offensive nuclear weapons before carrying out the first attack. Although this can be proved to be technically implausible, if a government believes that enemies’ AI-based offensive systems can destroy the country’s nuclear weapons, decision-makers may be psychologically encouraged to strike first in case of high-level tensions [7].

THE THREAT POSED BY AI-BASED NUCLEAR C2 SYSTEMS

In most countries, responses to threats are based on the OODA-LOOP model, which consists of four steps: observe, orient, decide, act [8]. However, due to the most recent advancements in military technology, the timeframe to go through the OODA-LOOP decision-making process is more limited, thus requiring faster decisions to respond to the threats. If hypersonic missiles, potentially carrying nuclear warheads, strike the target in a maximum of 6 minutes, actions must be taken promptly. However, immediacy may come at the expense of attentive human judgment, a key factor that has already prevented nuclear war in the 20th century.

Both machines and humans might be driven by misjudgement due to partial or inaccurate information. However, individuals involved in nuclear C2 systems have already avoided nuclear catastrophes during the Cold War. Notorious is the case of Stanislav Petrov who, when in 1983 a Soviet early-warning satellite allegedly detected the launch of five US missiles, decided to declare the incident as a false alarm, assuming that the U.S. would have never conducted a surprise attack with only five missiles [9]. He made the right decision; the Soviet satellite wrongly analysed sunlight bouncing off the clouds as a missile launch [10]. This historical fact demonstrates how machine error might lead to disastrous choices if the human judgment is excluded from the decision-making process.

In the context of modern disinformation campaigns, the negative influence of machine misjudgement on nuclear stability is even greater. The International Institute for Strategic Studies (IISS), in collaboration with the Carnegie Corporation of New York, has conducted tabletop exercises to investigate the vulnerabilities of AI-based nuclear command and control to disinformation [11]. The results are worrying and show how non-state actors’ disinformation operations may bring about a rapid nuclear escalation. In one scenario, fake images of the deaths of three American soldiers by Russian-employed nerve gas in Syria led U.S. officials to build a legal case for the potential use of tactical nuclear weapons. Subsequently, fake news about the families of high-ranking U.S. officials quickly moving to Washington, D.C. and of missile silos going on high-alert worried Russian officials. In response, Russian AI-based early warning systems warned the leadership that a U.S. strike was imminent. The scenario ended with both governments realising the false alarm and disabling the online activity of the non-state actor.

While in the scenario the false alarm was realised, decision-making results might largely differ in the context of the hypersonic missile race. How would governments act in such a tense context? Would officials be able to go through the OODA-LOOP model in less than 6 minutes? To what extent would they rely on AI-based decision-making processes?

#### And, global preemption that goes nuclear

Omar **Lamrani 16**, Senior Military Analyst at Stratfor, M.A. from the Diplomatic Academy of Vienna, B.A. in International Relations from Clark University, “What the Next Arms Race Will Look Like”, Stratfor, 3/21/2016, <https://www.stratfor.com/analysis/what-next-arms-race-will-look>

A new arms race is unfolding between the world's great powers. Hypersonic missiles, which are both accurate and extremely fast, stand to change the face of modern warfare by rendering the current generation of missile defense systems ineffective. As competition heats up among Russia, China and the United States to be the first to deploy hypersonic missiles, each will become more vulnerable to attack by the others. If tensions rise, so will the risk of pre-emptive strikes among the longtime rivals. Hypersonic missiles travel at least five times the speed of sound. Only a few other manmade devices are capable of reaching hypersonic speeds, including ballistic missiles, space launch vehicles and unmanned spacecraft such as the Boeing X-37. The only manned aircraft to achieve hypersonic speed is the rocket-powered North American X-15, which broke speed and altitude records when it was introduced in the 1960s. Recently, the focus of research in hypersonic technologies has shifted toward missile development, but several challenges must be overcome to make hypersonic missiles a reality. First, it is difficult to create a weapon that can reach hypersonic speeds while enduring the stress and extreme temperatures of hypersonic flight. It is harder still to ensure that the weapon can maintain those speeds for an extended period — enough time to reach its target. Second, high velocities can make a hypersonic vehicle sensitive to changes in flight conditions, resulting in instability in the missile's airframe during flight. Coupled with the fact that high speeds leave less time to course correct, this instability can make guidance of hypersonic missiles problematic. Finally, hypersonic vehicles' actual flight paths often do not match the predictions researchers derive from ground tests and theoretical models, lengthening the process of development. Despite these obstacles, hypersonic missiles have some considerable advantages. Their speed enables them to reach their targets much more quickly than other missiles and to better penetrate enemy defense systems. Those with gliding capabilities can also cover great distances, enabling one country to strike at another from farther away. Guided hypersonic missiles would be more accurate than traditional ballistic missiles, and they could conceivably be armed with nuclear warheads, becoming a strike asset or a deterrent in nuclear warfare. From Theory to Reality It will not be long before hypersonic missiles find their way out of the lab and onto the battlefield. In late February, U.S. Maj. Gen. Thomas Masiello announced that the U.S. Air Force plans to have operational prototypes ready for testing by 2020. The U.S. Air Force already conducted four flights of the experimental X-51 hypersonic cruise missile from 2010 to 2013, two of which were considered successes. Meanwhile, Lockheed Martin has made substantial progress on its Hypersonic Air-breathing Weapon Concept and Tactical Boost Glide vehicle. China is close behind, and it appears to be on track for deployment by 2020 as well. In 2014, China conducted three tests of its DF-ZF hypersonic strike vehicle, followed by three more in 2015. The U.S. military deemed all but one of the tests successful. Russia is developing its own hypersonic glide vehicle, the Yu-71, though its ambitions of fielding the vehicle in the next four years may be overly optimistic. (Moscow's sole test of the Yu-71, in 2015, was a failure.) But one of Russia's relatively short-range hypersonic missiles, the 3M22 Zircon, underwent its first test on March 18, and a second model (the BrahMos-II) will be ready for testing around 2017. As the world's biggest powers race to build up their hypersonic arsenals, the nature of battle will fundamentally change. Missile defense systems will struggle to counter hypersonic flight, making targets — especially large naval warships — more vulnerable to attack. In time, this could drive the development of directed-energy weapons (such as high-powered lasers or microwaves) as a possible way of countering hypersonic missiles. But as has been the case for revolutionary military technologies in the past, the best defense will be to destroy the missiles before they can launch, increasing war planners' emphasis on offensive action. Countries will have an incentive to launch pre-emptive strikes against their enemies to knock out hypersonic missile caches before the missiles can be deployed. Moreover, guidance systems, along with command, control, intelligence, surveillance and reconnaissance networks — the weakest components of hypersonic missile capabilities — will become critical targets. At the same time, states with hypersonic missiles (and the bigger offensive advantage they bring) will have less need for stealth technology to penetrate enemy defenses. Nuclear warfare — and strategies to deter nuclear conflict — will be altered as well. Though increasingly effective anti-ballistic missile technologies will continue to be important against opponents that lack hypersonic weapons, they will be of little use in countering hypersonic missiles equipped with nuclear warheads. Because hypersonic missiles are so difficult to detect and counter, countries could be motivated to pre-emptively strike at an enemy developing a hypersonic capability. As hypersonic missiles undermine the fragile balance among global nuclear powers more and more, many countries will be forced to re-examine their deterrence and national security strategies, potentially contributing to greater uncertainty and instability in the long run.

