# NU R2 Cards

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## OFFs

### CP - States

#### The fifty states and relevant subnational entities should substantially increase prohibitions on platform utilities by expanding the scope of its core antitrust laws to include standards against owning and competing on the same platform and the acquisition of potential and/or nascent competitors

#### 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 during this period.[[14]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-114)

### CP - Core PIC

#### The United States Federal Government should create a new antitrust law, delineated by industry, that increase prohibitions on platform utilities including standards against owning and competing on the same platform and the acquisition of potential and/or nascent competitors.

#### Creating new antitrust statutes solves --- the aff lacks a “core”-key warrant

**Paquette 17** [Jenny Paquette, J.D. from Temple University, 2017, “ARTICLE: OLD IS NOT ALWAYS WISE: THE INAPPLICABILITY OF THE SHERMAN ACT IN THE AGE OF THE INTERNET,”, 89 Temp. L. Rev. Online 2, lexis]

B. Divide and Conquer: An Industry-Specific Approach to Antitrust

To create an antitrust system that is applicable to a vast array of businesses, it is necessary to create several doctrines that are able to evolve independently of one another. This will accommodate the great variations between industries. A multipart framework should be created for antitrust analysis of modern businesses. This framework should also permit the creation of additional categories as needed for unforeseen developments in technology.

Most businesses can be lumped into industry categories. Examples include energy (including oil and gas), industrial goods and services, consumer goods, [\*34] consumer services (such as media, food service, and travel), health care, financial services, information services, telecommunication services, and the Internet. An exact list of industries that should be considered in an antitrust framework is beyond the scope of this paper. However, it is necessary to consider a split that looks something like this to solve the shortcomings of a regime based on the Sherman Act. Congress should determine the appropriate industry list, since it is able to employ the assistance of various experts from different fields.

Perhaps the most suitable model for a new antitrust statutory framework can be found in intellectual property. Similar to antitrust, intellectual property necessarily seeks to strike a balance between consumer protection and incentives to promote a healthy marketplace. However, while intellectual property has a fairly uniform set of policy goals focused on encouraging investment and innovation, the various areas covered within it require different, though partially overlapping doctrines to achieve these objectives. As a result, intellectual property exists in the separate, but related, areas of patents, copyrights, and trademarks, as well as a few others. Each of these areas requires a different legal approach to best achieve the common goals of intellectual property. Each area has its own statutory framework that has been updated periodically to expand and keep pace with changes in technology and society.

[\*35] Patent law, while also part of intellectual property law as a whole, focuses on protecting inventions. It is based in the United States Patent Act (Patent Act). Congress enacted the first iteration of the Patent Act in 1790 under the power granted in Article I, Section 8 of the Constitution. Throughout the nineteenth and twentieth centuries, as the types of inventions being produced expanded and changed, patent law expanded accordingly. For example, patent law was expanded to include industrial designs in 1842, plants in 1930, and surgical procedures in the 1950s. The Supreme Court first held that computer software was patentable in its 1981 decision, Diamond v. Diehr. Over time, the courts have adjusted their interpretations of patent laws to allow or deny patents as needed to compensate for changes in technology and the needs of society.

Copyright law provides protection for "original forms of expression," and is governed by the United States Copyright Act (Copyright Act). Like the Patent Act, the Copyright Act has gone through several versions. Congress adopted the original Copyright Act in 1790. Since that time, there have been changes in copyright law which have altered the duration of protection afforded to authors, expanded the types of works covered, and improved the rights of copyright holders. For example, musical recordings and photographs, neither of which existed at the time the first Copyright Act was enacted, are both afforded protection under its current iteration. Computer software is also protected under the Copyright Act. As technology has evolved to allow for the creation of new types of work, copyright doctrine has expanded accordingly.

[\*36] Trademark law protects the symbols and words used to identify the source of goods and services. Trademark protection initially appeared in the United States as a common law development in the mid-nineteenth century. In 1946, Congress enacted the Lanham Act, which allows for federal statutory protection of trademarks and provides for remedies against infringement. In its early existence, trademark protection was only available for trademarks that included the name of the manufacturer. Over time, the protection has expanded to include a vast array of terms and product designs, and has even evolved to include protection against the trademark being diluted or tarnished.

Intellectual property law is most instructive to engineering a new antitrust framework because of the way its doctrines have adjusted in reaction to society. Through the nineteenth century, the economy in the United States evolved from one that was heavily dependent upon agriculture to one increasingly dependent upon industry. In the twentieth century, the economy again shifted with the emergence of information technology. As the economy has evolved, the need for intellectual property rights has evolved with it. As a result, the doctrines of intellectual property have remained useful and relevant in a way that antitrust has not.

