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

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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.

#### Decline cascades---nuclear war

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

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

INTRODUCTION

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

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

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

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

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

METHODOLOGY

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

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

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

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

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

ECONOMY

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

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

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

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

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

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

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

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

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

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

ENVIRONMENTAL

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

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

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

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

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

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

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

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

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

GEOPOLITICAL

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

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

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Regulation CP

#### The United States federal government should:

#### ---require restrictions on anticompetitive mergers, acquisitions, and cooperatives that threaten profit loss in the agricultural sector;

#### ---substantially shift its farming subsidization to small, sustainable operations.

#### 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

#### Expanding subsidization of sustainable ag stops consolidation and environmental damage

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VI. Towards A More Just Agricultural Policy: Subsidizing Sustainable Agriculture

We have to produce food differently. The ADM/Cargill model of industrial agribusiness is heading toward its Waterloo. As oil and gas deplete, we will be left with sterile soils and farming organized at an unworkable scale. Many lives will depend on our ability to fix this. Farming will soon return much closer to the center of American economic life. It will necessarily have to be done more locally, at a smaller and finer scale, and will require [\*296] more human labor.

Despite what many scientists and farmers think to be the best available farming practices for environmental protection and a nutritious food supply, our nation's agricultural policies under the Farm Bill have strayed quite far from these practices to placate the agribusiness and food processing industries. The average commodity crop farmer now produces enough corn and soybeans to feed at least 129 Americans some food item processed from his crops. However, that same commodity farmer sends no healthy fruits and vegetables to the market and amazingly can no longer feed his own family from his massive fields. Heavy corn-producing states such as Iowa now import more than 80% of the food consumed by the residents of those states. Our food production system under the Farm Bill, which should ideally encourage production of healthy food for our nation, is actually creating "food deserts" where food is difficult to come by and the food that is available consists of saturated fats and little to no nutrition.

This system promotes larger and larger megafarms, but as Michael Pollan and other scholars note, we must remember the lessons learned by the Soviet Union as its national stability "foundered precisely on the issue of food." The move to industrial agriculture prompted the Soviet collapse because the Soviets "sacrificed millions of small farms and farmers," but their system of industrial agriculture "never managed to do what a food system has to do: feed the nation." Each day, the U.S. system [\*297] resembles the failed Soviet industrial agricultural system slightly more as it moves away from the 1940s American system, which was composed of farms roughly homogenous both in small size and in variety of crops and on-farm livestock. Although there are very stark differences between the political, social, and economic structures of the former Soviet Union and modern American society, one thing is clear from the comparison: our commodity crop farming system is no longer sensible, assuming it ever made sense to begin with. Given the widespread environmental degradation and public health concerns that are caused by our current federal agricultural policies, it is time for Congress to utilize the Farm Bill to effectively overhaul our agricultural system.

Fortunately, there are diverse policy solutions available to revise this system and remedy past wrongs. The remainder of this Article will emphasize one promising policy solution that can mitigate and potentially solve the major problems of industrial commodity crop agriculture in the United States: subsidizing sustainable agriculture to normalize the market. Although a truly free market without subsidies would be ideal, such as the system currently operating in New Zealand, the vast subsidy infrastructure currently embedded in the Farm Bill would be difficult to pull out from under the feet of farmers that depend on those subsidies to survive. As seen in previous Parts, more than [\*298] seventy years of Farm Bill policy have led to vast changes in the American agricultural system by forcing capital allocation and aggregation in large farms and few crops. Therefore, instead of immediately eliminating the Farm Bill subsidies on which many farms now rely for survival, Congress should shift a fair portion of these subsidies to farmers implementing sustainable agricultural methods. As discussed in Part II, past conservation programs erred in only targeting large commodity crop growers. A more workable policy solution, however, would be to offer these subsidy incentives to all farmers based on their farming practices, regardless of what crop they cultivate. This would create a much more just system than the current subsidy framework that excludes 60% of American farmers from any subsidies whatsoever.

Coincidentally, farmers that never see Farm Bill subsidies are typically the same farmers that grow our nation's healthy fruits and vegetables. California provides a vivid example of the current failures of the Farm Bill's subsidy program. "With 2,000 miles of waterways, nearly 30,000 farms, and over $ 30 billion in annual on-farm revenues," California is the leading state in terms of annual agricultural sales. Despite topping the nation's agricultural sales, more than 90% of California's farmers receive no agricultural subsidies. Of the few farmers that do receive Farm Bill subsidies, most are cotton and rice farmers. How important are these neglected Californian farmers to the American marketplace? Californian farmers are invaluable to our nation's agricultural system because the state "contributes more than 12.5% of the total U.S. agricultural market value and nearly half of all fruits, nuts, and vegetables." By ignoring these farmers and precluding them from receiving Farm Bill subsidies, Congress is prioritizing monocultures of corn, soybean, wheat, cotton, and rice at the expense of sound agricultural, nutritional, and environmental practices.

[\*299] Sustainable agriculture, however, can change these policies for the better. First, a definition for "sustainable agriculture" is appropriate since the term can be somewhat amorphous in a vacuum. According to leading sustainable agriculture scholar Dr. James Horne, sustainable agriculture "encompasses a variety of philosophies and farm techniques … [that] are low chemical, resource and energy conserving, and resource efficient." Although it did little to encourage such agriculture, the 1990 Farm Bill defined sustainable agriculture as:

An integrated system of plant and animal production practices having a site-specific application that will, over the long term, satisfy human food and fiber needs; enhance environmental quality and the natural resource base upon which the agricultural economy depends; make the most efficient use of nonrenewable resources and on-farm/ranch resources; integrate, where appropriate, natural biological cycles and controls; sustain the economic viability of farm/ranch operations; and enhance the quality of life for farmers/ranchers and society as a whole.

As most agricultural experts note, it is important to understand that "sustainable agriculture does not mandate a specific set of farming practices." Rather, sustainable practices vary from place to place depending on the ecosystem, precipitation, and other factors, but "there are myriad approaches to farming that may be sustainable." The more important overarching goal of sustainable agriculture is the "stewardship of both natural and human resources … including concern over the living and working conditions of farm laborers, consumer health and safety, and the needs of rural communities."

Despite the promise of sustainable agriculture to solve the numerous problems discussed in Parts I, II, III, IV, and V, the Farm Bill has been surprisingly silent as to how to encourage of such practices. This is likely due to pleas from certain campaign contributors that are also the largest beneficiaries of Farm Bill [\*300] subsidies: agribusiness and food processors. As early as 1994, the President's Council on Sustainable Development chartered a Sustainable Agricultural Task Force composed of agricultural experts to present strategies that could alleviate the problems identified in this Article. In the mid-1990s, the Task Force made key policy recommendations that were intended to serve as critical updates to the Farm Bill. Ignored for more than a decade, it is now time for Congress to listen to those experts and other proponents of sustainable agriculture in order to address the most serious environmental and health problems triggered by the Farm Bill.

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States CP

#### The 50 state governments and relevant sub-federal territories, in coordination through the National Association of Attorneys General, should restrict anticompetitive mergers, acquisitions, and cooperatives that threaten profit loss in the agricultural sector.

#### State action solves, won’t be preempted, and causes federal follow-on

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Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition.[2] In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions.[3] This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage.[4] Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.[5]

In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process.[6] As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States.[7] This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.[8]

In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring *parens patriae* suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations.[9] Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices.[10] These laws had their intended effect of reinvigorating state antitrust enforcement.

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints.[11] The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’.[12] No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications.[13] To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.[14]

Since the reawakening of state antitrust enforcement nearly 30 years ago, state attorneys general have continued to play an important role in the enforcement of both state and federal antitrust laws. During periods of lax federal antitrust enforcement, state attorneys general have often ramped up their enforcement activity in order to protect consumers from anticompetitive transactions and business practices.[15] During periods of vigorous federal antitrust enforcement, they have often served as strong partners for the DOJ and FTC by, among other things, offering valuable insights about competitive dynamics in local markets, assisting with obtaining information from key market participants (including state governmental entities that are direct purchasers of goods and services), and helping develop and implement litigation strategies for cases being tried before federal judges presiding in their states.[16]

Since January 2017, state attorneys general have increasingly played a leading and independent antitrust enforcement role. State antitrust enforcers have significantly increased their enforcement activity and willingness to act separately from their federal counterparts because many of them believe that there has been ‘under-enforcement’ by the DOJ and FTC.[17] State antitrust enforcers have also been able to enhance their influence over key competition policy issues and the antitrust enforcement agenda within the United States because there appears to have been a significant decline in the coordination and relationship between the DOJ and FTC.[18]

In once again flexing their enforcement muscle, state attorneys general have shown a willingness to publicly disagree with the DOJ and FTC on both policy and enforcement decisions, and have also sought to pressure their federal counterparts into more aggressively policing certain industries. Recent examples of the increased independence and assertiveness of state antitrust enforcers include:

* The DOJ, FTC and several state attorneys general have been actively investigating and prosecuting ‘no-poach’ agreements (i.e., where competitors for employees agree not to recruit or hire each other’s employees) in recent years. However, the DOJ and state attorneys general have taken directly opposing positions in private litigation challenging the legality of ‘no-poach’ clauses in corporate franchise agreements. The DOJ has argued that courts should review these clauses under the rule of reason whereas various state attorneys general have argued that these clauses should be deemed per se unlawful.[24]
* In their joint investigation into the T-Mobile/Sprint merger, nearly 20 state attorneys general sued to block the transaction in September 2019 even though the DOJ, along with seven state attorneys general, approved the deal after securing certain structural and behavioural remedies.[19] After the DOJ announced its proposed settlement with the companies, the Attorney General for New York, who led the states’ challenge to the merger, issued a press release dismissing the adequacy of the remedies negotiated by the DOJ: ‘The promises made by [the divestiture buyer] and [the merging companies] in this deal are the kinds of promises only robust competition can guarantee. We have serious concerns that cobbling together this new fourth mobile [phone] player, with the government picking winners and losers, will not address the merger’s harm to consumers, workers, and innovation.’[20] Thereafter, the DOJ opposed the states’ enforcement action by, among other things, moving to disqualify the private counsel hired by the states to represent them[21] and filing submissions that argued against the states’ requested injunction.[22] Ultimately, the state attorneys general were unsuccessful in their bid to block the deal.[23]
* None of the more than 20 state attorney general offices that actively investigated the AT&T/Time Warner merger joined the DOJ’s unsuccessful challenge to the transaction despite the DOJ’s concerted effort to secure their support.[25] In fact, nine state attorneys general filed an amicus brief opposing the DOJ’s appeal of the trial court’s decision.[26]
* After the FTC declined to seek any Colorado-related remedies in connection with Optum’s acquisition of DaVita Medical Group, the Attorney General for Colorado required the merging companies to lift the exclusivity provisions in contracts with certain healthcare providers and to extend their existing contracts with certain health insurers. In announcing this settlement, the Colorado Attorney General stated: ‘I recognize that this case marks an important step in state antitrust enforcement . . . . I am committed to protecting all Coloradans from anticompetitive consolidation and practices, and will do so whether or not the federal government acts to protect Coloradans.’[27]

After voicing displeasure with federal antitrust enforcement in the technology sector, numerous state attorneys general launched their independent investigations into ‘Big Tech’ companies even though the DOJ and FTC have ongoing investigations into these companies.[28]

### 1NC

Politics DA

#### Biden PC will get BBB passed despite disagreements, but timing and focus is key

Laura Barron-Lopez 11/11, White House Correspondent for POLITICO, “Dems to White House: The only prescription is more Biden”, <https://www.politico.com/news/2021/11/11/dems-white-house-biden-520946>, November 11th, 2021

After months of deference to Congress, President Joe Biden moved more assertively last week to shepherd half his domestic agenda into law. With the other half still in limbo, Democrats want some of that Biden punch again.

Outside groups fear that congressional Democrats could come up short on Biden’s social spending package. They are concerned that moderates in the House may end up buckling if the budget scores on the bill come back worse than anticipated. And there is residual anxiety that one of the two wavering Senate Democrats — Joe Manchin of West Virginia and Kyrsten Sinema of Arizona — could vote “no” over concerns about inflation and long-term debt.

The clearest solution to avoiding this, they argue, is more Biden.

“All eyes are on the president, all expectations are on the president,” said Lorella Praeli, co-president of the progressive Community Change Action. “We are playing our role. We are mobilizing. We're reminding people everyday what this is about.”

Praeli added that Biden must ensure there aren’t future cuts to the package, which dropped from $3.5 trillion to $1.75 trillion to accommodate centrist Democrats in the House and Senate. “This is what he campaigned on. Only the president can deliver it in the end.”

Until last week, Biden’s involvement in negotiations had been more deferential than managerial. That befuddled lawmakers, who were waiting for him to draw red lines about which priorities he wants in and out of the deal or to even demand votes. To date, Biden has publicly refrained from drawing a red line around including paid leave in the final version of the legislation, leaving the leadership in the House at odds with centrists in the Senate.

But Biden did ramp up his involvement in the negotiations last week. And Democrats viewed that as key to getting an agreement in the House on their infrastructure bill, as well as on a rule to move forward with their social spending package, which funds universal pre-K, expands Medicare access, cuts taxes for families with children 18 years old and under, and combats climate change.

Now they want more. Expectations are high for Biden to keep the House to its promise of a vote on that social spending plan the week of Nov. 15.

“They basically made a promise,” said Rahna Epting, executive director of the progressive advocacy group MoveOn. “And Biden was able to get enough progressives to vote for the bipartisan infrastructure bill, on that promise. We are expecting Biden and the Democratic Caucus will make good on their word and pass the Build Back Better Act no later than Nov 15th as stated.”

White House officials contend that Biden and his team remain in close touch with the Hill, and their legislative affairs staff continues to push the social spending bill toward a vote. The White House said it is communicating regularly with a range of lawmakers including Manchin, but did not answer when asked whether Biden has spoken to the West Virginia senator or other moderates in recent days.

“There has been no kind of slowdown when it comes to our Hill outreach,” a White House official said.

The growing demands for Biden to stay heavily involved reflect a fear in the party that the window to act on the agenda is quickly closing, especially as concerns mount about lingering inflation and the midterms near. If the House meets its deadline next week and passes the social spending bill, some Democrats want Biden to issue a deadline for the Senate to act. Others noted that the end-of-year legislative calendar is short and brutal.

The “dynamic has totally changed,” said a Democratic strategist. “The president secured this agreement with the five holdouts for House passage of BBB next week and it’s on him to enforce it.”

A top climate operative echoed that assessment telling POLITICO that Biden “will have failed” on tackling climate change if the second piece of the agenda doesn’t pass.

But the operative also expressed a newfound fear that Biden’s current effort to sell the benefits of the infrastructure bill could distract or complicate Democrats’ attempt to keep public interested in the social spending plan.

"They need to sell [physical infrastructure] but also act like it's not enough," said the activist.

"How are they also creating the urgency for BBB to get done, for it to stay on the timeline of getting it done by Thanksgiving? It's a balancing act.”

Matt Bennett, co-founder of the moderate group Third Way, agreed that the dynamics were “tricky” in trying to sell one just-passed bill as historic while simultaneously making the case that another ambitious bill is needed. Biden will travel to New Hampshire and Michigan next week to highlight the money the infrastructure bill will direct toward new roads, bridges and transit projects across the country.

“This moment that we're in is hard,” said Bennett. “It will be much, much easier when both bills are completed. There is a very profound political imperative for Democrats to get this finished, to end the infighting and sausage-making and shift to creating a narrative about what Democrats have just done for Americans because they've been utterly unable to do that.”

A number of groups plan to amp up pressure next week as Congress returns. House Speaker Nancy Pelosi and the White House have repeated their desire to have a vote on the social spending plan by the end of next week. The Service Employees International Union will descend on Capitol Hill with some 500 union members, said Mary Kay Henry, the union’s president.

“We are escalating phone calls, text messages,” said Henry. “We're bringing members into Washington next Tuesday, we have the president's back, to get Congress to act quickly and get the full back package.”

Democratic outside groups have spent more than $150 million on TV and digital ads promoting the president’s social spending plan, known as “Build Back Better.” The League of Conservation Voters and Climate Power launched new digital ads calling on the five moderates who reached an agreement with the White House and House leadership last week to follow through on their commitment to pass the second piece of Biden’s economic agenda “next week.”

The longer it takes to pass the social spending plan, the harder it becomes to keep the party unified, Democrats warn, especially amid up-and-down economic news. A new report Wednesday revealed inflation hit 6.2 percent in October, its highest point in 31 years, contributing to high gas, car and food prices. It forced Biden to quickly issue a statement addressing the issue and ever-so-slightly shift his messaging, arguing that passage of the social spending plan would combat inflation.

“Inflation hurts Americans’ pocketbooks, and reversing this trend is a top priority for me,” Biden said in a statement. “It is important that Congress pass my Build Back Better plan, which is fully paid for and does not add to the debt, and will get more Americans working by reducing the cost of child care and elder care, and help directly lower costs for American families.”

#### The plan trades-off

Peter C. Carstensen 21, Fred W. & Vi Miller Chair in Law Emeritus at the University of Wisconsin Law School, LL.B. from Yale Law School, MA in Economics from Yale University, “The “Ought” and “Is Likely” of Biden Antitrust”, Concurrences – Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities.

15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate!

16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Failure causes extinction

Jeff Goodell 21, American Author and Contributing Editor to Rolling Stone Magazine, Senior Fellow at the Atlantic Council and 2020 Guggenheim Fellow, “Joe Manchin Just Cooked the Planet,” Rolling Stone, 10-1-2021, https://www.rollingstone.com/politics/political-commentary/joe-manchin-reconcilation-bill-big-coal-1235597/amp/

West Virginia Sen. Joe Manchin just cooked the planet. I don’t mean that in a metaphorical sense. I mean that literally. Unless Manchin changes his negotiating position dramatically in the near future, he will be remembered as the man who, when the moment of decision came, chose to condemn virtually every living creature on Earth to a hellish future of suffering, hardship, and death.

Quite a legacy. But he has earned it.

Last night, during the insane and at times comical negotiations over President Biden’s infrastructure bill and his $3.5 trillion Build Back Better agenda (aka the reconciliation bill), Manchin let it be known that he was not going to vote for any measure above $1.5 trillion. And because Democrats can’t afford to lose a single vote in the Senate, if Manchin won’t vote for it, the reconciliation bill won’t pass.

The $3.5 trillion reconciliation bill includes a long list of programs and tax reforms that will help reduce poverty and improve the social safety net, such as universal child tax credit, universal pre-K, free community college, and an expansion of Medicare. But it is also the primary vehicle for President Biden’s ambitious climate action agenda, including cuts in subsidies for the fossil fuel industry, and, most importantly, the Clean Energy Performance Package (CEPP), which is a clean energy standard that incentivizes power companies to shift away from fossil fuels.

From a climate point of view, the importance of these climate policy measures is impossible to overstate. In order to have a decent chance at maintaining a habitable planet, scientists agree that the world needs to zero out carbon pollution by 2050. And to have any shot at that, we have to start moving now. Every year, every month, every hour of delay makes that goal more difficult to achieve, and increases the risks of accelerated climate chaos that will make this past summer of hellish wildfires, storms, and droughts look like the good old days.