### Missiles---Impact---Turns Case---Economy

#### It turns growth---Aerojet innovation’s key to commercial satcoms that underpin the economy

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Compared with defense mega-contractors such as Boeing, Lockheed Martin and Raytheon Technologies, Aerojet Rocketdyne Holdings is not a big company. With 5,000 employees, annual sales of $2 billion and a market cap in the $3 billion range, AJRD (its stock symbol) barely makes it into the ranks of America’s top-fifty military contractors as calculated by Defense News.

And yet each of those three top-ranked contractors would find its operations hobbled if Aerojet products were suddenly unavailable. The reason is that AJRD specializes in rocket, missile and space-system propulsion, an area in which sector consolidation has left only two major domestic sources (the other being Northrop Grumman). And Aerojet has a wider array of competencies in its chosen market segment than any other U.S. player.

Aerojet doesn’t just make solid and liquid-fuel rocket engines, it also makes air-breathing (ramjet) hypersonic propulsion systems and electric drive for maneuvering spacecraft in orbit. And it makes its propulsion systems in every conceivable size, from the giant RS-25 engines being used on NASA’s Space Launch System (the largest launch vehicle ever built) to the small divert-and-attitude-control systems that adjust interceptor maneuvers in flight so they can hit and destroy fast-moving threats without requiring an explosive warhead.

The company does other things too, addressing demand for its unusual competencies across diverse markets. But what virtually all of its products have in common, even when they are sold to civil or commercial customers, is that they are critical to national security. For instance, the launch vehicles that place commercial satcoms in orbit may not be carrying military payloads, but the connectivity their satellites provide to the nation’s economy and government agencies is absolutely essential.

That places Aerojet Rocketdyne (a modest contributor to my think tank) dead center in the middle of the ongoing Washington debate about the security of the U.S. defense supply chain. Before coronavirus, policymakers were concerned mainly about whether the supply chain could be secured against spies and cyberattacks. After coronavirus, the focus will shift to whether the supply chain will be there at all in a major international crisis.

Although Aerojet has participated in virtually every major U.S. space and missile program since the beginning of the Cold War, it faces some of the same competitive challenges from subsidized offshore sources that companies in other tech sectors do. To take one example, dozens of U.S. satellites in geosynchronous orbit (mostly satcoms) utilize Russian electric propulsion systems to keep the spacecraft in proper orbit and orientation. Reliance on Russia wasn’t a big concern before Moscow invaded Ukraine in 2014, but it is now, and Aerojet is one of the few U.S. companies with relevant expertise.

The problem Aerojet faces in Washington is that few decisionmakers understand what it does with sufficient granularity to grasp what could happen to national security if the company were somehow impaired. CEO Eileen Drake and her management team are pretty much on their own in defending the company’s equities in a highly competitive market segment.

Drake, a former Army aviator who previously held senior executive positions at Ford and United Technologies, has done a good job of making the enterprise more efficient, shifting manufacturing from the company’s legacy site in Sacramento to lower cost, less regulated locations in Camden, Arkansas and Huntsville, Alabama. Net sales are up every year since 2015 as is free cash flow, and total backlog currently stands at nearly three times annual sales.

The key question is how a company with 5,000 employees and a market cap of $3 billion can survive and thrive in a marketplace largely dominated by behemoths, both on the customer side and on the supplier side. The company’s strategy has been to remain on the cutting edge of propulsion technology, minimize costs, and secure roles on military and civil programs with broad-based political support.

A case in point was Northrop Grumman’s inclusion of Aerojet on its team to develop a replacement for the Minuteman III intercontinental ballistic missile, a breakthrough success that will keep the company’s large solid rocket motor facility in Arkansas humming for decades to come. Northrop is the sole offeror for the new missile, and there is bipartisan support for replacing the aged Minuteman in the nation’s nuclear deterrent.

Other franchise efforts on which Aerojet has a long-term role include the Army’s Terminal High Altitude Area Defense (THAAD), Patriot Advanced Capability 3 (PAC-3) and Guided Multiple Launch Rocket System (GMLRS) programs, and the Navy’s ubiquitous Standard missile family. Aerojet signed a billion-dollar strategic agreement last year with Standard missile prime contractor Raytheon to partner on the effort. The company also has an on-going role in defense research to develop hypersonic weapons, and works on an array of other munitions, targets and undersea systems.

It tells you a lot about the scale of some of these programs that Lockheed Martin was awarded a $6 billion contract this week to build PAC-3 missiles for the U.S. and nine overseas customers. That program will be a major revenue source for AJRD going forward. Its extensive civil space work with NASA, while not directly related to defense, is another bright spot.

