# 1NC

## 1

#### The FTC will enforce ‘right to repair’ now---it spurs growth and innovation, particularly in agriculture.

Minter ’21 [Adam; July 11; Columnist and author; Bloomberg, “Americans Must Reclaim Their Right to Repair,” <https://www.bloomberg.com/opinion/articles/2021-07-11/americans-must-reclaim-their-right-to-repair>]

When the Apple II personal computer was shipped in 1977, it came with a [detailed manual](https://archive.org/details/Apple_II_Mini_Manual/page/n49/mode/2up) for upgrading and repairing the device. Parts were readily available from Apple Inc. (and, later, other manufacturers), and if Apple owners didn’t want to fix or upgrade at home, they could find plenty of small, competitive repair businesses to do the work for them.

That was then. These days, Apple’s products arrive sealed shut, often with [proprietary screws](https://www.ifixit.com/News/9905/bit-history-the-pentalobe). Service manuals, circuit-board schematics and repair parts are [reserved](https://www.ifixit.com/News/43179/apple-endangers-our-business-model-gets-a-repairability-point-for-it) for Apple’s technicians, shops and a handful of “authorized” partners. With no access to parts, manuals or indie repair shops, consumers pay much more to keep their devices running.

President Joe Biden’s new executive order to promote competition encourages the Federal Trade Commission to end such anti-competitive repair monopolies. It’s a contentious move. Apple and the makers of other technological products from farm tractors to [35mm cameras](https://www.ifixit.com/News/1349/how-nikon-is-killing-camera-repair) argue that their repair monopolies are good for consumers. But as these monopolies have grown, their toll on consumers, the environment and American productivity and innovation has risen. Biden’s recognition of a “right to repair” can help lower these costs and, at the same time, spur new kinds of growth across the economy.

Repair has always been a part of American life. The first prairie farmers had no option but to repair their own carts and plows. When mechanization came along, farmers became expert technicians — so skilled that companies often consulted them on tractor designs. During the past 15 years, as computers have been integrated into expensive farm equipment, that relationship has broken down. The handful of remaining implement manufacturers make sure that only dealerships, with specialized software tools, can diagnose problems. Those same tools are often also needed to install parts and authorize repairs.

The costs to farmers can be significant. Paying a Deere & Co dealership to plug in a computer to clear an error code on a tractor or combine can cost [hundreds of dollars](https://www.vice.com/en/article/xykkkd/why-american-farmers-are-hacking-their-tractors-with-ukrainian-firmware) — not including transporting the tractor to the dealership. Worse, by limiting access to crucial diagnostic and repair tools, manufacturers cause significant delays during harvest, planting and other busy periods. At certain times, a piece of equipment immobilized for even a few hours can cost a farmer thousands of dollars.

As farmers lose money, farm manufacturers with parts and service businesses [profit handsomely](https://uspirg.org/feature/usp/deere-headlights). From 2013 to 2019, Deere & Co annual sales of new equipment declined 19%, to $23.7 billion, while sales of parts increased 22%, to $6.7 billion. Harvester manufacturers aren’t the only ones who’ve spotted a growth market in restricting access to repair. In 2019, Apple’s Tim Cook [conceded](https://www.apple.com/newsroom/2019/01/letter-from-tim-cook-to-apple-investors/) that lower-cost iPhone battery replacements had negatively impacted new iPhone sales. More expensive repairs, on the other hand, lead customers to think they may as well buy a new phone.

That’s bad for the buyers of Apple’s expensive new phones and even worse for lower-income consumers who rely on secondhand devices. Lack of competition in repair markets raises the cost of owning older devices, and ultimately accelerates their untimely, wasteful disposal.

The first calls to roll back manufacturer restrictions on repair, in the early 2010s, were focused on cars. But the problem now encompasses everything from phones to farm equipment. Since 2014, [32 states](https://www.repair.org/legislation) have considered so-called Fair Repair bills. Earlier this year, the New York legislature became the [first](https://states.repair.org/states/newyork/) to pass one.

But manufacturers have pushed hard to defeat such legislation. In 2017, Apple warned Nebraska lawmakers that Fair Repair “would make it very easy for hackers to relocate to Nebraska.” [TechNet](http://technet.org/), a trade group that represents Apple, Amazon Inc. and Google, has [warned](https://www.bloomberg.com/news/articles/2021-05-20/microsoft-and-apple-wage-war-on-gadget-right-to-repair-laws) several states that Fair Repair legislation would somehow jeopardize the safety of devices. (TechNet did not respond to requests for examples of such consumer safety threats.)

The federal government has not bought these arguments. In May, the Federal Trade Commission [reported](https://www.ftc.gov/news-events/blogs/business-blog/2021/05/nixing-fix-report-explores-consumer-repair-issues) that “many of the explanations manufacturers gave for repair restrictions aren’t well-founded.” Biden’s executive order now encourages the FTC to “limit powerful equipment manufacturers from restricting people’s ability to use independent repair shops or do DIY repairs.”

#### The plan trades off.

Nylen ’20 [Leah; December 10; Antitrust journalist; Politico, “FTC suffering a cash crunch as it prepares to battle Facebook,” <https://www.politico.com/news/2020/12/10/ftc-cash-facebook-lawsuit-444468>]

The agency that just launched a landmark antitrust suit to break up Facebook is so strapped for cash that its leaders have discussed shrinking their staff and warned against taking on more cases.

In a series of emails to all Federal Trade Commission staff, obtained by POLITICO, Executive Director David Robbins said the agency would face a period of “belt tightening” to cut costs — and that filing fewer cases and trimming litigation expenses must be on the table.

“[W]e will either need to bring fewer expert intensive cases or significantly decrease our litigation costs (e.g. experts, transcripts, litigation support contractors, etc.),” Robbins said in an Oct. 29 email.

The emails offer an increasingly dire portrait of the money woes facing the FTC, which has launched a record amount of litigation in the past year even as the pandemic has caused a sharp reduction in the corporate merger filing fees that normally supply about half its budget. The crunch also raises the possibility that the FTC may not have the cash it needs to win its case against Facebook, which is gearing up for an expensive fight, or to take on additional companies like Amazon.

#### Extinction.

Castellaw ’18 [John; March 14; Lieutenant General in the United States Marine Corps, member of the Center for Climate and Security’s Advisory Board, teaching fellow in the College of Business and Global Affairs at the University of Tennessee; Senate Committee on Foreign Relations, “Why Food Security Matters,” <https://www.foreign.senate.gov/imo/media/doc/031418_Castellaw_Testimony.pdf>]

Food Security Is Critical to Our National Security

The United States faces many threats to our National Security. These threats include continuing wars with extremist elements such as ISIS and potential wars with rogue state North Korea or regional nuclear power Iran. The heated economic and diplomatic competition with Russia and a surging China could spiral out of control. Concurrently, we face threats to our future security posed by growing civil strife, famine, and refugee and migration challenges which create incubators for extremist and anti-American government factions. Our response cannot be one dimensional but instead must be nuanced and comprehensive, employing “hard” as well as “soft” power in a National Security Strategy combining all elements of National Power, including a Food Security Strategy.

An American Food Security Strategy is an imperative factor in reducing the multiple threats impacting our National wellbeing. Recent history has shown that reliable food supplies and stable prices produce more stable and secure countries. Conversely, food insecurity, particularly in poorer countries, can lead to instability, unrest, and violence. Food insecurity drives mass migration around the world from the Middle East, to Africa, to Southeast Asia, destabilizing neighboring populations, generating conflicts, and threatening our own security by disrupting our economic, military, and diplomatic relationships. Food system shocks from extreme food-price volatility can be correlated with protests and riots. Food price related protests toppled governments in Haiti and Madagascar in 2007 and 2008. In 2010 and in 2011, food prices and grievances related to food policy were one of the major drivers of the Arab Spring uprisings.

These conclusions are based on my decades of experience while serving as a Marine around the world and from a lifetime as a steward of the soil on my family farm in Tennessee. I see food security strategy in military terms as either being “defensive” or “offensive”. “Defensive” includes those actions we take to protect our agricultural infrastructure including crops, livestock and the food chain here in the United States. Conversely, the “Offensive” side of food security takes the initiative to deal with food security issues overseas and this is where I will spend most of my time today.

There is a good reason for our success on the “defensive” here at home in ensuring our own food security. As my good friend and former Tennessee Deputy Agriculture Commissioner Louis Buck points out to me, American agriculture has always been about public/private enterprise. The Morrill Act of 1862 – showing our Country’s foresight and confidence in the future even in the dark days of our Civil War – created our Land Grant University model of teaching, research and extension. And equally importantly, we have a private sector that values individual initiative, unleashing an unparalleled vitality. With that vitality driving innovation, our farmers and ranchers leverage the expertise and information from the public sector to manage risks and seek profits from deployed capital. But above all, American farmers and ranchers are our “citizen soldiers” on the front lines here at home fighting to guarantee our food security.

America is also blessed with fertile soil, water availability, moderate climate, and the advanced technology to successfully utilize our abundance. Whether I walk the corn fields of Indiana or the cotton fields of Tennessee, I see agricultural technology in use that is amazing. Soon after I retired from the Marines and came home to the family farm, I climbed into the cab of a self-propelled sprayer. Settling into the seat was like strapping into the cockpit of one of the aircraft I flew, except the sprayer had more computing power and better data links. All these factors, public and private, natural and manmade, hard work and innovation, combine to provide the American people with the widest choices in the world of wholesome foods to eat and clothes to wear.

## 2

#### **America's maintaining tech leadership now, but antitrust expansion cedes tech dominance.**

Abbott et al. '21 [Alden; 3/10/21; Senior Research Fellow, formerly served on the Federal Trade Commission’s General Counsel, J.D. from Harvard Law School, M.A. in Economics from Georgetown University; "Aligning Intellectual Property, Antitrust, and National Security Policy," https://regproject.org/wp-content/uploads/Paper-Aligning-Intellectual-Property-Antitrust-and-National-Security-Policy.pdf/]

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

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

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

III. Overly Aggressive Antitrust Enforcement Hinders American Technological Leadership and Threatens National Security

As companies from around the world develop the technology and standards for 5G mobile devices and networks, American companies are under threat by aggressive antitrust enforcement that ultimately redounds to the benefit of these foreign companies, which are economic competitors in countries that are also military competitors of the U.S. Over the past five years, foreign governments, particularly in Asia, have subjected U.S. companies to antitrust investigations that failed to follow basic norms of the rule of law, such as providing basic due process protections.14 These antitrust investigations were a thinly-disguised effort by these countries to force the transfer of U.S. patented technology to their own domestic companies, or to insulate their domestic companies from American competition. In recent years, Chinese, Korean, and Taiwanese antitrust authorities have brought nearly 30 investigations against 60 foreign companies across a range of industries, including manufacturing, life sciences, and technology.15

Antitrust challenges undermine intellectual property rights by forcing companies to license their products on non-market-based terms. One prominent example in U.S. history is when the Department of Justice wrung a concession from AT&T to license royalty-free the entire portfolio of 8,600 patents held by Bell Labs in a 1956 antitrust consent decree with the company.16 Today, the White House Office of Trade and Manufacturing Policy has observed that “China uses the Antimonopoly Law of the People’s Republic of China not just to foster competition but also to force foreign companies to make concessions such as reduced prices and below-market royalty rates for licensed technology.”17 Companies have also complained about poor policy guidance and procedural protections under China’s competition laws.18 Others have complained about China’s use of its competition laws to promote policy objectives rather than protect competition and advance consumer welfare.19 In one example, companies raised concerns with Article 7 of China’s State Administration of Industry Commerce (SAIC) 2015 Rules on the Prohibition of Conduct Eliminating or Restricting Competition by Abusing Intellectual Property Rights.20 Under this provision, intellectual property constitutes an “essential facility,” which could allow parties to raise abuse of intellectual property rights claims against patent owners for a unilateral refusal to license their patents.21

Predatory antitrust enforcement actions threaten the ability of U.S. companies to continue to be leaders in 5G technological development. China and other nations with similarly restrictive regulatory frameworks can weaken the ability of the United States to compete in global markets by exacting high monetary penalties from U.S. intellectual property owners or forcing the transfer of their intellectual property to domestic commercial rivals. As a penalty for violations of its competition laws, China can impose exorbitant fines that range up to 10% of a foreign company’s entire revenue in the prior year.22 This is not a legal rule observed in the breach; it has already resulted in fines just shy of $1 billion.23

Another way in which courts in China and other foreign countries are harming U.S. companies is through the use of anti-suit injunctions. One example of this is in the recent patent infringement lawsuit brought by InterDigital, an American high-tech company that has developed key technologies in wireless telecommunication, against Chinese company Xiaomi. In June 2020, Xiaomi filed a lawsuit in the Wuhan Intermediate Court in China requesting that the court set global licensing rates for InterDigital’s patents on standardized technologies. In July 2020, InterDigital sued Xiaomi in India for infringement of InterDigital’s Indian patents. The Wuhan Intermediate Court then ordered InterDigital to stop its lawsuit with its request for an injunction in India. The Chinese court further prohibited InterDigital from suing Xiaomi and requesting an injunction or damages in the form of reasonable licensing rates, or even to enforce a previously-issued injunction, in any other country. If InterDigital does not comply with this worldwide injunction against pursuing legal relief for the violation of its patents in any other country, the company faces a significant fine in China. The type of judicial order issued by the Wuhan court is known as an anti-suit injunction and its purpose is to force an intellectual property dispute to play out solely in a Chinese court at the behest of the Chinese government. These court orders demonstrate China’s desire to become the source of 5G innovation and to dictate the licensing terms of the technology, and the anti-suit injunctions hamstring U.S. companies like InterDigital from enforcing their intellectual property rights anywhere in the world.

The unfair use of antitrust enforcement and related legal actions like anti-suit injunctions to weaken U.S. intellectual property rights around the world risks diminishing U.S. global competitiveness in critical technologies like 5G, and further empowers China and others to expand their influence over the evolving 5G technological ecosystem. To the extent the U.S. cedes its dominance in 5G standards development, China will continue its focused efforts to fill that void. Huawei, a China-based company, has increased its R&D spending while growing its share of patents on the standardized technologies comprising 5G.24 The President’s Council on Science and Technology issued a report concluding that Chinese actions in the semiconductor industry, which include a range of policies backed by over $100 billion in government funds, threaten U.S. leadership in the industry and present risks to U.S. national security.25 China’s “Made in China 2025” plan called for China to become a leader in 5G technology, including in the development of the standards for the technology, by 2020.26 The plan expressly favors Chinese domestic producers, calling for raising the domestic content of core components in high-tech industries like 5G to 70% by 2025.27

This issue, however, extends far beyond simply the ability and willingness of U.S. companies to engage in the requisite R&D to participate in the 5G race. Reduced U.S. influence on 5G standard-setting would force the U.S. government to rely on untrusted foreign companies for its 5G product supply. The Department of the Treasury has expressed concern about the “well-known” U.S. national security risks posed by Huawei and other Chinese telecommunications companies.28

#### Causes extinction---uncontrolled risks from emerging tech cause rapid shifts in strategic stability and misuse---American dominance is key.

Jain **’20** [Ash; 2020; Senior fellow with the Scowcroft Center for Strategy and Security; Strategic Studies Quarterly; “Present at the Re-Creation: A Global Strategy for Revitalizing, Adapting, and Defending a Rules-Based International System,” <https://www.atlanticcouncil.org/wp-content/uploads/2019/10/Present-at-the-Recreation.pdf>]

The system must also be adapted to deal with new issues that were not envisioned when the existing order was designed. Foremost among these issues is emerging and disruptive technology, including AI, additive manufacturing (or 3D printing), quantum computing, genetic engineering, robotics, directed energy, the Internet of things (IOT), 5G, space, cyber, and many others. Like other disruptive technologies before them, these innovations promise great benefits, but also carry serious downside risks. For example, AI is already resulting in massive efficiencies and cost savings in the private sector. Routine tasks and other more complicated jobs, such as radiology, are already being automated. In the future, autonomous weapons systems may go to war against each other as human soldiers remain out of harm’s way.

Yet, AI is also transforming economies and societies, and generating new security challenges. Automation will lead to widespread unemployment. The final realization of driverless cars, for example, will put out of work millions of taxi, Uber, and long-haul truck drivers. Populist movements in the West have been driven by those disaffected by globalization and technology, and mass unemployment caused by automation will further grow those ranks and provide new fuel to grievance politics. Moreover, some fear that autonomous weapons systems will become “killer robots” that select and engage targets without human input, and could eventually turn on their creators, resulting in human extinction. The other technologies on this lisgt similarly balance great potential upside with great downside risk. 3D printing, for example, can be used to “make anything anywhere,” reducing costs for a wide range of manufactured goods and encouraging a return of local manufacturing industries.61 At the same time, advanced 3D printers can also be used by revisionist and rogue states to print component parts for advanced weapons systems or even WMD programs, spurring arms races and weapons proliferation.62 Genetic engineering can wipe out entire classes of disease through improved medicine, or wipe out entire classes of people through genetically engineered superbugs. Directed-energy missile defenses may defend against incoming missile attacks, while also undermining global strategic stability.

Perhaps the greatest risk to global strategic stability from new technology, however, comes from the risk that revisionist autocracies may win the new tech arms race. Throughout history, states that have dominated the commanding heights of technological progress have also dominated international relations. The United States has been the world’s innovation leader from Edison’s light bulb to nuclear weapons and the Internet. Accordingly, stability has been maintained in Europe and Asia for decades because the United States and its democratic allies possessed a favorable economic and military balance of power in those key regions. Many believe, however, that China may now have the lead in the new technologies of the twenty-first century, including AI, quantum, 5G, hypersonic missiles, and others. If China succeeds in mastering the technologies of the future before the democratic core, then this could lead to a drastic and rapid shift in the balance of power, upsetting global strategic stability, and the call for a democratic- led, rules-based system outlined in these pages.63

The United States and its democratic allies need to work with other major powers to develop a framework for harnessing emerging technology in a way that maximizes its upside potential, while mitigating against its downside risks, and also contributing to the maintenance of global stability. The existing international order contains a wide range of agreements for harnessing the technologies of the twentieth century, but they need to be updated for the twenty-first century. The world needs an entire new set of arms-control, nonproliferation, export-control, and other agreements to exploit new technology while mitigating downside risk. These agreements should seek to maintain global strategic stability among the major powers, and prevent the proliferation of dangerous weapons systems to hostile and revisionist states.

## 3

#### The fifty states and relevant subnational entities should substantially increase its prohibitions on anticompetitive business practices by expanding the scope of its core antitrust laws to include nascent competitors by lowering HSR Act filing requirements through the adoption of a presumption of anti-competitiveness for companies who own significant portions of market data and fail to open their data for computational antitrust auditability in a data trust.

#### State coordination solves---multistate litigation and enforcement bureaus overcome deficits.

Arteaga ’21 [Juan and Jordan Ludwig; January 28; former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, J.D. from Columbia Law School; partner in the Antitrust and Competition Group at Crowell and Moring firm, J.D. from Loyola Law School; Global Competition Review, “The Role of US State Antitrust Enforcement,” <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement>]

In the United States, competition laws have been implemented and enforced through a dual system where the state and federal governments play distinct, yet complementary, roles in regulating the competitive process. While the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) are widely viewed as the stewards of US antitrust laws, state attorneys general have long played an important, albeit varying, role within the United States’ antitrust enforcement regime. This has been especially true during the past 30 years because state attorneys general have become much more effective at coordinating their antitrust enforcement efforts to ensure that they have a meaningful seat at the table in any actions brought jointly with their federal counterparts or are able to bring their own actions when the DOJ and FTC decide not to do so.