Courts and lawmakers can increase the flexibility and efficacy of antitrust law by dividing it in a fashion similar to intellectual property. In applying the Sherman Act to evolving industries and society over time, the courts have necessarily jumped through analytical hurdles and created numerous exemptions. As such, an analysis under the Sherman Act requires a number of steps--and added steps mean added opportunities for error and oversight. Under a divided antitrust scheme, Congress could correct court errors through updated legislation for specific affected industries, similar to updates to the Patent and Copyright Acts. As it currently exists, correcting an error through legislation would require a complex analysis of how the full antitrust framework may be impacted.

[\*37] Dividing antitrust into more closely tailored frameworks for various industries may not fully eliminate the need for judicially created exemptions. However, it is likely that fewer exemptions would be needed, as the frameworks would be more closely tailored to fit each industry. As a result, antitrust would be simplified and the application of it would be more straightforward. More bright-line rules could be created, rather than the vague standards that exist under the Sherman Act. Any necessary exemptions could additionally be broad enough to apply throughout an industry without the risk of affecting future cases in other industries.

To emulate the split framework of intellectual property for use in antitrust, Congress should enact separate statutes for each industry category, similar to the Patent Act, Copyright Act, and Lanham Act. These statutes should include similar provisions to the Sherman Act, stating the general types of behaviors that are anticompetitive. Unlike the Sherman Act, the specific purpose of the statutes--consumer protection--should be made clear. Each statute should also be made more specific, including in its text behaviors by firms that are known in that industry to result in consumer harms. Over time, the statutes should be updated as necessary, which will ideally result in frameworks that work separately by industry, but still achieve a unified goal of consumer protection.

#### But only the CP preserves the effective enforcement of antitrust in traditional industries

**Paquette 17** [Jenny Paquette, J.D. from Temple University, 2017, “ARTICLE: OLD IS NOT ALWAYS WISE: THE INAPPLICABILITY OF THE SHERMAN ACT IN THE AGE OF THE INTERNET,”, 89 Temp. L. Rev. Online 2, lexis]

Though the Sherman Act may not be a workable option for combatting anticompetitive actions in Internet companies, it is still applicable for traditional industries. Additionally, the general purpose of antitrust law is still applicable for all industries. Consumers are still consuming, so there is still a need for their protection as they do so. While antitrust generally is still needed, the Sherman Act as a specific framework is outdated.

The Act predates much of the current technology, and thus many of the related industries, that operate in the world today. When the Act was enacted in 1890, the United States was in the midst of a massive expansion of its industries, [\*31] which were primarily manufacturing, agriculture, and railroads. Since the Sherman Act's enactment, the advent of airplanes has drastically increased the globalization of commerce. Changes in communication technology have also altered the development of commerce as we increasingly rely on computers and the Internet. As the first home Internet connection came a century after the Sherman Act was enacted, it's impossible to fathom that the drafters imagined the state of commerce as it exists today.

Regardless of the possible legislative intent that existed at the time of its enactment, the Sherman Act has since been used as a consumer protection statute. Although commerce has evolved, many of the same concerns regarding consumer protection remain. Cartelization, price fixing, horizontal agreements, and other anticompetitive behaviors are still possible, and the Sherman Act is still competent to address these issues in traditional industries. Even some industries [\*32] relying on newer technology are suitable for analysis under the Sherman Act as the business models remain largely similar to those that existed in 1890.

Antitrust law must be changed in order for it to apply to nontraditional industries that use business models unsuitable for a Sherman Act analysis. This area of law cannot be abandoned altogether, as some scholars have suggested. Some of today's most profitable industries, such as Internet search engines, did not even exist in the most fledgling fashion when the Sherman Act was enacted. As the business models of some new industries are vastly different from what existed in 1890, the potential for consumer harms also differs. The scope of markets and what constitutes an "anticompetitive act" in such nontraditional industries can vary greatly from what is seen in traditional industries.

Attempting to apply an outdated statutory framework comes with a risk of inapplicability. The FTC's 2012 investigation of Google did not culminate in a lawsuit because the FTC found that Google only disadvantaged its competitors, [\*33] not competition. While this was the correct outcome, even if it were not, there was no appropriate alternative. Even if the FTC found that Google was acting in an anticompetitive manner, it is unlikely that a lawsuit against Google would have prevailed due to a lack of evidence of consumer harm. If a court found that Google was intentionally disadvantaging its rivals, it would be appropriate to hold Google liable under a traditional antitrust analysis. However, because Google was acting with the pro-consumer purpose to improve its search engine, such a holding would have been contrary to the goals of promoting consumer welfare.

Due to the multisided structure of a search business model, any action taken by Google potentially impacts users, advertisers, and Google's competitors simultaneously. As such, Google may help one of these groups while also harming another without incurring liability. Ignoring potential harms to competition renders an antitrust framework underinclusive and inapplicable to a goal of promoting competition. However, holding against Google for actions harming competitors would be overinclusive as it would thwart actions that benefit consumers. For antitrust to apply to search engines and other nontraditional industries, a more flexible antitrust framework is needed to avoid such issues of overinclusiveness and underinclusiveness.