Aerojet is just one company among thousands in the U.S. defense supply chain. However, the dearth of alternative domestic sources for much of what it does, combined with the high priority of programs on which it is resident, reflects how critical some suppliers are to the functioning of the overall industrial base.

### Link---AT: Plan Not FTC---2NC

#### TURF WARS---the FTC’s power-hungry---they’ll attempt to usurp the Aff.

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A. Competition Law

The Federal Trade Commission (FTC) and the Department of Justice (DOJ) have long shared regulatory authority over certain aspects of competition law. During the 1920s, there were cases where both agencies opened files to deal with the same conduct. For obvious reasons, this dynamic created repeated conflicts—so the agencies devised informal methods of consultation to avoid duplicative parallel inquiries. This “good fences make good neighbors” approach resulted in a written liaison arrangement (commonly called “clearance”) which allowed the agencies to avoid conflicts in the exercise of their concurrent regulatory power.8 A 2002 press release describes the clearance process, as well as some of the challenges that deregulation and technological chance posed to the smooth functioning of that process:

The FTC/DOJ clearance process was formally established in 1948; refinements were implemented in 1963, 1993, and 1995. The traditional methodology for allocating matters between the agencies has emphasized historical experience in addressing specific commercial sectors. As the boundaries that separate individual sectors have blurred in the face of rapid technological change, and as deregulation measures have allowed firms to diversify, this clearance methodology has begun to break down. In a growing number of important economic sectors of mutual concern to the FTC and the DOJ, the effectiveness of the experience-based allocation methodology that has anchored past clearance agreements has diminished significantly.9

The FTC and DOJ sought to resolve this dispute by negotiating and publishing a comprehensive statement that described the division of labor the two agencies intended to follow with respect to specific market sectors, and set out how future disagreements would be resolved.10 Although the DOJ ultimately abrogated the agreement under pressure from Senator Ernest Hollings, the underlying dynamics that gave rise to these problems have not changed materially in the intervening years.11 As such, it should not come as a surprise that in 2019 the FTC and DOJ negotiated a similar agreement focusing on the tech sector. Pursuant to that agreement, the FTC agreed to focus on Facebook and Amazon, and the DOJ agreed to focus on Google and Apple.12 (The irony of two competing competition agencies repeatedly negotiating over how best to divide a market does not escape us).

Roughly two months later, a turf war broke out when the DOJ asserted it would be reviewing the behavior of “social media[] and some retail services online”—a statement that was “widely interpreted by the legal community to mean Facebook and Amazon, two companies that under the earlier agreement stood to have at least some of their conduct reviewed by the FTC.”13 Such claim-jumping heightened tensions between the two agencies, which were already inflamed by the DOJ’s recent intervention in a case the FTC brought against Qualcomm.14 Such disagreements are not new: any list would include the dispute in 2008 over the appropriate standards for enforcing Section 2 of the Sherman Act,15 the FTC’s opposition in 2007 to the granting of cert in a private antitrust case against Pacific Bell where the DOJ filed an amicus brief urging the granting of cert, the DOJ’s 2005 opposition to the granting of cert in the FTC’s case against Schering-Plough, and the DOJ’s refusal to represent the FTC before the Supreme Court in Indiana Federation of Dentists—prompting the FTC to pursue the case itself.16

#### Triggers the link

Emily Birnbaum 20 & Issie Lapowsky, Birnbaum is a tech policy reporter with Protocol; Lapowsky is Protocol's chief correspondent, “Democrats just made their case against Big Tech. Here’s what comes next.,” Protocol — The people, power and politics of tech, 7-29-2020, https://www.protocol.com/big-tech-ceo-hearing-what-comes-next

The FTC's inquiries into tech giants have been complicated by simultaneous investigations of the same companies at the DOJ. The FTC and DOJ had reportedly agreed to split the workload, with the FTC overseeing Facebook and Amazon, while the DOJ took the reins on Apple and Google. But during a congressional hearing last year, Makan Delrahim, head of the DOJ's antitrust division, acknowledged "squabbles" between the two agencies over each other's jurisdictions. "It's not the best model of efficiency," Delrahim said.

In one antitrust case the FTC brought against Qualcomm, the DOJ went so far as to publicly oppose the FTC and side with Qualcomm. And despite the supposed division of labor, the DOJ is also reportedly investigating Facebook for antitrust violations, as well.

Kades calls the infighting between the DOJ and the FTC "bizarre" and unlike anything he saw during his two decades at the FTC. "You would hope they're not looking at the same thing," he said. "They're short enough on resources."

#### 1) NORMAL MEANS---FTC always takes at least part of the work. Normal means is best---prevents opportunistic reclarifications which is key to block strategy.

Emily Birnbaum & Issie Lapowsky 20, Birnbaum is a tech policy reporter with Protocol; Lapowsky is Protocol's chief correspondent, “Democrats just made their case against Big Tech. Here’s what comes next.,” Protocol — The people, power and politics of tech, 7-29-2020, https://www.protocol.com/big-tech-ceo-hearing-what-comes-next

Even if Congress doesn't pass any meaningful antitrust legislation, tech giants still face intense and mounting scrutiny from the Department of Justice, the Federal Trade Commission and state attorneys general across the country — all of which are now probing tech giants' potential antitrust violations. Those agencies and state governments could use any of the testimony from Wednesday to bolster their own cases against the Big Tech companies.

The FTC has several investigations going on simultaneously, the most advanced of which is an inquiry into Facebook, which the company disclosed last year. The probe reportedly includes a look at Facebook's history of acquiring potential competitors, including Instagram and WhatsApp. In an interview last summer, FTC Chairman Joseph Simons told the Financial Times that he planned to wrap up the investigation in time for the presidential election. But a recent New York Times report suggested that timeline will not be feasible, with the investigation likely extending into next year.