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]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-126) 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]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-125) 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]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-124) Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.[[5]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-123)

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]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-122) 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]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-121) 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]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-120)

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]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-119) 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]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-118) 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]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-117) 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]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-116) 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]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-115) 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

### Uniqueness---2NC

#### They’re rolling out enforcement---it’s a priority AND will solve innovation.

Gordon ’21 [Marcy; July 21; Journalist, graduate of the University of Florida; Washington Post, “Agency pledges tough action to buttress ‘right to repair’,” <https://www.washingtonpost.com/politics/agency-eyes-right-to-repair-rules-to-aid-consumers-shops/2021/07/21/3654d32a-ea31-11eb-a2ba-3be31d349258_story.html>]

Americans would be freer to repair their broken cellphones, computers, videogame consoles and even tractors themselves, or to use independent repair shops, under changes being eyed by federal regulators.

The regulators maintain that restrictions have steered consumers into manufacturers’ and sellers’ repair networks or led them to replace products before the end of their useful lives.

As the Federal Trade Commission and the Biden administration see it, that raises issues of anti-competitive conduct.

The FTC is moving toward writing new rules targeting the restrictions. On Wednesday, the five FTC commissioners unanimously adopted a policy statement supporting the “right to repair” that pledges beefed-up enforcement efforts and could open the way to new regulations.

“These types of (repair) restrictions can significantly raise costs for consumers, stifle innovation, close off business opportunity for independent repair shops, create unnecessary electronic waste, delay timely repairs and undermine resiliency,” FTC Chair Lina Khan said. “The FTC has a range of tools it can use to root out unlawful repair restrictions, and today’s policy statement would commit us to move forward on this issue with new vigor.”

The policy statement commits the agency to prosecute repair restrictions that violate current antitrust or consumer protection laws. A 1975 law, for example, requires that if a product has a warranty — which is not mandatory — the warranty must avoid using disclaimers in an unfair or deceptive way. It also prohibits tying a warranty to the use of a specific service provider or product, unless the FTC has issued a waiver in that case.

Unavailable parts, instruction manuals and diagnostic software and tools, product design restrictions and locks on software embedded in devices have made many consumer products harder to fix and maintain, regulators and industry critics say. Do-it-yourself repairs often require specialized tools, hard-to-obtain parts and access to diagnostic software that’s guarded by manufacturers.

The repair restrictions often fall most heavily on minority and low-income consumers, the regulators say. An FTC report to Congress in May noted that many Black-owned small businesses make equipment repairs, and repair shops often are owned by entrepreneurs from poor communities.

For minority and low-income consumers, the repair restrictions are especially acute for cellphones, the report says. Those consumers often have cellphones but no broadband access for computers at home, increasing their dependence on the phones.

Industry critics say the [coronavirus](https://www.washingtonpost.com/coronavirus/?itid=lk_inline_manual_15) pandemic worsened the effects of repair restrictions for all consumers as computers became essential for working remotely, schooling children at home and visiting relatives on screens — while many large chain stores stopped offering on-site repairs.

“Manufacturers, be warned: It’s time to clean up your act and let people fix their stuff,” Nathan Proctor, a director of U.S. Public Interest Research Group’s right-to-repair campaign, said in a statement Wednesday. “With unanimous support from commissioners, there’s a new sheriff in town. The FTC is ready to act to stop many of the schemes used to undermine repair.”

#### They’re litigating non-compliance and on drawing on resources throughout the agency.

FTC ’21 [Federal Trade Commission; July 2021; U.S. agency, tasked with enforcing antitrust and consumer protection law; Federal Trade Commission, “Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Manufacturers and Sellers,” <https://www.ftc.gov/system/files/documents/public_statements/1592330/p194400repairrestrictionspolicystatement.pdf>]

While unlawful repair restrictions have generally not been an enforcement priority for the Commission for a number of years,4 the Commission has determined that it will devote more enforcement resources to combat these practices.5 Accordingly, the Commission will now prioritize investigations into unlawful repair restrictions under relevant statutes such as the Magnuson-Moss Warranty Act6 and Section 5 of the Federal Trade Commission Act.7

First, the Commission urges the public to submit complaints and provide other information to aid in greater enforcement of the Magnuson-Moss Warranty Act and its implementing regulations. While current law does not provide for civil penalties or redress, the Commission will consider filing suit against violators of the Magnuson-Moss Warranty Act to seek appropriate injunctive relief. The Commission will also closely monitor private litigation to determine whether the Commission may wish to investigate a pattern of unfair or deceptive acts or practices or file an amicus brief. Further, the Commission will explore rulemaking, as appropriate.

Second, the Commission will scrutinize repair restrictions for violations of the antitrust laws. For example, certain repair restrictions may constitute tying arrangements or monopolistic practices—such as refusals to deal, exclusive dealing, or exclusionary design—that violate the Sherman Act.8 Violations of the Sherman Act also violate the prohibition on unfair methods of competition codified in Section 5 of the Federal Trade Commission Act.

Third, the Commission will assess whether repair restrictions constitute unfair acts or practices, which are also prohibited by Section 5 of the Federal Trade Commission Act. In addition, the Commission will analyze any material claims made to purchasers and users to ascertain whether there are any prohibited deceptive acts or practices, in violation of Section 5 of the Federal Trade Commission Act.

Finally, the Commission will bring an interdisciplinary approach to this issue, using resources and expertise from throughout the agency to combat unlawful repair restrictions. The FTC will also closely coordinate with state law enforcement and policymakers to ensure compliance and to update existing law and regulation to advance the goal of open repair markets.

## 4

#### Growth will rebound due to self-sustaining corporate performance.

Van der Welle ’21 [Peter; July 7; Strategist within the Global Macro team, M.A. in Economics from Tilburg University; Robeco, “How capex holds the key to a self-sustaining economic recovery,” <https://www.robeco.com/latam/en/insights/2021/07/how-capex-holds-the-key-to-a-self-sustaining-economic-recovery.html>]

Title:

How capex holds the key to a self-sustaining economic recovery.

Capital expenditure to fix supply shortages and meet burgeoning demand is seen figuring strongly in the post-Covid recovery.

[Author and summary omitted].

Companies are expected to invest heavily in new equipment and capacity as they seek to meet the pent-up demand released from economic reopening.

“The world is emerging from the pandemic, and much of the focus has been on the release of huge pent-up demand for goods and services that have been inaccessible for much of the past year,” says Peter Van der Welle, strategist with Robeco’s multi-asset team.

“But there is a bigger issue regarding the ability of companies to supply these goods and services, due to the supply side constraints that have emerged through economic reopening. We believe this is powering a resurgence in capital expenditure by companies, and those which are investing in new equipment to meet greater demand will be the more sought after stocks.”

Capex intentions

Van der Welle says this trend can already be seen in the US Federal Reserve’s Capex Intentions Index, which shows that steep year-on-year increases in capital expenditures are planned.

“So, that's promising for a near-term rebound in the capex cycle,” he says. “The market has already picked up on that theme because you can see a clear outperformance of capex-intensive stocks compared to the broader market year to date.”

Fiscal dominance

Van der Welle says five elements support the multi-asset team’s view that capex will rise from here onwards. “The first is the overarching macroeconomic picture in that we are increasingly moving towards an environment of fiscal dominance and away from one that has been monetary-led via quantitative easing,” he says.

“Central banks have pursued very easy monetary policies, but they have hit the nominal lower bounds with regard to policy rates.”

“This is a hard constraint because real rates are difficult for central banks to push even lower than they are nowadays, given the strong consensus among both central bankers and market participants that inflation is transitory.”

Big spending plans

For stimulus, fiscal policy is better suited to address the negative supply shock that Covid-19 has posed. Fiscal dominance can be seen in the huge infrastructure spending planned in the US, with the USD 1.9 trillion American Rescue Plan already in motion, and the USD 2 trillion American Jobs Plan going through Congress. In Europe, the disbursement of the EUR 750 billion EU Recovery Fund is due to start later in July.

“An era of fiscal dominance is able to say goodbye to the secular stagnation thesis, which holds that the economy is suffering from under-investment,” says Van der Welle. “Under-investment due to insufficient demand, which was the biggest problem after the global financial crisis, has become less likely.”

“We saw very subdued consumption growth both in the US and elsewhere between 2009 and 2019. That story is reversing in the US. Households’ income has been supported by fiscal policy during the Covid-19 recession, while burgeoning consumer demand in the reopening phase could prove to be more sticky as employment prospects continue to improve in the medium term.”

Tobin’s Q looks good

A third reason to expect higher capex is driven by ‘Tobin’s Q’ – the market value of a company divided by its assets' replacement cost. If this ratio is above one, then corporates have an incentive to invest directly in the underlying assets rather than buying another company at market value to acquire the same assets.

The Tobin’s Q ratio is currently at 1.7 for the US. “So it's very expensive to do M&A, and it is wiser for corporates to invest in the underlying capital goods themselves,” Van der Welle says.

“We should therefore expect a gradual move away from M&A activity towards companies making direct investments in capital goods.”

Supply-side constraints

The fourth element is the severe supply-side constraints seen in the global economy, as capacity shut down during the pandemic.

“This is reflected in the ISM Prices Paid Index, which reached an all-time high in June in reflection of rampant shortages of raw materials and labor,” says Van der Welle.

“Clearly the issue today following the pandemic is not demand related, but supply related. This will also trigger more awareness to push the productivity frontier and incentivize capital expenditure.”

Less reliance on labor

The fifth element is the partial substitution from labor to capital in the US against the backdrop of lingering labor shortages.

“A decline in the labor force participation rate shows that people are not quickly returning to the labor force, as they have been disincentivized by the subsidies and pay checks they have gained from the stimulus plans, and/or structural changes in their work/life balance due to the pandemic,” says Van der Welle.

“When the cost of labor becomes more expensive, substituting labor with capital becomes more attractive for employers. Typically, the inflection point for capex intentions becoming positive is when unit labor costs rise by more than 2% year on year, which is the case today.”

Capex will lengthen the earnings cycle

Regarding earnings, there is a significant relationship between capex intentions and productivity, though the lag from intending to invest to actually getting a realized productivity gain is quite long – up to several years.

Higher capex that eventually brings higher productivity growth will sustain the earnings cycle, Van der Welle says. Higher productivity gives corporates more pricing power because they suppress unit labor costs, and that means profit margins can stay elevated for longer.

#### The plan tumbles business confidence based on unworkable theoretical models.

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

We write because the modern antitrust debate has become characterized by sustained attacks on the integrity of antitrust institutions and by unsubstantiated dismissals of debate. This atmosphere has led to a variety of proposals for radical changes to the antitrust laws and their enforcement that we believe are unsupported by the evidence, counterproductive to promoting competition and consumer welfare, and offered with an unwarranted degree of certainty.

Vigorous debate and disagreement have long been a hallmark of antitrust scholarship and policy. Competition policy has been formed through an iterative process echoed in the courts’ evolving doctrine over more than a century.1 Today, however, efforts to sidestep the discussion, or to declare it over, and to force hasty and far-reaching changes have come to the fore. These proposals are numerous and include: (1) abandoning the consumer welfare standard;2 (2) overturning unanimous and supermajority judicial precedents, which are foundational to modern antitrust law; 3 (3) imposing obsolete and arbitrary market share tests to determine the legality of mergers;4 (4) shifting the burden of proof from plaintiffs to defendants to render large swaths of business behavior presumptively unlawful;5 (5) creating another federal regulator to oversee competition in digital markets;6 (6) breaking up major tech companies or their products without evidence of antitrust harm or that the remedy would make consumers better off; 7 and (7) imposing a general prohibition on all mergers either involving specific firms or during the current health crisis.8

Such proposals would abandon the legal and political traditions that helped transform antitrust from an unprincipled and incoherent body of law, marred by internal contradictions, into a workable system that contributes positively to American competitiveness and consumer welfare. It should be noted that we use the term “consumer welfare” throughout this letter, consistent with modern parlance about competition policy, to include the benefits of competition to the welfare of workers and other input suppliers, as well as consumers. Thus, the consumer welfare standard is not a narrowly circumscribed objective, but rather a prescription for the general social wellbeing generated by the competitive process. By contrast, many of the current proposals would (1) undermine the rule of law; (2) undo the healthy evolution of antitrust law in the courts over time; (3) require antitrust agencies to micromanage the economy by picking winners and losers; (4) abandon a focus on consumer welfare in favor of vague and politically-oriented goals; and (5) undermine successful American businesses and their competitiveness in the global economy at the worst-imaginable time.

The assertions about the state of antitrust law and policy that purportedly justify these radical changes are not supported by the evidence. A more accurate reading of the evidence supports the following view of the American economy and the role of antitrust law:

1. The American economy—including the digital sector—is competitive, innovative, and serves consumers well. Debate about whether the antitrust laws should be fundamentally re-written originated from a concern that markets have recently become more concentrated and that competition had decreased as a result. The popular narrative, that increases in concentration have caused harm to competition throughout the economy, does not withstand close scrutiny. In reality, most markets in the American economy—including digital markets—are competitive, and thriving, and create huge benefits for consumers.
2. Structural changes in the economy have resulted from increased competition. The economic data show that intense competition, winner-take-all rivalry, and the adoption of new successful technologies in relevant antitrust markets were major economic forces that led to structural changes (i.e., increased national-level concentration) in the economy. The existence of these structural changes does not itself support changes in the law.
3. Lax antitrust enforcement has not allowed systematic increases in market power. There is little evidence to support the view that anemic antitrust enforcement has led to a systematic rise in market power in the American economy. The evidence is especially weak as it relates to digital markets.
4. Existing antitrust law is adequate for protecting competition in the modern economy. Antitrust law has developed incrementally through the common law approach. A strength of antitrust law is that it can incorporate learning about new business practices and economics to protect competition in an evolving economy. The existing antitrust laws and enforcement framework, when correctly applied, are more than adequate to deter anticompetitive conduct today, including in new and growing digital markets.
5. History teaches that discarding the modern approach to antitrust would harm consumers. Many of the radical reforms being proposed today seek to return antitrust to what it was in the 1960s. But antitrust during that time was based primarily on per se rules that prohibited economic analysis and fact-based defenses. This created a body of law, fundamentally marred by internal contradiction, that frequently protected individual competitors over consumers and did not focus on the central goal of protecting competition. Congress has considered and rejected radical proposals to overhaul antitrust in the past and should do so again.

#### Changing the legal standards of antitrust spills over to crush otherwise surging corporate growth.

Thierer ’21 [Adam; February 25; Senior Research Fellow with the Mercatus Center at George Mason University; The Hill, “Open-ended antitrust is an innovation killer,” <https://thehill.com/opinion/technology/540391-open-ended-antitrust-is-an-innovation-killer>]

Unfortunately, the calls for more bureaucracy and regulation emanating from all corners of the political world could have an unintended consequence: discouraging the sort of vibrant innovation and consumer choice that made America’s tech companies household names across the globe.

Sen. [Amy Klobuchar](https://thehill.com/people/amy-klobuchar) (D-Minn.) is leading one charge. Klobuchar, who chairs the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, [recently introduced](https://www.klobuchar.senate.gov/public/_cache/files/e/1/e171ac94-edaf-42bc-95ba-85c985a89200/375AF2AEA4F2AF97FB96DBC6A2A839F9.sil21191.pdf) the “Competition and Antitrust Law Enforcement Reform Act.” This sweeping measure seeks to expand the powers and budgets of antitrust regulators at the Federal Trade Commission and the Department of Justice. It also includes new filing requirements and potentially hefty civil fines.

The most important feature is the proposed change to the legal standard by which regulators approve business deals. It would allow the government to stop any deal that creates an “appreciable risk of materially lessening competition,” and it also defines exclusionary behavior as, “conduct that materially disadvantages one or more actual or potential competitors.”

These may sound like simple, semantic tweaks, but – much like some of the other policy ideas currently circulating – they would upend decades of settled law and create a sea change in U.S. antitrust enforcement. This change could undermine business dynamism, innovation and investment in ways that inhibit the global competitiveness of U.S. businesses.

Critics of merger and acquisition (M&A) activity by large tech firms include not only Sen. Klobuchar but also Republicans such as Sen. [Josh Hawley](https://thehill.com/people/joshua-josh-hawley) (R-Mo.). Hawley recent [offered an amendment](https://www.axios.com/josh-hawley-big-tech-merger-ban-1467081d-216c-45a2-9d09-9416dfbde330.html) to a budget bill that would preemptively prohibit mergers and acquisitions by dominant online firms. Klobuchar and Hawley believe that M&A skews the market in favor of today’s largest firms, entrenching their market power and discouraging innovation.

History teaches a different lesson. Consider DirecTV and Skype, both once considered innovative market leaders in their respective fields of satellite TV and internet telephony. Both firms stumbled, however, and they might not even be with us today without creative business deals. DirecTV has been partially or fully controlled by Hughes Electronics, News Corp., Liberty Media and now AT&T. Skype has swapped hands multiple times, moving from eBay, to a private investment firm and now to Microsoft.

These were complex deals, and some didn’t work, leading to divestitures. But each was a learning experience that illustrated how dynamic media and technology markets can be with firms constantly searching for value-added arrangements that serve their customers and shareholders. If we make this type of activity presumptively illegal, we’re imagining that government bureaucrats are better suited to make these calls than businesspeople and the consumers who choose whether or not to buy the product.

Worse yet, legal tests like those Klobuchar proposes – “conduct that materially disadvantages potential competitors” – are remarkably open-ended and could be easily abused. The system will be gamed by opponents of deals for business reasons. They will claim that their own failure to attract investors or customers must all be the fault of more creative rivals. That’s a recipe for cronyism and economic stagnation.

Those who worry about today’s largest tech giants becoming supposedly unassailable monopolies should consider how similar fears were expressed not so long ago about other tech titans, many of which we laugh about today. Just 14 years ago, headlines [proclaimed](https://www.technewsworld.com/story/55185.html) that “MySpace Is a Natural Monopoly,” and [asked](https://www.theguardian.com/technology/2007/feb/08/business.comment), “Will MySpace Ever Lose Its Monopoly?” We all know how that “monopoly” ceased to exist.

At the same time, pundits [insisted](https://www.marketwatch.com/story/apple-should-pull-the-plug-on-the-iphone) “Apple should pull the plug on the iPhone,” since “there is no likelihood that Apple can be successful in a business this competitive.” The smartphone market of that era was viewed as completely under the control of BlackBerry, Palm, Motorola and Nokia. A few years prior to that, critics lambasted the merger of AOL and TimeWarner as a new [corporate “Big Brother”](http://www.ojr.org/ojr/workplace/1017966109.php?__cf_chl_jschl_tk__=67a5f6a101935b8e3586ca48216d31ba6d4e03de-1612467283-0-AXvbGCtUx-p_N4T-8_2m8OHezQUhQ9kelg9-pVuD6IzKvFfXrllJujU9ERvjqjyIsAeCovUw9bfZqq75_NYasBM87SnQT_027hDJOhjXeowzK1QQH_7vcmr1tS4XgCGC_NNx6UGbAvVgcJNFhSkqkVKKeRJ-BjdDA7Vus-gwmr7wQXcS7KKfTtHyqxdRfureL9alpZHU2IJcbbdYaZpTjTrfcJHCKa8pIZcdiScjaRJmON9X1Ip20Vuv7tyDHbZSvcrn88WrY_9N_qBpKvZhQ4PAe90w5Fx5iHjjNIzoNMKSpToTFGLbPdqawgge9PVubSQbkS7xXDXxCBMA2Sh-Y_U) that would decimate digital diversity and online competition.