The zero carbon by 2050 goal is not a political slogan or environmentalist’s dream. It is what the best scientists in the world are telling us we need to do to avert climate catastrophe. It is also the basis for Biden’s goal of a 100 percent clean energy grid by 2035, and a 50 percent reduction in CO2 pollution by 2030. For Biden, taking strong action on climate is not just important in itself. It is also key to giving the U.S. climate negotiators something to bring to the table at the upcoming Glasgow climate talks, which begin on October 31st. After President Trump pulled the U.S. out of the Paris climate deal, the rest of the world has looked at the U.S. with distrust. Passage of strong climate measures in Congress before the Glasgow meeting would not only rehabilitate America’s standing as a nation that takes its contribution to solving the climate crisis seriously, but give U.S. negotiators leverage to push other nations to take action.

For Biden, and for the world, it all rests on the ability to get the reconciliation bill through Congress. With Republicans not willing to do anything, this was the only chance they had to get climate policy through. It was a gamble, but it was a gamble they had to take.

### 1NC

Memo CP

#### The United States federal government should issue a policy memorandum that limits anticompetitive mergers, acquisitions, and cooperatives that threaten profit loss in the agricultural sector.

#### The CP competes because it’s not legally binding BUT solves by shifting antitrust policy

Theodore Voorhees 17, Senior Litigator and Member of the Antitrust and Competition Law Practice Group at Covington & Burling LLP, JD from the Catholic University of America, Columbus School of Law, AB from Harvard University, and Leah Brannon, Partner at Cleary Gottlieb Steen & Hamilton LLP, JD from Harvard Law School, BA with Highest Distinction from the University of Virginia, ABA 2016 Presidential Transition Task Force, “Presidential Transition Report: The State of Antitrust Enforcement”, American Bar Association Section of Antitrust Law, January 2017, http://cartelcapers.com/wp-content/uploads/2017/01/ABA-SAL-Presidential-Transition-Report-1-18-17-FINAL-2.pdf

III. ENFORCEMENT MATTERS

A. Agency Enforcement and Policy

1. Guidance

Where there are uncertainties in the Agencies' enforcement policies or priorities, it is often essential for the Agencies to provide guidance. The formal guidance can take the form of formal guidance documents (such as the Horizontal Merger Guidelines of 2010) or FTC opinions. Informal guidance can take the form of agency reports, speeches by key agency personnel, amicus briefs, decisions to litigate, or closing statements. Agency guidance is important and beneficial for multiple reasons, such as providing clarity for businesses, moving competition policy in the right direction, and ensuring a U.S. perspective on the international arena. Agency guidance is also particularly useful to communicate a shift in enforcement policy or practice.3

[FOOTNOTE] 3 The recent guidance issued by the Division and the FTC communicating the decision to treat wage-fixing and no-poaching agreements as criminal violations going forward provides an excellent example of this. See DEP’T OF JUSTICE, ANTITRUST DIV., FED. TRADE COMM’N, ANTITRUST GUIDANCE FOR HUMAN RESOURCE PROFESSIONALS (Oct. 2016), available at www.ftc.gov/system/files/documents/ public\_statements/992623/ftc-doj\_hr\_guidance\_final\_10-20-16.pdf. [END FOOTNOTE]

Furthermore, uncertainty as to the boundaries of antitrust laws may chill potentially procompetitive conduct or enable potentially anticompetitive behavior to continue unchecked. Businesses may be less willing to engage in novel business activities that could benefit consumers. Moreover, agency guidance and enforcement not only define the boundaries of how the Agencies view and enforce the law, but may also impact how courts rule in litigation.

Guidance also ensures a place for the U.S. perspective on the international stage. Because so many foreign antitrust authorities look to the Agencies for leadership and study U.S. enforcement decisions and cases, clearly articulated guidance helps achieve uniformity across jurisdictions. Moreover, an international presence and influence as to antitrust policy is particularly critical in an era in which some foreign competition agencies use the pretense of antitrust enforcement as a cover to mask decisions that are actually based on industrial policy or protectionism.

Speeches, while not binding on the Agencies or as long-lasting as more formal agency documents, can give advance notice of enforcement priorities and the views of agency leadership regarding how best to analyze certain forms of conduct. For instance, in her first speech as Acting Assistant Attorney General, Renata Hesse offered important insights into the use of bargaining models in analyzing vertical mergers and the Division's skepticism of procompetitive claims in horizontal mergers. Indeed, for changes in agency thinking, an agency speech or other non-enforcement guidance can be the fairer approach, at least in the first instance, than initially embarking on litigation.

Business review letters from the Division and advisory opinions from the FTC serve as another avenue for providing guidance on novel conduct. More important, by setting forth the respective agency's reasoning for how it views proposed conduct, these documents in effect make a policy statement as to what characteristics of the conduct are considered to be beneficial or harmful for consumers.

### 1NC

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.

### 1NC

ADV CP

#### The United States federal government should:

#### ---financially induce agricultural monopolies to not engage in anticompetitive mergers, acquisitions, and cooperatives;

#### ---mandate regenerative agriculture;

#### ---implement fiscal responsibility reforms.

## Consolidation ADV

### 1NC

#### Both ADVs rely on the same internal link---nearly everything is cross-applicable.

#### Food disruptions are temporary and adaptable AND war turns the case

Gene Tunny 12, Economic Consultant, Trading as Adept Economics, Former Consultant with the Commonwealth Treasury, “Should We Worry About Food Security?”, Queensland Economy Watch, 7/9/2012, https://queenslandeconomywatch.com/2012/07/09/should-we-worry-about-food-security/

The push for greater local food production in urban and peri-urban areas makes no economic sense in a country where there is abundant farm land, and hence I was pleased to learn about the views of a University of Queensland expert on food security, Michael D’Occhio, in Queensland Country Life today (Food security ‘overblown’):

…with Australia producing a huge surplus of food relative to its population, “I think we’re a little bit indulgent when we talk about food insecurity in Australia”.

But a combination of fears about food security and food miles (how far the food travels before it gets to the table and hence how much greenhouse gas is created) is driving urban planners to promote inefficient agriculture within and close to our cities. For example, in a piece at the Conversation today, Griffith University Professor of Urban Management and Planning Paul Burton writes (Grow your own: Making Australian cities more food secure):

A significant opportunity exists to support the re-localisation of food production, processing, and consumption. While cities historically grew as places where local food surpluses were traded, urban food supply lines have become increasingly long, complex, and vulnerable to disruption by a number of factors, including climate change but also by natural disasters and by wars and other conflicts. By growing more of our food within our cities and in their immediate peri-urban hinterlands we can become less dependent on these vulnerable supply lines.

I find it hard to worry about supply lines getting disrupted, as any disruption is likely to be temporary and there are still other supply lines to ensure our cities won’t starve. The risk of all the potential supply lines – roads, rail, shipping, air freight – getting knocked out at the same time for an extended period seems very remote to me, outside of a nuclear war, in which case a bunker full of baked beans and pop tarts would be the best contingency.

Hence I agree that concerns about food security domestically are overblown. All the discussions I’ve had with people in rural communities in Queensland suggest there is clear potential to grow more food, but economics dictates it isn’t feasible (e.g. it can’t economically be grown at current prices, or it can’t economically be taken to the port because there isn’t a rail line nearby).

#### Ag is competitive, with tons of incentive to innovate

Torsten Kurth 20, Managing Director & Senior Partner at the Boston Consulting Group, Berlin, et al., “Reviving Agricultural Innovation in Seeds and Crop Protection”, Boston Consulting Group, 2/24/2020, https://www.bcg.com/publications/2020/reviving-agricultural-innovation-seeds-crop-protection

Increasing Competition from New ­Entrants and Nimble Startups. Thanks to shifts in consumer demand, the advent of several emerging technologies, and the growing attractiveness of the agriculture market, a variety of nimble startups and new competitors from outside the traditional agriculture sector have risen to compete against the big agricultural-­input companies.

Bringing their own expertise in areas such as consumer usability, biotechnology, ­robotics, and data analytics to bear on the challenges the industry faces, numerous ­so-called agtech companies are taking ­advantage of agile product development techniques and new ways of working to focus on specific challenges and bring their innovations to market quickly. As a result, they are threatening to outcompete the big agricultural-input players in several areas.

Investment in these young agricultural-­technology companies has risen rapidly in recent years, with these companies receiving a larger and larger proportion of funding. (See Exhibit 3.) The number of acquisitions in the sector is increasing as well. Just to take one example, Blue River Technology, which uses computer vision and artificial intelligence to apply crop protection products on a plant-by-plant basis, was acquired by John Deere in 2017 for $305 million, one of the largest agtech deals in the past five years.

Chart

Description automatically generated with medium confidence

Several large technology companies have also begun looking carefully at the agriculture industry, bringing their competencies in consumer-facing technology infrastructure and data science to bear. IBM’s Watson Decision Platform for Agriculture, for example, analyzes information gathered by sensors in the field along with weather and other data to optimize farm operations. Similarly, FarmBeats, Microsoft’s IoT platform for agriculture, collects and analyzes data from sensors, cameras, and drones. While these companies lack the deep agronomic experience and access to growers of the traditional players, their track record in disrupting other industries, including retail, transport, travel, and financial services, should be a wake-up call for the entire agriculture sector.

#### The plan’s uncertainty and disruption to capacity for tech innovation decimates growth of the ag sector

Dr. Don Racheter 17, President of the Public Interest Institute, Master's Degree and Ph.D. in Political Science from the University of Iowa, Taught at the University of Iowa and Central College, “Upcoming Mergers Benefit America's Farmers”, Des Moines Register, 8/6/2017, https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2017/08/06/upcoming-mergers-benefit-americas-farmers/537250001/

America’s farmers are being challenged to prepare for a global, growing population and a robust international trade market.

Not only has every farmer had to increase the number of people that he or she is responsible for feeding by almost 130 people since 1960, but international markets also are eager for Iowa’s soybeans and other agricultural products.

These market-based problems need specific market-centric solutions. By leaning on the power of an innovative and dynamic private sector, we can ensure our farmers have the tools to compete in any economic climate.

Industry leaders such as Bayer, Monsanto, Dow and DuPont are meeting these challenges head-on with a commitment to developing the latest technologies that make America’s farms both more efficient and effective. These efforts have filled the gap in public investment to groundbreaking agricultural research and development. According to the USDA Economic Research Service, government investment in agricultural R&D dropped to just 30 percent of total agricultural R&D funding since 2013.

Today, the private sector is responsible for many of the innovations that are currently shaping the future of farming in America, and more resources in the private sector means farmers can expect these advances in technology faster. The latest breakthroughs in precision farming techniques are helping farmers target their crop treatments, saving small farms money while also limiting their environmental footprint. For example, John Deere tractors use GPS sensors so that farmers don’t cover the same area twice, which can reduce their fuel input by up to 40 percent.

More permanent partnerships, such as the potential merger between Bayer and Monsanto, will ensure that leading ag companies are able to invest additional resources to bring advanced solutions to farmers. Farmers will be able to spend less time and resources on daily challenges, enabling them to meet the international demand for Iowa’s ag products.

As opponents to mergers pop up as frequently as weeds after a strong rain, we should examine what might possibly be driving their motivation. Rather than truly believing that these mergers harm consumers, many are driven by political motivations. Case in point is the July 21 commentary by Austin Frerick ["To save rural Iowa, oppose Monsanto-Bayer mega-merger"], a little-known former U.S. Treasury economist under the Obama Administration. One can’t help but question Mr. Frerick’s perspective given his support for greater government interference in the marketplace while government investment in R&D has continued to decline.

Cloaking a progressive agenda behind a call for consumers to reject private sector investment by two leading ag companies with a stake in America’s farming future is both disingenuous and harmful. Anyone who has spent any real time in a farmer’s field knows that what agriculture really needs is to attract, not reject, more investment in innovative agricultural technologies.

What critics fail to highlight is that the Bayer-Monsanto merger is the perfect example of bringing together two companies that operate in largely complementary fields to develop new tools and products with more capital. In fact, Bayer focuses mostly on crop protection, while Monsanto is known for seeds and traits capabilities. Alone, it can take each company more than a decade to create a new product for farmers, but together, the time could shorten significantly.

In an ever-changing free market, it is natural for businesses to seek to maintain a competitive advantage over their rivals by expanding their offerings to the consumers they serve. Bayer-Monsanto’s focus on finding the next generation of farming technology will spur their competitors to do the same to keep up.

Farmers are constantly battling uncertainty in their line of business and don’t have time for political posturing. The benefits from greater private sector investment in innovation from these upcoming mergers are clear and demonstrable and are necessary for the future of American farming.

#### Innovation is driving down environmental damage from farming BUT is only feasible with concentrated farming

Dr. Jayson Lusk 16, Professor of Agricultural Economics at Oklahoma State University, “Why Industrial Farms Are Good for the Environment”, The New York Times, 9/23/2016, Lexis

There is much to like about small, local farms and their influence on what we eat. But if we are to sustainably deal with problems presented by population growth and climate change, we need to look to the farmers who grow a majority of the country’s food and fiber.

Large farmers — who are responsible for 80 percent of the food sales in the United States, though they make up fewer than 8 percent of all farms, according to 2012 data from the Department of Agriculture — are among the most progressive, technologically savvy growers on the planet. Their technology has helped make them far gentler on the environment than at any time in history. And a new wave of innovation makes them more sustainable still.

A vast majority of the farms are family-owned. Very few, about 3 percent, are run by nonfamily corporations. Large farm owners (about 159,000) number fewer than the residents of a medium-size city like Springfield, Mo. Their wares, from milk, lettuce and beef to soy, are unlikely to be highlighted on the menus of farm-to-table restaurants, but they fill the shelves at your local grocery store.

There are legitimate fears about soil erosion, manure lagoons, animal welfare and nitrogen runoff at large farms — but it’s not just environmental groups that worry. Farmers are also concerned about fertilizer use and soil runoff.

That’s one reason they’re turning to high-tech solutions like precision agriculture. Using location-specific information about soil nutrients, moisture and productivity of the previous year, new tools, known as “variable rate applicators,” can put fertilizer only on those areas of the field that need it (which may reduce nitrogen runoff into waterways).

GPS signals drive many of today’s tractors, and new planters are allowing farmers to distribute seed varieties to diverse spots of a field to produce more food from each unit of land. They also modulate the amount and type of seed on each part of a field — in some places, leaving none at all.

Many food shoppers have difficulty comprehending the scale and complexity facing modern farmers, especially those who compete in a global marketplace. For example, the median lettuce field is managed by a farmer who has 1,373 football fields of that plant to oversee.

For tomatoes, the figure is 620 football fields; for wheat, 688 football fields; for corn, 453 football fields.

How are farmers able to manage growing crops on this daunting scale? Decades ago, they dreamed about tools to make their jobs easier, more efficient and better for the land: soil sensors to measure water content, drones, satellite images, alternative management techniques like low- and no-till farming, efficient irrigation and mechanical harvesters.

Today, that technology is a regular part of operations at large farms. Farmers watch the evolution of crop prices and track thunderstorms on their smartphones. They use livestock waste to create electricity using anaerobic digesters, which convert manure to methane. Drones monitor crop yields, insect infestations and the location and health of cattle. Innovators are moving high-value crops indoors to better control water use and pests.

Before “factory farming” became a pejorative, agricultural scholars of the mid-20th century were calling for farmers to do just that — become more factorylike and businesslike. From that time, farm sizes have risen significantly. It is precisely this large size that is often criticized today in the belief that large farms put profit ahead of soil and animal health.

But increased size has advantages, especially better opportunities to invest in new technologies and to benefit from economies of scale. Buying a $400,000 combine that gives farmers detailed information on the variations in crop yield in different parts of the field would never pay on just five acres of land; at 5,000 acres, it is a different story.

These technologies reduce the use of water and fertilizer and harm to the environment. Modern seed varieties, some of which were brought about by biotechnology, have allowed farmers to convert to low- and no-till cropping systems, and can encourage the adoption of nitrogen-fixing cover crops such as clover or alfalfa to promote soil health.

Herbicide-resistant crops let farmers control weeds without plowing, and the same technology allows growers to kill off cover crops if they interfere with the planting of cash crops. The herbicide-resistant crops have some downsides: They can lead to farmers’ using more herbicide (though the type of herbicide is important, and the new crops have often led to the use of safer, less toxic ones).

But in most cases, it’s a trade-off worth making, because they enable no-till farming methods, which help prevent soil erosion.

These practices are one reason soil erosion has declined more than 40 percent since the 1980s.

Improvements in agricultural technologies and production practices have significantly lowered the use of energy and water, and greenhouse-gas emissions of food production per unit of output over time. United States crop production now is twice what it was in 1970.

That would not be a good change if more land, water, pesticides and labor were being used. But that is not what happened: Agriculture is using nearly half the labor and 16 percent less land than it did in 1970.

Instead, farmers increased production through innovation. Wheat breeders, for example, using traditional techniques assisted by the latest genetic tools and information, have created varieties that resist disease without numerous applications of insecticides and fungicides. Nearly all corn and soybean farmers practice crop rotation, giving soil a chance to recover. Research is moving beyond simple measures of nitrogen and phosphorus content to look at the microbes in the soil.

New industrywide initiatives are focused on quantifying and measuring soil health. The goal is to provide measurements of factors affecting the long-term value of the soil and to identify which practices — organic, conventional or otherwise — will ensure that farmers can responsibly produce plenty of food for our grandchildren.

#### Transitioning to small farming causes devasting land conversion AND worse fill-in abroad

Ted Nordhaus 21, Founder and Executive Director of the Breakthrough Institute and Co-Author of An Ecomodernist Manifesto, and Dan Blaustein-Rejto, Director of Food and Agriculture at the Breakthrough Institute, Conducted Research with the Environmental Defense Fund, International Center for Tropical Agriculture, and Farmers Market Coalition, “Big Agriculture Is Best”, Foreign Policy, 4/18/2021, https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/

Moreover, organic farms, large and small, don’t actually outperform large conventional farms by many important environmental measures. Scale, technology, and productivity make good environmental sense and economic sense. Because organic farming requires more land for every calorie or pound produced, a large-scale shift to organic farming would entail converting more forest and other land to farming, resulting in greater habitat loss and more greenhouse gas emissions. And while organic farming doesn’t use synthetic pesticides or fertilizers, it often results in greater nitrogen pollution because manure is a highly inefficient way to deliver nutrients to crops.

Another benefit of large-scale U.S. farms is that because they are so efficient, economically and environmentally, they are also able to produce vastly more food than Americans can consume, making the country the world’s largest agricultural exporter as well.

That benefits the U.S. economy, of course, but it also comes with an environmental benefit for the world. In the contemporary environmental imagination, highly productive, globally traded agriculture is a bad thing—poisoning the land at home and undermining food sovereignty abroad. But in reality, a pound of grain or beef exported from the United States almost always displaces a pound that would have been produced with more land and greenhouse gas emissions somewhere else.