The FTC also announced in February that it would be looking into Facebook, Amazon, Apple, Google and Microsoft's history of smaller acquisitions that hadn't previously been reviewed by the commission. "We wanted to get a handle on why they were not reportable, what their transactions look like, whether they were potentially problematic or not and whether there was something we should do about it," Simons told reporters at the time.

Meanwhile, the FTC has also been interviewing Amazon merchants as part of an inquiry into the ecommerce giant's treatment of sellers and competing products on its platform, but that investigation appears to be in earlier stages.

Whenever the FTC investigation concludes, its options for financial penalties are limited, says Michael Kades, director for markets and competition policy at the Washington Center for Equitable Growth and a 20-year veteran of the FTC. The FTC can seek a fine only after a company has violated an order, and the Supreme Court is currently set to decide whether the FTC even has the power to recover money through disgorgement, a tool it's used in the past. That means that if the FTC does find, say, Facebook to be at fault, the repercussions would be mainly structural. The agency could, for instance, require Facebook to divest from those businesses, prohibit Facebook from kicking competition off of its platform or limit its ability to make acquisitions.

Kades predicts Facebook would fight such an order. "They'd argue these happened so long ago … there's no way you can unscramble the egg," Kades said. Facebook could also settle, as it did last year, when it paid the FTC $5 billion for privacy violations.

The FTC's inquiries into tech giants have been complicated by simultaneous investigations of the same companies at the DOJ. The FTC and DOJ had reportedly agreed to split the workload, with the FTC overseeing Facebook and Amazon, while the DOJ took the reins on Apple and Google. But during a congressional hearing last year, Makan Delrahim, head of the DOJ's antitrust division, acknowledged "squabbles" between the two agencies over each other's jurisdictions. "It's not the best model of efficiency," Delrahim said.

In one antitrust case the FTC brought against Qualcomm, the DOJ went so far as to publicly oppose the FTC and side with Qualcomm. And despite the supposed division of labor, the DOJ is also reportedly investigating Facebook for antitrust violations, as well.

Kades calls the infighting between the DOJ and the FTC "bizarre" and unlike anything he saw during his two decades at the FTC. "You would hope they're not looking at the same thing," he said. "They're short enough on resources."

#### 2) TOPICALITY---“the antitrust laws” are enforced by the FTC

FTC 21, “Bureau of Competition,” FTC, https://www.ftc.gov/about-ftc/bureaus-offices/bureau-competition

The FTC’s Bureau of Competition enforces the nation's antitrust laws, which form the foundation of our free market economy. The antitrust laws promote the interests of consumers; they support unfettered markets and result in lower prices and more choices.

#### ‘The USFG’ means the whole thing

Dr. James R. Hurford 94, General Linguistics Professor at the University of Edinburgh, Grammar: A Student’s Guide, p. 224

Singular

Explanation

A singular noun or pronoun in a language typically refers to just one thing or person, or to a mass of stuff, rather than to a collection of things or people. Other nouns which occur in the same grammatical patterns as typical singular nouns may be classified as grammatically singular.

Examples

Some singular nouns in English are waiter, inability, objection, cat, frostbite, garlic, refusal, gatepost, liair and region.

The English personal pronouns I, he. she and it are singular.

Contrasts

Singular contrasts with plural. A word cannot simultaneously be both singular and plural.

Relationships Singular and plural in a language belong to its system of number. It is common in languages for singular to be the unmarked member of the system, and for plural nouns to have some special marker, such as a suffix; this is true of English, where, for instance, the noun dog is singular, and its plural is formed by adding an ~s. The singular is rarely formed by adding something in this way.

The basic parts of speech to which singular applies are nouns and pronouns; other parts of speech or word-classes may be marked as singular by agreement with a singular noun or pronoun. In English, only verbs and demonstratives show this agreement; this and that are singular demonstratives, and is and was are forms of the verb be which show singular agreement.

Among the nouns, mass nouns are always singular. So we may say *This stuff is sticky* and *That wine tastes of bananas*. Count nouns show the distinction between singular and plural. Thus we have singular/plural pairs such as *tree/trees*, *diagram/diagrams* and *burial/burials*. Proper names are almost always singular. Even proper names formed from plural common nouns, such as *the United States*, tend to be singular, as in *The United States is ready to defend its vital interests*.

#### It must include the FTC

Dr. Loreto Todd 5, Professor and Reader in International English at the University of Leeds & Author of More Than 20 Books on Linguistics & English Usage, International English Usage, Ed. Hancock and Todd, p. 133

The term *collective noun* refers to a singular noun that has a plural implication (e.g. [for example,] *government*) and is used when the whole body (and not the constituent members) is being considered. The category *collective nouns* is not discrete, and it can be argued that some usages are midway between collective and mass nouns. For example, *team* is clearly a collective noun and *butter* is clearly a mass noun but it is not so easy to decide the status of such nouns as: hair linen royalty.

#### And, they just won’t---there’s Congressional pressure to shut down the Aerojet merger

Joe Gould 21, Congress Reporter for Defense News, “To Keep Up With Rivals, DoD Nominee Will Weigh Consolidation vs. Innovation”, Defense News, 2/2/2021, https://www.defensenews.com/congress/2021/02/02/to-keep-up-with-rivals-dod-nominee-will-weigh-consolidation-vs-innovation/

President Joe Biden’s nominee for deputy defense secretary, Kathleen Hicks, said she is “concerned” about consolidation in the defense industrial base, and that competition is needed to maintain an edge over China and Russia.

Hicks, whose office would review deals that involve national security issues if she is confirmed by the Senate, told lawmakers Tuesday that she would work with them to ensure a healthy defense industrial base. The comments came amid market expectations that defense deal-making could take off in 2021.

“Extreme consolidation does create challenges for innovation,” Hicks told the Senate Armed Services Committee. “We need to have a lot of different good ideas out there. That’s our competitive advantage over authoritarian states like China, and Russia. And so if we move all competition out, obviously, that’s a challenge for the taxpayer. But it’s also a challenge in terms of the innovation piece.”