Today, we know these tales of the apocalypse ended up instead becoming case studies in the continuing power of “creative destruction.” New innovations and players emerged from many unexpected quarters, decimating whatever dreams of continued domination the old giants once had.

Today’s biggest players face similar pressures, and it’s better to let rivalry and innovation emerge organically, not through the wrecking ball of heavy-handed antitrust regulation.

#### Extinction---recovery caps numerous geopolitical crises.

Baird ’20 [Zoe; October 2020; C.E.O. and President of the Markle Foundation, Member of the Aspen Strategy Group and former Trustee at the Council on Foreign Relations, J.D. and A.B. from the University of California at Berkeley; Domestic and International (Dis)order: A Strategic Response, “Equitable Economic Recovery is a National Security Imperative,” Ch. 13]

A strong and inclusive economy is essential for American national security and global leadership. As the nation seeks to return from a historic economic crisis, the national security community should support an equitable recovery that helps every worker adapt to the seismic shifts underway in our economy.

Broadly shared economic prosperity is a bedrock of America’s economic and political strength—both domestically and in the international arena. A strong and equitable recovery from the economic crisis created by COVID-19 would be a powerful testament to the resilience of the American system and its ability to create prosperity at a time of seismic change and persistent global crisis. Such a recovery could attack the profound economic inequities that have developed over the past several decades. Without bold action to help all workers access good jobs as the economy returns, the United States risks undermining the legitimacy of its institutions and its international standing. The outcome will be a key determinant of America’s national security for years to come.

An equitable recovery requires a national commitment to help all workers obtain good jobs—particularly the two-thirds of adults without a bachelor’s degree and people of color who have been most affected by the crisis and were denied opportunity before it. As the nation engages in a historic debate about how to accelerate economic recovery, ambitious public investment is necessary to put Americans back to work with dignity and opportunity. We need an intentional effort to make sure that the jobs that come back are good jobs with decent wages, benefits, and mobility and to empower workers to access these opportunities in a profoundly changed labor market.

To achieve these goals, American policy makers need to establish job growth strategies that address urgent public needs through major programs in green energy, infrastructure, and health. Alongside these job growth strategies, we need to recognize and develop the talents of workers by creating an adult learning system that meets workers’ needs and develops skills for the digital economy. The national security community must lend its support to this cause. And as it does so, it can bring home the lessons from the advances made in these areas in other countries, particularly our European allies, and consider this a realm of international cooperation and international engagement.

Shared Economic Prosperity Is a National Security Asset

A strong economy is essential to America’s security and diplomatic strategy. Economic strength increases our influence on the global stage, expands markets, and funds a strong and agile military and national defense. Yet it is not enough for America’s economy to be strong for some—prosperity must be broadly shared. Widespread belief in the ability of the American economic system to create economic security and mobility for all—the American Dream— creates credibility and legitimacy for America’s values, governance, and alliances around the world.

After World War II, the United States grew the middle class to historic size and strength. This achievement made America the model of the free world—setting the stage for decades of American political and economic leadership. Domestically, broad participation in the economy is core to the legitimacy of our democracy and the strength of our political institutions. A belief that the economic system works for millions is an important part of creating trust in a democratic government’s ability to meet the needs of the people.

The COVID-19 Crisis Puts Millions of American Workers at Risk

For the last several decades, the American Dream has been on the wane. Opportunity has been increasingly concentrated in the hands of a small share of workers able to access the knowledge economy. Too many Americans, particularly those without four-year degrees, experienced stagnant wages, less stability, and fewer opportunities for advancement.

Since COVID-19 hit, millions have lost their jobs or income and are struggling to meet their basic needs—including food, housing, and medical care.1 The crisis has impacted sectors like hospitality, leisure, and retail, which employ a large share of America’s most economically vulnerable workers, resulting in alarming disparities in unemployment rates along education and racial lines. In August, the unemployment rate for those with a high school degree or less was more than double the rate for those with a bachelor’s degree.2 Black and Hispanic Americans are experiencing disproportionately high unemployment, with the gulf widening as the crisis continues.3

The experience of the Great Recession shows that without intentional effort to drive an inclusive recovery, inequality may get worse: while workers with a high school education or less experienced the majority of job losses, nearly all new jobs went to workers with postsecondary education. Inequalities across racial lines also increased as workers of color worked in the hardest-hit sectors and were slower to recover earnings and income than White workers.4

The Case for an Inclusive Recovery

A recovery that promotes broad economic participation, renewed opportunity, and equity will strengthen American moral and political authority around the world. It will send a strong message about the strength and resilience of democratic government and the American people’s ability to adapt to a changing global economic landscape. An inclusive recovery will reaffirm American leadership as core to the success of our most critical international alliances, which are rooted in the notion of shared destiny and interdependence. For example, NATO, which has been a cornerstone of U.S. foreign policy and a force of global stability for decades, has suffered from American disengagement in recent years. A strong American recovery—coupled with a renewed openness to international collaboration—is core to NATO’s ability to solve shared geopolitical and security challenges. A renewed partnership with our European allies from a position of economic strength will enable us to address global crises such as climate change, global pandemics, and refugees. Together, the United States and Europe can pursue a commitment to investing in workers for shared economic competitiveness, innovation, and long-term prosperity.

The U.S. has unique advantages that give it the tools to emerge from the crisis with tremendous economic strength— including an entrepreneurial spirit and the technological and scientific infrastructure to lead global efforts in developing industries like green energy and biosciences that will shape the international economy for decades to come.

## 5

#### The United States federal government should establish a Digital Platform Agency to regulate public interest expectations that promote fair market practices pertaining to digital technology, including portability, interoperability, and privacy regulations.

#### Digital Platform Agency solves effective tech regulation---makes Big Tech sustainble

Wheeler et al. 20 [Tom Wheeler is the former Chairman of the Federal Communications Commission, Phil Verveer has served at the Antitrust Division of the Justice Department, the State Department, and the FCC, and Gene Kimmelman served in antitrust positions in both the Congress and Department of Justice, authors are all Senior Fellows at Harvard Kennedy School’s Shorenstein Center and recently published a report titled “New Digital Realities; New Oversight Solutions,” “The need for regulation of big tech beyond antitrust,” September 23, 2020, https://www.brookings.edu/blog/techtank/2020/09/23/the-need-for-regulation-of-big-tech-beyond-antitrust/]

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

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

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

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

Risk management rather than micromanagement: rigid industrial era utility-style regulation is incompatible with today’s rapid pace of technological change. Regulation should be based on risk-targeted remedies focused on market outcomes.

Restoration of common law principles: for hundreds of years common law has required those providing services to anticipate and mitigate harmful effects (a “duty of care”), as well as providing access to essential services (a “duty to deal”). Oversight of Big Tech need do nothing more than reinstate such expectations.

Agile regulation: in lieu of top-down dictates, the new agency should be the forum to involve the industry in developing enforceable behavioral standards similar to fire and building codes. Such codes introduce innovation-promoting agility to the oversight process while protecting consumers and competition.

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

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

## 6

#### Biden PC gets BBB back on track.

Nichols ’1/2 [Hans; 1/2/22; writer for Axios News; "Scoop: Manchin returns to Build Back Better negotiations with demands," https://www.axios.com/scoop-manchin-new-play-2cb59ff0-1577-44bf-81a4-a0d72b7e9be2.html]

Sen. Joe Manchin (D-W.Va.) is open to reengaging on the climate and child care provisions in President Biden's Build Back Better agenda if the White House removes the enhanced child tax credit from the $1.75 trillion package — or dramatically lowers the income caps for eligible families, people familiar with the matter tell Axios.

Why it matters: The holdback senator's engagement on specifics indicates negotiations between him and the White House could get back on track, even after Manchin declared he was a “no” on the package on Dec. 19.

The senator’s concerns with the size and the scope of the package remain.

His belief that it could cost more than $4 trillion over 10 years extends beyond the CTC issue, and he continues to tell colleagues he’s concerned about the inflationary effects of so much government spending, Axios is told.

The Bureau of Labor Statistics will release its next Consumer Price Index on Jan. 12. Last month's reading put inflation at 6.8% for the year — fueling Manchin's opposition.

The big picture: Manchin and top White House aides traded recriminations after their negotiations fell apart — but President Biden and the senator subsequently spoke by phone late in the evening of Dec. 19.

They agreed to continue to talk, and Manchin stayed in touch with senior White House officials over the holidays.

The week before Christmas, reports emerged about how close he and Biden were on a potential deal.

The details included a $1.8 trillion offer from Manchin that contained money for universal preschool and green tax credits but nothing for the child tax credit, which provides families up to $3,600 per child per year.

Families who make up to $400,000 had been receiving some CTC payments under the program that ended Jan. 1.

Between the lines: One possible solution to the stalemate would be to remove the CTC from the Build Back Better legislation, which the Senate plans to pass with only Democratic votes.

The chamber could then have a separate, focused debate during a midterm year about making the tax credits permanent.

Some Republicans, like Sen. Mitt Romney (R-Utah), are supportive of the CTC, but it’s unclear if Democrats could find all 10 Republicans needed to clear the 60-vote threshold for passing major legislation.

#### Antitrust requires PC. Knocks out competing domestic initiatives.

Carstensen ’21 [Peter; February 2021; Fred W. & Vi Miller Chair in Law Emeritus at the University of Wisconsin Law School; Concurrences, “The ‘Ought’ and ‘Is Likely’ of Biden Antitrust,” <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#carstensen>]

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.

#### Prevents existential climate disaster.

Moncrief ’21 [Aliki; 11/11/21; executive director of Florida Conservation Voters; Orlando Sentinel, “Build Back Better Act would help in climate crisis,” https://www.orlandosentinel.com/opinion/guest-commentary/os-op-climate-change-congress-act-now-20211111-44u6bgyn5fdvnp3eqievkebqpe-story.html]

Last week, Congress passed the Infrastructure Investment and Jobs Act. This bipartisan bill will address upgrades to things like our transportation system, rural broadband, public transit, and clean-water infrastructure. These are badly needed, overdue investments that will make our communities more resilient to the climate impacts we are already seeing. But we know much more is needed.

It’s not enough to just respond to extreme weather — we need to cut the pollution driving it in the first place. That’s why Congress must also pass the Build Back Better Act, the most transformational climate and jobs legislation in our nation’s history. By investing in clean energy and things like electric vehicles and more energy-efficient homes and businesses, we can stop making the problem worse and avoid a growing disaster. We don’t have time for half measures, and Floridians know it — more than 75% of registered voters in the state support bold congressional action on climate change.

The Build Back Better Act takes bold steps to dramatically reduce climate pollution for everyone. But it also centers those who have been disproportionately impacted by this crisis by taking steps to address the decades of unchecked environmental injustice, ensuring at least 40% of the benefits of this bill go to those communities hardest hit by pollution and climate change.

Building a clean energy economy is an investment that will pay dividends for families today and for generations to come. Preventing the most catastrophic hurricanes, floods and heat waves will help ensure that we still bring people from all over the world to our beaches, the Everglades, and every amazing destination across our state that supports our multi-billion dollar tourism industry.

And the robust clean-energy investments in the Build Back Better Act will create millions of good-paying jobs for Floridians in every corner of our state. Florida already ranks fourth in the nation for clean-energy employment, and this legislation would help this industry grow exponentially by tapping into the Sunshine State’s solar power potential.

Orlando has some great members of Congress who understand that climate change is an existential threat to our state and they ran on being a part of the solution to this crisis. Now, we are counting on them to take bold action and pass the Build Back Better Act. This is a win-win-win that creates jobs, lowers energy bills for Floridians, and begins to address the climate crisis at the same time.

## FTC Adv

### AT: Innovation---1NC

#### Innovation critiques of the CWS are wrong---the plan causes inconsistent application and ignores current rapid pace of innovation.

Abbott ’21 [Alden; 4/2/21; Senior Research Fellow at the Mercatus Center, J.D. from Harvard Law School, former General Council for the FTC; Tracy Miller; Ph.D. in Economics from the University of Chicago, Senior Policy Research Editor at the Mercatus Center; "Antitrust Should Stay Focused on Consumer Welfare," https://www.nationalreview.com/2021/04/antitrust-should-stay-focused-on-consumer-welfare/]

Politicians and policy analysts have expressed concern about the growing size and impact of large digital-platform companies such as Google, Facebook, Amazon, and Apple. Some are advocating more aggressive antitrust enforcement or major changes to the law. Although competition policy can be improved, promoting consumer welfare should continue to guide antitrust enforcement in the United States.

Critics claim that antitrust law, which is intended to condemn business practices that undermine competition or maintain monopolies, is being neglected as competition weakens across the economy. They claim that the failure to enforce antitrust law allows unchecked abuses — not just by digital platforms, but by powerful firms in other market segments as well.

Critics also attribute this monopoly-abuse problem to antitrust law’s emphasis on the goal of promoting consumer welfare. They argue that the consumer-welfare standard should be ditched in favor of broader policy goals in order to “revitalize” antitrust as a powerful interventionist tool.

Before the 1970s, Supreme Court antitrust decisions generally reflected a “big is bad” philosophy. Those opinions often viewed antitrust as a means of protecting smaller companies. Many poorly understood business practices were condemned with no inquiry into their actual economic effects. Mergers fared particularly badly in court. As Supreme Court Justice Potter Stewart lamented in 1966, the only consistency in government merger challenges was that “the Government always wins.”

In the late 1970s, we started to see the rise of the consumer welfare standard as courts changed their approach to antitrust in response to economic and legal scholarship revealing that large business size and market share often manifested wealth-creating efficiency, rather than poor economic performance. While continuing to summarily condemn hard-core cartel activity, courts began to apply case-specific economic analysis. This involved weighing the potential benefits resulting from a firm’s conduct against its harmful effects.

In 1979 the Supreme Court underscored the new approach in its Reiter v. Sonotone opinion, stating that “Congress designed the Sherman Act as a ‘consumer welfare prescription.’” Subsequent judicial decisions enunciated legal standards that seek to preserve incentives for business conduct that benefits consumers. These decisions have also granted dominant firms greater leeway to engage in aggressive competition to better satisfy consumers.

In parallel with judicial developments by the mid-1990s, Democratic and Republican enforcers adopted a bipartisan approach to federal antitrust enforcement that emphasized consumer-welfare promotion.

Over the past few years, however, the consumer-welfare standard has come under siege. Critics of current antitrust policy cite the growing size and market share of dominant firms as signs of ineffective antitrust enforcement. These concerns were highlighted in 2020 studies by the House Subcommittee on Antitrust, Commercial, and Administrative Law and by the Washington Center for Equitable Growth. They endorse digital platform regulation, new Federal Trade Commission rulemaking, and legislation to tighten antitrust laws, with a greater emphasis on condemning dominant firm behavior out of hand, without regard for consumer welfare. They would also pursue a broader range of objectives, such as promoting fairness, protecting labor rights, and limiting monopoly as measured by firm size and market share.

In February 2021, Senator Amy Klobuchar (D., Minn.) introduced legislation that would toughen the standard for evaluating mergers (preventing many out of hand, based on the size of the acquiring firm). Her proposal would also lower the bar for convicting a firm of illegal monopolization. Other expansive antitrust-reform proposals, including possible regulation or structural breakups of big platforms, may be considered in Congress. Recent antitrust-reform hearings in both the Senate and House have featured condemnations of the consumer-welfare standard.

Yet these critiques of consumer welfare miss the mark. Abandoning this approach in favor of broad-based interventionist antitrust policies would prove harmful.

Proposed reforms such as breaking up dominant firms or prohibiting most mergers and acquisitions are likely to make consumers worse off, sacrificing the cost reductions that result from one firm producing a growing share of output and integrating many complementary services.

Considering a broader range of conduct to be in violation of antitrust law would likely increase uncertainty for firms as they endeavor to compete to attract additional customers. Moreover, having to assign weights to ill-defined objectives of labor rights and fairness (among other new goals) would create confusion. The resulting decisions could be arbitrary and inconsistent with the rule of law.

Furthermore, oft-cited studies claiming that competition is weakening are based on questionable evidence. The 2020 Economic Report of the President showed that those studies rely on overbroad market definitions that tell us nothing about competition in specific markets, let alone across the entire economy.

What’s more, while leading digital platforms often have large market shares, they still face competitive pressure from existing firms and startups to develop innovative new products and services. Indeed, market-leading platforms that fail to innovate can be displaced — just ask Yahoo and MySpace.

Finally, the benefits that consumers derive from participating in some digital platforms will grow as the platforms expand their membership. Antitrust attacks aimed at “cutting monopoly platforms down to size” could undermine these benefits, harming consumers.

The antitrust consumer-welfare standard has served consumers well. Competitive forces have yielded a bounty of highly affordable and greatly enhanced digital products and services. The pace of innovation has been breathtaking. The last thing we should do is quickly impose new and amorphous antitrust restrictions that threaten this success story.

### AT: Small Firms---1NC

#### Kronos effect is good---it creates a cultivation zone that enhances innovation.

Huddleston ’20 [Jennifer; 7/30/21; Director of Technology and Innovation Policy at the American Action Forum, J.D. from the University of Alabama; "Continuing a Principled Approach to Antitrust," <https://www.americanactionforum.org/insight/continuing-a-principled-approach-to-antitrust/>]

Yet this hearing did not clearly indicate that policymakers’ concerns are properly considered a competition-related issue. While concerns about potentially anticompetitive behavior may exist, any enforcement efforts should focus on competition related issues and apply the objective consumer welfare standard rather than seeking to politicize antitrust or use it for policy goals to which it is ill-suited.

Analyzing Antitrust Arguments Against Big Tech

While many of the questions focused on issues unrelated to competition policy, some members of the committee did express various concerns about potential anticompetitive behavior particularly around acquisitions by the companies and their alleged dominance in certain markets—issues that are squarely within the purview of antitrust law. When examining such concerns, policymakers should take a principled approach to carefully consider if alleged consumer harm is occurring and to fully understand the market. These considerations provide useful context for concerns about the largest tech companies.

The largest technology companies operate in complicated and rapidly shifting markets, many times competing each other. As NetChoice’s Chris Marchese illustrates in a recent white paper, the emergence of an online ad market has lured new players, including Amazon, and lowered the overall prices for advertising in a way that benefits those advertisers. Market definition will be a critical point of debate in any antitrust analysis and will also need to show the dominance and unfair use of that dominance by a company. In many cases, an assessment of this dominance may be overly narrow, such that it misses competitors on a global or national level, or overly broad, such that it misses the hyper-local nature of competition for a service.

In some cases, these allegations of dominance or anticompetitive behavior may miss the competitive benefits of new markets. For example, the explosion of smartphones and mobile apps has brought with it an entirely new and dynamic market in which app stores attempt to improve consumers access to these products. Developers can now create products for a range of platforms that often compete with one another. App stores have helped facilitate this rapid growth, as a study from ACT (The App Association) and Deloitte found that app stores had reduced transaction costs and barriers to entry and improved competition.