#### No food wars.

Jonas Vestby 18, Doctoral Researcher at the Peace Research Institute Oslo, Ida Rudolfsen, doctoral researcher at the Department of Peace and Conflict Research at Uppsala University and PRIO, and Halvard Buhaug, Research Professor at the Peace Research Institute Oslo (PRIO); Professor of Political Science at the Norwegian University of Science and Technology (NTNU); and Associate Editor of the Journal of Peace Research and Political Geography, “Does hunger cause conflict?”, 5/18/18, https://blogs.prio.org/ClimateAndConflict/2018/05/does-hunger-cause-conflict/]

It is perhaps surprising, then, that there is little scholarly merit in the notion that a short-term reduction in access to food increases the probability that conflict will break out. This is because to start or participate in violent conflict requires people to have both the means and the will. Most people on the brink of starvation are not in the position to resort to violence, whether against the government or other social groups. In fact, the urban middle classes tend to be the most likely to protest against rises in food prices, since they often have the best opportunities, the most energy, and the best skills to coordinate and participate in protests.

Accordingly, there is a widespread misapprehension that social unrest in periods of high food prices relates primarily to food shortages. In reality, the sources of discontent are considerably more complex – linked to political structures, land ownership, corruption, the desire for democratic reforms and general economic problems – where the price of food is seen in the context of general increases in the cost of living. Research has shown that while the international media have a tendency to seek simple resource-related explanations – such as drought or famine – for conflicts in the Global South, debates in the local media are permeated by more complex political relationships.

#### White is about pesticides AND monocultures:

#### Pesticide use is plummeting

Alison McGrew 20, Writer for Illinois Farm Families, “3 Myths About Sustainable Agriculture”, March 2020, https://www.watchusgrow.org/2020/03/02/3-myths-about-sustainable-agriculture/

Myth #3: Farmers apply too many pesticides on their fields, which impacts water quality.

Fact: Today’s farmers use fewer pesticides than generations past, thanks to technology advancements:

* Smarter crop protection tools – today’s chemicals are precise, effective and leave virtually no residue on the soil, water or crop.
* Better with biotech – some GMO crops have been genetically engineered to fight off pests, so farmers don’t have to use as many chemicals.
* More accuracy – instead of spraying entire fields for weeds and pests, farmers can use equipment and machinery with variable rate technology to spray precisely where needed.

#### Monocultures are stable and sustainable

Tim Durham 20, Associate Professor at Ferrum College, Degree in Plant Medicine, Operator of Deer Run Farm, “Perspective: Why Monocultures are a Deceptively Simple Solution in Agriculture”, Ag Daily, 4/29/2020, https://www.agdaily.com/crops/row-crop-redemption/

It’s a humble, if one-sided goal. But what’s often in the crosshairs of activists is the philosophy of the planting system — the “dreaded” monoculture.

Row crops are a relic, say self-styled pundits in the sustainability debate.

Indian activist Vandana Shiva touts her surreally titled book “Monocultures of the Mind,” defying the prevailing mindset and conformity of row crops.

In the closing segment of the BBC’s acclaimed Reith Lecture Series, Prince Charles agreed, proposing that we work “with the grain of nature” and follow the “genius of nature’s clearly defined boundaries.”

After straying too far from nature’s bosom, they say it’s time to square up with polyculture, a mosaic inspired by the rainforest. What does this mean? Grow multiple crops in a shared space. Shun that one-dimensional simplification for a more intricate ecosystem. The selling points are perennial stability, productivity, and built-in checks and balances that keep pests and diseases at bay.

Certainly sounds appealing. In their view, it’s naive to think something so elegantly simple can sustainably provide. If monoculture is a 100 level basket-weaving class for unambitious and shortsighted, polyculture is an all-out doctoral dissertation for the studious and eco-aligned.

Seems like a Rube Goldberg complex though — insufferable complexity just for the sake of it. Ironically, nature’s model is best suited to provide food and fiber — only salvation isn’t the miracle system the Prince is peddling.

Though no farm can ever hope (nor should they want to) faithfully replicate a wild ecosystem, current methods seem to be well grounded. In fact, researcher David Wood thinks Mother Nature would be flattered at the lengths we’ll go to mimic her.

Questioning the theory that cereals (not the milk in a bowl kind, at least not directly!) first arose as weeds on the outskirts of human settlements, Wood found that they exist today as vast monocultures along ancient waterways. Frequent floods would flush these stands with nutrient rich sediment; much in the same way a farmer spreads fertilizer in the field.

For centuries, wild rice was widely harvested as a staple crop from southern Sudan to the Atlantic. Wood suggests that early farmers had a working knowledge of this system and adapted it, realizing the precedents set in nature’s fields.

Even though wet rice has been sustained on the same land for millennia, Miguel Altieri of UC-Berkeley claims that monocultures are inherently unstable because they “provide optimal conditions for the unhampered growth of weeds, insects, and diseases because ecological niches are not filled by other organisms.”

The alternative is to model our ambitions on the rainforest. Hosting perhaps 25 million of the Earth’s 30 million wild species, it remains a hotspot of biodiversity. With limited resources, organisms effectively keep the peace by filling the least intrusive niches and avoiding competition at all costs. Skirmishes for resources are just too costly. Though productivity (in terms of sheer plant biomass) remains high, few of those gains are edible or of economic value to a farmer.

Indeed, the rainforest’s treasure trove of life is largely a last ditch effort to survive.

Suggesting such a model for food production is counterintuitive. Blistering heat robs the soil of nutrients and tilth, and yields suffer. In the Amazon, growers are resigned to slash and burn, while U.S. farmers still tend the land that their forefathers cleared centuries before.

They didn’t know it, but early pioneers extended the historical reign of monodominance by selecting the best land, leaving the marginal areas (which host a much broader spectrum of life) as a last resort. This is the polyculture (and often by association, organic) paradox.

It’s also a textbook case in ecology. When resources are plentiful, a few species dominate. Opportunists need not be pests, as Altieri claims. Nobel Laureate Norman Borlaug capitalized on this principle to develop high-yielding wheat strains responsive to fertilizer and other inputs. In the process he saved a billion lives and 12 million square miles of wildlife habitat.

The Green Revolution taught us that the key to averting human misery and wildlife loss is properly pairing land with practice. We can be intentional by conscripting the “best” land (which tends to trend monodominant anyway), and spare the rich biodiversity in poor(er) real estate. This land sparing ensures maximum productivity on the smallest footprint, sustaining us and leaving more land for nature.

Far from failing the eco-palatability taste test, the take home message is to embrace a monoculture in both mind and practice — using nature’s forgotten fields as inspiration. Farmers can (and should) still leverage crop rotation and fallowing to keep pests and pathogens from building to intolerable levels. No one is suggesting they grow the same crop year in, year out, in the same space. That’s the definition of insanity — not monoculture.

Turns out the deceptively simple monoculture playbook has been right all along. As an eco-foray in conservation, food security, and social justice, polyculture is a recurring fad that’s doomed to fail.

## Cooperatives ADV

### 1NC

#### Merger ban will be circumvented to continue consolidation

James M. MacDonald 1, Economic Research Service at the USDA, and Marvin Hayenga, Iowa State University, “Concentration, Mergers, and Antitrust”, Economic Research Service Report, https://www.iatp.org/sites/default/files/Concentration\_Mergers\_and\_Antitrust.htm

Prohibit mergers among large agribusiness firms

Some recent Congressional proposals would place temporary or permanent moratoria on mergers between large agribusiness firms. Such actions would eliminate two types of mergers that can bring overall benefits to the economy. First, mergers that allow firms to realize economies of scale would not occur. Second, some mergers effectively allow for the replacement of one poorly performing management team by another. In each case, the merger would allow for lower costs and product prices and expanded output. Expanded output, in turn, would lead to higher demand for agricultural inputs. Merger prohibition could eliminate those gains.

A prohibition on large mergers would also eliminate those mergers that create market power, but that would not have been stopped by antitrust authorities. In those cases, the prohibition will lead to lower product prices to consumers or higher prices paid to farm producers. Finally, some mergers do not lead to market power, but they create no new cost efficiencies--rather, they lead to inefficiency by simply making the merged firm more complicated, without any attendant advantages. An agribusiness merger moratorium might also limit those types of mergers and their attendant costs.

Agribusiness mergers are one strategy for large firms, and they could respond to a ban with other strategic steps. Those seeking scale economies could grow internally, by building bigger facilities instead of merging. Because firms have that alternative, a merger prohibition will not necessarily halt increases in concentration based on scale economies. Second, firms could respond to a prohibition on the purchase of large agribusiness firms by purchasing other large firms in the economy and becoming conglomerates. Such moves might be particularly inefficient (cost-raising).

#### Farming is rapidly becoming sustainable---all environmental metrics are improving

Michael Shellenberger 20, Founder and President of Environmental Progress, Former President of the Breakthrough Institute, Apocalypse Never: Why Environmental Alarmism Hurts Us All, ISBN: 0063001705,9780063001701

As farms become more productive, grasslands, forests, and wildlife are returning. Globally, the rate of reforestation is catching up to a slowing rate of deforestation.19

Humankind’s use of wood has peaked and could soon decline significantly.20 And humankind’s use of land for agriculture is likely near its peak and capable of declining soon.21 All of this is wonderful news for everyone who cares about achieving universal prosperity and environmental protection.

The key is producing more food on less land. While the amount of land used for agriculture has increased by 8 percent since 1961, the amount of food produced has grown by an astonishing 300 percent.22

Though pastureland and cropland expanded 5 and 16 percent, between 1961 and 2017, the maximum extent of total agriculture land occurred in the 1990s, and declined significantly since then, led by a 4.5 percent drop in pastureland since 2000.23 Between 2000 and 2017, the production of beef and cow’s milk increased by 19 and 38 percent, respectively, even as total land used globally for pasture shrank.24

The replacement of farm animals with machines massively reduced land required for food production. By moving from horses and mules to tractors and combine harvesters, the United States slashed the amount of land required to produce animal feed by an area the size of California. That land savings constituted an astonishing one-quarter of total U.S. land used for agriculture.25

Today, hundreds of millions of horses, cattle, oxen, and other animals are still being used as draft animals for farming in Asia, Africa, and Latin America. Not having to grow food to feed them could free up significant amounts of land for endangered species, just as it did in Europe and North America.

As technology becomes more available, crop yields will continue to rise, even under higher temperatures. Modernized agricultural techniques and inputs could increase rice, wheat, and corn yields five-fold in sub-Saharan Africa, India, and developing nations.26 Experts say sub-Saharan African farms can increase yields by nearly 100 percent by 2050 simply through access to fertilizer, irrigation, and farm machinery.27

If every nation raised its agricultural productivity to the levels of its most successful farmers, global food yields would rise as much as 70 percent.28 If every nation increased the number of crops per year to its full potential, food crop yields could rise another 50 percent.29

Things are headed in the right direction regarding other environmental measures. Water pollution is declining in relative terms, per unit of production, and in absolute terms in some nations. The use of water per unit of agricultural production has been declining as farmers have become more precise in irrigation methods.

High-yield farming produces far less nitrogen pollution run-off than lowyield farming. While rich nations produce 70 percent higher yields than poor nations, they use just 54 percent more nitrogen.30 Nations get better at using nitrogen fertilizer over time. Since the early 1960s, the Netherlands has doubled its yields while using the same amount of fertilizer.31

High-yield farming is also better for soils. Eighty percent of all degraded soils are in poor and developing nations of Asia, Latin America, and Africa. The rate of soil loss is twice as high in developing nations as in developed ones. Thanks to the use of fertilizer, wealthy European nations and the United States have adopted soil conservation and no-till methods, which prevent erosion. In the United States, soil erosion declined 40 percent in just fifteen years, between 1982 and 1997, while yields rose.32

#### The overall environment is resilient---‘existential’ threats are false

Ronald Bailey 20, Science Correspondent at Reason, Member of the Society of Environmental Journalists and the American Society for Bioethics and Humanities, “The Global Environmental Apocalypse Has Been Canceled”, Reason Magazine, 8/1/2020, <https://reason.com/2020/08/01/the-global-environmental-apocalypse-has-been-canceled/> [grammar edit]

According to these activists and politicians, humanity is beset on all sides by catastrophes that could kill off civilization, and maybe even our species. Are they right?

Absolutely not, answers the longtime environmental activist Michael Shellenberger in an engaging new book, Apocalypse Never: Why Environmental Alarmism Hurts Us All. "Much of what people are being told about the environment, including the climate, is wrong, and we desperately need to get it right," he writes. "I decided to write Apocalypse Never after getting fed up with the exaggeration, alarmism, and extremism that are the enemy of positive, humanistic, and rational environmentalism." While fully acknowledging that significant global environmental problems exist, Shellenberger argues that they do not constitute inexorable existential threats. Economic growth and technological progress, he says, can ameliorate them.

Shellenberger's analysis relies on largely uncontroversial mainstream science, including reports from the Intergovernmental Panel on Climate Change (IPCC) and the Food and Agriculture Organization. And as a longstanding activist, Shellenberger is in a good position to parse the motives behind the purveyors of doom.

Shellenberger's activism is the real deal. To raise a donation to the Rainforest Action Network, he charged his friends $5 to attend his 16th birthday party. At 17 he went to Nicaragua to experience the Sandinista revolution. In the 1990s he worked with the Landless Workers' Movement in Brazil.

In 2003, Shellenberger and allies launched the New Apollo Project to jumpstart a no-carbon energy revolution over the next 10 years. In 2008, Time named him "A Hero of the Environment." He co-founded the ecomodernist Breakthrough Institute, which advocates the use of advanced technologies such as nuclear power and agricultural biotechnology to decouple the economy from the ecology, allowing both humanity and the natural world to flourish. More recently, he founded Environmental Progress, which campaigns for, among other things, the deployment of clean modern nuclear power. He is an invited expert reviewer of the Intergovernmental Panel on Climate Change's next assessment report.

Ohio Passes Controversial Conscience Clause for Doctors

So what does he say about climate change? "On behalf of environmentalists everywhere, I would like to formally apologize for the climate scare we created over the last 30 years," he wrote in an essay to promote his new book. "Climate change is happening. It's just not the end of the world. It's not even our most serious environmental problem." Needless to say, there are environmentalists everywhere who do not believe they have anything to apologize for. A group of six researchers assembled by the widely respected Climate Feedback fact-checking consortium rated his article as having low scientific credibility.

Shellenberger doesn't devote much of Apocalypse Never to the science behind man-made climate change. He basically accepts the consensus that it's a significant problem and instead focuses on various claims about the harms it is supposedly already causing. In that promotional essay, he argues that (1) human[s] being are not causing a "sixth mass extinction," (2) the Amazon rainforests are not the "lungs of the world," (3) climate change is not making natural disasters worse, and (4) fires have declined 25 percent around the world since 2003.

Shellenberger isn't denying the reality of man-made climate change. He's arguing that humanity is already adapting to the ways climate change has been making weather patterns evolve, and that we will continue to adapt successfully in the future. His book is ultimately a sustained argument that poverty is world's most important environmental problem, and that rising prosperity and increasing technological prowess will ameliorate or reverse most deleterious environmental trends.

#### U.S. farm emissions are a drop in the bucket AND already declining---other GHGs thump

Dr. Frank Mitloehner 19, PhD, Professor and Air Quality Specialist in Cooperative Extension in the Department of Animal Science at UC Davis, “It’s Time to Stop Comparing Meat Emissions to Flying”, 11/13/2019, https://ghgguru.faculty.ucdavis.edu/2019/11/13/its-time-to-stop-comparing-meat-emissions-to-flying/

I can appreciate how having a sound bite is tempting and even useful like the recent Bloomberg assertion “… that the humble hamburger is a bigger contributor to the warming of the planet than the jumbo jet,” for example. The problem is, it’s not as simple as all that. Animal agriculture’s impact is overstated when speaking to an American audience, and aviation’s effect is understated when speaking to any audience.

U.S. livestock farmers have – and continue to – reduce GHGs

Globally, animal agriculture accounts for 14.5 percent of GHG emissions, the number that tends to be used to support the claim that eating meat is a bigger planetary enemy than the combustion of the fossil fuels used in aviation. But in the United States, isn’t it more helpful to look at U.S. animal agriculture statistics, especially when they’re vastly different from the global picture?

Here in the U.S., animal agriculture makes up a far smaller percentage of total GHG emissions than worldwide: 3.9 percent, according to the U.S. Environmental Protection Agency (EPA). Granted, the lower U.S. percentage is due in some part to the fact that the United States is highly industrialized and wealthy, and we are major users of energy, fossil fuels and transportation. So as those percentages swell, animal agriculture takes up a smaller piece of the pie.

Even so, our farmers are the most efficient in the world. Case in point: In Mexico, it takes up to five cows to produce the same amount of milk as one U.S. cow, and in India, it takes up to 20. These statistics point to the United States having the lowest GHG emissions per unit of milk of any country in the world. It’s a similar story for other ruminant and non-ruminant animals that produce meat in the United States. In fact, emissions from all U.S. livestock species are much lower than those in Brazil, China, India and countries in the European Union, among others.

Americans fly more – much more – than people in any other country

Consistent with using a global number for animal agriculture is the tendency to do the same thing with the GHG emissions of air travel, and that likewise distorts the picture for the United States. Whereas the global animal agriculture figure is inflated for a U.S. audience, the global aviation figure downplays the role air travel plays in the United States’ GHG emissions.

That’s because Americans fly much more than people in other countries, including China, the United Kingdom, Germany and Japan, other top consumers of air travel. According to Bureau of Transportation Statistics, there were 1 billion passengers on U.S. airlines and foreign airlines serving the U.S. in 2019, a record and yet another year-over-year increase since the global recession of 2008-2009.

Aviation is two to three times more damaging to the environment than is often reported

In our hamburger-airplane example, aviation is assigned a GHG emissions number of 2 percent, giving most readers reason to have a clear conscience when boarding a plane. But that number doesn’t capture a plane’s full emissions footprint.

A 2 percent “GHG emissions” figure for aviation accounts only for the amount of carbon dioxide (CO2) air travels puts in the atmosphere. It ignores, the other GHGs that come from planes (for example, nitrous gases, water vapor, soot, particles and sulphates).

In addition, the 2 percent number is a tailpipe assessment, meaning what is being measured are the direct CO2 emissions from the jet fuel that is combusted in the planes’ turbines. The figure fails to consider things such as the manufacture of materials for parts used in the aircraft, the transportation of materials and parts to factories where planes are made, wear and tear on roads and runways, and many more.

Life-cycle assessments and tailpipe emissions are GHGs’ apples and oranges

When we look at our metaphorical burger, we’re taking into account pretty much every GHG that is emitted by the activities and processes required to get the proverbial burger on a dinner table. Called a life-cycle assessment (LCA), it provides a more accurate and total picture of GHG emissions than does a direct (tailpipe) assessment.

In the same example, air travel gets a huge break by being subjected only to a measurement of its (direct (i.e. tailpipe) emissions. To make a fair comparison, the same system of quantification must be used for both the burger and the airplane ride, and ideally, a life-cycle assessment would provide the figures. The thing is, we don’t have life-cycle assessment numbers for planes, or other parts of the transportation sector.

Methane is a short-lived GHG; carbon dioxide might be forever

When we talk about the GHG emissions of livestock or the carbon footprint of meat, methane is often at the heart of the matter. Ruminant animals such as cows emit methane. As far as global warming potential, methane is a powerful GHG, with about 28 times the warming potential of carbon dioxide over a period of 100 years.

But methane doesn’t hang around for a century; it’s a short-lived GHG. In about a decade’s time, it’s converted to water vapor and carbon dioxide, which is part of the cycle whereby plants take CO2 out of the atmosphere and convert it into feed via photosynthesis. Animals eat the non-human edible vegetation and upcycle it to meat and dairy products that provide efficient sources of protein and other essential nutrients to humans. It’s a cyclical process, also referred to as the biogenic carbon cycle, that’s been around as long as life itself.