As the space sector and technological developments drive growth in the aerospace and defense sector and the pandemic weakens commercial aviation firms, companies are “likely to pursue opportunities for consolidation,” the consulting firm Deloitte said in a recent report.

Firms could seek new merger and acquisition opportunities, the report said, to “capture more value, drive cost-competitiveness, or acquire targeted niche capabilities and emerging technologies” such as “advanced air mobility, hypersonics, electric propulsion, and hydrogen-powered aircraft.”

Recent years have seen a number of major deals, including the combination of Harris and L3 Technologies, United Technologies Corp. and Raytheon; BAE Systems and Collins Aerospace, and General Dynamics and CSRA. Lockheed Martin’s $4.4 billion acquisition of Aerojet Rocketdyne, announced in December, has yet to clear regulators.

The Federal Trade Commission and the Justice Department also review mergers and acquisition activity in the defense sector.

At Tuesday’s hearing, Connecticut Democratic Sen. Richard Blumenthal, whose state hosts General Dynamics Electric Boat, told Hicks a drop in the number of submarine suppliers from 17,000 to 5,000 over recent decades suggested broader problems for the defense industrial base, problems that he said were, “extremely alarming to me.”

Blumenthal indicated Hicks had committed prior to the hearing to aid small suppliers struggling with the pandemic’s economic fallout and to develop new small and medium suppliers. (This was one focus of DoD’s acquisition and sustainment office under the previous administration.)

“I’m hoping you will focus on the supply chain that is vitally important to suppliers like Electric Boat or Raytheon or any of our major sources of supply,” said Blumenthal, who has served as the top Democrat on SASC’s Seapower Subcommittee.

A broader theme for the hearing was how Hicks, whose job involves supervising the defense budget, would invest in forward-leaning technologies under a flat budget and divest from existing weapons platforms. Meanwhile, lawmakers grilled Hicks about whether she supported spending on nuclear modernization, shipbuilding and other programs with connections to lawmakers’ home states.

Acknowledging the political and budget tensions, Hicks said she wants to link future budgetary decisions with concepts for operations, to buy “capabilities that actually line up to theories of victory for how we are trying to pace challenges from China and Russia.”

“I think the fundamental misunderstanding between the DoD and venture investors is just how difficult it is to keep the wheels on a fast-growing startup.”

By: Joe Gould

Other lawmakers told Hicks they wanted an easier paths for smaller, cutting edge firms from outside the Beltway to do business with the Pentagon and for them to scale production of their products, beyond the experimentation phase.

### Link---AT: PC Theory False

#### They’re constantly calculating political feasibility to avoid confronting Congress

William E. Kovacic 15, Global Competition Professor of Law and Policy, George Washington University Law School and Non-executive Director, United Kingdom Competition and Markets Authority, JD from Columbia University Law School, BA from Princeton University, and Marc Winerman, Formerly of the Federal Trade Commission, “The Federal Trade Commission as an Independent Agency: Autonomy, Legitimacy, and Effectiveness”, Iowa Law Review, 100 Iowa L. Rev. 2085, https://ilr.law.uiowa.edu/print/volume-100-issue-5/the-federal-trade-commission-as-an-independent-agency-autonomy-legitimacy-and-effectiveness/

In its century of experience, the FTC has occasionally had volatile relations with Congress. In part, the Commission’s broad statutory mandate elicits interest from Congress. The FTC Act gives the FTC jurisdiction over much of the economy and directs the agency to operate in political terrain. Below we explore the implications, for drafting laws and designing institutions, of the tasks Congress assigned the FTC in 1914 and the design choices Congress made in creating the agency.

A. Implications for Law Drafting and Institutional Design

One factor to consider in the design of a law’s substantive commands and in the formulation of an implementation strategy is political risk. In identifying a preferred role for a competition agency, one must ask if that role is politically feasible. The political feasibility of a statutory mandate does not depend on technical proficiency alone. Political adroitness frequently assumes equal importance in determining success. As one student of administrative behavior has noted: “[E]ach agency must constantly create a climate of acceptance for its activities and negotiate alliances with powerful legislative and community groups to sustain its position. It must, in short, master the art of politics as well as the science of administration.”

### AT: Antitrust Now

#### FTC’s firmly committed not to push statutory limits

Cathy Anne McMorris Rodgers 21, American politician who is the U.S. Representative for Washington's 5th congressional district; Janice Danoff Schakowsky is an American politician who has served as the U.S. Representative from Illinois's 9th congressional district since 1999; Lori Ann Loureiro Trahan is an American businesswoman and politician who serves as the U.S. Representative for Massachusetts's 3rd congressional district; Lina Khan is Chair of the FTC; Rebecca Slaughter is Commissioner at the FTC, “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

Cathy Anne McMorris Rogers (4:00:11): I look forward to further conversations with you because I am concerned about rumors of the FTC acting outside of Congress and issuing a rule on privacy. And with that, I'll yield back.

Jan Schakowsky (4:00:25): Congresswoman Trahan. It's your five minutes.

Lori Trahan (4:00:32): Thank you Madam Chair, and Chair Khan, and fellow commissioners, thank you for your patience and for being here today discuss how this essential agency can better protect our consumers. President Biden's most recent executive order promoting competition in the American economy encouraged the commission to exercise the FTC's statutory rulemaking authority in regards to, and I quote, unfair data collection and surveillance practices that may damage competition, consumer autonomy, and consumer privacy. Now, in October 2020, Google Ads updated its policy to restrict the serving of high fat sugar, salt, food, and/or non alcoholic beverages advertising for minors under 18 in the United Kingdom, and in the European Union, but has refused to make similar changes here in the United States. A recent policy change by Facebook is a step in the right direction, but it's far from perfect when you consider that a May 2021 study by the Tech Transparency Project found that Facebook allows advertisers to target ads for electronic cigarettes, pill parties, and extreme weight loss product products to children as young as 13 across the US. Plainly, Facebook and Google are using troves of personal data belonging to teens and adults to target harmful advertisements in ways that are not transparent to users. So Chair Khan, would you consider these examples of the types of surveillance practices that may damage consumer autonomy and consumer privacy?