Similarly, some members of Congress also raised concerns that tech giants might have created a “kill zone” in which companies acquire potential competitors to choke out new competitors before they can challenge their dominance. The reasons for such acquisitions are often complicated, and some startups see their ultimate goal as to be acquired. The Center for Growth and Opportunity’s Will Rinehart argues that acquisitions by large tech companies are far from a “kill zone” and actually present a “cultivation zone” by providing more exit strategies in the innovation and startup lifecycle in ways that can encourage improvements, investment, and continue the lifecycle of innovation.

When examining the alleged antitrust behaviors of successful firms, policymakers should take an objective approach considering if these actions are actually harming consumers or abusing market power within a clearly defined market. To merely presume “big is bad” would mean a return to an earlier era of antitrust enforcement that could deter success and create uncertainty, particularly in dynamic markets.

## AI Adv

### AT: Warming ---1NC

#### Warming doesn’t cause extinction---new studies.

**Nordhaus 20** Ted Nordhaus, an American author, environmental policy expert, and the director of research at The Breakthrough Institute, citing new climate change forecasts. [Ignore the Fake Climate Debate, 1-23-2020, https://www.wsj.com/articles/ignore-the-fake-climate-debate-11579795816]//BPS

Beyond the headlines and social media, where Greta Thunberg, Donald Trump and the online armies of climate “alarmists” and “deniers” do battle, there is a real climate debate bubbling along in scientific journals, conferences and, occasionally, even in the halls of Congress. It gets a lot less attention than the boisterous and fake debate that dominates our public discourse, but it is much more relevant to how the world might actually address the problem. In the real climate debate, no one denies the relationship between human emissions of greenhouse gases and a warming climate. Instead, the disagreement comes down to different views of climate risk in the face of multiple, cascading uncertainties. On one side of the debate are optimists, who believe that, with improving technology and greater affluence, our societies will prove quite adaptable to a changing climate. On the other side are pessimists, who are more concerned about the risks associated with rapid, large-scale and poorly understood transformations of the climate system. But most pessimists do not believe that runaway climate change or a hothouse earth are plausible scenarios, much less that human extinction is imminent. And most optimists recognize a need for policies to address climate change, even if they don’t support the radical measures that Ms. Thunberg and others have demanded. In the fake climate debate, both sides agree that economic growth and reduced emissions vary inversely; it’s a zero-sum game. In the real debate, the relationship is much more complicated. Long-term economic growth is associated with both rising per capita energy consumption and slower population growth. For this reason, as the world continues to get richer, higher per capita energy consumption is likely to be offset by a lower population. A richer world will also likely be more technologically advanced, which means that energy consumption should be less carbon-intensive than it would be in a poorer, less technologically advanced future. In fact, a number of the high-emissions scenarios produced by the United Nations Intergovernmental Panel on Climate Change involve futures in which the world is relatively poor and populous and less technologically advanced. Affluent, developed societies are also much better equipped to respond to climate extremes and natural disasters. That’s why natural disasters kill and displace many more people in poor societies than in rich ones. It’s not just seawalls and flood channels that make us resilient; it’s air conditioning and refrigeration, modern transportation and communications networks, early warning systems, first responders and public health bureaucracies. New research published in the journal Global Environmental Change finds that global economic growth over the last decade has reduced climate mortality by a factor of five, with the greatest benefits documented in the poorest nations. In low-lying Bangladesh, 300,000 people died in Cyclone Bhola in 1970, when 80% of the population lived in extreme poverty. In 2019, with less than 20% of the population living in extreme poverty, Cyclone Fani killed just five people. “Poor nations are most vulnerable to a changing climate. The fastest way to reduce that vulnerability is through economic development.” So while it is true that poor nations are most vulnerable to a changing climate, it is also true that the fastest way to reduce that vulnerability is through economic development, which requires infrastructure and industrialization. Those activities, in turn, require cement, steel, process heat and chemical inputs, all of which are impossible to produce today without fossil fuels. For this and other reasons, the world is unlikely to cut emissions fast enough to stabilize global temperatures at less than 2 degrees above pre-industrial levels, the long-standing international target, much less 1.5 degrees, as many activists now demand. But recent forecasts also suggest that many of the worst-case climate scenarios produced in the last decade, which assumed unbounded economic growth and fossil-fuel development, are also very unlikely. There is still substantial uncertainty about how sensitive global temperatures will be to higher emissions over the long-term. But the best estimates now suggest that the world is on track for 3 degrees of warming by the end of this century, not 4 or 5 degrees as was once feared. That is due in part to slower economic growth in the wake of the global financial crisis, but also to decades of technology policy and energy-modernization efforts. “We have better and cleaner technologies available today because policy-makers in the U.S. and elsewhere set out to develop those technologies.” The energy intensity of the global economy continues to fall. Lower-carbon natural gas has displaced coal as the primary source of new fossil energy. The falling cost of wind and solar energy has begun to have an effect on the growth of fossil fuels. Even nuclear energy has made a modest comeback in Asia.

# 2NC

## Condo

## Uniform fiat

## Main

### Solvency---2NC

#### Subnational capabilities are vital to compensate for underenforcement---AND they’ll pressure the Fed into following on.

Arteaga ’21 [Juan and Jordan Ludwig; January 28; former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, J.D. from Columbia Law School; partner in the Antitrust and Competition Group at Crowell and Moring firm, J.D. from Loyola Law School; Global Competition Review, “The Role of US State Antitrust Enforcement,” <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement>]

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]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-113) 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]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-112)

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]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-111) 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]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-110)

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:

#### It causes global and federal follow-on---national government alone isn’t durable.

Spiegel ’21 [Julia; March 3; Deputy County Counsel in the Santa Clara County Counsel’s Office and Lecturer in International Policy Studies and Law at Stanford University, J.D. from Yale University, M.P.A. from the Princeton School of Public and International Affairs; Lawfare, “Embracing Foreign Affairs Federalism in a Post-Trump Era,” <https://www.lawfareblog.com/embracing-foreign-affairs-federalism-post-trump-era>]

To truly embrace subnational engagement, national and global actors should solicit state and local views, seek to secure their buy-in, and lock-in their commitments on the front end of negotiating a deal. The Obama administration planted the seeds for this kind of engagement in advance of the Paris deal, using a [convening](https://www.foreignaffairs.com/articles/united-states/2020-12-29/cities-are-transforming-us-foreign-policy) of U.S. and Chinese cities to build toward a U.S.-China agreement that then laid the foundation for the Paris Agreement. But the administration could have garnered far more significant local support—by actually seeking it from localities—in advance of the deal. The administration would not have been beholden to securing subnational commitments, but it certainly could have benefited from having them.

Of course, not all localities across the United States will be supportive or prepared to make forward-leaning commitments to international agreements, especially while provisions are still being hashed out. But the support of a significant number of states and localities would build momentum for a deal. Those local commitments would provide a critical [stickiness](http://opiniojuris.org/2018/02/20/law-and-stickiness-in-the-times-of-the-great-unglued/) to U.S. agreements that global partners are eager to see, particularly in the aftermath of the Trump presidency. As localities have shown in the context of the U.S. walk-back from the Paris deal, local government support can be the glue that binds a global agreement together, even when federal governments falter.

### Solvency---Big Tech---2NC

#### States can aggressively invoke against Big Tech---litigation is fast, empirically successful, AND better resourced---unifying state claims is key to expansive and coherent antitrust.

Huddleston ’20 [Jennifer; December 18; Director of Technology and Innovation Policy at the American Action Forum, J.D. from the University of Alabama; American Action Forum, “Antitrust Actions Beyond the Federal Government: The Potential Impact of State and Private Litigation,” <https://www.americanactionforum.org/insight/antitrust-actions-beyond-the-federal-government-the-potential-impact-of-state-and-private-litigation/>]

Introduction

Recently the Federal Trade Commission (FTC) and Department of Justice (DoJ) brought antitrust claims against Facebook and Google respectively, but calls to “break up Big Tech” are coming from far more than federal policymakers, and so too are the antitrust claims. Eleven Republican attorneys general joined the DoJ antitrust case against Google and 48 state and district attorneys general filed an antitrust case against Facebook on the same day as the FTC. Additionally, nine other states joined Texas in filing [additional antitrust claims against Google](https://www.reuters.com/article/us-tech-antitrust-google/texas-nine-u-s-states-accuse-google-of-working-with-facebook-to-break-antitrust-law-idUSKBN28Q2RL#:~:text=in%205%20hours-,Texas%2C%20nine%20U.S.%20states%20accuse%20Google%20of%20working,Facebook%20to%20break%20antitrust%20law&text=WASHINGTON%20(Reuters)%20%2D%20Texas%20and,already%2Ddominant%20online%20advertising%20business.) concerning advertising, 38 states, districts, and territories have joined a [case led by Colorado](https://coag.gov/app/uploads/2020/12/Colorado-et-al.-v.-Google-PUBLIC-REDACTED-Complaint.pdf) claiming Google engages in self-dealing to preserve its dominance in search and search ads, and a [case filed by Epic Games](https://www.nytimes.com/2020/08/13/technology/apple-fortnite-ban.html) alleges that Apple is engaging in anticompetitive behavior with its app store practices. While observers have largely focused on the federal level—both the proposed changes to federal antitrust standards and the results of federal antitrust actions—states and private litigants also have a substantial ability to impact both the technology industry and the trajectory of competition law as a whole.

State Antitrust Investigations and Complaints

In addition to the federal investigations, groups of state attorneys general have investigated potential antitrust violations against Google and Facebook. The states’ investigation into Facebook resulted in a separate complaint from the FTC’s. While some states joined the DoJ complaint against Google, more investigations by state attorneys general are ongoing meaning additional cases from these states are also likely to come later. But we are seeing a proliferation of multi-state litigation separate from the federal actions regarding antitrust claims against tech giants. . While states can provide additional resources for antitrust investigations and have their own interests in consumer protection, the current state-level cases alleging antitrust violations by “Big Tech” do not reveal a strong argument of monopolistic behavior and, like the federal cases, could create more disruption to both competition policy and innovation than benefits to consumers.

This is not the first time the states have been involved in antitrust investigations or calls to break up tech companies. During the 1990s, a group of 20 states, joined the DoJ in the investigation and an antitrust case against Microsoft After just over 3 years of litigation and following the Court of Appeals for the D.C. Circuit overturning a lower court’s ruling against Microsoft, Microsoft and the federal government settled. While this settlement avoided some of the potentially concerning penalties and interference in a competitive market that the courts could have brought, it still had an impact both on Microsoft’s opportunities in certain emerging areas such as mobile and in the overall competitive landscape. Nevertheless, some states felt the settlement was insufficient. Massachusetts led a group of nine states that argued the judge’s agreement of the settlement did not adequately address Microsoft’s monopolization or resolve the anti-competitive behavior related to tying, but they failed to convince the court.

States are once again taking an aggressive view on antitrust in the tech industry, but the divergence in arguments could lead to more confusion and disruption in an industry that has provided consumers with beneficial and free services. Currently, the attorneys general of many states disagree with one another and the federal government regarding the nature of anticompetitive behavior and consumer harm by the tech giants’ actions. As we are starting to see with the new claim led by Texas Attorney General Ken Paxton, this split is likely to result separate cases with different theories of antitrust that seek not to apply current standards but embrace more expansive policy uses of this powerful tool. Often the animus behind these claims is not clear evidence of anti-competitive behavior but a desire to solve other concerns regarding tech policy, such as data privacy or alleged anti-conservative bias. This desire to solve non-competition-related issues could give rise to divergent theories of antitrust action that are incompatible with one another and not based in the traditional elements of consumer welfare and competition policy.

### Perm: Do Both---2NC

### Perm: Do Both---Overlapping---2NC

#### Adding the fed causes overlapping mandates.

Kovacic ’12 [William; 2012; Global Competition Professor of Law and Policy at George Washington University, former member of the Federal Trade Commission; Michigan Law Review, “The Institutions of Antitrust Law: How Structure Shapes Substance,” vol. 110]

III. The Federal Antitrust Agencies

Overlapping authority is common in the federal government. Pick any area of federal endeavor and you are likely to find two or more agencies that occupy the same policy domain or share (and contest) jurisdictional boundaries. Even when related functions are housed inside a single institution, severe rivalries can emerge. The Air Force, Army, Marine Corps, and Navy all reside within the Department of Defense, yet they compete fiercely for resources and missions.5 4 As Institutional Structure points out, an unusual feature of the duality of federal antitrust enforcement is its deliberateness (pp. 27-28). Core elements of the common antitrust tenancy of the DOJ and the FTC arose through conscious legislative choice, not by accident. In 1914, Congress expressly gave the DOJ and the new Commission authority to enforce the Clayton Act and prescribed no principle or process for allocating tasks between the two institutions to carry out this mandate. By the mid-twentieth century, the breadth of the jurisdictional duality was complete, following Supreme Court rulings that the FTC's power to proscribe unfair methods of competition encompassed the ability to prosecute conduct that would constitute an infringement of the Sherman Act.56

#### It causes duplicative and rivalrous cases, crushing solvency.

Chance ’18 [Clifford; May 2018; International law firm, ranking in the top ten globally on revenue and employment-based metrics; Clifford Chance, “DOJ Announces Policy to Discourage Law Enforcement Agencies and Regulators from ‘Piling On’ Duplicative and Parallel Penalties,” <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2018/05/doj-announces-policy-to-discourage-law-enforcement-agencies-and-regulators-from-piling-on-duplicative-and-parallel-pen.pdf>]

What Is “Piling On”?

In the law enforcement context, "piling on" refers to multiple law enforcement agencies issuing their own independent penalties for the same corporate conduct. Piling on most typically comes about as the result of overlapping mandates for law enforcement and regulatory bodies, each with an interest in targeting a particular course of conduct. In his announcement, Rosenstein analogized "piling on" to football, where a player "piles on" by jumping on other tacklers after the opponent is already down. To proponents of the new DOJ policy, duplicative penalties from multiple law enforcement agencies are like "piling on" in football: they are unnecessary and unfair.

The notion of law enforcement “pile on” has received attention in recent years. DOJ components typically have enforcement mandates focusing on particular types of conduct (e.g. the Fraud Section, the Antitrust Division), regardless of market context. By contrast, other federal regulators have statutory oversight of particular sectors or markets (e.g. the Securities and Exchange Commission (the "SEC"), the Commodity Futures Trading Commission (the "CFTC")). Additionally, the enforcement mandates of federal regulators often function in tandem, and sometimes overlap, with the enforcement mandates of state, local, and foreign regulators. "Piling on" comes about most frequently when a challenged course of conduct falls within the mandates of (a) multiple conduct-oriented DOJ components; or (b) one or more DOJ components and another regulator with broad oversight of the market where the challenged conduct took place. In the United States, DOJ investigations are commonly conducted in parallel with investigations by other regulators, both at the federal and state level. When conduct also occurs outside the United States, DOJ penalties are also often coupled with the imposition of penalties by foreign regulators.

In the wake of the 2008 financial crisis, the practice of multiple law enforcement agencies issuing duplicative penalties against the same acts of corporate misconduct has been common in the United States, and indeed, around the world. For example, numerous regulators at the federal and state levels and abroad imposed billions of dollars in penalties on financial institutions in connection with guilty pleas to both fraud and antitrust crimes concerning alleged manipulation of the foreign exchange markets ("FX"). In the FX investigations, the Fraud Section of the DOJ Criminal Division used its mandate to target FX manipulation internal to the financial institutions themselves, while the Antitrust Division targeted the same conduct as engaged in between the financial institutions and their horizontal competitors (a per se violation of the Sherman Act). DOJ received parent-level guilty pleas from five financial institutions and more than $2.5 billion in criminal penalties.4 Meanwhile, also at the federal level, the CFTC pursued enforcement actions against the financial institutions under the theory that the foreign exchange benchmarks were "commodities in interstate commerce" subject to the antimanipulation provisions of the Commodity Exchange Act and the Federal Reserve used its authority under the Federal Deposit Insurance Act to issue sanctions. In addition, at the state level and abroad, the New York State Department of Financial Services, and foreign regulators such as the UK's Financial Conduct Authority, each imposed hefty sanctions pursuant to their respective mandates to prosecute violations of New York and UK law.

### Perm: Do CP---2NC

### Perm: Do CP---Federal---2NC

#### ‘Federal’ government is national.

Thompson ’21 [Thompson School District; 2021; Public school district for Loveland, Colorado and surrounding area; Thompson Schools, “Structures of Government,” <https://www.thompsonschools.org/cms/lib/CO01900772/Centricity/Domain/3627/Structures%20of%20Government.pdf>]

Australia, Switzerland, Canada, Mexico, Germany, India, and some 20 other stats also have federal forms of government today. In the United States, the term ‘Federal Government’ is often used to refer to the National Government, but note that the 50 state governments are unitary in structure, not federal.

### Solvency---AT: Patchwork---2NC

#### It’s remedied by interstate cooperation AND wrong---states are laboratories of democracy.

HLR ’20 [Harvard Law Review; June 10; Legal journal published by the Harvard Law Review Association at Harvard University, ranked number one in law journal citations; Harvard Law Review, “Antitrust Federalism, Preemption, and Judge-Made Law,” vol. 133]

A. The Patchwork Regime Problem

First, critics of the status quo argue that a patchwork regime of state antitrust laws can make it expensive for companies that operate across state borders to comply. State and federal regimes share similar philosophies regarding most of antitrust law.31 But state antitrust laws do not perfectly mirror their federal counterparts — and the antitrust laws of the different states are heterogeneous themselves.32 Disputes are concentrated in a few areas of the doctrine, like vertical restraints and mergers.33 For example, states often focus on damage to intrabrand competition when enforcing limits on vertical restraints, whereas federal antitrust law focuses primarily on interbrand competition.34 Additionally, state merger guidelines often materially differ from federal guidelines,35 and states are likelier to define markets “more narrowly,” “refus[e] to consider efficiencies” favored by federal agencies, and show a concern for local jobs and competitors that does not “enter . . . the [federal] calculus.”36 An inconsistent antitrust regime that may conflict between states could cause economic inefficiency, for example by discouraging companies from undertaking what might otherwise be an economically efficient merger.37

This critique relies in part on the federal government having a better approach to vertical restraints and mergers, and that is anything but clear. The classic federalism argument that states function as laboratories of democracy 38 applies here: antitrust law is far from settled, and having multiple regimes allows for testing different theories. For example, some scholars argue that the states are correct to consider intrabrand competition’s effects on price, especially in certain markets.39 Similarly, in the merger context, there is support for both the states’ refusal to consider only economic efficiency40 and their push for heightened antimerger enforcement.41 Of course, the laboratories of democracy might not work so well in the antitrust context: because of the interwoven economic effects of federal and state antitrust laws and enforcement in an interconnected national economy, determining the effects of one state’s slightly different antitrust regime would be difficult.42 But federalism can still offer benefits by breaking the antitrust orthodoxy: by putting different policies on the table, a multilevel regime reminds us both that there are different possible “best” antitrust policies and that antitrust law has a variety of potential goals.43

#### Litigation will be coordinated through multistate task forces---that solves.

Arteaga ’21 [Juan and Jordan Ludwig; January 28; former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, J.D. from Columbia Law School; partner in the Antitrust and Competition Group at Crowell and Moring firm, J.D. from Loyola Law School; Global Competition Review, “The Role of US State Antitrust Enforcement,” <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement>]

Coordination in multistate investigations and litigation

Coordination among state antitrust enforcers

State attorneys general often coordinate their investigation and prosecution of antitrust matters with their counterparts in other states.[[66]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-062) To help ensure that these coordinated efforts are conducted in an efficient and effective manner, the NAAG has created an Antitrust Committee, which ‘is responsible for all matters relating to antitrust policy’.[[67]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-061) This committee is comprised of 12 state attorneys general [[68]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-060) and is responsible for promoting effective state antitrust enforcement by developing the NAAG’s antitrust policy positions and by facilitating communications among state enforcers regarding investigations, litigation, legislative matters and competition advocacy initiatives, among other things.[[69]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-059)

In 1983, the NAAG established a Multistate Antitrust Task Force that is ‘comprised of state staff attorneys responsible for antitrust enforcement in their states’.[[70]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-058) This task force ‘recommends policy and other matters for consideration by the Antitrust Committee, organizes training seminars and conferences, and coordinates multistate investigations and litigation’.[[71]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-057) The task force is chaired by a person appointed by the head of the NAAG’s Antitrust Committee[[72]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-056) and has a representative from each NAAG member state.[[73]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-055) The chair of the task force serves as ‘the principal spokesperson for the states on antitrust enforcement’.[[74]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-054)

The NAAG’s Multistate Antitrust Task Force does not handle actual investigations or litigation. Instead, such coordination usually occurs through working groups established by the states involved in an investigation or litigation. In most multistate investigations, the working group will designate a state responsible for leading the investigation. The lead state is often a state that has the most relevant experience and can dedicate the appropriate level of resources to the investigation, and has a sufficient interest in ensuring that the investigation is handled in an effective and efficient manner (i.e., the transaction or business practice in question could potentially impact a significant number of consumers or commerce within its state). (If an investigation is sufficiently large or complex, such as a mega-merger involving numerous markets, the states may create an executive committee that oversees the working group as well as designate multiple lead states.)