Given the advances American farmers have made in animal agriculture, today we are producing as much food as we did 50 years ago from cattle herds that are far smaller. All told, the U.S. herd is contributing *less methane* to the environment as a result.

On the other hand, our voracious appetite for fossil fuels has resulted in an enormous glut of carbon dioxide in the atmosphere. According to the EPA’s GHG inventory, CO2 accounted for 82 percent of GHGs in 2017, with industry, transportation and electricity contributing nearly 80 percent of the total. It’s so much more emissions than oceans, rainforests and plants can absorb, by conservative accounts, it will hang over the planet for a thousand years. Realistically, it could be forever.

#### Industrial ag is soil preserving---no chance of short-term disaster

James Wong 19, Botanist and Science Writer, Trained at the Royal Botanic Gardens, “The Idea That There Are Only 100 Harvests Left Is Just A Fantasy”, The New Scientist, 5/8/2019, https://www.newscientist.com/article/mg24232291-100-the-idea-that-there-are-only-100-harvests-left-is-just-a-fantasy/

When it comes to science reporting, there are some headlines that are so frequently repeated, so intuitively plausible, so closely aligned to our cultural beliefs, that they can seem like incontrovertible truths.

The general public, and indeed many scientists, may fervently believe that these claims reflect the overwhelming scientific consensus. However, sometimes when you dig a little beyond the surface, the evidence underpinning even the most ubiquitous headlines can seem surprisingly shaky.

Perhaps the best example of such an assertion is that of an impending agricultural Armageddon, caused by decades of irresponsible farming practices that have degraded soils across the planet (or so the press narrative goes).

A quick scan of the headlines reveals that despite the confidence with which these forecasts are proclaimed, the actual timescale to D-Day varies rather widely from story to story. While some report that we have 100 years until the end of our soil’s ability to support farming, citing a University of Sheffield study, others claim that this is a mere 60 years away, referencing a speech at the UN’s Food and Agriculture Organization.

Recently, the UK government’s environment secretary even stated that the UK is as little as 30 years away from an “eradication of soil fertility” because we “drench it in chemicals”. If this is indeed a likely end-game scenario, we should probably determine which of these estimates is most plausible as a matter of urgency: 30, 60 or 100 years. So let’s take a closer look at this claim.

Despite dozens of headlines quoting these predictions, surprisingly only one peer-reviewed paper from a scientific journal is ever cited as evidence to back them up. This 2014 study from the University of Sheffield compared the soil quality of a range of sites in the English city, including agricultural, garden and allotment soils.

Now, before we question whether the results of this single, small study can be extrapolated to represent all of England, let alone the whole UK or even the whole world, let us take a look at their findings: basically, some urban soils in Sheffield are higher in carbon and nitrogen than some nearby agricultural ones. OK, but where is the 100-year statistic? It turns out that nowhere in the study was there any calculation, prediction or even passing reference to the claim. None whatsoever. Perhaps not so much shaky evidence to support this assertion as much as non-existent.

“I asked leading soil scientists if they had ever come across such a prediction in published research. Not a single one had”

Maybe this is the result of a typo and the work is in another research paper? After an 8-hour trawl through the academic journals failed to pull up a single study that even attempted to make this calculation, I contacted six leading soil scientists across the world to ask if they had ever come across such a prediction in either the published literature or their work. Not a single one had.

In fact, the words they used to describe this claim were “bold”, “too Malthusian”, “hardly useful”, “almost insulting” and “I have used this in my soil science lectures to show the students to be wary of headlines!”. Ouch.

Does that mean there aren’t real threats to some agricultural soils around the world? Absolutely not. Indeed, all the scientists I spoke to went to great lengths to point these out, where they exist.

However, they also highlighted how incredibly complex the calculations needed to make such predictions would be, based on myriad factors, only some of which can be predicted with any reliability, with generalisations almost impossible. The boring reality is that while soils in some parts of the world might be in decline, others are not.

Furthermore, while agriculture may be one of the factors driving erosion and nutrient depletion, many modern farming practices such as no-till and synthetic fertiliser applications may actually be helping alleviate (rather than drive) this. In fact, according to many objective measures, modern, evidence-based farming techniques are more sustainable than those of an idealised past. Quite a different picture to that painted by the headlines.

Despite the thirst for simple truths in a complicated world, the researchers I contacted agreed that setting such a figure for an agricultural “end-point” would be nigh on impossible, which may explain why no published studies appear to have been able to do so. But this hasn’t stopped the newspapers. Welcome to 2019!

# 2NC

## Regulation CP

### Subsidies---Solvency---2NC

#### It’s as effective as antitrust without the plan’s economic costs

Dr. Philip Watson 21, PhD in Agricultural Economics from Colorado State University, Professor at the University of Idaho, and Jason Winfree, Professor of Agricultural Economics and Rural Sociology at the University of Idaho, PhD in Economics from Washington State University, “Should We Use Antitrust Policies On Big Agriculture?”, Applied Economic Perspectives & Policy, 5/31/2021, p. 10-11

ALTERNATIVE POLICIES TO ASSIST SMALL FARMS

Antitrust-related policies should not be geared towards protectionism of small firms; however, there may be potential ways to help small farmers without potentially increasing food prices. This section is not meant to be a full accounting of the benefits and costs of these alternatives, but rather shows that there are alternatives that may achieve these goals without driving up food costs for consumers. At the crux of antitrust policy is getting rid of any barriers to entry, which can at times be a barrier to small farmers. However, some policies that the USDA has pursued have the unintended consequence of creating barriers, increasing the fixed costs of production, and exacerbating consolidation in agriculture, further putting small farms in a competitive disadvantage. These policies include food standard regulations and output restrictions. Relaxing and reducing these restrictions, while potentially creating other problems, would likely help small farmers.

Subsidize small and beginning farmers

There are currently a large number policies that the USDA and other agencies are pursing to encourage small and medium-sized producers12 as well as new farmers13. Some groups support the expansion of these types of programs to assist small and beginning farmers because they feel that US agricultural policy has unduly subsidized big commodity agriculture for years at the expense of small farms. Conversely, others argue that subsidizing small farms disproportionately benefits rich consumers who are able to afford the price premium on niche foods. However, irrespective of the relative efficacy of programs and subsidies to support small farms, these efforts will not likely lead to higher prices for basic food products, which should be central to the agricultural policy. The same cannot be said for using antitrust policies to break up “big ag”.

#### It effectively redirects billions of dollars to much smaller farms AND incentivizes diverse, environmentally friendly practices

William S. Eubanks 13 II, Summer Faculty Member at the Vermont Law School, Adjunct Associate Professor of Law at the American University Washington College of Law, and Partner at Meyer Glitzenstein & Crystal, Conference on Agriculture and Food Systems: September 28, 2012: “The Future of Federal Farm Policy: Steps for Achieving a More Sustainable Food System”, Vermont Law Review, 37 Vt. L. Rev. 957, Summer 2013, Lexis

Therefore, instead of immediately eliminating the farm bill subsidies on which many farms now rely for survival, Congress should instead shift a substantial portion of these subsidies-in phases-to farmers implementing sustainable agricultural methods. Past and current conservation programs often had a major flaw: they target only large commodity crop growers. A more workable policy would be to offer a predetermined share of subsidy incentives to all farmers based on their farming practices, irrespective of crops cultivated or farm size. This would create a more just system than the current subsidy framework that excludes 60% of American farmers from any subsidies whatsoever.

Farmers who never see farm bill subsidies in our current system are typically those who grow crops using environmentally sustainable agricultural methods and those who grow most of the nation's fruits, vegetables, and nuts, which are called "specialty crops" in the farm bill, but are critical for good health. It should be noted that the two sets of farmers are not necessarily the same. Growers in California provide a vivid example of the current failures of the farm bill's subsidy program to reward farmers for growing healthy food for our nation. With nearly 81,500 farms, and nearly $ 43.5 billion in annual on-farm revenues, California is the leading [\*961] state in annual agricultural sales. Despite this, more than 90% of California's farmers receive no agricultural subsidies. Of the few Californian farmers that do receive farm bill subsidies, most are cotton and rice farmers. Yet these subsidy-neglected California farmers are invaluable to our nation's agricultural system because the state contributes more than 15% of the total U.S. agricultural market value and nearly half of all fruits, nuts, and vegetables. By ignoring these farmers and precluding them from receiving farm bill subsidies, Congress is prioritizing monocultures of corn, soybean, wheat, cotton, and rice at the expense of sound agricultural, nutritional, and environmental practices.

Sustainable agriculture, however, can serve as a first step in changing these policies for the better. What is "sustainable agriculture"? According to the scholar James Horne, sustainable agriculture "encompasses a variety of philosophies and farming techniques . . . [that] are low chemical, resource and energy conserving, and resource efficient." Ironically (because it did little to encourage such agriculture), the 1990 farm bill defined sustainable agriculture as:

an integrated system of plant and animal production practices having a site- specific application that will, over the long term, satisfy human food and fiber needs; enhance environmental quality and the natural resources base upon which the agricultural economy depends; make the most efficient use of nonrenewable resources and on-farm/ranch resources; and integrate, where appropriate, natural biological cycles and controls; sustain the economic viability of farm/ranch operations; and enhance the quality of life for farmers/ranchers and society as a whole.

As most agricultural experts note, it is important to understand that "[s]ustainable agriculture does not mandate a specific set of farming [\*962] practices." Rather, sustainable practices vary from place to place depending on the ecosystem, climate, and other factors, but "[t]here are myriad approaches to farming that may be sustainable." The more important overarching goal of sustainable agriculture is the "stewardship of both natural and human resources . . . includ[ing] concern over the living and working conditions of farm laborers, consumer health and safety, and the needs of rural communities."

#### Farmers will follow the money, rapidly adopting sustainable techniques to capture the subsidy AND corresponding market growth

William S. Eubanks 9 II, Associate Attorney at Meyer Glitzenstein & Crystal, LL.M. in Environmental Law, Summa Cum Laude, Vermont Law School, J.D., Magna Cum Laude, North Carolina Central University School of Law, “A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation's Tax Dollars”, Stanford Environmental Law Journal, June 2009, 28 Stan. Envtl. L.J. 213, Lexis

B. Expected Success of Scaling Up Sustainable Agriculture with Farm Bill Subsidies

By moving away from corn and commodity crop subsidies in favor of paying farmers for employing some of the sustainable agricultural methods enumerated above, Congress will foster a much more effective piece of legislation that is more aligned with the original goals of the Farm Bill. As seen with our nation's massive corn production tied solely to subsidies, farmers will farm wherever the money is. If sustainable agriculture is what results in subsidies, sustainable agriculture will likely be what farmers undertake on their farms in order to survive. Further, all available data indicates that many farmers genuinely want to grow healthier foods, maintain their communities, and conserve their natural ecosystems, but they have been pressured to farm corn and other commodity crops because that is where past profits could be garnered. Although most farmers in the United States do not [\*305] want Farm Bill subsidies eliminated or phased out, farmers "show[] strong support for programs focused on conservation" and seem very concerned about the status of the natural environment. This is not surprising considering the interdependent relationship between healthy farms and a healthy environment: long-term farm health requires a high functioning local ecosystem that can sufficiently supply all of a farm's needs. To prevent degradation of this important ecosystem, which suffers from "the tragedy of the commons" under the current Farm Bill subsidy regime, the proposed sustainable agriculture subsidy system will pay farmers to protect this common pool resource.

A related issue is whether farmers are willing to transition from solely growing corn or other commodity crops to planting a diversity of healthier crops under a sustainable agriculture subsidy program. It seems that farmers would be willing to do so both financially and for the viability of their farms and families. Financially speaking, every consumer dollar spent on a corn-based product in the supermarket results in only four cents reaching the farmer that produced that corn because of the large number of middlemen such as Cargill, ADM, Coca-Cola, and PepsiCo. This is starkly different for whole foods such as green vegetables, fruits, and eggs, where the respective farmer receives forty cents for every supermarket dollar spent. Thus, it makes financial sense for farmers to indulge in the cultivation of healthier produce and whole foods once sustainable agriculture subsidies are put into place because these farmers will receive a significantly higher percentage of supermarket sales and because of the offsetting economic effect of being able to feed one's family with the farm's nutritious and diverse crops.

[\*306] Shifting to anticipated environmental impacts, sustainable agriculture will greatly help to repair local ecosystems, boost farmers' yields as the ecosystem improves, and mitigate the degradation caused by decades of mechanized agriculture under the Farm Bill. As farmers well know, sustainable agriculture includes polycultures and crop rotations that are essential to protect soils from erosion and streambeds from sedimentation. Farmers have long recognized the need for better farming practices to enhance environmental protection. When the USDA has given farmers flexibility to diversify their crops into polycultures and yet retain their full commodity subsidies, many farmers have taken advantage of this flexibility and planted non-commodity crops on nearly half of the land available for diversification. Additionally, sustainable agricultural systems do not rely on harmful chemical inputs of fertilizers or toxic pesticides that pose serious threats to both humans and wildlife. Further, studies indicate that sustainable farming systems "use 30% to 70% less energy per unit of land than conventional systems, a critical factor in terms of global warming and eventual fossil fuel shortages." Since subsidizing sustainable agriculture will result in more polyculture and thus more robust and diverse local food supplies, less transportation will be needed and will result in "reduced energy consumption, less processing and packaging, and higher nutritional values" which are lost during storage and transportation.

## Consolidation ADV

### Food Security---No Disruptions---2NC

#### Farmers will adapt AND the COVID shock spurred preparedness and redundancy

David Green 20, Director of the U.S. Sustainability Alliance, “How Innovation is Helping U.S. Farmers Rise to the Challenges of COVID-19”, Open Access Government, 9/18/2020, https://www.openaccessgovernment.org/how-innovation-is-helping-u-s-farmers-rise-to-the-challenges-of-covid-19/94589/

Consumers are used to buying the food they want, where and when they want it. So, imagine their shock and distress when, in the early days of the COVID-19 pandemic, they were confronted with aisles of empty shelves at their local supermarket or grocery store.

Equally shocking were the scenes of vegetable farmers ploughing surplus produce back into the ground while dairy farmers poured milk on their fields.

This is what unprecedented supply chain disruption looks like. When consumers panic buy, and schools, offices and foodservice businesses close, where and how food is bought and consumed – and the type of food consumed – changes and the food system is forced to play catch up.

Despite the upheaval, U.S. farmers have managed to adapt and find ways to keep putting food on our tables while protecting their own livelihoods. Innovation is one such way.

Labour shortages

In the United States, and elsewhere, one of the biggest challenges for the food supply chain has been the availability of labour. Like many industries, farming and food production need people – skill and dexterity are important for picking and preparing certain produce. However, virus outbreaks among workers and a reduced seasonal workforce due to travel restrictions and COVID fears have depleted resources.

Meat and poultry processing plants have been particularly hard hit. According to the U.S. Centers for Disease Control and Prevention, among 23 states reporting COVID-19 in April and May 2020, 16,233 cases in 239 facilities occurred, including 86 COVID-19–related deaths. Temporary closures and meat shortages ensued – at one point fast-food chain Wendy’s ran out of hamburgers at some of its restaurants.

Nor are farmworkers immune. Initially, the concern was that not enough seasonal workers would be able to travel to farms to harvest the fruit and vegetable crops. Now that harvest is underway, the virus continues to spread despite safety precautions. The risk is that crops won’t get picked, leading to wastage, shortages and higher prices for consumers.

The robots are coming

Some U.S. farmers are using technology to plug gaps in the workforce. American farmers have been early adopters of AgTech, from variable rate technologies that enable them to manage the inputs for their crops more accurately to GM crops that mean less herbicide and insecticide, but better yields, and they have made substantial sustainability and productivity gains as a result. So, it is hardly surprising that they should turn to the latest innovations to create efficiencies at a critical time such as this.

FarmWise, a San Francisco company that makes robots to help with farming tasks such as picking weeds and harvesting vegetables, reports seeing increased demand from farmers in California and Arizona for robotic helpers to maintain production levels.

And dispelling the myth that machines can’t mimic human skill, this summer, some U.S. farmers have been using the new Virgo harvesting robot from Somerville, Massachusetts, start-up Root AI, which the company claims is capable of doing anything a person can. Leveraging artificial intelligence (AI) and an advanced 3D vision system, Virgo automates the picking of tomatoes – and could potentially be used for other delicate produce.

Meeting future food demand

Could technology play an even greater role in helping farmers meet future food demand?

Arzum Akkas, a professor of operations and technology management at Boston University and an expert in food supply chain management, believes that a trend for automation and mechanisation was already in motion even before the pandemic “and the extra labour shortage risks due to COVID-19 will accelerate automation adoption.”

Increased automation is something food company Tyson Foods, a processor and marketer of chicken, beef, and pork has been working on at its Manufacturing Automation Centre in Springdale, Arkansas.

Over the past three years, the company has invested $500 million in tech and automation. One innovation in progress is an automated deboning system that will be able to handle the millions of chickens processed at its facilities every week. Meat giants JBS US Holdings and Cargill are also working on robotic technologies. They aren’t quite there yet, but the pandemic has served to speed up their development.

According to Erik Pekkeriet, Programme Manager Agro Food Robotics at Wageningen University, in the Netherlands, robots are set to become even more commonplace, performing all of the menial, repetitive work in farming 10 to 20 years from now.

An automated future

So, yes, the future could well be innovation-driven. Science and technology innovations are already helping farmers create efficiencies, helping them to reduce their inputs, boost yields and conserve natural resources such as land and water. Why shouldn’t other areas of the supply chain benefit, too?

The ability for farmers and producers to cut their reliance on manual labour, which is hard to come by at the best of times, is pretty compelling.

Up until now, the costs of robotics and automation have been prohibitive for some, but Root AI co-founder and CEO John Lessing believes this is changing: “The underlying costs of building a robot have massively dropped. We’re now able to deploy these systems for growers in a way that their cost structure doesn’t go up.”

The pandemic has also opened people’s eyes to the importance of science and technology and removed the stigma of something new often being viewed as ‘scary’ or mystifying.

This is good news for farmers. With the right innovations in place, they are better equipped than ever to respond to future crises to maintain a sustainable, future food supply.

#### Supply is structurally decentralized and resilient

Saktipada Maity 18, Practice Head of Engineering & Operations Analytics at Cap Gemini, MTech from the Indian Statistical Institute, BE from Jadavpur University, “Debunking the Myths—the MNC Monopoly”, Cap Gemini, 3/30/2018, https://www.capgemini.com/2018/03/debunking-the-myths-the-mnc-monopoly/

The Digital Agriculture and Smart Farming trend continues to thrive in this age of technology transformation and disruption. With every passing month, we read news like the Bayers and the Monsantos of the world merging, or cooperatives like FrieslandCampina going bold with acquisitions. While consolidation of some parts of the food chain is certainly happening, such news tends to paint an inaccurate picture of food being a global, highly consolidated business. Misconstrued perceptions lead to different myths and, food being controlled by multinational giants, is one such myth.