Lina Khan (4:02:05): Absolutely, Congresswoman.

Lori Trahan (4:02:06): Thank you for that. And Commissioner Slaughter. If the commission were to begin rulemaking today to protect consumers, including our children, from surveillance advertising, what would be the process under the Commission's existing Mag-Moss authority? And would the commission face difficulties? If you could speak to that it would be great.

Rebecca Kelly Slaughter (4:02:30): Thank you, Congressman. It's a great question. And I want to start by responding to suggestion from the ranking member of the committee that the Commission might act without Congress or outside of congressionally delegated authority. I want to be very clear: the commission cannot, should not, and will not, with my support, act outside of congressionally delegated authority. But we absolutely should look at the authority Congress has delegated to us, and it has specifically delegated to us rulemaking authority under Section 18 of the FTC Act, which is referred to as Mag-Moss, to promulgate rules to address unfair and deceptive acts or practices that are prevalent in interstate commerce. And so data abuses could fall very much into that category. Rulemaking under Section 18, to answer your question briefly, looks like APA rulemaking, but with much, much more process. So we can't begin with a notice of proposed rulemaking - we have to begin with an advance notice of proposed rulemaking that asks questions about the issues that we will consider. We have to notify Congress before we do that. We have to do then in a notice of proposed rulemaking identify any issues of material fact that are disputed, and again, notify Congress. And if there are issues of material fact, the statute requires us to have an informal hearing to adjudicate them. So it is a very process-intensive statute that requires lots of, and provides opportunity, for lots of participation. It is absolutely burdensome to the commission to do it. I think it's worth it for us to try. But we should make no mistake that it would not be a quick or fast effort.

#### The XO is empty talk that’s years from being implemented

Jeff Jaeckel 21, Co-Chair Global Antitrust Law Practice Group at Morrison & Foerster, Alexander Paul Okuliar, Co-Chair Global Antitrust Law Practice Group at Morrison & Foerster, and Lisa M. Phelan Co-Chair Global Antitrust Law Practice Group at Morrison & Foerster, and Megan E. Gerking Partner at Morrison & Foerster, “Charting a New Course for Antitrust: President Biden’s Executive Order Promoting Competition in the American Economy”, Client Alert, 7/14/2021, https://www.mofo.com/resources/insights/210714-president-biden-executive-order-antitrust.html

Despite its breadth, the immediate effect of the EO on law or regulation is less clear. The EO itself does not enact any new law or regulation. Rather, the EO often uses vague language in instructing or guiding the actions of agencies. This is likely purposeful in many instances, including when the EO refers to independent agencies, like the FTC, Federal Communications Commission, Maritime Commission, Consumer Financial Protection Bureau, and the Surface Transportation Board. Nonetheless, for almost every initiative, there is likely to be a significant gap between the action directed or encouraged by the EO and the time it will take for the relevant agency to investigate, evaluate, and potentially implement a new rule or policy. Even where the direction to an agency is explicit, issuing a new rule or regulation takes time. An agency must first draft a rule, allow for a notice-and-comment period, make any necessary revisions, and then issue and start to enforce a final rule. And this does not account for likely legal challenges. In some instances, the EO directs the agencies to submit a report on the issue first rather than make any immediate changes, pushing any resulting regulatory activity out at least until the period following completion of the report.

#### It's non-binding AND will be blocked by the court and Congress

Lewis Brisbois 21, Lewis Brisbois Bisgaard & Smith LLP, “President Biden Signs Executive Order on Promoting Competition in the American Economy”, 7/12/2021, https://lewisbrisbois.com/newsroom/legal-alerts/president-biden-signs-executive-order-on-promoting-competition-in-the-american-economy

On July 9, 2021, President Biden signed an “Executive Order on Promoting Competition in the American Economy.” According to a Fact Sheet released in advance of the signing, the Executive Order takes “decisive action to reduce the trend of corporate consolidation, increase competition, and deliver concrete benefits to America’s consumers, workers, farmers, and small businesses.”

Among other things, the Executive Order encourages the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ) to focus enforcement efforts on problems in key markets and coordinate other federal agencies’ responses to corporate consolidation. Further, the Executive Order calls on the FTC and DOJ to “enforce the antitrust laws vigorously.” The Executive Order would also make it easier for high tech workers to change jobs by banning or limiting non-compete agreements, lower prescription drug prices by supporting programs to import cheaper prescription drugs from Canada, make it less expensive to repair products by limiting manufacturers from barring self-repairs or third-party repairs of their products, and increase opportunities for small businesses by directing all federal agencies to promote greater competition through procurement and spending decisions. In all, the Executive Order outlines 72 initiatives that attempt to rein in corporate powerhouses that control markets.

In the Fact Sheet, the Biden Administration compared its Executive Order to the responses of previous Administrations to “growing corporate power,” expressly citing the trust-busting efforts of the Theodore Roosevelt and FDR Administrations’ “supercharged antitrust enforcement” agendas.

Although Democratic lawmakers and union leaders have cheered the Executive Order, some business advocacy groups have reportedly warned that such measures as those in the Executive Order could slow the economy.

Executive Orders are expressions of policy intent that have no actual binding legal force. Their ability to change the law lies in follow-up implementation by federal agencies that act to implement presidential initiatives. Those changes are limited by the extent of underlying statutory authority, and the courts in recent years have appeared reluctant to expand the scope of what is considered anticompetitive activity under the antitrust laws. Business interests should keep a close eye on the regulatory proposals that result from this Executive Order and consider engaging on those that affect their business operations.