# Case

### Concentration Offense---2NC

#### Drives competition.

Atkinson ’21 [Robert D; March 10; Ph.D. at UNC-Chapel Hill, the founder and president of ITIF; Information Technology & Innovation Foundation, “How Progressives Have Spun Dubious Theories and Faulty Research into a Harmful New Antitrust Doctrine,” https://itif.org/publications/2021/03/10/how-progressives-have-spun-dubious-theories-and-faulty-research-harmful-new]

Myth 8: Big Technology Companies Create Innovation Kill Zones28

Large U.S. technology platforms invest almost as much in R&D as the entire U.K. economy does (business and government).29 But knowing that innovation is important, neo-Brandeisians have argued that big technology companies actually limit innovation, either by acquiring start-ups in order to terminate the development of innovations that threaten their continued dominance (“killer acquisitions”) or by creating areas of the market in which they exert dominance to the extent others won’t invest in them (“kill zones”). Either way, large tech companies supposedly limit prospective challengers from being able to take root and grow, thereby limiting not only competition but overall U.S. innovation.

In fact, acquisitions may be beneficial, at least to innovation, if they allow the larger firms to benefit from economies of scale or network effects, and enable the smaller firms to reach many more customers much more quickly with a higher quality product. Moreover, the prospect of being purchased by a larger company often motivates founders and venture capitalists to invest. Making it more difficult for them to sell therefore might make it harder for promising firms to find funding.

And rather than looking at so-called kill zones as an innovation deterrent, it is more accurate to view them as an innovation enabler that guides entrepreneurial resources (talent and capital) to areas that have the best chance of success. Why invest in companies seeking to duplicate mature products offered by large firms that benefit from economies of scale or network effects? It is better for society if new companies concentrate instead on other markets they can break into. Indeed, that seems to be occurring, as venture capital investment, especially in early-stage deals, has grown significantly over the last decade, indicating that there is no shortage of innovation opportunities.

Moreover, if they are creating kill zones, why did the number of angel and seed deals rise almost sixfold between 2006 and 2019, peaking in 2015? The number of early deals rose by 2.4 times. It is hard to see any sign of investor activity slowing down. (See figure 5.)

#### The most recent and comprehensive data proves monopolies are good.

Ganapati ’21 [Sharat; 2021; Assistant Professor of International Economics at Georgetown University; American Economic Journal of Microeconomics, “Growing Oligopolies, Prices, Output, and Productivity,” vol. 13, no. 3]

American industries have grown more concentrated over the last 40 years. In the absence of productivity innovation, this should lead to price hikes and output reductions, decreasing consumer welfare. With US census data from 1972 to 2012, I use price data to disentangle revenue from output. Industry-level estimates show that concentration increases are positively correlated to productivity and real output growth, uncorrelated with price changes and overall payroll, and negatively correlated with labor’s revenue share. I rationalize these results in a simple model of competition. Productive industries (with growing oligopolists) expand real output and hold down prices, raising consumer welfare, while maintaining or reducing their workforces, lowering labor’s share of output. (JEL D43, L13, D24, D33, D21, D42)

Does America have a monopoly problem? Market concentration within narrowly defined industries has risen over the last 40 years. Various papers have systematically and comprehensively laid out the implications of concentration on profits, productive factors, and markups.1 However, research has not systematically measured consumer welfare and prices, a first-order concern for antitrust authorities (Shapiro 2010, FTC Hearings 2018). 2 In the simplest economics examples (Tirole 1988), monopolies charge higher prices and restrict output, maximizing profits and reducing consumer welfare. However, monopolies could be caused by innovation from “superstar” firms or scale economies, leading to falling prices or increased output (Autor et al. 2017, Van Reenen 2018, Armstrong and Porter 2007, Tirole 1988, Kehrig and Vincent 2021).

Monopolists and oligopolists have incentives to both increase prices and/or decrease output.3 My main research question is simple: is there an empirical relationship between changes in oligopolies and consumer-relevant market outcomes on an economy-wide basis? I test the relationship of prices, quantities, and market concentration across the vast majority of the US economy using 40 years of census data. I then link these changes on the consumer side to productivity innovations and labor shares.

I directly quantify how changes in industry concentration in the medium- to long-run are correlated to changes in prices and real output by combining price data with revenue data.4 A 10 percent increase in the national market share of the 4 largest firms is correlated with a 1 percent increase in real output. Finding that higher output, but not price, is linked with higher concentration rates, I turn to the role of productivity. Industries with the most real productivity growth are those with the largest increases in industry concentration. A 10 percent increase in the market share of the largest 4 firms is linked to a 2 percent increase in labor productivity. With both industry concentration and productivity, output growth is not accompanied by payroll growth. Growing monopolists and oligopolists are able to produce more output with fewer, but higher-paid, workers. A 10 percent increase in the market share of the largest 4 firms is correlated with a 1 percent decrease in the labor’s share of revenue.5

### Concentration Defense---2NC

#### Studies fail to causally link mergers to negative effects---only correlation, throw them out for failing social science 101.

Cooper ’20 [James C, Joshua D Right, and John M Yun; April; Former Acting and Deputy Director of the FTC’s Office of Policy Planning; Former Commissioner of the Federal Trade Commission and Law Professor at George Mason University; Economics PhD at Emory University, Law Professor at George Mason University; George Mason Law & Economics Research Paper, “Testimony on the 'State of Competition in the Digital Marketplace' before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Antitrust, Commercial, and Administrative Law,” no. 20-13]

There is a growing belief that the U.S. is facing a significant competition problem; that market power is increasing; and antitrust enforcement has done little to stop this trend. A key catalyst for this current perception is the 2016 White House Council of Economic Advisors (CEA) study. 42 The main conclusion of the CEA study is that “[s]everal indicators suggest that competition may be decreasing in many economic sectors, including . . . increases in industry-specific measures of concentration.”43 Specifically, the CEA study calculates fifty-firm concentration ratios (“CR50”), which is the combined market share of the top fifty firms in a given area of commerce, in thirteen broad sectors including “wholesale trade.” Other studies have shown similar metrics purporting to show increases in concentration and market power.44

Yet, these broad and highly aggregated measures tell us very little about market power and the type of markets that antitrust is concerned with. In fact, the CEA study acknowledges that “[t]he statistics presented . . . are national statistics across broad aggregates of industries, and an increase in revenue concentration at the national level is neither a necessary nor sufficient condition to indicate an increase in market power.”45 Further, as Sacher & Yun state:

Even if it were true that overall concentration in properly measured antitrust markets was increasing, and even if it were also true that many firms were earning a very high return, this is not direct evidence of a decline in competition. In other words, concentration and competition are not the same thing. Competition is about the process. If firms grow organically to have high market shares because they are more efficient, offer low prices, and beneficial new products while—due to economies of scale or networks effects—earn very high returns, then the economy and consumers are better off. In such a situation the market may appear to have high concentration and high profits. However, it is not the high concentration that has led to the high profits. Rather, a few firms grow to positions of leadership and earn high profits either because they reduce costs or provide goods that consumers prefer, or both. Ultimately, market performance is the point of competition, while counting the number of players is not. Thus, an undue focus on concentration is seriously flawed regardless of any shortcomings of the studies at issue.

Work by Professors Luke Froeb & Gregory Werden further disputes whether increases in concentration from broad aggregates has relevance to antitrust market.47 To illustrate the point, Froeb & Werden show that aggregated measures of concentration such as the Herfindahl-Hirschman Indexes (“HHIs”) can increase if more concentrated antitrust markets grow more quickly than less concentrated ones even if there is no actual increase in concentration in these markets. Indeed, there can be increases in concentration in the broad aggregates even if there have been decreases in concentration in the underlying relevant antitrust markets. Further, Professor Carl Shapiro notes that, to the extent increases in concentration in these broad aggregates reflect actual increases in concentration, it would appear that the increases and levels of concentration are quite modest.48

Moreover, there is evidence that the trends in rising national concentration and falling local concentration are best explained by increased competition and technological change, not a rise in market power. Specifically, Rossi-Hansberg et al. find that, while national concentration may be rising, the same does not hold for local concentration.49 The authors reject the view that market power explains the observed data: “Our findings challenge the view that product-market concentration is increasing in the U.S. … our results should provide pause for policy-makers that worry about increases in market power.” To the contrary, the authors find that: “On the whole, and in most industries, large firms are lowering local concentration and, therefore, most likely increasing product market competition.”50 In another study, Hsieh & Rossi-Hansberg find that national concentration is increasing due to efficient and productive firms expanding and creating more competition locally, which ultimately results in more employment. 51 In sum, the data tend to support the hypothesis that changes in market structure are occurring because of increases in efficiency and competition, combined with technological change, and not an increase in market power. Changes in antitrust targeting market or sectorlevel concentration risk sacrificing these gains to competition and consumers.

### AT: Innovation---2NC

#### Big is bad logic isn’t true for tech or small competitors---the plan causes gaming that turns competition.

Disco ’21 [Project; 4/23/21; The Disruptive Competition Project; "It’s Not the Size of the Dog in the Fight, But the Size of the Fight in the Dog," https://www.project-disco.org/competition/042321-its-not-the-size-of-the-dog-in-the-fight-but-the-size-of-the-fight-in-the-dog/]

As the title says, the size of a company doesn’t stop that company from offering competitive products and should not determine the acceptability of any company’s actions to innovate. From small to large alike, any business is capable of producing innovative products and competing with the largest firms. However, certain firms have recently come under fire for their efforts, and although offering highly valued services by consumers and businesses alike, even take criticism for defending themselves.

Tech firms are constantly attempting to innovate and compete, often spending significant resources to lead in R&D in order to offer the best services they can, as the competitiveness of the tech industry is a more complicated subject than it may appear at first glance. Criticism aimed at larger tech companies often centers around their efforts to innovate in any sector, discussing their supposed “market power.” As DisCo has discussed in the past, clear assessments of markets, market power, and dominance can be quite difficult to achieve and have all long been points of discussion. [1, 2, 3, 4] Yet critics of “Big Tech” often reach their conclusions to break up companies or punish certain firms based upon oversimplified understandings of these concepts. For example, last July’s CEO hearing discussed a range of concerns voiced by policymakers, the most common of which was the perceived market dominance and abuse of power of the companies the witnesses lead. These conclusions do not reflect the actual state of these companies or competition.

Take Amazon’s new deal with the NFL as a recent example of a competitive move which is open to similar criticism as in last July’s CEO hearing on online platforms and market power. Amazon’s responses to questions for the record regarding content distribution shed light on certain misconceptions around competition in the tech sector. This deal makes Amazon Prime Video an exclusive partner for the NFL’s Thursday Night Football package from 2023-2033. This deal is meant to enhance Amazon’s free live sports programming. Amazon’s efforts through Amazon Prime Video are just one of a number of companies in the sector attempting to innovate and continue to capture consumers’ interest. The streaming market is a highly competitive and ever-shifting space, where many companies offer a host of unique offerings to viewers, cable has been in decline for some time now, and pay-TV just had its worst year ever. Consumers are reaping the benefits from firms such as Amazon offering these innovative new services.

Amazon’s size doesn’t stop it from innovating in the streaming market. Neither does Apple’s as it continues to pursue Apple TV+ content, or Netflix’s as it leads in nominations for this Sunday’s Academy Awards. In a recent WSJ article Netflix’s Scott Stuber, head of original films, expanded on Netflix’s growing desire to produce original movies and stated:

“Competition is good. It makes you sharper as an executive and it gives the artists a chance to find the right place in the market for their idea and get what they deserve for it.”

These services, in addition to the other firms competing in the streaming market, have provided, and continue to expand upon, a wealth of pre-existing and original content for consumers to enjoy. This constant drive towards innovation and competition is not unique to streaming. The tech industry as a whole is characterized by its pushes towards disruption and innovation, which necessarily propel the involved companies to grow, oftentimes exponentially. In a word, they become “big.”

Yet as is often the case, when larger companies take action to innovate, providing highly valued services to consumers, they receive criticism for it. Additionally, it’s becoming increasingly more common to see “swampetition” at play and it appears more companies are becoming targets of such actions based upon their size in the name of “consumer protection” or market correction. What masquerades as an attempt to address perceived inequalities present in the market is really the case that “firms that face serious competitive challenges in the market will turn to political economy, aiming to manipulate regulators into undermining an agile and disruptive competitor.”

There are clear positive effects that come from companies’ efforts towards innovation, no matter their size. The constant pursuit of innovation, often disruptive, by companies across a range of sectors sparks the development of new offerings and services and greater competition between firms which leads to benefits for consumers. “Bigness” by itself should not be an antitrust concern. Size does not preclude competition or innovation.

#### Additional restrictions ignore vibrant competition.

Sigaud ’20 [Liam; 9/11/20; Economic Policy and Research Manager at the American Consumer Institute, Graduate Research Assistant in Economics at the University of Maine, M.S. in Economics from the University of Maine; "The War on Big Tech Threatens Consumer Welfare," https://www.realclearpolicy.com/articles/2020/09/11/the\_war\_on\_big\_tech\_threatens\_consumer\_welfare\_577011.html/]

From a consumer welfare perspective, there is little reason to impose additional restrictions on Big Tech. Economists have long understood that network effects in technology favor giant companies. Network effects occur whenever a product or service becomes more valuable as the total number of customers increases. For example, the benefits you derive from a Facebook account grow as more of your friends, loved ones, and colleagues join the site. By facilitating interactions and reducing transactions costs, the scale of Big Tech platforms actually benefits consumers.

And despite frequent claims to the contrary, tech platforms exist in a fiercely competitive market. Again and again, once-dominant companies have faded away — or crumbled seemingly overnight — when consumers spotted better, faster services elsewhere. Anyone who doubts the intensity of rivalries in the tech sector should recall the fate of once-dominant AOL, Yahoo!, and Myspace. As a more recent example, consider the meteoric rise of start-ups like TikTok which have threatened Facebook’s supremacy in social media, especially among younger users.

Moreover, many of the most popular technology services offered by Big Tech — social media accounts, web searches, countless apps — are available free of charge, while Amazon attracts customers by beating competitors’ prices and offering a broader selection of products. Where is the harm, exactly?

Of course, Big Tech is not immune from antitrust concerns. Some has suggested these platforms have engaged in troubling behavior to squash competitors and hawk their own products. Ongoing investigations by Congress, the Federal Trade Commission, and other agencies may shed additional light on the extent of these practices and whether or not they have legal merit. Whatever actions may be needed to rein in potential abuses, however, should be taken with consumer welfare in mind, and not a knee-jerk opposition to large companies.

The consumer welfare standard has fostered an economy that delivers products and services at prices and levels of quality that would have been unimaginable just a few years ago. Too many policymakers seem willing to sacrifice that track record based on the discredited notion that big is necessarily bad.

Scholars like Geoffrey Manne, founder and president of International Center for Law and Economics, have pointed out the dangers of trying to address social and political concerns — like threats to free speech or inadequate privacy protections — through antitrust legislation.

With no objective guardrails rooted in economic analysis, who’s to say when a company is too large and powerful? Would the effort to break up or rein in big companies stretch beyond online platforms to more traditional industries? Would unelected bureaucrats be handed the authority to reshape our economy based on ad hoc rulemaking, thereby weaponizing antitrust rules to beat successful businesses and business models? How are regulators’ political and ideological motivations to be prevented from targeting disfavored businesses?

None of these questions have convincing answers.

### Internal---Big is Better---2NC

#### Big firms are more innovative.

Kennedy ’18 [Joe; November 9; former chief economist for the U.S. Department of Commerce, Economics PhD from George Washington University, J.D. from the University of Minnesota; Information Technology and Innovation Foundation, “Monopoly Myths: Is Big Tech Creating “Kill Zones”?” https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones]

The Assumption That Small Firms Are Inherently More Innovative Than Large Firms Is Not Borne Out by the Evidence

One core argument made by anti-monopolists who oppose large companies and argue that kill zones and killer acquisitions are real and harmful is that small firms are inherently more innovative than large firms. As FTC Commissioner Christine Wilson argued, “[M]any today believe that small firms are inherently more innovative than large ones, so that the acquisition of a small firm by a large one necessarily reduces innovation.”45 For example, Tim Wu recently testified before Congress that innovation in technology sectors would increase if government imposed greater regulations and increased antitrust enforcement because “[o]ver the last century, competitive, open sectors—ecosystems—have proved themselves superior to those monopolized or dominated by a ‘big three’ or ‘big four.’”46

In fact, large companies are as or more innovative than small firms. In a 1996 paper, Wesley M. Cohen and Steven Klepper found that large firms invest more in R&D as a share of sales.47 The number of patents and innovations produced per R&D dollar decline with increasing firm size. But they argued that this reflects a mismeasurement of innovation outputs. Large firms benefit from “cost spreading,” because they can spread the benefits from one innovation across more units and products, leading to a greater overall level of innovation per unit of R&D. They wrote, “Not only does cost spreading provide the basis for explaining the R&D-size relationship, it also challenges the consensus that has emerged from the R&D literature that large firm size imparts no advantage in R&D competition.”48

More recently, in 2016, business professors Anne Marie Knott and Carl Vieregger estimated that a 10 percent increase in the number of employees increases R&D by 7.2 percent, and a 10 percent increase in firm revenues increases R&D productivity by 0.14 percent. This shows that large firms not only invest more in R&D activities, they also enjoy higher returns on innovation output per dollar invested in R&D.49

Other research has found that “small firms prevail in the early stages and innovation tends to concentrate in larger firms as industries evolve towards maturity.”50 In the 1990s, many small firms emerged and competed to be the winners in IT platforms. But only a few firms could emerge as winners, and the ones that did continue to invest in innovation.