Perception though, is not always reality. Food, unlike many other industries, is a very local and extremely fragmented business. Food production involves stakeholders sitting in plush offices at multi-billion dollar conglomerates, down to local operating small landholders. Consolidation isn’t consistent across all segments and in all geographies of the agricultural industry. In fact, while grain trading represents only a relatively limited part of the whole value chain, it’s interesting to watch four giant transnational companies dominate this global grain trade. The four companies account to an indicative and staggering 75% to 90% of the global grain trade. It is this extraordinary concentration of money and power that is a structural flaw in the system. Large players automatically extract as much value possible, but transfer as much of the cost and risk onto the weakest links—the farmers and laborers —in this food chain. Currently, the Fairtrade movement is working on resolving this problem. France has taken a legal stance wherein French law prohibits food waste by supermarkets. The rationale behind is that, this will have a positive effect on the economic position of the farmers.

The fragmentation of the agricultural industry stems from constraints resulting from food security. Control over one’s land and food security is enough for any government to get finicky over allowing MNCs to exert control over their food chains. In developing countries, agriculture is still the primary driver of the economy, and agriculture results in jobs for several hundred thousand people. Governments constantly need to balance the move to disenfranchise such a large segment, and not in the process, risk political turmoil. Land ownership is a sovereign function, and corporates cannot win this battle any time soon. With anti-monopoly regulations, with registration rules of the land, and with strict monitoring of water and types of crops grown in an area, food production is unlikely to be a consolidated industry in the near future.

### Food Security---Yes Competition---2NC

#### Farming is decentralized AND a wave of competition’s coming

Sara Spaventa 20, MA from Durham University, BA in Applied Science from the University of California, San Diego, “Myths Debunked About Farmland”, Farm Together, 8/18/2020, https://farmtogether.com/learn/blog/myths-debunked-about-farmland

Myth #1: Farmland is controlled by big corporations and the wealthy.

Historically, farmland hasn’t always been available to anyone as an investment opportunity. But, that’s not due to a stigma tied to risk or wealth. Instead, it’s because of a lack of access. Farmland has traditionally stayed within the family, being handed down from generation-to-generation.

With growing concerns over factory farming and a continuous decrease in arable land, the question of who owns America’s farmland often arises: families own 97% of US farmland. However, with the average age of farmers approaching 60, and younger generations exploring different career routes other than the taking over the family business, more farmland is entering the market. Experts anticipate 25% of farmers and ranchers will retire by 2030 and roughly one-third of US farmland and ranch land will likely change hands in the next 15 years.

This boom in land ownership transfers and the introduction of investing technology like FarmTogether allow for the democratization of farmland ownership. With modern farmland investing, anyone can invest in farmland and have a say in what practices are being used.

### Innovation Turn--U---Yes Ag Innovation---2NC

#### Innovation is rapid in key areas

Linly Ku 21, Manager, Content Marketing at Plug and Play Tech Center, BA from the University of California, Santa Barbara, “New Agriculture Technology in Modern Farming”, Plug and Play Tech Center, 6/2/2021, https://www.plugandplaytechcenter.com/resources/new-agriculture-technology-modern-farming/

Innovation is more important in modern agriculture than ever before. The industry as a whole is facing huge challenges, from rising costs of supplies, a shortage of labor, and changes in consumer preferences for transparency and sustainability. There is increasing recognition from agriculture corporations that solutions are needed for these challenges. In the last 10 years, agriculture technology has seen a huge growth in investment, with $6.7 billion invested in the last 5 years and $1.9 billion in the last year alone. Major technology innovations in the space have focused around areas such as indoor vertical farming, automation and robotics, livestock technology, modern greenhouse practices, precision agriculture and artificial intelligence, and blockchain.

#### Supply will meet rising demand if innovation continues without disruption

Ronald Bailey 20, Science Correspondent at Reason, Member of the Society of Environmental Journalists and the American Society for Bioethics and Humanities, “The Global Environmental Apocalypse Has Been Canceled”, Reason Magazine, 8/1/2020, https://reason.com/2020/08/01/the-global-environmental-apocalypse-has-been-canceled/

The Future of Food Security

"The most important thing for saving the environment is producing more food, particularly meat, on less land," argues Shellenberger. The good news, he notes, is that while the amount of land devoted to agriculture has increased 8 percent since 1961, the amount of food produced in that space has increased 300 percent. Meanwhile, the amount of land devoted to raising the livestock we use for meat has "declined by an area nearly as large as Alaska." As Shellenberger reports, providing farmers in poor countries access to modern agricultural techniques—e.g., better seeds, pesticides, and fertilizer—could increase corn, rice, and wheat yields fivefold.

As the world warms, will farmers be able keep up with the rising population and increasing demand for better foods? In its 2019 report on climate change and land, the IPCC observes that many studies using different methods to project how climate change will affect crop yields have "consistently showed negative temperature impacts on crop yield at the global scale."

Most studies do project deleterious effects from climate change on crop yields. That being said, analyses that seek to find a consensus on the topic report the effects are likely to be small prior to 2050.

For example, a 2015 Environmental Research Letters study finds that, depending on the climate change scenario, global grain yields will nevertheless be 45 to 60 percent greater than now in 2050. This is well within a 2017 BioScience study's projection of a global food demand increase by 2050 that ranges 25 to 70 percent above current global production.

Similarly, a 2017 policy report for the European Commission found that "the impact of climate change on agricultural production in 2050 is negative but relatively small at the aggregated global level." A 2019 study in Environmental Research Letters concluded, assuming reasonable adaptations on the part of farmers, that "average impacts of climate change on crop yields up to the 2050s are generally small (but negative) for rice and wheat, and modest for maize."

And these studies tend to extrapolate current crop yield trends without taking into account how breakthroughs can enhance crop yields even as the climate warms. Among the possibilities: boosting photosynthetic efficiency, drought and salinity tolerance, self-fertilizing cereals, and genomic editing.

### Food Wars D---2NC

#### The countries that matter will solve escalation with institutions.

Sarah **Cliffe 16**, Director of the Center on International Cooperation at New York University, 3/29/16, “Food Security, Nutrition, and Peace,” http://cic.nyu.edu/news\_commentary/food-security-nutrition-and-peace

However, current research does not yet indicate a clear link between climate change, food insecurity and conflict, except perhaps where rapidly deteriorating water availability cuts across existing tensions and weak institutions. But a series of interlinked problems – changing global patterns of consumption of energy and scarce resources, increasing demands for food imports (which draw on land, water, and energy inputs) can create pressure on fragile situations. Food security – and food prices – are a highly political issue, being a very immediate and visible source of popular welfare or popular uncertainty. But their link to conflict (and the wider links between climate change and conflict) is indirect rather than direct. What makes some countries more resilient than others? Many countries face food price or natural resource shocks without falling into conflict. Essentially, the two important factors in determining their resilience are: First, whether food insecurity is combined with other stresses – issues such as unemployment, but most fundamentally issues such as political exclusion or human rights abuses. We sometimes read nowadays that the 2006-2009 drought was a factor in the Syrian conflict, by driving rural-urban migration that caused societal stresses. It may of course have been one factor amongst many but it would be too simplistic to suggest that it was the primary driver of the Syrian conflict. Second, whether countries have strong enough institutions to fulfill a social compact with their citizens, providing help quickly to citizens affected by food insecurity, with or without international assistance. During the 2007-2008 food crisis, developing countries with low institutional strength experienced more food price protests than those with higher institutional strengths, and more than half these protests turned violent. This for example, is the difference in the events in Haiti versus those in Mexico or the Philippines where far greater institutional strength existed to deal with the food price shocks and protests did not spur deteriorating national security or widespread violence.

#### Global food supply is high and resilient

Indur Goklany 15, PhD from Michigan State, Assistant Director of Programs, Science and Technology Policy at the DOI, represented the United States at the Intergovernmental Panel on Climate Change (IPCC) and during the negotiations that led to the United Nations Framework Convention on Climate Change, “CARBON DIOXIDE: The good news”, The Global Warming Policy Foundation, GWPF Report 18

Crop yields have increased (see Figure 3) and global food production, far from declining, has actually increased in recent decades. Between 1990–92 and 2011–13, although global population increased by 31% to 7.1 billion, available food supplies increased by 44%. Consequently, the population suffering from chronic hunger declined by 173 million despite a population increase of 1.7 billion.112 This occurred despite the diversion of land and crops from production of food to the production of biofuels. According to one estimate, in 2008 such activities helped push 130–155 million people into absolute poverty, exacerbating hunger in this most marginal of populations. This may in turn have led to 190,000 premature deaths worldwide in 2010 alone.113 Thus, ironically, a policy purporting to reduce AGW in order to reduce future poverty and hunger only magnified these problems in the present day.

#### No correlation between food shortages and conflict—other factors

Buhaug et al 15 [Halvard Buhaug, Peace Research Institute in Oslo an Norwegian University of Science and Technology. Tor Benjaminsen, Espen Sjaastad, Ole Magnus Theisen.] “Climate variability, food production shocks, and violent conflict in Sub-Saharan Africa” Environmental Research Letters, Volume 10, Number 12 (http://iopscience.iop.org/article/10.1088/1748-9326/10/12/125015) - MZhu

Across all models, we find relatively weak and insignificant effects for domestic food production and we also note that the sign of the coefficients shifts between outcome types. In this sense, table 1 implicitly contrasts both claims that political violence is more prevalent when basic needs are met (Salehyan and Hendrix 2014) and claims that agricultural income shocks increase civil conflict risk (von Uexkull 2014). The results are consistent with Koubi et al (2012) and van Weezel (2015), however, who conclude that rainfall—a significant determinant of yields in SSA—has little impact on conflict either directly or through economic performance.

The covariate that best and most consistently explains temporal variation in political violence is the time-lagged conflict incidence indicator. Models 1–2 show that a new civil conflict is unlikely to break out if another one is already ongoing in the same country whereas Models 3–6, which capture the occurrence of less organized conflict, demonstrate that violence begets violence. Coups d'état (Models 7–8) exhibit a comparatively weak temporal correlation pattern in our data and are generally regarded as a highly unpredictable phenomenon (Luttwak 1979).

Next, we estimate the same set of models on a subsample of 14 countries in SSA where rainfall has a large and significant positive effect on food production (figure 2(b); see supplementary information, section B for details). To better capture the influence of climate variability and reduce concerns with endogeneity, we further replace the standard OLS model with two-stage instrumental variable regression. The first stage in this model estimates the joint influence of annual rainfall (linear and squared terms) and temperature (linear) on contemporaneous food production. This effect then constitutes the exogenous instrument for food production in the second stage. The results are reported in table 2. Mirroring the results presented above, we fail to uncover a robust signal for agricultural performance, although the sign of the coefficient for food production now remains negative in seven of the eight specifications.

Food production shocks may have different consequences depending on the socioeconomic context, so next we consider a series of interactive relationships. Specifically, we investigate the joint effect of food production and (i) low level of development, (ii) extent of discriminatory political system, and (iii) economic dependence on agriculture; three conditions whereby loss of income from agriculture might constitute a particular challenge to society. To model these interactions, we include time-varying regressors instead of country-fixed effects where (i) is represented by infant mortality rate (IMR; World Bank 2014), (ii) is captured using the Ethnic Power Relations v.1.1 data (Cederman et al 2010), while (iii) uses an index of agricultural contribution to GDP (World Bank 2014). Moreover, to preserve focus on temporal dynamics, food production is now operationalized as yearly deviation from the country mean, 1961–2009. We use additive inverse deviation values to ensure theoretical consistency among the components in the interaction terms. All models control for (ln) population size, conflict history, and a common time trend, and models without IMR and agricultural dependence additionally control for (ln) GDP per capita. The results are presented in table 3.

Again, we are unsuccessful in establishing a consistent covariation pattern between agricultural performance and political violence. Interpreting the combined effect of interaction terms with continuous parameters is inherently difficult but figure 4 shows that food production is insignificantly related to all conflict outcomes across levels of socioeconomic development for all three interaction terms. The sole exception is the result in Model 24, where lower food production in highly discriminatory societies is negatively associated with non-state conflict. This result would seem to contradict the standard scarcity thesis (Homer-Dixon 1999) although it is consistent with observations that conflict is more prevalent during surplus years (Witsenburg and Adano 2009, Salehyan and Hendrix 2014).

Mirroring earlier research, ethnopolitical exclusion is strongly related to higher civil conflict risk, but not necessarily to other forms of political violence. Infant mortality rate and economic dependence on agriculture appear largely irrelevant. While this may come as a surprise, recall that most countries in SSA are characterized by underdevelopment and a large agricultural sector, implying that the variation in values on these indicators is modest.

Large parameter uncertainties and p-values above the conventional significance threshold (5%) may disguise substantively important effects (Ward et al 2010). Accordingly, as a final assessment, we conduct a set of out-of-sample simulations and compare predictions for models with and without food production. The models are estimated on a subset of the full sample, in this case all years before 2000, and the estimated effects are then used to predict conflict outcomes out of sample, i.e., the 2000–09 period. Figure 5 shows the predicted values from four pairs of models that are specified similarly to Models 17, 20, 23, and 26, except for the shorter time period and the fact that one model in each pair drops the food production deviation variable. For civil conflict and social unrest, the models generate very similar predictions, signaling that agricultural performance adds little to the models' predictive power. There is more spread in the predictions for the remaining two outcome categories. Puzzlingly, the model without food production performs better in both cases—i.e., the Receiver Operating Characteristics curves have higher 'Area Under the Curve' scores. We hesitate to put too much emphasis on the ROC tests, given the rareness of the outcomes (notably Models 17 and 26) and the relatively small training samples (Models 20 and 23), but nonetheless the patterns observed in the out-of-sample simulations substantiate the regression results reported above; fluctuations in agricultural output explain little of the observed variation in political violence in post-colonial Sub-Saharan Africa.

5. Concluding remarks

Emerging evidence suggests that food price shocks are associated with an increase in social unrest (Smith 2014, Bellemare 2015, Hendrix and Haggard 2015, Weinberg and Bakker 2015). Yet, the robust 'non-finding' presented here implies that so-called 'food riots' play out largely isolated from climate-sensitive production dynamics in the affected countries. Likewise, claims that adverse weather and harvest failure drive contemporary violence in Africa (e.g., Hsiang et al 2013, IFPRI 2015) are not supported by our analysis. Instead, social protest and rebellion during times of food price spikes may be better understood as reactions to poor and unjust government policies, corruption, repression, and market failure (e.g., Bush 2010, Buhaug and Urdal 2013, Sneyd et al 2013, Chenoweth and Ulfelder 2015).

### Pesticides---U---2NC

#### Use is declining---measuring per capita is best

Kayleen Schreiber 21, GLP’s Infographics and Data Visualization Specialist, and Marc Brazeau, Editor of Food and Farm Discussion Lab, GLP’s Senior Contributing Writer Focusing on Agricultural Biotechnology, “Pesticides and Food: It’s Not a Black or White Issue — Part 1: Has Pesticide Use Decreased?”, Genetic Literacy Project, 4/5/2021, https://geneticliteracyproject.org/2021/04/05/pesticides-and-food-its-not-a-black-or-white-issue-part-1-has-pesticide-use-decreased/

This means pesticide use has decreased dramatically both per unit produced and per capita (graph created using data from the USDA and the U.S. Census Bureau). Looking at the decrease through a per capita lens isn’t even taking the increase in exports over the last four decades into account. Total pesticide use in the U.S. has decreased from almost three pounds per person per year in 1980 to less than two pounds per person per year in 2008:

Chart, waterfall chart

Description automatically generated

Pesticide use in conventional agriculture has decreased substantially per unit produced and per capita as farmers have been getting bigger and bigger yields per acre over the last few decades. Farmers are always looking to increase yield while decreasing pesticide use when possible.

Pesticide use has changed significantly over the past decades. However, many people have become even more concerned about the toxicity and environmental impact of pesticides. Part 2 of this series looks at how pesticide toxicity and environmental impact have changed over the last decades and where improvements still need to be made.

#### It’s down by more than half in the past 30 years

Brian Boyce 21, Member of the American Medical Writers Association and Society of Professional Journalists, Award-Winning Writer Living on a Farm in West-Central Indiana, “5 Things You May Not Know About Pesticides”, Ag Daily, 6/3/2021, https://www.agdaily.com/crops/pesticide-facts-things-you-may-not-know-about-pesticides/

World pesticide expenditures at the producer level totaled $56 billion in 2012. Between 2008 and 2012, expenditures on herbicides accounted for approximately 45 percent. The U.S. pesticide expenditures at the producer level totaled $9 billion in 2012. In that same year, the U.S. market utilized 678 million pounds of herbicides, 64 million pounds of insecticides, 105 million pounds of fungicides, and 435 million pounds of fumigants.

Per the EPA, between 1990 and 1991, the U.S. pesticide user expenditures totaled $8.3 billion, representing one-third of the world market. Interestingly enough, in those years, the pesticide usage involved 20,000 different pesticide products registered under the Federal Pesticide Law. The total U.S. pesticide usage in 1991 was about 2.2 billion pounds.

One of the reasons for the reduction in gross poundage over the years is because some crops, such as Bt corn, are genetically engineered to produce an insecticidal protein like the one naturally produced by the bacteria species Bacillus thuringiensisis. This has helped to eliminate the need for spraying that particular insecticide. Additionally, the use of some herbicides have coincided with the adoption of no-till practices, thus helping save billions of tons of topsoil by reducing erosion. Tillage had been the primary strategy to control weeds outside of herbicide applications.

## Cooperative ADV

### Circumvention---2NC

#### Antitrust is developed by adjudication---that creates an ineffective, unpredictable, and unenforceable patchwork

Rohit Chopra 20, Commissioner of the Federal Trade Commission, and Lina M. Khan, Academic Fellow at Columbia Law School, Counsel to the Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary and Former Legal Fellow at the Federal Trade Commission, “The Case for "Unfair Methods of Competition" Rulemaking”, University of Chicago Law Review, 87 U. Chi. L. Rev. 357, March 2020, Lexis

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

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

One reason that antitrust adjudication suffers from these shortcomings is that courts analyze most forms of conduct under the "rule of reason" standard. The "rule of reason" involves a broad and open-ended inquiry into the overall competitive effects of particular conduct and asks judges to weigh the circumstances to decide whether the practice at issue violates the antitrust laws. Balancing short-term losses against future predicted gains calls for "speculative, possibly labyrinthine, and unnecessary" analysis and appears to exceed the abilities of even the most capable institutional actors. 1 Generalist judges struggle to identify anticompetitive behavior 2 and to apply complex economic criteria in consistent ways. 3 Indeed, judges themselves have criticized antitrust standards for being highly difficult to administer. 4 And if a standard isn't administrable, it won't yield predictable results. The dearth of clear standards and rules in antitrust means that market actors face uncertainty and cannot internalize legal norms [\*360] into their business decisions. 5Moreover, ambiguity deprives market participants and the public of notice about what the law is, thereby undermining due process--a fundamental principle in our legal system. 6

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

#### Antitrust courts lack expertise to make correct decisions. That allows continued market distortion.

Herbert Hovenkamp 18, James G. Dinan University Professor at Penn Law and Wharton School of Business at the University of Pennsylvania, “The Rule of Reason”, Florida Law Review, 70 Fla. L. Rev. 81, January 2018, Lexis

II. BURDENS OF PROOF, QUALITY OF EVIDENCE, AND THE "QUICK LOOK"

A. Cost Savings from the Per Se Rule?

Antitrust policy should strive to reduce the social costs of anticompetitive behavior, which has two distinct components. One is the net social costs of anticompetitive price increasing or output reducing conduct and the private measures taken to defend against it, offset by any economic benefits. Second are administrative costs, including error costs, of operating the enforcement system.