#### Even if, it’s moderate and restrained

Andrew Coopersmith 21, Managing Director of the Penn Program on Regulation, “The Biden Executive Order on Restructuring Competition”, The Regulatory Review, 7/26/2021, https://www.theregreview.org/2021/07/26/coopersmith-biden-executive-order-restructuring-competition/

Hovenkamp, while still supporting the consumer welfare basis for antitrust decision-making, sees some potential for applying antitrust law in new ways, especially in the regulation of Big Tech. “There are certain types of mergers that we’re not going after because our current merger guidelines don’t cover them, particularly mergers that are intended to eliminate competitors”—for example, Facebook buying Instagram—“or that entail other anticompetitive practices that are not collusive,” he explained.

Hovenkamp stated that he thinks that the U.S. already has effective tools such as the Sherman Act that can allow regulators to use “focused injunctions to stop the conduct without doing unnecessary harm … to the efficiencies and the network effects that have made the tech market so valuable.”

Part of what impressed Hovenkamp about Biden’s executive order is how moderate and un-political it seems. “While this was widely touted as a progressive document,” Hovenkamp noted, “the fact is that it preserves the centrality of economic concerns in antitrust. It never speaks of political power as an antitrust concern.” And it never uses the word “breakup” in reference to Big Tech.

### AT: Rulemaking Now

#### The FTC won’t significantly expand the scope of antitrust because it’s politically cautious

Megan Browdie 21, Jacqueline Grise, and Howard Morse, Partners at Cooley, Washington, DC, “Biden/Harris Expected to Double Down on Antitrust Enforcement: No “Trump Card” in the Deck”, Concurrences: Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

38. Current leadership at the agencies appear to agree with the Republicans’ more cautious approach. For example, Chairman Joe Simons, while having touted himself as “responsible for overseeing the re-invigoration of the FTC’s non-merger enforcement program” during his tenure as director of the FTC Bureau of Competition under Bush, has pushed back on these “expanded” theories of antitrust harm. For example, he argued in January 2020 that “U.S. antitrust laws are sufficiently robust to handle competition problems as they arise. Over the years, antitrust laws have proven to be very flexible and resilient in enabling enforcers to challenge conduct that harms competition in a broad range of markets. These laws have proved themselves effective even as the economy evolved with technological progress.” [42]

39. Given this disagreement, and that the Democrats, at best, will have a very thin majority in the Senate, we anticipate some modest modifications to the antitrust laws but expect serious pushback to substantial overhauls of the system or laws.

#### The FTC’s walking a fine line---drawing some fire BUT broadly retaining support AND avoiding controversial stances

Kate Linebaugh & Ryan Tracy 21, Linebaugh is the co-host of The Journal; Tracy is a Reporter at The Wall Street Journal, “Biden's New FTC Chair Squares Off With Big Tech,” WSJ, 7-30-2021, https://www.wsj.com/podcasts/the-journal/biden-new-ftc-chair-squares-off-with-big-tech/b3aae132-15f2-499f-ab40-51758758ad34

Kate Linebaugh: Now that Kahn is in a powerful position and has shown she's willing to rewrite the rules, the forces against her are piling up, including two of the biggest companies in the world. That's after the break. When Khan took over leadership of the FTC, Amazon publicly challenged her objectivity, citing her past statements and writings.

Ryan Tracy: The FTC has an active antitrust investigation of Amazon, and Amazon has preemptively asked for Lina Khan to be recused from that investigation and any action the agency might take as a result.

Kate Linebaugh: Two weeks later, Facebook, which is being sued by the FTC over antitrust, came out with a similar argument.

Ryan Tracy: In Facebook's view, she should be an impartial observer of these facts. She's brought on to this job, but she has access to the evidence that the agency has. And then she makes a judgment, keeping the public interest in mind and upholding her oath to the Constitution and all these things that public officials are supposed to do. If she's already formed her view, then how can she do that? That's Facebook's argument.

Kate Linebaugh: The FTC's case against Facebook predates Kahn, but it gets right at the heart of her philosophy. It doesn't look at prices for consumers. Instead, it focuses on how Facebook's acquisitions of companies like WhatsApp and Instagram stifled competition and hurt consumers.

Ryan Tracy: What the FTC says is we may not have challenged these mergers back when they happened, but when you look at the whole picture, we think Facebook wasn't making these mergers for good business reasons. We think they were trying to keep competitors out and to create a monopoly for themselves.

Kate Linebaugh: Big high visibility cases like these are important, but they aren't Kahn's only priority.

Ryan Tracy: She's got a lot of other things that she wants to do. She wants to write rules that aim to boost competition and target unfair business practices in sectors across the economy.

Kate Linebaugh: Kahn's plans for the agency were the focus of this week's House hearing, and lawmakers came with a laundry list of what they wanted the FTC to enforce. Everything from online fraud and ransomware to protections for veterans and older adults. Kahn had her own message for lawmakers.

Ryan Tracy: Congress, please give us more money. And if you want us to do all these things well, we're going to need more resources.

Kate Linebaugh: But Republicans voiced their displeasure over Kahn's early steps that they say indicate she's consolidating power. Here's Republican Congresswoman Cathy Rogers.

Audio: I continue to hear that the FTC needs additional funding, staff authorities, but if decisions are being made behind the scenes unilaterally, really makes it hard to justify such requests.

Kate Linebaugh: Despite some critique, Ryan says that Kahn held her own in the hearing.

Ryan Tracy: I once had someone who had testified before Congress tell me that really what you're trying to do is not lose when you're under pressure, and I think she didn't make any errors or have any blow-up moment. It was a fairly even-keeled hearing from her. To the extent she got pushback, it was really on this issue of how she's running the agency, what the agency's internal process and policies and procedures have been under her leadership. A lot of that is coming from Republicans on the Commission being frustrated that she's, in their view, cutting her out of the process. She responded to that by saying she was open to thinking about how to do things differently. That seemed to satisfy lawmakers, at least for now.

Kate Linebaugh: Why does it matter if Congress is happy with her or not?

Ryan Tracy: Look, in terms of conducting her daily business, she's already got this job. Congress doesn't have any direct say about that. On the other hand, she does have things she needs from Congress, and if she wants to get those things, she's got to have support from Democrats and probably also from Republicans, at least on some of them. Because some of that legislation will have to be bipartisan to get through.