## Tech turn

#### Antitrust expansion decimates tech leadership:

#### Aggressive enforcement places hurdles in front of American innovators---decimates IPR, imposes crippling penalties, and cedes standing.

#### Competitors will capitalize---they’ll be first to market which allows standard setting over emerging tech---that’s Abbott.

#### Link is guaranteed:

#### 1. Scale---technological monopolies are vital to military effectiveness---centralized assets for cloud computing and data gathering provide advance warning of terrorism and cyberattacks.

Bateman ’19 [Jon; October 22; fellow in the Cyber Policy Initiative of the Technology and International Affairs Program at the Carnegie Endowment for International Peace, previously served as director for Cyber Strategy Implementation in the Office of the U.S. Secretary of Defense, J.D. from Harvard University; Carnegie Endowment for International Peace, “The Antitrust Threat to National Security,” <https://carnegieendowment.org/2019/10/22/antitrust-threat-to-national-security-pub-80404>]

But there are dangers in restructuring any U.S. industry. One of the most serious remains largely unrecognized: national-security risk. Despite their faults, tech companies contribute directly to American military and intelligence operations. Their titanic scale can itself be an asset. Any responsible antitrust debate must address the national security risks of breaking up Big Tech—and the parallel risks of keeping these companies intact.

Consider cloud computing. The Defense Department is planning a massive global cloud called JEDI. Unlike corporate clouds, the “war cloud” must support life-or-death missions on austere battlefields despite virtual or physical onslaughts. The Pentagon found only two eligible bidders: Amazon and [Microsoft](https://quotes.wsj.com/MSFT). Three defense secretaries, a federal judge and the Government Accountability Office have upheld this bidding process.

It is no coincidence the two eligible bidders have a combined market value of $1.9 trillion. Vast resources were needed to fund global networks of hardened data centers linked by undersea cables. The U.S. military’s unique demands required companies of unique scale. Yet one JEDI bidder faces a concerted breakup campaign (Amazon), and the other was nearly dissolved in 2001 (Microsoft).

Scale also matters in intelligence collection. The Foreign Intelligence Surveillance Act compels U.S. companies to hand over data on suspected foreign agents. U.S. intelligence analysts increasingly rely on FISA to monitor terrorist communications or warn of cyberattacks. Tech giants have particular FISA value because their sheer popularity attracts users from around the world, including hostile actors. The largest tech companies provide some of the fastest-growing intelligence streams.

Splitting up Big Tech would reduce its intelligence value. First, smaller companies would lose global market share to foreign rivals such as Alibaba or Baidu, which can ignore FISA. Small U.S. sites can’t leverage the “network effect,” a gravitational force that helps large sites stay dominant. Intelligence collected from small sites would also be less useful. They see only narrow slices of online activity, whereas tech giants track users across sprawling internet ecosystems. Dismantling these ecosystems would put greater burden on intelligence agencies to “connect the dots” of potential threats.

#### 2. Infiltration---new competitors won’t be American business, but Chinese saboteurs aiming for technological supremacy---that’s the largest source of American influence.

Thompson ’20 [Loren; July 16; Senior Contributor for Aerospace and Defense, former Deputy Director of the Security Studies Program at Georgetown University, Ph.D. and M.A. in Political Science and Government from Georgetown University; Forbes, “Inventing Bogus Antitrust Arguments to Bring Down Big Tech Is Bad for National Security,” <https://www.forbes.com/sites/lorenthompson/2020/07/16/inventing-bogus-antitrust-arguments-to-bring-down-big-tech-is-bad-for-national-security/?sh=613768e4784b>]

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

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

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

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

#### 3. Competitiveness---tech centrality is key to win the platform wars---it’s the main source of economic primacy and contra-Chinese innovation.

Lessin ’21 [Jessica; February 4; Founder and Editor-In-Chief, graduate of Harvard University; The Information, “Former Google CEO Fears ‘Chilling Effect’ of Antitrust Probes,” <https://www.theinformation.com/articles/former-google-ceo-fears-chilling-effect-of-antitrust-probes>]

Eric Schmidt ran Google during its ascendance into one of the world’s most powerful companies, and before regulators on multiple continents ramped up investigations into its potential abuses of power. Today, Schmidt said he fears that antitrust probes into Google and other tech giants will have a “chilling effect” on innovation in the industry.

In a conversation with The Information founder Jessica Lessin at The Information’s Future of Startups conference, Schmidt pointed to the availability of affordable, superpowerful cellphones and other devices as evidence that the biggest tech companies foster competition rather than squelch it.

Schmidt also discussed why social media platforms need to do a better job of ranking information to diminish the impact of harmful content, and why it would be foolish to write off the San Francisco Bay Area’s future as the tech industry’s center of gravity.

The Information: I want to start with politics. We have a new administration in D.C., a lot of different tech policy issues on the agenda. What do you think are some of the most important issues that people should have on their radar in the year ahead?

Eric Schmidt: By far the most important thing is American competitiveness, and in particular our ability to compete against the rise of China.

Let’s start with the fact that 20% of our stock market value is five tech companies who are global in nature, who are innovators beyond belief. We all know who they are. Let’s understand that the Chinese model is a different model. They have ruthless domestic competition, unbelievable competition and work ethic. And the government picks the national champion, and they become a very pro-China, pro–Chinese-policy corporation.

So in addition to the five or six most valued companies in the United States, the three most valued companies in China are tech companies. So the two are in battle. It’s a competition with enormous consequences. And if you get confused, think about Huawei and TikTok and the fears that the American government has had about it. I try to remind our government that the Europeans had the same fears about U.S. companies and that we dismissed them. But now that we fear China—and by the way, fear is the correct word because they are ahead of us there—then what’s our response? We have to learn as a country how to fight the platform wars to win. And this thinking is completely missing in our political system.

President Trump did take some action. He said he was going to block TikTok, and now a deal is in review with the Committee on Foreign Investment in the U.S. Did you agree with the steps he took? How should the Biden administration address TikTok?

Generally, Trump’s actions were reactive and without strategy, which had characterized his entire presidency. The answer is not to block Huawei; it’s to compete with them. In other words, what’s your strategy to win with a global, strong, subsidized Chinese competitor? With TikTok, it’s the same thing. What’s your strategy to win? What happens is that we were behaving the way the Europeans did to the American companies, where they would spend all their time complaining and trying to block and regulate. Whereas what the Europeans should have done is organized to win and compete against the global platforms that were coming out of the West Coast of America. It’s exactly analogous. And because people aren’t framing this question correctly, they’re thinking that somehow we’re going to do a deal where we’re going to change the cloud computing provider of TikTok from Google to Oracle.

And Walmart.

And I’m glad Walmart was part of that package. But none of that actually happened. At the end of the day, it created a huge press narrative and a huge discussion in Washington. But the outcome does not affect the success of these companies. If you want to deal with global platforms, which is what TikTok is, you have to have a thoughtful, multigenerational technology platform strategy, which includes, by the way, winning. And winning is defined as building better products. Last time I checked, all of the major telecom companies were outside the United States. That’s a problem that needs to get addressed.

# 1nr

## BBB

## BizCon

## FTC

### Uniqueness---2NC

#### They’re rolling out enforcement---it’s a priority AND will solve innovation.

Gordon ’21 [Marcy; July 21; Journalist, graduate of the University of Florida; Washington Post, “Agency pledges tough action to buttress ‘right to repair’,” <https://www.washingtonpost.com/politics/agency-eyes-right-to-repair-rules-to-aid-consumers-shops/2021/07/21/3654d32a-ea31-11eb-a2ba-3be31d349258_story.html>]

Americans would be freer to repair their broken cellphones, computers, videogame consoles and even tractors themselves, or to use independent repair shops, under changes being eyed by federal regulators.

The regulators maintain that restrictions have steered consumers into manufacturers’ and sellers’ repair networks or led them to replace products before the end of their useful lives.

As the Federal Trade Commission and the Biden administration see it, that raises issues of anti-competitive conduct.

The FTC is moving toward writing new rules targeting the restrictions. On Wednesday, the five FTC commissioners unanimously adopted a policy statement supporting the “right to repair” that pledges beefed-up enforcement efforts and could open the way to new regulations.

“These types of (repair) restrictions can significantly raise costs for consumers, stifle innovation, close off business opportunity for independent repair shops, create unnecessary electronic waste, delay timely repairs and undermine resiliency,” FTC Chair Lina Khan said. “The FTC has a range of tools it can use to root out unlawful repair restrictions, and today’s policy statement would commit us to move forward on this issue with new vigor.”

The policy statement commits the agency to prosecute repair restrictions that violate current antitrust or consumer protection laws. A 1975 law, for example, requires that if a product has a warranty — which is not mandatory — the warranty must avoid using disclaimers in an unfair or deceptive way. It also prohibits tying a warranty to the use of a specific service provider or product, unless the FTC has issued a waiver in that case.

Unavailable parts, instruction manuals and diagnostic software and tools, product design restrictions and locks on software embedded in devices have made many consumer products harder to fix and maintain, regulators and industry critics say. Do-it-yourself repairs often require specialized tools, hard-to-obtain parts and access to diagnostic software that’s guarded by manufacturers.

The repair restrictions often fall most heavily on minority and low-income consumers, the regulators say. An FTC report to Congress in May noted that many Black-owned small businesses make equipment repairs, and repair shops often are owned by entrepreneurs from poor communities.

For minority and low-income consumers, the repair restrictions are especially acute for cellphones, the report says. Those consumers often have cellphones but no broadband access for computers at home, increasing their dependence on the phones.

Industry critics say the [coronavirus](https://www.washingtonpost.com/coronavirus/?itid=lk_inline_manual_15) pandemic worsened the effects of repair restrictions for all consumers as computers became essential for working remotely, schooling children at home and visiting relatives on screens — while many large chain stores stopped offering on-site repairs.

“Manufacturers, be warned: It’s time to clean up your act and let people fix their stuff,” Nathan Proctor, a director of U.S. Public Interest Research Group’s right-to-repair campaign, said in a statement Wednesday. “With unanimous support from commissioners, there’s a new sheriff in town. The FTC is ready to act to stop many of the schemes used to undermine repair.”

#### They’re litigating non-compliance and on drawing on resources throughout the agency.

FTC ’21 [Federal Trade Commission; July 2021; U.S. agency, tasked with enforcing antitrust and consumer protection law; Federal Trade Commission, “Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Manufacturers and Sellers,” <https://www.ftc.gov/system/files/documents/public_statements/1592330/p194400repairrestrictionspolicystatement.pdf>]

While unlawful repair restrictions have generally not been an enforcement priority for the Commission for a number of years,4 the Commission has determined that it will devote more enforcement resources to combat these practices.5 Accordingly, the Commission will now prioritize investigations into unlawful repair restrictions under relevant statutes such as the Magnuson-Moss Warranty Act6 and Section 5 of the Federal Trade Commission Act.7

First, the Commission urges the public to submit complaints and provide other information to aid in greater enforcement of the Magnuson-Moss Warranty Act and its implementing regulations. While current law does not provide for civil penalties or redress, the Commission will consider filing suit against violators of the Magnuson-Moss Warranty Act to seek appropriate injunctive relief. The Commission will also closely monitor private litigation to determine whether the Commission may wish to investigate a pattern of unfair or deceptive acts or practices or file an amicus brief. Further, the Commission will explore rulemaking, as appropriate.

Second, the Commission will scrutinize repair restrictions for violations of the antitrust laws. For example, certain repair restrictions may constitute tying arrangements or monopolistic practices—such as refusals to deal, exclusive dealing, or exclusionary design—that violate the Sherman Act.8 Violations of the Sherman Act also violate the prohibition on unfair methods of competition codified in Section 5 of the Federal Trade Commission Act.

Third, the Commission will assess whether repair restrictions constitute unfair acts or practices, which are also prohibited by Section 5 of the Federal Trade Commission Act. In addition, the Commission will analyze any material claims made to purchasers and users to ascertain whether there are any prohibited deceptive acts or practices, in violation of Section 5 of the Federal Trade Commission Act.

Finally, the Commission will bring an interdisciplinary approach to this issue, using resources and expertise from throughout the agency to combat unlawful repair restrictions. The FTC will also closely coordinate with state law enforcement and policymakers to ensure compliance and to update existing law and regulation to advance the goal of open repair markets.

#### The FTC is maximizing resources---the ‘full range’ of tools will be available.

Fung ’21 [Brian; July 22; Technology reporter; CNN, “The FTC vows to 'root out' illegal repair restrictions on phones, fridges, tractors and more,” <https://www.cnn.com/2021/07/22/tech/ftc-right-to-repair/index.html>]

US regulators are vowing to make it easier for consumers and independent service shops to repair commercial products like smartphones without having to rely on those products' manufacturers, effectively backing a principle known as "right to repair."

On Wednesday, the Federal Trade Commission led by Chair Lina Khan voted unanimously to condemn restrictions imposed by manufacturers on products that make them more difficult to repair independently. The decision commits the FTC to investigating restrictions that may be illegal under both the nation's antitrust laws as well as a key consumer protection law governing product warranties, the Magnuson-Moss Warranty Act.

In a statement, FTC Chair Lina Khan vowed to use the agency's full range of tools to "root out" illegal repair restrictions.

The move is a shot across the bow of companies like Apple ([AAPL](https://money.cnn.com/quote/quote.html?symb=AAPL&source=story_quote_link)), which for years has been criticized by [right-to-repair advocates](https://www.ifixit.com/News/43179/apple-endangers-our-business-model-gets-a-repairability-point-for-it) for shipping products with unremovable memory or batteries, or sealing devices with special glue. Apple didn't immediately respond to a request for comment on the vote.

Beyond the use of adhesives that make it harder to access the insides of a device, the policy statement calls out restrictions that limit the availability of spare parts only to a manufacturer's preferred servicers. It zeroes in on "software locks" and copy-protection technology as well as restrictive user licensing language. And it blasts "unlawful, overbroad" patent and trademark lawsuits that have allegedly been weaponized to restrict independent repairs.

"Restricting consumers and businesses from choosing how they repair products can substantially increase the total cost of repairs, generate harmful electronic waste, and unnecessarily increase wait times for repairs," the FTC's new [policy statement](https://www.ftc.gov/system/files/documents/public_statements/1592330/p194400repairrestrictionspolicystatement.pdf) said. "In contrast, providing more choice in repairs can lead to lower costs, reduce e-waste by extending the useful lifespan of products, enable more timely repairs, and provide economic opportunities for entrepreneurs and local businesses."

Wednesday's vote doesn't just place more pressure on the tech industry. Makers of everything from tractors to hospital equipment have been accused of similar tactics.

In remarks ahead of the vote, FTC Commissioner Rohit Chopra said the agency had received reports of hospitals that were prevented from fixing ventilators during the pandemic as a result of manufacturer restrictions, making the right-to-repair issue a matter of life and death.

"The nation started this school year with a vast laptop shortage; we were reportedly five million short at one point," Chopra said in [prepared remarks](https://www.ftc.gov/system/files/documents/public_statements/1592354/final_chopra_prepared_remarks_on_right_to_repair.pdf). "The start to remote learning, already so astoundingly difficult, was worsened by unnecessary repair restrictions on refurbishing computers, leaving those students without computer access unable to learn."

The vote follows [an FTC report](https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf) published in May that addressed the right-to-repair issue, finding that most of the justifications put forward by manufacturers for repair restrictions are "not supported by the record." Companies defending repair restrictions have cited the need to protect their intellectual property, promote safety and cybersecurity, and provide better quality of service.

Right-to-repair advocates have made strides globally in recent months, with the European Parliament [voting to back the movement](https://www.zdnet.com/article/eu-takes-a-leap-forward-in-supporting-consumer-right-to-repair-rules/) last year (after the European Commission [introduced a right-to-repair proposal](https://ec.europa.eu/environment/pdf/circular-economy/new_circular_economy_action_plan.pdf) a few months earlier). Even Apple co-founder Steve Wozniak [threw in his support in a recent video](https://www.cnn.com/2021/07/09/tech/apple-steve-wozniak-right-to-repair-intl-hnk/index.html#:~:text=Wozniak%2C%20who%20co%2Dfounded%20Apple,devices%20also%20has%20commercial%20value.&text=%22It's%20time%20to%20start%20doing,right%20to%20repair%20more%20fully.%22) message.

The FTC's vote also comes after the Biden administration issued a sweeping executive order this month on competition. The order specifically addresses right-to-repair and encourages the FTC to limit manufacturers' ability to restrict independent repairs.

"Powerful equipment manufacturers—such as tractor manufacturers—use proprietary repair tools, software, and diagnostics to prevent third-parties from performing repairs," said an accompanying White House [fact sheet](https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/). "For example, when certain tractors detect a failure, they cease to operate until a dealer unlocks them. That forcers farmers to pay dealer rates for repairs that they could have made themselves, or that an independent repair shop could have done more cheaply."

For its part, John Deere has said [in a statement](https://www.deere.com/en/our-company/news-and-announcements/newsroom/repair/) that it "supports a customer's right to safely maintain, diagnose and repair their equipment. When customers buy from John Deere, they own the equipment and can choose to personally maintain or repair the product." The company has added that it "does not support the right to modify embedded software due to risks associated with the safe operation of the equipment, emissions compliance and engine performance."

Wednesday's policy statement also commits the FTC to working with states "to advance the goal of open repair markets." Dozens of states are considering so-called right-to-repair legislation, according to the advocacy group US PIRG.

"Manufacturers, be warned: It's time to clean up your act and let people fix their stuff," said Nathan Proctor, senior campaign director for the group's right to repair initiative, in a statement. "With unanimous support from commissioners, there's a new sheriff in town. The FTC is ready to act to stop many of the schemes used to undermine repair, while support is increasing for new legislation to further crack down."

### Uniqueness---Thumpers---2NC

#### ‘Right to repair’ is top-of-the-docket---especially in agriculture AND resource allocation.

Kavi ’21 [Aishvarya; July 21; Reporter in the Washington Bureau, graduate of George Washington University; New York Times, “The F.T.C. votes to use its leverage to make it easier for consumers to repair their phones,” <https://www.nytimes.com/2021/07/21/us/politics/phones-right-to-repair-FTC.html>]

The Federal Trade Commission voted unanimously on Wednesday to push harder for the right of consumers to repair devices like smartphones, home appliances, cars and even farm equipment, arguing that large corporations have cost consumers by making such products harder to fix.

All five commissioners — two Republicans and three Democrats — voted to back a policy statement that promises to explore whether companies that make it harder for consumers to repair products are breaking antitrust or consumer protection laws, and to step up enforcement of the laws against violators.

“These types of restrictions can significantly raise costs for consumers, stifle innovation, close off business opportunity for independent repair shops, create unnecessary electronic waste, delay timely repairs and undermine resiliency,” said [Lina Khan](https://www.nytimes.com/2021/06/16/technology/lina-khan-big-tech.html), the commission’s chairwoman. “The F.T.C. has a range of tools it can use to root out unlawful repair restrictions, and today’s policy statement would commit us to move forward on this issue with new vigor.”