One must assume that a full-blown rule of reason inquiry is much costlier than analysis under the per se rule. Applying the rule of reason typically requires expert testimony identifying a relevant market or alternative mechanisms for estimating market power, as well as some evidence that purports to measure actual anticompetitive effects. 103 By contrast, the per se rule requires only proof that a particular type of conduct has occurred. Thus, the rule of reason is justifiable only to the extent that it provides superior outcomes.

Administrative costs include not only the costs of litigation, whether terminated by settlement, dispositive motion, or trial, including appeals, but also the cost of detecting violations, of determining whether to sue, as well as of antitrust compliance with whatever the rule happens to be. Error costs are particularly relevant to compliance costs. For example, an unduly harsh tying rule may influence firms to avoid socially beneficial tying. By contrast, an overly lenient predatory-pricing rule may yield excessive anticompetitive predation. 104

[\*99] Excessive complexity can increase error costs just as much as excessive simplicity. Antitrust cases in the United States are decided by generalist judges, many of whom lack economics training. Further, facts are often determined by juries, who frequently lack any relevant training whatsoever. In such cases increased complexity can produce poorer rather than better outcomes. 105 As a result, a per se rule that is easily administered but right only 80 percent of the time may actually be preferable to an open-ended rule of reason query with an arbitrary and indeterminate error rate.

### Environment---U---Ag---2NC

#### Sustainability is increasing

Alison McGrew 20, Writer for Illinois Farm Families, “3 Myths About Sustainable Agriculture”, March 2020, https://www.watchusgrow.org/2020/03/02/3-myths-about-sustainable-agriculture/

Myth #1: Today’s farms are less sustainable than they used to be.

Fact: Simply put, farmers today are doing more with less. Here are a few examples:

* Compared to 1977, today’s beef farmers produce the same amount of beef with 33% fewer cattle.
* Pig farms now use 75.9% less land than in 1960.
* Over the last 40 years, soybean farmers have nearly doubled how much they grow while using 8% less energy.
* Dairy farmers have reduced greenhouse gas (GHG) emissions by 63% over the past 60 years.
* Corn farmers have increased yields while reducing pesticide and fertilizer use, thanks in part to biotechnology.

Sustainable agriculture may look different on each farm, but the goal is always the same: make the farm better for tomorrow and for future generations while providing a safe, sustainable food supply.

#### Every output is improving

Ted Nordhaus 15, Founder and Executive Director of the Breakthrough Institute and Co-Author of An Ecomodernist Manifesto, Michael Shellenberger, Founder and President of Environmental Progress, Former President of the Breakthrough Institute, and Linus Blomqvist, PhD Student in Environmental Economics and Science at UC Santa Barbara, Former Director of the Conservation and Food & Agriculture programs at the Breakthrough Institute, “George Monbiot is Wrong to Suggest Small Farms Are Best for Humans and Nature”, The Guardian, 9/25/2015, https://www.theguardian.com/environment/2015/sep/25/george-monbiot-is-wrong-to-suggest-small-farms-are-best-for-humans-and-nature

Without question, the journey from subsistence economies to modern livelihoods is not an easy one and moving from the farm to the city does not guarantee a better life, at least in the short term. But the last two centuries offer ample evidence that by just about every metric of human health, freedom, and material well-being, urbanisation, industrialisation, and agricultural modernisation are processes that have been overwhelmingly positive for humans.

Moreover, as a leading proponent of rewilding, we hope that Monbiot will think a bit harder about where all those rewilded landscapes in which, he hopes “nature is allowed to do its own thing, in which it can be to some extent self-willed, driven by its own dynamic processes” are likely to come from. On a planet of 7, going on 9 billion people, agricultural modernisation and intensification are clearly the most plausible path to leaving more of the Earth to nature.

### Environment---U---General---2NC

#### All metrics are improving

Dr. Alex Berezow 19, PhD in Microbiology from the University of Washington, Vice President of Scientific Communication at the American Council on Science and Health, Non-Resident Fellow at The Council on Strategic Risks, Speaker at The Insight Bureau, Former Adjunct Faculty Member at Northwest University, “The Environment: Getting Better All The Time”, American Council on Science and Health, 7/23/2019, https://www.acsh.org/news/2019/07/23/environment-getting-better-all-time-14176

In 1967, the Beatles released Sgt. Pepper's Lonely Hearts Club Band, one of the best albums ever made. One of its hit songs was titled "Getting Better," and part of the chorus goes like this:

I've got to admit it's getting better

A little better all the time

The song was about life in general, but it could have been dedicated to the environment. Contrary to what you see reported in the news, the environment is, bit by bit, getting better.

The Environment: Getting Better All the Time

The latest evidence for this comes from France, which is becoming heavily re-forested. According to The Economist:

Since 1990, thanks to better protection as well as to a decline in farming, France’s overall wooded or forested areas have increased by nearly 7%. And France is far from being alone. Across the EU, between 1990 and 2015, the total forested and wooded area grew by 90,000 square kilometres—an area roughly the size of Portugal. Almost every country has seen its forests grow over the period.

Believe it or not, Europe is not an outlier. The United States has more trees now than it did 100 years ago. A study in Nature concluded that there is more tree cover on Earth now than 35 years ago1.

Why? Because of technology and wealth. Technology, including agricultural technology, helps decouple the economy from natural resources. In other words, we humans are becoming less reliant on Mother Nature for our well-being. We can grow more food on less land, for instance. Soon, using hydroponics, we may be able to grow food in skyscrapers.

Wealth is the other major driver. When a poor country becomes wealthier, it usually does so at the expense of the environment. (That's why China is belching out pollution and Brazil is destroying the Amazon rain forest.) The primary concern of these countries is to escape poverty. But as countries become even richer, they decide to use some of that wealth to benefit the environment. Green spaces and parks are often seen as a luxury that only the wealthy can afford.

This concept is neither new nor a myth propagated by industry. It's known as the environmental Kuznets curve. (Source: Govinddelhi via Wikipedia.) A textbook co-authored by Paul Krugman (yes, that Paul Krugman) called International Economics: Theory and Policy said that the relevance of the environmental Kuznets curve "has been confirmed by a great deal of further research."2

None of this is meant to suggest that there are no environmental problems. Poor regions really are doing some very bad things to the planet. Asia and Africa, for example, are primarily responsible for dumping plastic into the ocean3.

As is often the case, the cure is wealth. If we want these countries to treat the planet well, we should do whatever we can to help make them richer. Incidentally, they'll also have fewer kids.

Notes

(1) Naysayers, pessimists, and Debbie Downers will note that biodiversity is lower in new forests than in old-growth forests. That's probably true but have patience. Biodiversity will return. The Demilitarized Zone (DMZ) between North and South Korea has become a haven for wildlife, including endangered species.

# 1NR

## ADV CP

### Solvency---AT: Subsidies Fail

#### It raises sufficient money.

Joshua McCabe 18, Assistant Professor of Sociology and the Assistant Dean for Social Sciences at Endicott College, Senior Fellow in Poverty and Welfare at the Niskanen Center, “Top 10 Reform Options from the CBO,” Niskanen Center, 12-21-2018, <https://www.niskanencenter.org/top-10-reform-options-from-the-cbo/>

The independent Congressional Budget Office recently released a report offering 121 options for reducing spending or increasing revenues. It’s a cornucopia of fiscal responsibility. Whether your goal is reducing unsustainable deficits, strengthening existing social programs, or saving the planet, there’s something for everyone. Here’s my top 10 list (in no particular order):

1). Eliminate Itemized Deductions

Estimated revenue change: $1.312 trillion over 10 years

Itemized deductions are one of the main reasons the federal tax code looks like Swiss cheese. Eliminating deductions such the state and local tax deduction and mortgage interest deduction, which are regressive and distortionary, would be the more efficient way to reduce the deficit without raising marginal tax rates.

Table

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2). Increase Individual Tax Rates Across the Board

Estimated revenue change: $905.4 billion over 10 years

Nobody likes to see their taxes go up but a broad-based increase of 1 percentage point across the board would be one of the more sustainable deficit reduction strategies. It would have minimal impact on most taxpayers and leave the overall tax-burden distribution unchanged.

A picture containing table

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3). Introduce 5 percent Federal Value Added Tax

Estimated revenue change: $2.97 trillion over 10 years

Beginning with the revenue slowdowns of the 1970s, the value added tax (VAT) has been the revenue booster of choice for every English-speaking country with the exception of the United States. It’s less distortionary than income taxes and its regressive structure can be easily offset with progressive spending or refundable tax credits.

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4). Properly Fund the IRS

Estimated revenue change: $35.3 billion over 10 years

In terms of total revenue increases, better enforcement of current tax laws isn’t a money machine. In terms of getting the most bang for the buck while buttressing the rule of law, it’s a no-brainer.

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5). Reform Unemployment Insurance Taxes

Estimated revenue change: $18.1 billion over 10 years

Because it hasn’t been indexed for inflation, the tax base for unemployment insurance has steadily shrunk over the years. “Broaden the base, lower the rates” is a tried and true tax reform strategy that applies just as well in this case. This option would broaden the taxable wage base for unemployment insurance from $7,000 to $40,000 while lowering the net tax rate from 0.6 percent to 0.167 percent.

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6). Expand the Wage Base for Social Security taxes

Estimated revenue change: $758.1 billion over 10 years

Expanding Social Security’s taxable wage base to 90 percent of an individual’s wages would restore it to what it was under President Reagan’s 1983 reforms and make it a bit more fiscally sustainable in the long run.

Table

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7). Fix the FMAP Formula

Estimated revenue change: $794 billion over 10 years

The Federal Medical Assistance Percentages formula is supposed to subsidize states based on their fiscal capacities, but the minimum funding rates of 50 percent for all programs and 90 percent for the Medicaid expansion favor wealthy states over poor states. Eliminating both would save a total of $794 billion over 10 years, as we can see by adding up the figures in CBO’s chart, below. Plowing the savings back into an enhanced FMAP formula based solely on fiscal capacity would make it vastly more equitable without adding a penny to the deficit.

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8). Eliminate Head-of-Household Filing Status

Estimated revenue change: $165.3 billion over 10 years

The standard deduction for a head of household is an inefficient way to help single parents and those taking care of elderly parents because it is regressive and creates marriage penalties. Eliminating it and plowing the savings back into an expanded child tax credit or family credit would be a progressive and pro-family reform.

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9). Increase the Gas Tax and Index It

Estimated revenue change: $514.9 billion over 10 years

Everyone is talking about funding much-needed infrastructure spending. The gas tax was last raised in 1993 and has been eroded by inflation every year since because it was left unindexed. Raising it by 35 cents and indexing it would go a long way toward sustainably funding infrastructure and still leave the United States with the lowest rate of any rich democracy.

Table

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10). Introduce a Carbon Tax

Estimated revenue change: $1.099 trillion over 10 years

The Paris Accords and “green New Deal” proposals are window dressing when it comes to fighting climate change. There will never be a better option than simply directly taxing carbon emissions. Use the revenues for progressive spending offsets, growth-inducing tax cuts, deficit reduction, or all three.

Table

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## Biz Con DA

### U---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.

#### There’s no significant antitrust enforcement

Joseph Charles Folio 21 III, Lawyer at Morrison Forrester, and Lisa M. Phelan Co-chair Global Antitrust Law Practice Group at Morrison Forrester, Jeff Jaeckel, Co-chair Global Antitrust Law Practice Group at Morrison Forrester, and Alexander Paul Okuliar, Co-chair Global Antitrust Law Practice Group at Morrison Forrester, “Antitrust Update: Up and Down the Avenue”, 3/22/2021, https://www.mofo.com/resources/insights/210322-atr-update.html

Are the stars aligning for antitrust reform? President Biden is filling key positions in the White House (Timothy Wu, National Economic Council) and at the FTC (Lina Khan, nominee for commissioner) with lawyers who have advocated for increased antitrust enforcement, especially against “big tech.” In Congress, the House antitrust subcommittee concluded a year-long investigation in October 2020 and found bipartisan agreement on discrete areas for reform. With Democrats now in control of both houses of Congress, antitrust legislation seems close. But not so fast.

The House and Senate antitrust subcommittees have held four hearings since February 25, 2021, but it is crucial to view these recent developments in their proper context. Even when politicians and enforcers appear to agree on a goal, it can still be a long and winding road to actual policy reform.

Two to go

Although antitrust reform advocates cheered President Biden’s initial appointments, two of the most consequential antitrust positions—the assistant attorney general (AAG) for antitrust and the FTC chair—remain open. Both the AAG and FTC chair wield tremendous authority; they approve cases, guide investigations, and will decide how to proceed with ongoing litigation. It is unlikely that the Biden administration will make any significant decisions, or support any particular legislation, before its key personnel are firmly in place. And that can take time. Former AAG Makan Delrahim was nominated in March 2017 but not confirmed until September 2017.

Interestingly, the pressure to nominate like-minded antitrust reformers for these two positions is coming from multiple angles. One public interest group recently sent a letter to White House chief of staff Ron Klain and, after “highly commend[ing]” the nomination of Ms. Khan to be an FTC commissioner, warned against the influence of certain White House and DOJ officials over the AAG and FTC chair nominations because of their links to “big tech” companies.[1] Additionally, many in the press have been critical of the level of tech enforcement activity during the Obama administration and want to avoid a replay of those years.[2]

#### 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.

#### Khan is uniqueness, not a thumper---she’s laser-focused on her agenda---she’s trimming other distractions.

Kiran Stacey 21, Washington Correspondent for the Financial Times, “Washington vs Big Tech: Lina Khan’s battle to transform US antitrust,” Financial Times, 8/9/21, https://www.ft.com/content/eba8d3d7-dba7-4389-858c-5406c31b413d

Since taking over at the FTC, Khan has quickly begun to remodel it. Some of these changes look like technical internal reforms, while others are major policy statements. Almost all have been fiercely opposed by Republicans and the business community.

In the past few weeks, Khan has begun holding commission meetings in public — something Democrats say makes the commission more open to scrutiny, but which the two Republican commissioners say makes it harder for them to negotiate compromises.

She has banned staff from making public appearances such as conference panel sessions, saying the commission has too much work to do. She has passed a rule which allows FTC staff greater leeway to pursue investigations in certain priority areas, giving them the power to issue their own subpoenas for documents and testimony.

## Politics DA

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

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

David A. Hyman 20 & William E. Kovacic, Hyman is Professor, Georgetown University Law Center; Kovacic is Global Competition Professor of Law and Policy, George Washington University School of Law, and a Non-Executive Director of the United Kingdom’s Competition and Markets Authority, “State Enforcement in a Polycentric World,” BYU Law Review, 9/1/20, Iss. 6, https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=3248&context=lawreview

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."

#### 2) OPTICS---DOJ exclusivity looks like the FTC abdicating its political independence---that wrecks cred

David Vladeck 21, Professor of Law at Georgetown University Law Center; Jan Schakowsky is an American politician who has served as the U.S. Representative from Illinois's 9th congressional district since 1999; Sally Greenberg is Executive Director of the National Consumers League, “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

David Vladeck (5:43:42): Well, it would shorten the time that the FTC has in order to get a civil penalty from a defendant that's already been found to be a violator, has violated a rule. And so the current practice is that the FTC has to make a referral to the Department of Justice, the Department of Justice must agree to take the referral, the FTC does most of the drafting of the legal documents that need to be filed in court, but ultimately, the Justice Department will do that. And so, in cases, for example, that need to go to trial, there's an enormous duplication of of work. The FTC lawyers do the first cut, then the Justice Department lawyers redo it. It's just an incredible waste of resources on both the FTC's part and the Department of Justice's part. But there's another concern I have, which is, the FTC was designed to be an independent agency, bipartisan, not beholden to the president through the executive branch. But if the FTC has to rely on the Justice Department to enforce its own orders, well, that independence sometimes can be compromised. And so I think this is an important step forward. The FTC has already asked Congress to give us that kind of authority. And I would urge the subcommittee vote this bill out.

Jan Schakowsky (5:45:13): Thank you so much. I wanted to ask the same around the same question. So we know - to Ms. Greenberg. We know that some stakeholders are critical of the idea that we're talking about, now, of giving the FTC this authority, under support of the legislation, arguing that it could lead to the FTC to overreach and unfairly harm businesses. And I'm wondering how you would respond to those concerns that have been raised. Because it seems to me that we want to empower the FTC in the ways that we just heard the professor mentioned.

Sally Greenberg (5:46:06): Yeah, and the FTC is a critically important consumer protection agency, I think it punches above its weight, we need to give it the power and the authority it needs to hold bad actors accountable. And the authority that would provide the FTC in your legislation, I think, will be ultimately more protective of consumers. And the FTC, unfortunately, is hamstrung by the processes and procedures which other agencies do not have to confront.

#### Shut up!

[Kentucky in blue].