Kate Linebaugh: After the hearing, Kahn held a press conference. She stayed on message and didn't ruffle feathers, but there was one notable thing. She had a book with her, a book about a century-old action by the FTC.

Ryan Tracy: She said it had a fairly boring title, like Federal Trade Commission Report on Meatpacking Industry. Basically as she described it, it was the Commission's investigation into this industry and how it worked and how different companies might've had power over different segments of the supply chain and that sort of thing. She also noted with a laugh that the FTC had tried to take action on that industry and that Congress ended up thinking the agency had gone too far in limiting its jurisdiction with respect to that industry. Which I thought was kind of an interesting comment, given that in a lot of people's view, she may try to herself push the bounds of the FTC's legal authority.

### Link---2NC

#### The plan depletes the FTC’s PC, preventing risky action in other areas

Filippo Maria Lancieri 19, Master’s Degree in Economics from Insper, Research Fellow at the Stigler Center, J.S.D. and LLM Candidate at the University of Chicago Law School, BA in Law from FGV - Fundação Getulio Vargas, “Digital Protectionism? Antitrust, Data Protection, and the EU/US Transatlantic Rift”, Journal of Antitrust Enforcement, Volume 7, Number 1, 8/19/2019, Lexis

This is better seen as a regulator’s endogenous decision that reflects both the political climate in which he operates and the toolkit at his disposal-leading different regulators to opt for different solutions. As a result, it is feasible that European anti-trust policymakers’ actions partially reflect concerns regarding the economic power of companies that handle large amounts of personal data. In the US, the response may be different, as local preferences and available tools are different. In other words, if agencies are *‘continually engaged in a process of accumulating and spending political capital’* when taking enforcement decisions, European regulators have incentives to increasingly act to reign-in, through all means available (antitrust being an important one), on the power of data companies. In doing so, they demonstrate their alignment to political priorities and accumulate political capital to spend in other areas. The same does not hold true for American regulators operating in a political environment where similar actions entail an expenditure of political capital that may be better allocated elsewhere.

#### The FTC is a political actor, acutely aware of its finite PC---it’ll avoid repeatedly confronting Congress by altering antitrust enforcement in other cases

D. Daniel Sokol 10, Assistant Professor at the University of Florida Levin College of Law, Senior Research Fellow at the George Washington University Law School Competition Law Center, LLM from the University of Wisconsin Law School, JD from the University of Chicago, MS in History from the University of Oxford, AB from Amherst College, “Antitrust, Institutions, and Merger Control”, George Mason Law Review, 17 Geo. Mason L. Rev. 1055, Summer 2010, Lexis

Both antitrust's statutory authority and each country's current policy outlook are functions of policy choice discretion. Antitrust agencies must take into account their political capital and how to expend it vis-a-vis other government actors, states, and privately-owned enterprises that wield significant political power. These public choice calculations color how agencies order their enforcement priorities. Agency discretion through agency inaction illustrates the limits of competition advocacy and other forms of antitrust enforcement against public restraints.

The history of U.S. antitrust enforcement illustrates public choice concerns. In 1890, Congress enacted antitrust legislation at the federal level. At its very roots, antitrust emerged in part as a result of political bargaining. Some of the rationale behind the Sherman Act was to protect producer interests against more efficient large-scale operations. To think that antitrust is not influenced by political interests naively suggests that public choice theory applies in other regulatory settings but not antitrust.

In some instances, antitrust enforcers may be subject to capture. Antitrust agencies may act politically in a number of ways. Agencies are political players that attempt to increase their size and power. Agencies may [\*1074] act politically in case selection. The more high profile the case successfully brought, the greater the potential rewards are for antitrust lawyers going forward as they advance within government or exit government for private practice. Cases not brought are equally important. Agencies may choose not to bring difficult cases because they could result in a defeat. A decision against the agency may affect the future budget of the agency and the quality of its staff. Antitrust agencies also may be chilled from bringing a case, if in doing so they threaten the interests of government officials that have budgetary or oversight authority over the agency. For example, when an enforcer rules the "wrong" way because she looks to efficiency rather than industrial policy concerns, political repercussions may ensue.

Both the executive and the legislative branches may push the antitrust agencies toward certain goals. Antitrust agencies face potential cuts in funding if their enforcement and non-enforcement priorities are inconsistent with Congressional wishes. Such threats limit the potential scope of agency decision making. Similarly, the executive branch may try to influence the DOJ Antitrust Division to push an enforcement agenda based on its own policy agenda. The antitrust bar may also influence the antitrust agencies. Prestige in the eyes of the practitioner community and potential private firm opportunities after government service may shape some agency decision making at both staff and leadership levels of the antitrust agencies.

### Link---Fear

#### Even without actual backlash---the fear of potential backlash causes the FTC to regulate conservatively, which triggers the impacts.

Kathleen Watson 16, researcher at New America's Open Technology Institute, “The Federal Trade Commission Doesn’t Need Congress’ “Disruption”,” New America, 8/18/16, https://www.newamerica.org/oti/blog/federal-trade-commission-doesnt-need-congress-disruption/

The FTC Robust Elderly Protections and Organizational Requirements to Track Scams (REPORTS) Act (H.R. 5098) would create more roadblocks for the FTC. This bill would require the FTC to submit a forward-looking report to Congress each December that outlines any policies the agency might implement, rulemakings it might issue, and non-regulatory guidelines it might develop over the next year, along with dates and timelines of these future actions. This bill would create a Congressional oversight regime of unprecedented magnitude, allowing Congress to act as a back-seat driver to the FTC and stall politically disfavored actions in their nascent state. If the REPORTS Act became law, the FTC may be less likely to take actions that would protect consumers for fear of retaliation from Congress. In such a case, Congress’ interference could harm the consumers and businesses that rely on the FTC to police unfair and deceptive market behaviors. This bill leaves too many questions unanswered regarding the ways it would be carried out and must be stopped.