The commission’s vote on Wednesday falls in line with President Biden’s policies to prioritize initiatives to increase competition between large corporations and to limit their power. In an [executive order](https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/) this month, Mr. Biden encouraged the commission to crack down on companies that make it harder for consumers to get equipment or electronics repaired by third-party shops. It singled out manufacturers of farming equipment — the tractor manufacturer John Deere, for example — that use [license agreements](https://www.deere.com/assets/pdfs/common/privacy-and-data/docs/agreement_pdfs/english/2016-10-28-Embedded-Software-EULA.pdf) that block farmers from repairing their tractors on their own.

Wednesday’s vote was a victory for the “right to repair” movement, which has long been pushing for repair-friendly policies at the federal, state and local levels. Nathan Proctor, the senior director of the United States Public Interest Research Group’s Right to Repair campaign, celebrated the agency’s decision in a statement.

“They have pledged to assist states in making right to repair improvements, and to tackle illegal behavior from manufacturers,” Mr. Proctor said. “The F.T.C. is no longer on the sidelines.”

#### It’s top of the docket.

Goode ’21 [Lauren; July 7; Senior Writer, graduate for Clark University and Stanford University; Wired, “The FTC Votes Unanimously to Enforce Right to Repair,” <https://www.wired.com/story/ftc-votes-to-enforce-right-to-repair/>]

During an open commission meeting Wednesday, the Federal Trade Commission voted unanimously to enforce laws around the Right to Repair, thereby ensuring that US consumers will be able to repair their own electronic and automotive devices.

The [FTC’s](https://www.wired.com/tag/ftc/) endorsement of the rules is not a surprise outcome; the issue of Right to Repair has been a remarkably bipartisan one, and the FTC itself [issued a lengthy report](https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf) in May that blasted manufacturers for restricting repairs. But the 5 to 0 vote signals the commission’s commitment to enforce both federal antitrust laws and a key law around consumer warranties—the [Magnuson Moss Warranty Act](https://www.ftc.gov/enforcement/statutes/magnuson-moss-warranty-federal-trade-commission-improvements-act)—when it comes to personal device repairs.

The vote, which was led by new FTC chair and known tech critic Lina Khan, also comes 12 days after President Joe Biden signed a broad executive order aimed at promoting competition in the US economy. The order addressed a wide range of industries, from banks to airlines to tech companies. But a portion of it encouraged the FTC, which operates as an independent agency, to create new rules that would prevent companies from restricting repair options for consumers.

“When you buy an expensive product, whether it's a half-a-million-dollar tractor or a thousand-dollar phone, you are in a very real sense under the power of the manufacturer,” says Tim Wu, special assistant to the president for technology and competition policy within the National Economic Council. “And when they have repair specifications that are unreasonable, there's not a lot you can do."

Wu added that [Right to Repair](https://www.wired.com/tag/repairs/) has become a "visceral example" of the enormous imbalance between workers, consumers, small businesses, and larger entities.

#### And prioritized by FTC enforcers.

Miller ’21 [Kirk; July 23; Managing Editor; Inside Hook, “The FTC Is Now Enforcing the ‘Right to Repair.’ What Does That Really Mean?” <https://www.insidehook.com/article/personal-tech/ftc-right-to-repair>]

So what’s next?

This isn’t a magic fix. Right now, the combination of the FTC vote and Biden’s executive order is basically to put emphasis on Right to Repair rules that are already in place in many states (or being considered). And it means enforcement of this ruling is now a priority.

As Wired notes, “The commission said today it would investigate repair restrictions both as potential violations of antitrust laws and from a consumer protection angle. The FTC is also encouraging the public to report warranty abuse—as defined by the Magnuson Moss Warranty Act of 1975, which prohibits manufacturers from telling consumers that a warranty is voided if the product has been altered or tampered with by someone other than the original manufacturer.”

### AT: Biden XO

#### Biden is all talk---actual policy signals deference to corporate consolidation in every sector.

Stoller ’21 [Matt; April 29; Research Director of the American Economic Liberties Project, author; Substack, “Is Biden Accidentally Giving the Green Light to Mega-Mergers?” <https://mattstoller.substack.com/p/is-biden-accidentally-giving-the>]

Today I’m going to write about the Biden administration’s first major antitrust move, a clearance of a giant pharmaceutical merger which signaled to Wall Street that Biden hasn’t made antitrust a priority. It’s not the worst news, but it’s not good news.

Before that, a little house-keeping. First, Brian Barrett at Wired wrote [a good piece](https://www.wired.com/story/logitech-harmony-smart-remote-lost-its-way/) on how Logitech’s Harmony monopoly killed the universal remote control industry, going into more detail than I did a [few weeks ago](https://mattstoller.substack.com/p/why-logitech-just-killed-the-universal) on the same subject. Second, last year I [wrote up a board game monopoly roll-up](https://mattstoller.substack.com/p/weird-monopolies-and-roll-ups-horse) by a firm called Asmodee, which owns Settlers of Catan. Paul Tullis at Bloomberg [did a more thorough job](https://www.bloomberg.com/news/articles/2021-04-13/board-game-maker-asmodee-behind-catan-pandemic-ticket-to-ride-corners-market?sref=q0qR8k34) last week on how they’ve done through the pandemic.

And now…

Mega-Merger Mania

A number of sources have told me that the merger space is the busiest they’ve ever seen, which is probably a result of being able to borrow a lot of money cheaply (courtesy of the Federal Reserve). Wall Street knows it. “It’s the busiest I’ve ever known it,” Farah O’Brien, a private equity and M&A partner at Latham & Watkins [told](https://www.ft.com/content/bacdf86f-e786-4439-966e-f5958adb1c59) the Financial Times. “There’s a ton of capital that is desperately trying to find a home. I wouldn’t say there’s caution in the market at all.”

It’s happening in every sector, from lithium mining to electric utilities to [semiconductors](https://www.wsj.com/articles/u-k-starts-national-security-probe-of-nvidia-s-40-billion-deal-to-buy-arm-11618837683) to pharmaceuticals. Mergers tend to lead to layoffs, higher prices, less innovation and research, and a more brittle supply chain, and they amplify the control monopolies have over our society. There are even weird new ways of self-dealing via mergers, like the trend of private equity funds [selling their](https://www.institutionalinvestor.com/article/b1r14ljp32b2ly/Private-Equity-Firms-Used-to-Sell-Half-Their-Companies-to-Their-Competitors-Now-They-re-Selling-Them-Back-to-Themselves) own portfolio companies to themselves, and the new cheating special of 2021, the special-purpose acquisition companies, or SPAC. The details of how are not particularly important, suffice to say that what is happening is a massive transfer of wealth and power to a small group, far beyond the inequality we’ve known.

#### 1. They’re not binding.

Holding et al. ’21 [Christopher, Paul Jin, Andrew Lacy, Arman Goodwin; July 15; Experts at JD Supra, a daily source of legal intelligence on all topics business and personal, distributing news, commentary, and analysis from leading lawyers; JD Supra, “Biden Executive Order Calls for Heightened Antitrust Scrutiny,” <https://www.jdsupra.com/legalnews/biden-executive-order-calls-for-7783960/>]

Key Implications

* Revised horizontal and vertical merger guidelines are expected, which will likely implement a much more aggressive approach to deals. Note, however, that agency merger guidelines are not binding on courts and merger challenges under more aggressive theories may be met with skeptical courts;
* Anticipate delays in HSR review especially for deals in industries singled out by the Order (e.g., tech, pharma, healthcare, among others), even if competitive overlaps are minimal;
* Deals not subject to HSR filing requirements, even when purchase prices are relatively low, should be reviewed by antitrust specialists to assess risk, especially in the sectors identified in the Order;

#### 2. They’ll be abandoned due to immediate judicial opposition.

McLaughlin ’21 [David; June 23; Reporter; Bloomberg Businessweek, “Antitrust Crusader Lina Khan Faces a Big Obstacle: The Courts,” <https://www.bloomberg.com/news/articles/2021-06-23/tech-antitrust-lina-khan-faces-courts-as-challenge-to-ftc-s-progressive-agenda>]

Instead, hours after the Senate confirmed her, Biden put the 32-year-old Khan—one of the [most prominent antagonists of big business](https://www.bloomberg.com/news/articles/2020-10-26/how-big-is-bad-has-become-a-big-big-deal)—in charge of the agency, where she’ll be responsible for challenging mergers and taking on companies when they use their market muscle to snuff out competition.

Now comes the hard part: putting her agenda into action. The biggest hurdle, say antitrust experts, is a judiciary that has made it very difficult for competition watchdogs to win ambitious cases. And to make any change of consequence, whether breaking up a monopoly or stopping a takeover, enforcers must prevail in court.

“None of that is easy, and it’s particularly not easy when courts are very conservative, as they are today,” says Stephen Calkins, a law professor at Wayne State University and a former general counsel at the FTC. “She’s certainly talked about breaking up companies but, my golly, that’s incredibly hard to do.”

Khan made her mark in 2017, with a [law review article](https://www.yalelawjournal.org/note/amazons-antitrust-paradox) she wrote while still a student at Yale Law School. Titled “Amazon’s Antitrust Paradox,” it traced how the online retailer came to control key infrastructure of the digital economy and how traditional antitrust analysis fails to consider the danger to competition the company poses. The paper was widely talked about in antitrust circles and was read by senior enforcement officials.

U.S. tech titans are at the center of the antitrust debate in Washington. They are ever more powerful, with [Apple Inc.](https://www.bloomberg.com/quote/AAPL:US), [Amazon.com Inc.](https://www.bloomberg.com/quote/AMZN:US), [Alphabet Inc.](https://www.bloomberg.com/quote/GOOGL:US), and [Facebook Inc.](https://www.bloomberg.com/quote/FB:US) among the top 10 largest companies in the world, by market value. A House of Representatives investigation last year accused the companies of [abusing their dominance](https://www.bloomberg.com/news/articles/2020-10-06/house-panel-calls-for-sweeping-antitrust-reforms-for-big-tech) to thwart competition, and lawmakers are considering a [raft of bills](https://www.bloomberg.com/news/articles/2021-06-11/u-s-tech-giants-would-have-to-exit-businesses-under-house-plan) to impose new rules on how the companies operate. Federal antitrust enforcers and state attorneys general have sued Google and Facebook for what authorities say are monopoly abuses.

Khan, who was counsel to the House antitrust committee during its probe, was one of the main authors of the House [report](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf). It recommended a series of reforms to antitrust laws that she and anti-monopoly activists have long championed, like restricting which markets the companies can operate in and requiring them to treat other businesses on their platforms fairly and without favoritism.

Khan’s work helped revolutionize competition-policy debates and shift support for a more forceful approach that abandoned the playbook inspired decades ago by Robert Bork, the conservative legal scholar and judge. That framework came to be known as the consumer welfare standard and relies on price effects as the measure of competitive harm. Khan argued in her paper for a new approach, focused on the competitive process and the structure of markets, that she said would more fully capture harms that the consumer welfare standard misses.

Once considered on the fringes of antitrust thinking, Khan and her acolytes—often dubbed the New Brandeis School, after Supreme Court Justice Louis Brandeis—are now firmly mainstream with Khan’s appointment as FTC chairwoman.

The FTC has suffered some stinging defeats recently. Last year, the agency lost a major monopoly case filed against chipmaker [Qualcomm](https://www.bloomberg.com/quote/QCOM:US). In April, a unanimous Supreme Court eliminated a tool used by the FTC to recover money for defrauded consumers. Later this month, a federal judge in Washington is expected to rule on whether the agency’s monopoly lawsuit against Facebook can proceed.

Still, there’s widespread agreement that the status quo is no longer tenable. Over the last two decades, concentration has risen in industries across the economy. Some economists say dominant companies can use their market power to suppress wages, for example, exacerbating inequality. The worries are bipartisan. Republicans and Democrats alike are pushing for antitrust reforms to rein in the biggest tech platforms, and Khan was confirmed by the Senate with significant Republican support.

Big losses in the courts would eventually hurt Khan’s authority and demoralize her staff, says William Kovacic, a former FTC chairman who now teaches at George Washington University Law School. “You become like a sports team that is known to its opponents as unable to win,” he says. But defeats also could provide the foundation for the kind of sweeping antitrust legislation that Khan and her supporters want.

“If you want to change the world, at some point it goes to the courts or it goes to the legislature,” Kovacic says. “But you can’t do it by yourself.”

### AT: Case Solves

#### No—requires credible enforcement from the FTC but that doesn’t exist because the FTC is cash strapped. Their ev indicates that people ignore antitrust policy because they know it won’t be enforced and there’s no reason that would change post-plan unless the FTC starts actually enforcing things—means they definitely link

#### Khan will inevitably go for litigation---she’s the most eager antitrust enforcer, and one of the few who’s willing to advance new standards for antitrust.

Kendall ’21 [Brent and Ryan Tracy; May 23; Legal affairs reporter; Technology reporter from the Washington News Bureau; The Wall Street Journal, “Big Tech Adversary Poised to Take Assertive FTC Antitrust Role,” <https://www.wsj.com/articles/big-tech-adversary-poised-to-take-assertive-ftc-antitrust-role-11621785601>]

Lina Khan, a progressive champion nominated by President Biden for a key enforcement post, wants to transform antitrust policy into a bulwark against corporate power by blocking more mergers, attacking monopolistic practices and potentially breaking up some of America’s largest companies.

Ms. Khan, 32 years old, is awaiting Senate confirmation for a Democratic seat on the five-member Federal Trade Commission after she was cleared by the Senate Commerce Committee. She has risen to prominence—and gained bipartisan support—as Democrats and Republicans alike have said lax antitrust enforcement, especially in the tech sector, has allowed dominant firms to hobble rivals and stifle competition.

Her targets have included not just Big Tech but also Big Chocolate and others. She has argued for hawkish positions that would overhaul legal doctrine and go well beyond the approach of recent antitrust enforcers. While her most ardent supporters believe such changes are long overdue, her views [have prompted a debate](https://www.wsj.com/articles/tech-giants-google-facebook-and-amazon-intensify-antitrust-debate-11559966461?mod=article_inline) on whether her approach is realistic and potentially so sweeping that it could prove jarring to the economy.

“Stepped-up antitrust enforcement is one thing,” said Howard University law professor Andrew Gavil, who was a top FTC staffer the last time Democrats controlled the commission. “Changing the standards is a different matter,” he said.

Mr. Gavil, who favors more enforcement, said Ms. Khan will have to consider how to translate her views into something that can be applied in practice. “That’s more challenging than simply being a critic on the outside,” he said.

If confirmed, Ms. Khan, a professor at Columbia Law School, would join an agency that enforces antitrust and consumer-protection laws across the economy. She would further cement the rise of a progressive camp that believes the U.S. faces what she has described as “a sweeping market power problem” in which large firms have been allowed to become too dominant.

“Lina has been very clear-eyed in recognizing that the core questions have to do with power, with the ability of private entities to coerce and to bully,” said Stacy Mitchell, co-director of the Institute for Local Self-Reliance, a research and advocacy group.

A London-born immigrant who came to the U.S. at age 11, Ms. Khan is soft-spoken and a prolific writer. During her teenage years in the New York City area, she worked on the student newspaper at Mamaroneck High School. She gained prominence through her criticism of [Amazon.com](https://www.wsj.com/market-data/quotes/AMZN) Inc., writing a widely read law-review article while a student at Yale Law School that argued that antitrust law has failed to restrain the online retailer.

Ms. Khan has rocketed through the progressive ranks, sounding the alarm on corporate concentration in industries ranging from airlines to agriculture. “Big chocolate is about to get even bigger,” she wrote in a 2013 article criticizing [consolidation in the world market for cocoa processing](https://foreignpolicy.com/2013/11/12/the-rise-of-big-chocolate/).

People close to Ms. Khan said she sees herself as an intellectual leader in an antimonopoly movement, one that views unchecked corporate power as a threat to democracy.

She was a House staffer on a congressional antitrust panel that conducted a 16-month investigation of large online platforms and last year recommended that lawmakers take steps to rein them in. She served as legal director of the Open Markets Institute, a group that favors aggressive trustbusting.

Ms. Khan, who declined to comment, would join an FTC that scrutinizes mergers and business practices to determine whether they illegally suppress competition in the marketplace. She has argued that the current framework for enforcing U.S. antitrust laws is misguided because it favors corporate efficiency and short-term consumer welfare interests—a preference for Amazon’s prices and convenience, for example—over maintaining a competitive structure in which a healthy number of rival firms keep one another in check.

The current system, she has said, essentially gives a green light to most corporate mergers and all except the most questionable business practices.

Restoring vigorous enforcement “first requires recognizing that the source of the problem is not just a lack of enforcement, but also the current philosophy of antitrust,” Ms. Khan wrote for the Yale Law Journal in 2018.

Democrats have embraced Ms. Khan’s arguments that enforcement has been inadequate, supporting tougher action by the FTC and the Justice Department, as well as legislation to strengthen antitrust laws. Some, however, have said the FTC can change its approach without embracing Ms. Khan’s philosophical shift away from how enforcers [have thought about the law for decades](https://www.wsj.com/articles/antitrust-law-what-is-it-and-why-does-congress-want-to-change-it-11615554000?mod=article_inline).

### AT: Plan Funds

#### It’s not a ‘prohibition,’ a law forbidding action.

Garner ’19 [Bryan A; Editor in Chief of Black’s Law Dictionary; Westlaw, Black's Law Dictionary, “Prohibitions,” Eleventh Edition]

prohibition (15c) 1. A law or order that forbids a certain action; PROSCRIPTION (1).

#### Nor an expansion of ‘scope,’ the law’s legal range.

Parsons ’14 [Honorable Donald F Jr; February 18; Vice Chancellor of the Court of Chancery of Delaware; Westlaw, “Vichi v. Koninklijke Philips Electronics, N.V.,” 85 A.3d 725]

As an initial matter, I reject the proposition that the determination of who can invoke a choice of law provision must precede the analysis of the provision's validity and scope. The “scope” of a choice of law provision refers to how broadly or narrowly that provision applies and includes the question of whether the provision created enforceable rights in third parties.310 The only case Philips N.V. cites in support of its assertion that Delaware law should govern whether it can invoke the choice of law clause merely stands for the proposition that a Delaware court will apply its own conflict of laws rules to determine which jurisdiction's substantive law will govern the claims before it.311 As noted previously, under Delaware conflict of laws rules, the scope of a valid choice of law provision is determined by the law of the selected jurisdiction—in this case, England.

#### Congress will ‘say no’ to budget requests AND demand downsizing in response to the plan.

Kantrowitz ’20 [Robert; November 19; Author and reporter, B.A. from Cornell University; Substack, “‘A Breathtaking Constraint on Capacity’: Internal FTC Memo Announces Major Cuts Ahead of Tech Giant Action,” <https://bigtechnology.substack.com/p/a-breathtaking-constraint-on-capacity>]

In addition to decreasing case costs, the FTC will freeze hiring; decrease spending on consumer education, including call centers, which log complaints about fraudulent and unfair business practices; lower spending on services such as training; delay and possibly cancel staffers’ year-end bonuses; encourage leave without pay; and cut IT spending. The agency is doing just about everything it can to cut costs, outside of layoffs.