1AC Tam and Bielskis 21, Kristen, BA, Environmental Science Policy, University of California, Los Angeles, Olivia, BA, Political Science & Human Biology and Society, University of California, Los Angeles, "Stimulating Antitrust Enforcement to Expand the Regenerative Agriculture Movement," 2021-04-01, <https://escholarship.org/content/qt0m16g2r5/qt0m16g2r5.pdfAH>

II. Prong One: “Antitrust Injury” Should Include the Threat of Loss of Profits due to Possible Price Competition The negative effects of agriculture consolidation have transpired largely due to the lack of antitrust enforcement from the Courts and the DOJ and FTC. The Supreme Court’s ruling on Cargill v. Monfort, which allowed two meatpacking corporations to merge even though the plaintiff, a competing firm, claimed the merge would cause a “threat of loss of profits.” This showcases how this perspective on antitrust laws has failed to err on the side of precaution and subsequently allows mergers that decrease competition in the marketplace to arise. This section outlines the intended purpose of antitrust laws, provides an overview of the case, then argues why showing the threat of loss of profits due to possible price competition following a merger does constitute antitrust injury. Further, this ruling has created an unreasonable threshold for private entities to bring potential mergers to court and has created precedent for later filings to be dismissed on the basis that they did not prove sufficient “antitrust injury.” A. Origins of Antitrust Law The term “antitrust” came about in the late 1800s because many companies were transferring their stock to a board of “trustees” who controlled the output and prices for entire industries.47 With this in mind, antitrust laws were designed to ensure that a few corporations do not hold substantial economic power that could “be exerted to oppress individuals and injure the public generally.”48 Not only do they intend to prevent monopolization of markets, but they aim to maintain competitive markets, increase consumer surplus, increase the quantity and quality of the product consumed, reduce deadweight loss, and improve efficiency in resource allocation as well.49 Congress created three major Federal antitrust laws to maintain competition in the marketplace: The Sherman Antitrust Act, the Clayton Antitrust Act and the Federal Trade Commission Act.50 The first of the antitrust laws, The Sherman Antitrust Act was enacted in 1890 with the purpose of protecting interstate and foreign trade by outlawing contracts, combinations, conspiracies, and anticompetitive conduct that unreasonably restrained trade.51 The Act is not violated when one firm’s vigorous competition and lower prices take sales from its less efficient competitors; in this case, the Courts state that competition is working properly.52 While the Sherman Act imposes a more onerous burden of proving actual unreasonable restraints, Congress created the Clayton Act to require proof only of potential anticompetitive effect.53 The Act intends to prevent practices that suppress competition and give large businesses undue advantages over small businesses, as well as to prohibit mergers and acquisitions that are likely to lessen competition.54 There are three key elements that help uphold United States antitrust laws and affect the level of enforcement. The first is jurisprudential doctrines that the courts develop.55 Judicial decisions may limit or expand the reach of antitrust laws by setting precedents that alter the government’s ability to challenge certain types of cases. The second is the prosecutorial discretion that enforcers, the DOJ, the FTC, and the state attorneys general, employ.56 Because these agencies determine what does and does not violate antitrust laws, a change in the enforcement discretion or philosophy of enforcers may affect the intensity of regulation. The third is the fiscal resources provided to the enforcers.57 Judicial rules that increase or decrease the cost and barrier to entry to pursue cases can affect the number of antitrust cases brought to trial. B. Jurisprudential Doctrines are Largely Influenced by Lenient Interpretations by the Courts Until the late 1970s, the courts strictly ruled against many mergers and in favor of protecting competition. However, this changed when Robert Bork published a book in the 1980s arguing that the government must only focus on changes in consumer prices when assessing anticompetitive harm, a perspective known as the “consumer welfare standard.”58 His framework prioritized economic efficiency over small businesses, arguing that big business should be allowed to consolidate because its efficiency benefited the economy.59 Concurring with Bork, the Chicago School principles claim that underenforcement of antitrust laws was better than overenforcement because market self-correction will provide sufficient safeguards to competition.60 Because of these new priorities, the Supreme Court, FTC, and DOJ adopted this philosophy in 1979 ushering in what is known as the Chicago Era.61 They prioritized the efficiencies and lower prices that larger firms created, thus rolling back their antitrust enforcement on larger firms to create more consolidated industries.62 Although consolidated industries may positively affect consumers by decreasing prices, the Court neglected to take into account the negative effect that consolidation in agricultural purchasing and distribution had on suppliers such as farmers. When there are less buyers, distributors, or packers who compete for the supplier’s good, the buyers are able to control and drive down the price they pay to the suppliers; they create what is known as monopsony power. C. Cargill v. Monfort Cargill v. Montfort exemplifies a decision invoking a diluted enforcement of the Clayton Act that leads to the creation of monopsony power. In this case, the Supreme Court overruled the Circuit and District Court rulings and decided that the plaintiff, Monfort, did not establish sufficient antitrust injury under Section 16 of the Clayton Act by claiming a threat of loss of profits to sue Excel. Monfort, the fifth largest beef packing corporation in the United States, was contesting the merging of Excel and Spencer, the second and third largest beef packing corporations in the United States. Excel is a wholly owned subsidiary of Cargill, Inc., which owns more than 150 subsidiaries in over 35 countries.63 The merger would still leave Excel as the second largest packer, but its market share would almost equal the largest packer, IBP, Inc.64 The case was first brought to the Tenth Circuit Court, where they agreed that the plaintiff proved antitrust standing and was able to seek injunction under Section 16 of the Clayton Act, which allows for a party to sue for injunctive relief due to “threatened loss or damage by a violation of the antitrust laws.”65 This conclusion was reached because Montfort’s viability in the market would be injured by (1) a threat of loss of profits from the possibility that Excel would lower its prices to a level at or only slightly above its costs, and (2) a threat of being driven out of business by the possibility that Excel would lower its prices to a level below its costs, which would violate Section 7 of the Clayton Act.66 Section 7 intends to prohibit actions that substantially lessen competition or tend to create monopolies.67 These injuries would be met on the premise that Excel would injure Monfort by enacting a “price-cost squeeze.” A price-cost squeeze would involve Excel increasing the bidding price it would pay for cattle while lowering the price it sells the end product, boxed beef, to a level at or only slightly above its production costs.68 In effect, this would require Monfort to also lower its prices in order to remain competitive, causing them to suffer profit losses.69 Excel’s large financial resources endowed by its owner, Cargill, would allow it to accept far lower profit margins than firms like Monfort, which would eliminate competitors in the short run and reduce competition in the long run.7071 This inevitability violates the Clayton Act by creating a “threatened loss or damage”72 by a pricecost squeeze, which would “substantially… lessen competition”73 and create a dynamic in which Excel can control the market to maximize their own benefit.74 The District Court agreed that Monfort’s allegations and proof of anticompetitive effect were sufficient given that Excel, being the second largest producer, could create an acquisition that realistically threatens Monfort’s position as a strong competitor in the marketplace.75 The Court of Appeals also affirmed this ruling and held that the respondent’s allegation of a “pricecost squeeze” was not just harm from competition, but constituted a claim of injury as a form of predatory pricing because Excel would drive other companies out of the market.76 D. The Supreme Court’s Ruling on Cargill v. Monfort Undermines the Clayton Act In response to the District and Circuit Court rulings, the Supreme Court’s first argument was that the showing of loss or damage merely due to increased competition does not constitute antitrust injury to seek relief under Section 16.77 The Supreme Court looked back to its rulings on Brunswick orp. V. Pueblo Bowl-O-Mat, Inc., where they held that “antitrust laws do not require the courts to protect small businesses from the loss of profits due to continued competition, but only against the loss of profits from practices forbidden by the antitrust laws.”78 Here, the Court found that the competition that Monfort alleged, competition for increased market share, was simply vigorous competition, and not actively forbidden by antitrust laws.79 The Court suggests that if antitrust laws protected competitors from the loss of profits due to this price competition, any decision by a firm to cut prices in order to increase market share would be rendered illegal.80 However, showing loss or damage due to increased competition does constitute antitrust injury. Antitrust injury results from predatory pricing, an anticompetitive practice forbidden by antitrust laws where a corporation intentionally lowers prices below normal competitive prices in order to monopolize part of the market.81 Monfort demonstrated that this injury is at play because they proved high likelihood that Excel would engage in a price-cost squeeze. A price cost squeeze may be viewed as “simply vigorous competition” in the short run. However, if the practice continues, it will greatly reduce competition in the long run. Furthermore, antitrust laws focus on protecting competition in the long run rather than treating these matters as mere short term price wars. In this case, the Court focused on the post-merger conduct and opted to deny relief unless the plaintiff could prove a violation of the Sherman Act. Instead, the Court should focus its attention on the merger itself and grant relief if there is a significant probability that the merger will adversely affect competition in the market, focusing on the probable threat of harm rather than actual harm.82 This aligns with the purpose of Section 7 in the Clayton Act to prevent mergers that “may substantially lessen competition, or tend to create a monopoly” without requiring initial proof of ongoing, established harm to the plaintiff.83 Section 16 of the Clayton Act is not being properly enforced to protect competition if it does not grant plaintiffs antitrust injury on the basis that there is a threat of loss of profits due to possible price competition following a merger. The Supreme Court’s second argument is that the respondent neither raised nor proved any claim of predatory pricing before the District Court. This is because Monfort did not allege that Excel’s engaging in a price-cost squeeze was included in predatory activities.84 Although Monfort may only have four passing references that claim that Excel would be able to and would probably engage in predatory pricing, it should not need to claim this, rather, the evidence of a price-cost squeeze likely occurring is enough to satisfy antitrust injury. The Court's ruling on Cargill v. Monfort did not, however, set a per se rule, which would have unequivocally “denied competitors standing to challenge acquisitions on the basis of predatory pricing theories.”85 Therefore, competitors can still challenge acquisitions on the basis of predatory pricing. However, because the Court ruled that showing loss of damage merely due to increased competition, or the threat of loss of profits due to possible price competition following a merger does not constitute antitrust injury to give injunctive relief under Section 16,86 if following competitors try to bring up this reason for antitrust injury, they will most likely be denied standing as the Court will refer back to this case. This language has been inscribed into this section’s jurisprudence doctrines and has not been overturned or amended since, as more recently cited in the definition of antitrust standing in Glen Holly Entm’t, Inc. v. Tektronix Inc case in 2003.87 The subsequent adverse impacts of consolidation on the market demonstrate that showing loss of damage due merely to increased competition, or the threat of loss of profits due to possible price competition following a merger does constitute antitrust injury and should be struck down. III. Prong Two: The DOJ and FTC have significantly decreased the number of agriculture and meatpacking merger acquisitions that they block A. Power in the Hands of the Antitrust Division and Federal Trade Commission to determine Harmful Merges The second institutional aspect affecting antitrust enforcement is observed in federal agencies. The DOJ and FTC are the federal agencies that evaluate if corporate merges valued at more than $94 million can occur.8889 Since the 1980s, regulation by the FTC and DOJ has significantly decreased. Every year the FTC and DOJ review over a thousand merger filings, and it was found that between 2000 and 2005, 95 percent of merger filings presented no competitive issues.90 For mergers that “may… substantially… lessen competition, or tend to create a monopoly,”91 the FTC conducts more in-depth investigations using their Merger Best Practices guidelines.92 Oftentimes, competitive issues with these mergers are solved by consent agreement with the parties. In the few cases where the agency and parties cannot agree on a way to fix the competitive problems, the agency may bring the merger on administrative trial to federal court.93 These agencies base their determination on if a merge is likely to create or increase market power.94 Market power is the ability of a seller or a group of sellers to profitably maintain prices above competitive levels for a significant period of time or the ability of a buyer or coordinating group of buyers to depress prices below competitive levels.95 When a merger is brought before them, such as the acquisition of Cargill by Continental, the Division conducts extensive research. In this case, they worked with over 20 attorneys, economists and paralegals who reviewed over 400 documents and consulted with officials from the USDA, FTC and state attorneys general offices. They interviewed over 100 farmers, farm organization officials, agricultural economists, grain company executives, and other individuals. In conducting their analysis, the Division determines the size and shape of the product and geographic markets, how recent buying and selling patterns would be affected by the merge, analyzes the size of the firms’ market shares, and looks at the pre- and post-merger levels of concentration in the market.9697 From this, the Division decides if the effect of the merger may substantially lessen competition in the relevant market, which determines whether or not to allow the merger to exist.98 In Philadelphia National Bank, the Supreme Court set forth an additional test that said if mergers control an undue percentage share of the relevant market and which results in a significant increase in the concentration of firms in the market inherently likely to lessen competition, then they violate Section 7 of the Clayton Act.99 After the Division follows these steps, they can prevent the merger from existing or allow the merger to proceed if they follow restructuring recommendations. For Cargill, they concluded that the merger would prevent competition and options for farmers to sell their products to. Thus, the Division suggested multiple divestitures in Cargill and Continental facilities throughout the Midwest, West and Texas Gulf. The Division did this because they wanted to ensure that farmers in the affected markets would have alternative buyers to sell their grain and soybeans to.100 This case exemplifies that the DOJ and FTC have the capacity to determine how much evidence is needed to prove injury, what constitutes control of an “undue percentage share of the relevant market,” and what “a significant increase in the concentration of firms in the market” is.101 Although the investigation in Cargill and Continental resulted in an adequate enforcement of antitrust guidelines, the majority of cases do not face comparable evaluation. B. Regulation by the DOJ has Significantly Decreased Decreased regulation by the DOJ and FTC is not adequately protecting competition. From 2010 to 2019, despite a 79.16 percent increase in the number of pre-merger submissions to the DOJ and FTC, from 1,166 to 2,089, the percentage of mergers that these agencies conducted a second request for decreased by 0.5 percent and 0.3 percent respectively for the DOJ and FTC.102 Despite a clear increase in the number of merger requests, the DOJ and FTC have not proportionally increased the usage of their enforcement mechanisms. Examining enforcement in 2013, there were 1,326 merger transactions reported, 217 of which raised questions for further inquiry based solely on information reported. From this, 47 second requests were issued from the FTC and DOJ to collect data from the businesses. After receiving this information, the DOJ and FTC brought 38 merger enforcement actions which in the majority included settlement agreements with the parties involving asset divestiture to prevent post merger harm. This resulted in only 6 merger cases filed in court seeking injunction rather than settlement.103 Seeing as enforcement trends have shifted to such a great extent to allow over 95 percent of merger transactions form every year, the DOJ and FTC have clearly demonstrated a propensity to decrease regulation of mergers, which generally favors furthering the dominance of large corporations. The Cargill case epitomizes the Court’s lenient attitude specifically against enforcement of Section 7 of the Clayton Act where the federal agencies also need to increase enforcement to uphold the goals of the statute. Under Section 7 in the Clayton Act, the number of merger cases investigated by the DOJ have decreased in each decade following the Bork era: 125.3 merger cases per year in the pre-Bork era from 1970 to 1979,104 95.1 cases per year in the post-Bork era from 1980 to 1989,105 and most recently, only 69.8 cases per year from 2010 to 2019.106 Merger cases have experienced drastic decreases in the number of cases for which the DOJ conducts a second request, finds violation of antitrust laws, and bars a merger from proceeding from the 1970s to our current age. For agriculture enforcement specifically, since 1969 the DOJ has only filed 10 cases against company mergers for fluid milk manufacturing and dairy products, while meat packing firms have only faced 7 cases cumulatively.107 The DOJ’s decreasing regulation of mergers that substantially harms competition has caused the agriculture market to become more consolidated; therefore, it must reinvigorate its deference to its statutory duties to uphold the Clayton Act and strike down on mergers that it foresees will and currently are, threatening competition on the marketplace. From 2008 to 2011, the FTC challenged nearly all mergers that would result in three or fewer significant competitors, most that would result in four or fewer significant competitors, and none that would leave five or more competitors.108 This practice closely resembles Robert Bork’s philosophy arguing that mergers resulting in four or more competitors should be presumptively lawful.109 Although the FTC was diligent in challenging mergers that would result in three or fewer significant competitors, having five large competitors on the market still constitutes a substantially consolidated market, further decreasing competition and preventing smaller businesses from surviving and profiting. IV. Recommendations In order to uphold competition in the marketplace, the Courts and federal regulation agencies must take deliberate action against mergers that will inevitably have profound effects on long-term competition. In order to address prong one, where the Courts have not erred on the side of precaution and have not granted antitrust injury to parties that claim “the threat of loss of profits due to possible price competition,” the Courts should interpret American antitrust laws with Congress’s intent to protect competition, rather than through the lens of consumer welfare, a strategy that has failed to uphold empirical integrity, seeing as consumer prices have risen.110 Specifically, they should interpret Section 16 of the Clayton Act to allow for antitrust injury to include the threat of loss of profits due to possible price competition following a merger. Not only will this rightfully decrease the barrier to bringing forth an antitrust injury, but it will bring precedent back into alignment with the purpose and intention of the Clayton Act and prevent further consolidation in the agriculture marketplace. In order to address prong two, where the DOJ and FTC have largely allowed consolidation in the marketplace to transpire with limited regulation, the DOJ and FTC must increase the number of agriculture and meatpacking merger acquisitions that they block by holistically analyzing the scope of the merger’s market power. Additionally, they must reinvestigate current corporations in the market that have unruly market power, such as Tyson, and require divestiture. Tyson is sued on average 2.7 times every month, however, it still holds a substantially large percentage of the meat processing and packing industry.111 By implementing both of these recommendations, the federal government can truly fulfill their regulatory responsibilities by laying the groundwork for increasing competition by maintaining or increasing the number of farms, distributors and meatpacking businesses. CONCLUSION The growing consolidation of America’s agriculture industry is alarming and poses a continuous threat to the expansion and transition to regenerative farming practices. The DOJ, FTC and the Courts have embraced Robert Bork’s “consumer welfare standard” philosophy and employ stricter standards to prove antitrust injury, allowing more consolidation to occur in the agriculture industry. These conglomerates have increased market prices,112 and in the long run, are implementing farming practices that are destroying the soil and security of America to produce its own food. There are more small and medium sized farms that implement regenerative practices such as applying manure and organic fertilizers. In order to expand the implementation of regenerative practices, large operations need to be broken down and further prevented from forming. Ultimately, allowing merges to occur and limiting regulation on the current marketplace by the Courts and federal agencies is harming consumers, farmers, and the government.

#### 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.

## Aerojet DA

### Impact---2NC

#### Denial collapses missile defense. Nuclear war from North Korean and Iranian strikes.

Punch Moulton 21, Retired U.S. Air Force Major General, Vice President for Defense Support and Cyber Strategies at Stellar Solutions, and Francis Mahon, Former Director for Strategy, Policy and Plans at North American Aerospace Defense Command and U.S. Northern Command, Independent Aerospace Defense Contractor and Advisor for Stellar Solutions, “Robust, Credible and Layered Missile Defense is the Foundation of Deterrence”, 6/16/2021, https://www.defensenews.com/opinion/commentary/2021/06/16/robust-credible-and-layered-missile-defense-is-the-foundation-of-deterrence/

In 2005, an anticipated missile threat to the homeland prompted the expeditious fielding of a missile defense capability to defend the United States. Today, that threat is real, expanding, and most likely nuclear. Our defense needs to also be real and effective for today and into the future.

A recent report by the think tank Rand estimates North Korea has 50 nuclear weapons in its arsenal and, by 2027, will have in excess of 200 and several dozen intercontinental ballistic missiles to complement its several hundred theater ballistic missiles. The director of national intelligence’s 2021 Annual Threat Assessment clearly states: “North Korea will be a [weapons of mass destruction] threat for the foreseeable future, [and] the country is actively engaged in ballistic missile research and development.”

While we must not cast diplomacy aside, we should recognize deterrence is an essential element in any strategy for dealing with the North Korean nuclear missile threat. Deterrence matters, and Adm. Charles Richard, commander of U.S. Strategic Command, framed the point well when he said: “A robust and credible layered missile defense system paired with our conventional and nuclear force capabilities provide the ability to deter strategic attacks, deny benefits, and impose costs against any potential adversary.”

Deterrence discourages an adversary by instilling doubt and anxiety in their decision calculus. Our Ballistic Missile Defense System “denies benefit” by planting that seed of doubt in North Korea’s decision calculus; the doubt that an attack on the United States will succeed.

Today, our defense rests on the Ground-based Midcourse Defense system, or GMD, and its 44 interceptors. But that alone is not going to be adequate to deal with the threats of 2027. Defending our homeland is vital. Looking to the next decade, we need to stay ahead of our threats. Our concerns are four-fold: technology, numbers, layers and sensors.

Technology: Advancing the effectiveness of our missile defense capabilities is extremely important. The Missile Defense Agency recently awarded two contracts, to two teams, to competitively develop a Next Generation Interceptor, or NGI, to overcome the shortcomings in the current interceptor fleet and provide a path to outpace future threats. This competitive development cycle will add up to 20 new interceptors to the inventory. As long as the program enjoys support and an adequate budget from the Department of Defense and Congress, we are on solid ground for the technology.

Numbers: A point of concern, though, is the math: 20 new intercepts plus the current 44 will give us 64. If Rand is anywhere close, we could be outnumbered by the end of the decade. More important, we certainly cannot accept a 1-to-1 exchange ratio when we are dealing with nuclear missiles coming toward the homeland.

Layers: No single defensive system is successful 100 percent of the time, and we cannot base the defense of America solely on the hope of success for every GMD intercept. We need the opportunity for a second engagement in the event GMD’s interceptors do not destroy the in-bound threat. Developing a layered defense is a vital strategy for our nation. We have the technology. MDA recently demonstrated the SM-3 Block 2A missile could intercept an ICBM. All we need now is an aggressive plan to truly build our layered approach for homeland missile defense.