The FTC’s “belt-tightening,” as Robbins put it in the email, is a win for Facebook and Amazon. With a divided Congress uninterested in working together on legislation, regulators like the FTC are the government’s last meaningful check on tech giants’ power. The FTC’s annual budget is less than what these companies make in a few days — approximately $330 million a year vs. $18 billion in a quarter, in Facebook’s case alone — and its ability to stand up to anticompetitive behavior is slipping away with these new funding constraints. The agency imposed the cuts when it couldn’t keep up with minimal annual spending increases, like cost of living adjustments.

“If I were a prospective defendant I'd be heartened by this,” Kovacic said.

Congress has made a show of hauling big tech executives before their committees, but its members disdain the idea of funding the regulators who restrain the abuses they decry. When Kovacic floated the idea of tripling FTC funding to $1 billion per year in a hearing this September, Sen. Maria Cantwell mocked him.

Sen. Josh Hawley, one of tech’s most strident critics, was put off Tuesday by the suggestion he support more funding to the agency. “I’ve repeatedly said I will NOT vote to shovel more money at the FTC when it has utterly failed to hold tech accountable,” Hawley[tweeted](https://twitter.com/HawleyMO/status/1328838538490765313).

#### Increasing budgets doesn’t stop tradeoffs.

Chakravorti ’21 [Bhaskar; July 7; Dean of Global Business at Tufts University’s Fletcher School of Law and Diplomacy, founding Executive Director of Fletcher’s Institute for Business in the Global Context; Foreign Policy, “As FTC Chair, Lina Khan Has Her Own Antitrust Paradox,” <https://foreignpolicy.com/2021/07/07/ftc-lina-khan-regulate-tech-congress/>]

Meanwhile, Facebook is shoring up its defenses. Even as the FTC gets its act together and its complaint is reconsidered, Facebook is busy [integrating](https://www.nytimes.com/2020/09/30/technology/instagram-facebook-messenger-integration.html) the backend infrastructure that supports its popular apps: Facebook Messenger, Instagram, and WhatsApp. This is likely to make it impossible to tear the apps apart. In addition to the integration’s technical aspects, which offer the company many benefits, Facebook is making the case that consumers benefit from it as well. It is testing a unified “accounts center” that shows the user all the apps the user has open; Facebook Messenger and Instagram users can send messages and get access to features across apps as well. Most significantly, this could also [enable end-to-end encryption](https://techcrunch.com/2019/01/25/facebook-instagram-encryption-integration/) across all the apps, which would be an enormous boost to Facebook’s argument that its changes are meant to enhance users’ privacy.

It is conceivable that even if the FTC’s rewritten complaint is accepted, an antitrust case would take a long time to prosecute. In the meantime, Facebook will have already accomplished a fait accompli, making it hard to push further with the current, narrow complaint’s core. In fact, Khan’s predecessor, Joseph Simons, [acknowledged](https://www.nytimes.com/2019/12/12/technology/ftc-facebook-injunction.html) that Facebook’s plan to integrate its apps would pose challenges to any move to break up the company.

So what should be done? I would recommend three sets of actions.

Khan and the FTC need Congress and the White House’s help. It is not enough, as one[bill](https://www.congress.gov/bill/117th-congress/senate-bill/228/text) proposes to do, to increase FTC funding for antitrust enforcement. Budgets are only one part of what constrains the agency from taking a holistic approach to regulating the digital industry.

All parties concerned need to take a longer view and stop getting into near-term skirmishes, either with the courts or even among members of the U.S. House of Representatives [battling one another](https://www.theverge.com/2021/6/24/22548317/tech-antitrust-reform-bills-congress-democrats-republicans-editorial) over the passage of narrow bills. This ought to be an opportunity to consider the various issues of the digital industry in its entirety: data protection versus the use of data to provide better services, platforms as media companies with editorial responsibilities versus platforms as “public squares,” network effects versus networks as barriers to entry, and potential sources of power abuses.

### Internal---2NC

#### Every new filing decreases enforcement by fifty percent---they’re already down to only essential cases.

Burke ’21 [Andrea and Henry; May 28; B.A. in Political Science and Labor Studies from the University of California at Los Angeles; Research Assistant, B.A. in Economics from the University of Maryland; Revolving Door Project, “Hobbled FTC Lacks Budget to Combat Corporate Buying Spree,” <https://therevolvingdoorproject.org/hobbled-ftc-lacks-budget-to-combat-corporate-buying-spree/>]

Our analysis also shows the declining budget coincided with stagnation in the number of full-time employees: from 2010 to 2019, the number of full-time employees of the FTC actually decreased by 31 from 1132 in FY 2010 to 1101 in FY 2019.

Hiring and retaining employees is another struggle for the beleaguered agency as they are forced to compete for attorneys with a private sector that offers ever higher salaries, particularly for young lawyers beginning their careers (oftentimes burdened by significant student loan debt). The FTC’s [2002 Congressional Budget Justification](https://www.ftc.gov/reports/fy-2002-congressional-justification-budget-summary) bemoaned the struggles the agency had retaining “human capital” in the competitive labor market. The agency’s struggles were explained to Congress, saying the FTC “currently faces significant competitive pressures from the private sector, particularly for attorneys, economists, and information technology professionals with experience in mergers and Internet-related issues. For example, the compensation for first-year attorneys in the private sector is often three times higher than that available to most Government agencies.” Since the pay associated with FTC employment for attorneys and economists (the GS scale 11 or above) has not increased in keeping with inflation in the ensuing years, one can only assume the agency’s woes have grown since despite the struggles not being voiced so openly by FTC leadership. The lowest GS-11 pay grade in 2002 when adjusted for inflation, is almost 10% higher than the lowest GS-11 pay grade in 2021, a significant decrease in purchasing power for the entry level staff that was already susceptible to the higher wages offered in the private sector in 2002.

So, while HSR filings have been steadily climbing over the past 10 years, the FTC’s ability to regulate these filings has actually decreased because of a decline in agency funding and lack of competitive hiring. Without the resources to handle the increase in merger filings, the FTC has been compelled to reduce the number of enforcement actions it takes, conserving staff resources for only the most important cases. This has resulted in a decline in enforcement actions per merger by nearly half over a short nine year time frame, ultimately benefiting the monopolistic corporations that bolster their power by buying up other companies.

#### FTC resources are limited---new initiatives trade off with existing priorities.

Wheeler ’21 [Tom; February 10; Visiting Fellow in Governance Studies at the Center for Technology Innovation, former Chairman of the Federal Communication Commission Brookings Institution, “A focused federal agency is necessary to oversee Big Tech,” <https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/>]

Because of the vast scope of its market oversight, the FTC has often been the agency to which Congress looked first for solutions. It is not unusual, however, for Congress to subsequently recognize the need for a new specialized agency. In 1934, for instance, FTC’s oversight of the securities market was transferred to the [Securities and Exchange Commission](https://en.wikipedia.org/wiki/U.S._Securities_and_Exchange_Commission) (SEC). In the mid-1990s, amidst a concern about auto safety, Congress looked beyond the FTC to create a new National Highway Traffic Safety Administration. In response to the 2008 financial crash, Congress moved what had been the FTC’s authority in consumer financial markets to a newly created Consumer Financial Protection Bureau.

The proposal to create a new digital agency is a continuation of such precedents. The vast scope of the FTC’s present responsibilities—as diverse as funeral director practices, robocalls, and labeling hockey pucks—means that the oversight of digital platform regulation must compete with the agency’s existing diverse responsibilities and limited resources.[[4]](https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/#footnote-4) A new digital agency would also help assure that resources would not be withdrawn from the FTC’s traditional activities.[[5]](https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/#footnote-5)

A new digital agency would not eliminate the FTC’s current activities, but rather augment them with regulatory oversight beyond the capabilities of the agency. One example of the need for new powers is the constraints on its competition authority that effectively limit the FTC to ex post enforcement against a specific company for a specific violation rather than ex ante rulemaking authority that is more widely applicable.[[6]](https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/#footnote-6)

Another reason for the creation of a new agency is the inherent muscle memory that has developed since the FTC’s industrial era creation. Every institution has its cultural commitments: a collection of thoughts, procedures, the results of formal and informal congressional interventions, and judicial decisions developed in the analog era to resolve the demands of an analog economy. The digital economy requires departure from such a hidebound precedent to create an all-digital-all-the-time agency staffed by specialists with digital DNA.

The new digital reality

The rationale for a focused specialized agency to oversee the dominant digital companies is rooted in how the forces that drive the digital economy differ from those of the industrial economy.

Assets behaving differently

The policies and practices of the industrial era were based on business activity that utilized hard assets such as coal, iron, and manufactured goods. The digital era is built around the soft assets of digital information. While data assets enjoy industrial-like scope and scale economies, they are different in many other ways. Those differences create such strong proclivities to market failure that a new kind of regulatory oversight is required.

As compared to industrial assets, information assets are incrementally inexpensive, inexhaustible, iterative, and non-rivalrous. Computers perform calculations and networks distribute the results at very low incremental costs. In the industrial economy, a ton of coal was exhausted by usage; in the digital economy, a file of data can be used repeatedly. The use of that data, in turn, creates new data that produce new products. Finally, data is non-rivalrous in that usage by one party does not preclude usage by another.

Added to these basic differences in the root assets of the digital economy are three additional factors: network effects, low marginal cost distribution, and “free” end user goods and services. Network effects are the ground zero of internet economics, increasing the value of a product or service as it connects with more people. This creates a propensity to “tip” toward a monopoly. Thanks to the internet, this phenomenon is reinforced as the marginal cost of delivering that product or service to an additional user approaches zero. Together, these forces permit the product or service to be given away, thus triggering further network effects that create barriers to new entrants while allowing monopoly pricing to those seeking access to users of the “free” service.

The economic model of the industrial era was constrained by assets that ultimately confronted diminishing marginal returns as costs rose and markets became saturated. The economic model of the internet era knows no such constraints, but rather is driven by an endless supply of data feeding boundless demands. At the heart of machine learning and artificial intelligence, for instance, is an unquenchable demand for more data. That demand is met by digital perpetual motion where data use begets data products that beget more data that beget more products. Such perpetual motion further tips the market to dominance by companies that, by controlling data, can feed its constant reproduction.

The difference between digital demand-driven economics and industrial economics is expressed in the following [illustration](https://hbr.org/2020/01/competing-in-the-age-of-ai) by Harvard business professors Marco Iansiti and Karim Lakhani:

Inexpensive, inexhaustible, iterative, and non-rivalrous assets that take advantage of low-margin, network effect-driven digital capabilities mean that there is even greater mass production in the information economy than there was in the industrial economy. This produces the next challenge: how the self-perpetuating, never-ending process in which data produces new products, which produce new data, speeds the pace of change far beyond anything experienced in the industrial economy—and beyond the capacity of industrial-era regulatory concepts.

The pace of change drives the demand for agility

Digital technology sped up the pace of change, removing the time buffer that policymakers once relied upon for identifying oversight needs. The existing regulatory approach was developed in a period where stable technology produced stable markets. As a result, the government was able to wait until market failures reached a certain scale before stepping in. Today, however, when a platform such as Facebook can [grow](https://www.fool.com/investing/2019/01/20/the-social-media-platforms-that-hit-100-million-us.aspx) from zero to 100 million users in under five years (and [one billion users](https://money.cnn.com/2012/10/04/technology/facebook-billion-users/index.html) only four years later), the speed of change exerts unprecedented pressure on policymakers to keep pace.

The digital companies responded to this pace of change by walking away from rigid industrial-era product and management concepts. Digital products and digital management are based on the principle of agility. The products are designed in anticipation of technology and market changes. Every time your smartphone updates its software is an example of such agility. Digital company management, similarly, became agile and less hierarchical in order to keep up with the pace of change.

The agile response to the pace of technological change permits dominant digital companies to maintain their dominance and fend off competition within their markets. The federal government’s oversight, based on bureaucratic and legal precedent, however, remains encased in the cement boots of industrial-era management. Rigid, slow-paced bureaucracies built to mirror the rules-based bureaucracies of industrial corporations are no match for the agility of digital companies.

Precisely at the time when the speed of change should be an impetus for the creation of broad, yet agile, ex ante behavioral rules, the existing governmental agencies are typically constrained to act through slow and arduous procedures on a limited ex post basis. A new digital agency with new agile procedures is necessary to bring public-interest oversight up to speed.

### Impact---2NC

#### Link alone turns case, zeroing enforcement and encouraging anticompetitive behavior.

Baker et al. ’20 [Jonathan, Bill Baer, Michael Kades, Fiona Morton, Nancy Rose, Carl Shapiro, Tim Wu; November 19; Professor of Law at American University, former Director of the Bureau of Economics at the Federal Trade Commission, Ph.D. in Economics from Stanford University, J.D. from Harvard University; Visiting Fellow in Governance Studies, former Assistant Attorney General for Antitrust at the U.S. Department of Justice and Director of the Bureau of Competition at the Federal Trade Commission, J.D. from Stanford University; Director of Markets and Competition Policy at the Equitable Growth Foundation, J.D. from the University of Wisconsin; Professor of Economics at ale University, Ph.D. in Economics from the Massachusetts Institute of Technology; Professor of Applied Economics, Ph.D. in Economics from the Massachusetts Institute of Technology; Professor of Business Strategy at the University of California, Berkeley; Special Assistant to the President for Technology and Competition Policy in the National Economic Council, J.D. from Harvard Law School; Washington Center for Equitable Growth, “Restoring competition in the United States,” <https://equitablegrowth.org/research-paper/restoring-competition-in-the-united-states/>]

The need for more resources

The agencies lack the resources to fulfill their mission after a decade in which they have seen their budgets largely frozen. Increasing resources alone will not solve today’s manifest market power problems, but substantially increasing resources is an important part of the solution.

The agencies require a significant increase in appropriations to begin the process of more effectively deterring anticompetitive conduct and mergers. Agencies strapped for resources are less likely to investigate complex cases and more willing to accept flawed settlements. Corporations are more likely to pursue questionable mergers or undertake potentially anticompetitive conduct if they think the agencies have little or no capacity to bring additional enforcement actions.

#### It’s the most likely scenario for war---sparks nuke escalation in Asia and the Middle East.

Cribb ’19 [Julian; October 3; Principal of Julian Cribb & Associates, Fellow of the Australian Academy of Technological Sciences and Engineering, former Director of National Awareness at the Commonwealth Scientific and Industrial Research Organisation; Food or War, “Food as an Existential Risk,” Ch. 6]

Weapons of Mass Destruction

Detonating just 50–100 out of the global arsenal of nearly 15,000 nuclear weapons would suffice to end civilisation in a nuclear winter, causing worldwide famine and economic collapse affecting even distant nations, as we saw in the previous chapter in the section dealing with South Asia. Eight nations now have the power to terminate civilisation should they desire to do so – and two have the power to extinguish the human species. According to the nuclear monitoring group Ploughshares, this arsenal is distributed as follows:

– Russia, 6600 warheads (2500 classified as ‘retired’)

– America, 6450 warheads (2550 classified as ‘retired’)

– France, 300 warheads

– China, 270 warheads

– UK, 215 warheads

– Pakistan, 130 warheads

– India, 120 warheads

– Israel, 80 warheads

– North Korea, 15–20 warheads.11

Although actual numbers of warheads have continued to fall from its peak of 70,000 weapons in the mid 1980s, scientists argue the danger of nuclear conflict in fact increased in the first two decades of the twenty-first century. This was due to the modernisation of existing stockpiles, the adoption of dangerous new technologies such as robot delivery systems, hypersonic missiles, artificial intelligence and electronic warfare, and the continuing leakage of nuclear materials and knowhow to nonnuclear nations and potential terrorist organisations.

In early 2018 the hands of the ‘Doomsday Clock’, maintained by the Bulletin of the Atomic Scientists, were re-set at two minutes to midnight, the highest risk to humanity that it has ever shown since the clock was introduced in 1953. This was due not only to the state of the world’s nuclear arsenal, but also to irresponsible language by world leaders, the growing use of social media to destabilise rival regimes, and to the rising threat of uncontrolled climate change (see below).12

In an historic moment on 17 July 2017, 122 nations voted in the UN for the first time ever in favour of a treaty banning all nuclear weapons. This called for comprehensive prohibition of “a full range of nuclear-weapon-related activities, such as undertaking to develop, test, produce, manufacture, acquire, possess or stockpile nuclear weapons or other nuclear explosive devices, as well as the use or threat of use of these weapons.”13 However, 71 other countries – including all the nuclear states – either opposed the ban, abstained or declined to vote. The Treaty vote was nonetheless interpreted by some as a promising first step towards abolishing the nuclear nightmare that hangs over the entire human species.

In contrast, 192 countries had signed up to the Chemical Weapons Convention to ban the use of chemical weapons, and 180 to the Biological Weapons Convention. As of 2018, 96 per cent of previous world stocks of chemical weapons had been destroyed – but their continued use in the Syrian conflict and in alleged assassination attempts by Russia indicated the world remains at risk.14

As things stand, the only entities that can afford to own nuclear weapons are nations – and if humanity is to be wiped out, it will most likely be as a result of an atomic conflict between nations. It follows from this that, if the world is to be made safe from such a fate it will need to get rid of nations as a structure of human self-organisation and replace them with wiser, less aggressive forms of self-governance. After all, the nation state really only began in the early nineteenth century and is by no means a permanent feature of self-governance, any more than monarchies, feudal systems or priest states. Although many people still tend to assume it is. Between them, nations have butchered more than 200 million people in the past 150 years and it is increasingly clear the world would be a far safer, more peaceable place without either nations or nationalism. The question is what to replace them with.

Although there may at first glance appear to be no close linkage between weapons of mass destruction and food, in the twenty-first century with world resources of food, land and water under growing stress, nothing can be ruled out. Indeed, chemical weapons have frequently been deployed in the Syrian civil war, which had drought, agricultural failure and hunger among its early drivers. And nuclear conflict remains a distinct possibility in South Asia and the Middle East, especially, as these regions are already stressed in terms of food, land and water, and their nuclear firepower or access to nuclear materials is multiplying.

It remains an open question whether panicking regimes in Russia, the USA or even France would be ruthless enough to deploy atomic weapons in an attempt to quell invasion by tens of millions of desperate refugees, fleeing famine and climate chaos in their own homelands – but the possibility ought not to be ignored.

That nuclear war is at least a possible outcome of food and climate crises was first flagged in the report The Age of Consequences by Kurt Campbell and the US-based Centre for Strategic and International Studies, which stated ‘it is clear that even nuclear war cannot be excluded as a political consequence of global warming’. 15 Food insecurity is therefore a driver in the preconditions for the use of nuclear weapons, whether limited or unlimited.

A global famine is a likely outcome of limited use of nuclear weapons by any country or countries – and would be unavoidable in the event of an unlimited nuclear war between America and Russia, making it unwinnable for either. And that, as the mute hands of the ‘Doomsday Clock’ so eloquently admonish, is also the most likely scenario for the premature termination of the human species.

Such a grim scenario can be alleviated by two measures: the voluntary banning by the whole of humanity of nuclear weapons, their technology, materials and stocks – and by a global effort to secure food against future insecurity by diverting the funds now wasted on nuclear armaments into building the sustainable food and water systems of the future (see Chapters 8 and 9).