Sensors: Lastly, our future missile defense architecture needs to have the right capabilities to “see the threat” and enable successful defenses. As Gen. John Hyten, vice chairman of the Joint Chiefs of Staff, has stated: “If you can’t see it, you can’t shoot it. And if you can’t see it, you can’t deter it either.” Today’s sensor suite — a handful of terrestrial sensors — needs to advance to the next generation: space-based sensors. Our defenses need to be able to pick out the lethal objects in a cluster of countermeasures. Further, our sensors need to provide “fire control quality” information to the defensive interceptors. While a space-based sensor architecture will be expensive, it will cost far less — in both dollars and operational risk — than relying solely on a terrestrial network.

We cannot take our foot off the pedal. While it will likely take six to seven years to field our NGI, rest assured our adversaries are not standing still. The threat is real: in North Korea today, and potentially Iran tomorrow.

### U---AT: Delay

#### 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.

#### It’s weathering scrutiny, requires deviating from Congressional preference

Valerie Insinna 10-26, Senior Reporter, Air Warfare and OSD at Breaking Defense, “Lockheed’s Acquisition of Aerojet Rocketdyne Delayed”, Breaking Defense 10/26/2021, https://breakingdefense.com/2021/10/lockheeds-acquisition-of-aerojet-rocketdyne-delayed-to-2022/

Lockheed Martin’s proposed $4.4 billion acquisition of Aerojet Rocketdyne is now set to take place during the first quarter of 2022, Lockheed’s chief executive announced today, dashing plans for the deal to close this year.

“The Aerojet Rocketdyne transaction continues moving through the regulatory approval process, and we now anticipate closing in the first quarter of 2022,” said Lockheed CEO James Taiclet during an earnings call with investors.

Despite the delay, Taiclet sounded a confident note that the deal would be permitted to go through.

“Our strong balance sheet provides us with the capability to close on the Aerojet Rocketdyne transaction, provide robust returns to shareholders and continue to invest in our portfolio to support our customers and drive future growth,” he said.

Although the Defense Department has not stated a position on the proposed acquisition, the deal has weathered scrutiny from regulators and members of Congress who question whether the largest US defense prime should be allowed to acquire the nation’s only remaining independent supplier of solid-fuel rocket motors.

Lockheed has maintained that, under the company’s ownership, Aerojet would continue to be a fair “merchant-supplier” to defense primes.

However, Raytheon has come out in opposition to the deal, with its CEO Greg Hayes stating that the acquisition would force the company to buy 70% of its rocket motors from its biggest rival in the missile business, according to Space News.

Federal Trade Commission Chair Lina Khan has also raised eyebrows at the deal, writing in an August letter [PDF] to Sen. Elizabeth Warren, D-Mass., that she was “skeptical that behavioral remedies alone are sufficient to prevent a vertical merger from causing harm.”

### Link---AT: No Spillover

#### It’s high profile AND ‘top of the docket’---closure is this year

Amanda Huffman 21, Veteran Who Served in the Air Force for Six Years as a Civil Engineer, Author of Women of the Military, “Mergers and Acquisitions: Strengthening or Threatening Defense Capabilities?”, Clearance Jobs, 5/26/2021, https://news.clearancejobs.com/2021/05/26/mergers-and-acquisitions-strengthening-or-threatening-defense-capabilities/

KEY PENDING ACQUISITION

Another acquisition is pending within the defense industry. Lockheed Martin announced their plans in December 2020 to acquire Aerojet Rocketdyne, the last remaining American company that makes solid rocket motors.

Why is this merger such a big deal? Many of the U.S. arms manufacturers have partnered with Aerojet for missile propulsion systems. If Lockheed Martin acquires Aerojet, they will have a competitive advantage locking out the rest of the defense industry from using Aerojet and instead pushing them to look overseas to solicit bids from foreign suppliers just to compete.

The estimated transaction closure is in the second half of 2021. Both the DoD and FTC will have to give approval for the merger. Given the risks of creating another defense industry monopoly and pushing manufacturers into bed with Russia and China to compete, this acquisition joins the list of significant changes and challenges affecting the defense industrial base.

#### It’s a likely target for compensation because of high Congressional interest AND politicized nature of defense reviews

Matt Korda 21, Research Associate for the Nuclear Information Project at the Federation of American Scientists, MA in International Peace & Security from the Department of War Studies at King’s College London, Ploughshares Fund 2020 Olum Fellow and an Associate Member of the Canadian Pugwash Group, “The Flawed Assumptions Behind the GBSD Program”, Federation of American Scientists Report, p. 75-77

Does GBSD actually maintain the large solid rocket motor industrial base?

For years, internal and external analysts have sounded alarm bells about corporate consolidation in the defense industry. In its FY2017 Annual Industrial Capabilities Report to Congress, the Pentagon noted that “the trend toward fewer and larger prime contractors has the potential to affect innovation; narrow industrial capabilities and technology; limit the supply base; pose entry barriers to small, medium, and large businesses; and ultimately reduce competition that may otherwise not be in the Department’s or the public’s interests.” Additionally, t 28 he report’s authors concluded, “The Department is mindful of past loss of competition at the prime level, resulting from significant industry consolidations over the past 20-plus years.”29

With specific regard to the GBSD, both Congress and the Pentagon have been particularly concerned about the effect of these mergers on the domestic large solid rocket motor (LSRM) industry: in 1990, there were five LSRM manufacturers in the United States; now there are only two.30

Having fewer providers of big-ticket systems like LSRMs means that the Pentagon has less ability to control costs through competition, generally resulting in increased costs. Additionally, the presence of system monopolies can create chokepoints in the defense acquisition process, since the entire supply chain can be affected by the conduct of a single corporation. This could easily result in delays to the weapon system coming online.31

In its justification for the GBSD program, the Air Force has continuously emphasized that a brand-new missile program would protect the ailing LSRM industry better than a simple refurbishment. However, after Northrop Grumman purchased on 32 e of the two remaining LSRM manufacturers and subsequently won the GBSD’s unprecedented sole-source engineering contract in 2020, the state of the industrial base today is significantly less healthy than it was just a couple of years ago. As is catalogued in the following paragraphs, despite the concerns of Congress and civil society watchdogs, the Pentagon’s nonchalant reaction indicates that the department may not be as concerned with preserving the industrial baseline as was previously advertised in its justifications for pursuing GBSD.33

In September 2017, immediately after the Air Force awarded Northrop Grumman and Boeing contracts to begin the Technological Maturation and Risk Reduction phase of the GBSD acquisition process, Northrop Grumman announced its intention to acquire Orbital ATK––one of two remaining LSRM providers left in the United States.34

If Northrop Grumman’s acquisition was successful, and if the company ultimately won the contract for the Engineering, Manufacturing and Development (EMD) phase of the GBSD program, it could theoretically exclude the only other LSRM provider––Aerojet Rocketdyne–– from its production team, thus probably putting its new competitor out of business.35 Aerojet Rocketdyne was already on precarious footing, and in April 2017, the company had announced that it would shutter its operations at its complex in Sacramento as a cost-saving measure.36 The new prospect of a LSRM monopoly dominated by Northrop Grumman was therefore a significant concern for Aerojet Rocketdyne, who urged the Pentagon to step in.37

Legal mechanisms are available for the Pentagon to object to such an acquisition and make relevant recommendations to the Federation Trade Commission and the Department of Justice “to ensure that mergers and acquisitions do not reduce competition or cause market distortions that are not in the Department’s ultimate best interest.” However, despite 38 Aerojet Rocketdyne’s concerns over a LSRM monopoly, the Pentagon did not make a public objection of this kind, and it remains unclear whether such an objection was made in private.39

#### Aerojet’s the likely target---it’s already being teed up

Josh Fineman 21, News Editor at Seeking Alpha, “Deal Stocks Aerojet, Kansas City Southern, Xilinx Drop After Willis Towers Deal Terminated, Mounting Chinese Tensions”, Seeking Alpha, 7/26/2021, https://seekingalpha.com/news/3719179-deal-stocks-aerojet-kansas-city-southern-xilinx-drop-after-willis-towers-deal-terminated-mounting-chinese-tensions

Investors are concerned that Change Healthcare and Aerojet could be potential targets for DOJ and FTC under Biden administration that has stepped up its antitrust efforts, specifically fearing Lina Khan as chair of the FTC. Aerojet has seen some negative rhetoric recently, including last week when Senator Elizabeth Warren (D-Mass) requested that the FTC examine the Lockheed deal more closely.

### Link---AT: Plan Not FTC---Food

#### Normal means is FTC enforcement

Alden Abbott 21, Senior Research Fellow at the Mercatus Center, J.D. from Harvard Law School and M.A. in Economics from Georgetown University, “US Antitrust Laws: A Primer”, Mercatus Center Policy Briefs, 3/24/2021, https://www.mercatus.org/publications/antitrust-policy/us-antitrust-laws-primer

Practicalities of Antitrust Enforcement

How does dual antitrust enforcement by the FTC and the DOJ Antitrust Division work? In some respects, the two agencies’ authorities overlap, but in practice the two agencies complement each other. Over the years, the agencies have developed expertise in particular industries or markets. For example, the FTC devotes most of its resources to segments of the economy where consumer spending is high: healthcare, pharmaceuticals, professional services, food, energy, and certain high-tech industries such as computer technology and internet services. Before opening an investigation, the agencies consult with one another to avoid duplicating efforts. In this policy brief, “agency” refers to either the FTC or the DOJ, whichever is conducting the antitrust investigation.

### Link---1NR

#### The plan creates a new standard that’ll force the FTC to be more aggressive in antitrust enforcement

Daniel J. Solove 14, John Marshall Harlan Research Professor of Law at the George Washington University Law School, Founder of TeachPrivacy, JD from Yale University, BA from Washington University, and Dr. Woodrow Hartzog, Assistant Professor at Samford University's Cumberland School of Law, B.A. from Samford University, J.D. from Cumberland School of Law, LL.M. from The George Washington University Law School and Ph.D. from The University of North Carolina at Chapel Hill, “The FTC and the New Common Law of Privacy”, Columbia Law Review, 114 Colum. L. Rev. 583, April 2014, Lexis

1. FTC Settlements. -- Although the FTC has specific rulemaking authority under COPPA and GLBA, for Section 5 enforcement--one of the largest areas of its jurisprudence--the FTC has only Magnuson-Moss rulemaking authority, which is so procedurally burdensome that it is largely ineffective. The FTC must rely heavily on its settlements to [\*621] signal the basic rules that it wants companies to follow. Indeed, this is how courts create rules in the common law. Because courts cannot legislate, they craft rules in judicial decisions, which remain in effect for future cases by way of precedent. When the FTC issues a settlement, it typically issues a complaint and settlement document simultaneously, and these are publicized on the FTC's website. Among privacy law practitioners, FTC settlements are major news and generate significant attention.

Why are these settlements akin to common law? First, they are publicized, and the FTC follows them. Accordingly, they have a kind of precedential value, and they serve as a useful way to predict future FTC activity. Chris Wolf notes that "consent orders have immediate nationwide impact (to the extent they affect behavior) unlike in the litigation context, where there can be a split of authority on what is or is not prohibited conduct." Additionally, every state has adopted some form of a consumer protection statute, often called "[L]ittle FTC Acts," many of which explicitly look to FTC interpretations of overlapping concepts to guide enforcement.

Second, FTC settlements are viewed by the community of privacy practitioners as having precedential weight. Privacy lawyers routinely use FTC settlements to advise companies about how to avoid triggering FTC enforcement. For example, Wolf notes that when counseling clients, he frequently references activities that triggered FTC actions. Many firms that counsel clients on privacy matters routinely post and disseminate [\*622] information about recent FTC settlements on their blogs. Addressing the precedential value of FTC settlements, David Vladeck states:

It is not uncommon for lawyers representing respondents in agency proceedings--investigations and then formal complaints--to cite prior complaints or orders (consent or litigated) as "precedent" as to what constitutes an unfair or deceptive trade practice. And I think that practice makes sense. Complaints do signal the agency's view of the applicable law, and do inform regulated parties as to the agency's view of how the law applies to a discrete and identified set of facts. So it seems entirely appropriate that counsel would rely on them to draw inferences about the correctness, or fairness, of the agency's position in an investigation and contested action.

Wolf notes that "[i]t is indeed fair to say that FTC settlements are followed like cases interpreting a statute would be followed."

Indeed, this seems to be the precise intent of the FTC. Toby Levin, a senior attorney with the FTC from 1984 to 2005, states that "[t]he audience for consent orders is very broad--every similarly situated company, whether in that market or engaging in a similar practice." Levin further explains:

Given its limited resources, the FTC intends for consent orders to send a clear message that the practices identified in the complaint violate the FTC Act. It may wait to bring additional cases involving the same practice to see if the order is receiving the national attention it intends. If not, it may bring additional actions or send "warning letters" to a number of companies engaged in the same practice, putting them on notice that the practice, if continued, will put the company at risk of an FTC action.

According to Levin, "[T]he more responsible companies--the ones that rely on their reputation as industry leaders--will take steps to address the practices outlined in an FTC settlement."

FTC settlements are thus like the common law because they are treated in practice like the common law. The orders are publicized with the intent that practitioners rely upon them, and practitioners do so. The FTC's intent is just part of the equation, for the common law effect of [\*623] FTC settlements rests heavily upon how they are received by the companies they regulate and the community of practitioners that advises these companies.

Of course, settlements are not equal to judicial decisions. Unlike judicial decisions, where other stakeholders are able to be heard through amicus briefs, FTC settlements have no such process. FTC investigations of companies are often secret and only announced when the settlement has been issued. As Wolf observes, "Unlike in litigation, the adversarial process and . . . role of the tribunal is quite limited as companies frequently enter into consent orders to avoid publicity, and thus agree that there has been enough of a case made to settle (even though in litigation, they might be able to prove otherwise)." Nevertheless, the FTC does have a comment period where other stakeholders can be heard before the settlements are finalized. Commissioners vote on settlement orders and often write concurring and dissenting statements to reflect their view on an action. The Commission also sends direct letters to those who comment on the proposed orders addressing their concerns. This is similar in effect to an appellate court's handling of particular issues in a case and the ability of interested parties to voice support and concern, and highlight various interests through amicus briefs.

Settlements need not be as binding on future cases as judicial decisions to reflect aspects of the common law. While there is no well established doctrine of precedent for settlements, the FTC has been relatively consistent in its privacy jurisprudence. Although the FTC rarely explicitly cites settlement orders in later, separate settlement orders, Levin states that while she was at the FTC, "[i]n a new action, internal memoranda accompanying proposed pleadings would typically cite to the Bureau and the Commission prior complaints or consent orders as precedent for bringing the action against a proposed respondent." [\*624] The FTC has referenced previous consent orders in statements that accompany final orders. For example, in a letter to commenter Sidley Austin, LLP as part of In re Sears Holdings Management Corp., the FTC referenced two prior consent orders that were similar to the current one to demonstrate consistency. Indeed, the FTC settlements are rarely inconsistent with each other. There have been hardly any noted instances of inconsistency, despite a sizeable number of practitioner commentators who have analyzed FTC cases.

#### That derails Aerojet---it can only overcome opposition because of prior FTC precedent

Matt Korda 21, Research Associate for the Nuclear Information Project at the Federation of American Scientists, MA in International Peace & Security from the Department of War Studies at King’s College London, Ploughshares Fund 2020 Olum Fellow and an Associate Member of the Canadian Pugwash Group, “The Flawed Assumptions Behind the GBSD Program”, Federation of American Scientists Report, p. 81-82

This may soon change, however, as Lockheed Martin announced its intention to purchase Aerojet Rocketdyne for $4.4 billion in December 2020.63 Raytheon Technologies––one of Lockheed Martin’s largest competitors––has since announced its intention to formally oppose the deal on the grounds that if the merger goes through, “you don’t have an independent supplier on the solid-rocket-motor side.”64

However, despite the FTC taking a close look at the acquisition, Lockheed Martin is confident that the deal will be approved, specifically because of how it mirrors Northrop Grumman’s acquisition of Orbital ATK during the GBSD competition: “There’s already an example of how DoD handled a prime contractor in the space domain taking in a propulsion supplier,” stated Lockheed Martin CEO Jim Taiclet, “Our overall expectation is that this may be the same lens through which this transaction is viewed.”65

As a result, not only did Northrop Grumman’s acquisition of Orbital ATK undermine the health of the LRSM industrial base, but it provided a template for Lockheed Martin to erode it even further two years later. Therefore, despite the Air Force’s argument that pursuing GBSD would help the LRSM industry, it has done the opposite: after Lockheed Martin's acquisition goes through, there effectively will be no more independent LRSM industry.

#### The plan’s substantive popularity is irrelevant---pressure is inevitable as scope grows because politicians want to direct its influence

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/

The notion that any competition agency is so isolated from the political process is a fiction. For older and newer competition agencies alike, pressure from elected officials is ubiquitous and relentless. The real questions for those designing a competition agency are how much independence is desirable and what mechanisms will most likely allow effective agency functioning with adequate accountability. From the competition agency’s perspective, a continuing challenge—even for an agency with years of experience and nominal institutional safeguards to create autonomy—is how to blunt attempts at destructive political intervention and see that harmful political influence does not infect the agency’s operations and, ultimately, risk destroying it.

A further tradeoff exists between independence and the agency’s effectiveness. One valuable function of a competition agency is to advocate that legislatures and other government departments adopt pro-competitive policies. Fulfillment of this function requires engagement with elected officials. A completely autonomous competition agency is unlikely to build the political relationships needed to serve as an effective advocate, or to be consulted in a manner timely to ensure that its voice will be heard in the formulation of legislative or regulatory measures.

III. The Sources of Political Pressure

The intensity of political pressure a competition agency faces depends upon the functions it performs, the sanctions it can impose, and how aggressively it performs its duties. As powers grow, efforts by elected officials to determine how the agency uses such powers expand. Feeble public institutions generally attract tepid interest among politicians (except on rare occasions when the agency’s perceived weakness itself becomes a political issue).

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.

#### It creates an opportunity for already opposed legislators to scope the agency for going beyond previously established scope

Steven S. Nam 17, Distinguished Practitioner at the Center for East Asian Studies at Stanford University, “Our Country, Right or Wrong: The FTC Act's Influence on National Silos in Antitrust Enforcement”, University of Pennsylvania Journal of Business Law, 20 U. Pa. J. Bus. L. 210, Lexis

Section 5 is not explicit regarding openness to presidential control, but Section 6 includes direct mention of presidential prerogative: "The Commission shall also have power. . . [u]pon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation." Wilson was quick to rely on Section 6, and even as the notion of FTC autonomy later became entrenched in the U.S., this portion of the FTC Act was left unamended. Today, the language easily could be construed overseas as an affirmation of the FTC's subservience to the executive branch. In the event that foreign readers of the Act fail or do not choose to connect the historical dots, they would be unable to find any undergirding support for agency independence in Section 5 or 6. Indeed, novel expansions of FTC autonomy in Section 5 cases still risk political crossfire for "going beyond established principles of antitrust

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doctrine--principles set in the resolution of Clayton or Sherman Act disputes creat[ing] immediate opportunities to scold the Commission for taking 'unprecedented' measures or entering 'uncharted' territory," per Kovacic. The originators of the legislation would not have had it any other way.

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