#### Traditional antitrust jurisprudence key to US energy dominance

**Gray 20** [Mr. Gray has served as White House counsel, U.S. ambassador to the European Union, and as U.S. special envoy to Europe for Eurasian energy, “Banks' Energy Boycott Is an Antitrust Problem,” 15 July 2020, The Wall Street Journal, Factiva]

America's largest financial institutions are picking winners and losers in the energy sector for political reasons -- even while the Covid-19 crisis has reduced global oil demand and a price war between Russia and Saudi Arabia has flooded global markets with crude. Under pressure from environmental activists, banks are withholding desperately needed capital from oil and gas companies. In doing so, they put millions of jobs at risk and may even be violating federal antitrust law.

To protect consumers, antitrust laws prohibit unreasonable agreements in restraint of trade. Anticompetitive conduct enriches the few -- members of the cartel -- at the expense of everyone else, especially the consumers who end up paying higher prices. Agreements among competitors to fix prices, divide markets or engage in certain forms of group boycott prevent competition and are therefore illegal.

Normally, banks compete to lend to corporate customers. That competition ensures that worthwhile projects can gain access to capital and use it to bring products to consumers at affordable prices. But Citibank, Goldman Sachs, JPMorgan Chase, Morgan Stanley and Wells Fargo have started moving in parallel to cut off liquidity and capital to America's energy sector. More specifically, these ostensible competitors have announced promises to stop lending money in support of Arctic oil drilling and coal mining.

BlackRock, the world's largest investment firm, announced in January that it would divest from companies deriving more than 25% of their revenue from thermal coal and has joined a pact called "Climate Action 100+" with more than 450 global investors. "Banks are increasingly using environmental, social and governance factors when underwriting corporate borrowing," Barron's reports, such that according to one survey, "half the lending assets covered by 182 banks" were screened for ESG risks.

These announcements look a lot like invitations to collude on a boycott of a critical segment of the U.S. economy. The Federal Trade Commission has maintained that such invitations -- even if they go unheeded -- can violate federal antitrust law. As the FTC and the Department of Justice reiterated in April, "Even absent a collusive agreement," antitrust enforcers may "pursue a civil enforcement action against companies and individuals that invite others to collude." If made with an intent to invite or signal competitors to join a group boycott, these announcements could violate the law.

Federal antitrust law also prohibits boycott agreements instigated by a third party to prod firms that compete with each other into unreasonably restraining market competition. In these "hub and spoke" conspiracies, competitors may violate the law without communicating with each other, and even though the relevant agreements they make are with a third party, not a competitor.

Pressure campaigns by activist groups (possible hubs) -- followed by the pattern of announcements and parallel conduct by banks (possible spokes) -- present more evidence of potential conspiracies. For example, Green America proclaims it "is pressuring banks world-wide to stop funding fossil fuels" as part of the "Fossil Banks, No Thanks" campaign, which aims "to stop large commercial banks from financing the fossil fuel industry." The Sierra Club shares the same goal and even reports that it has "met with representatives from major banks to discuss . . . why action by the financial industry is necessary." As a result, five of the six largest banks in the United States will no longer finance oil and gas drilling in the Arctic National Wildlife Refuge. Bank of America is the lone holdout.

Activist investors have also joined the pressure campaign, encouraged by business leaders' embrace of "stakeholders" over shareholders. Any of this third-party activity could be the hub for tacit collusion between the spokes -- i.e., banks collectively boycotting certain energy projects.

The U.S. does a lot for its banks, which have long been heavily subsidized and backed by government interventions. The Federal Deposit Insurance Corp. guarantees deposits, and other programs have been set up whenever banks face a crisis. The Covid-19 pandemic is no exception: Congress routed its Cares Act relief efforts to businesses through banks, which are rewarded with fat fees. Meanwhile, bank executives are turning their backs on the very companies that keep the lights on.

When America's financial industry starves the energy sector of capital, that isn't fair, free-market competition. It's a subsidized industry barreling toward collusion at the invitation of radical third-party intermediaries -- and inviting billions of dollars in antitrust liability.

#### US energy dominance solves global threat escalation and great power war

**Yergin 20** [Daniel Yergin, BA Yale, PHD intl history from Cambridge, American author, speaker, energy expert, and economic historian, “The new map: energy, climate, and the clash of nations,” chapter 8, New York: Penguin Press, 2020]

For four decades, U.S. energy policy was dominated—and its foreign policy hobbled—by the specter of shortage and vulnerability, going back to the 1973 oil embargoes and then the 1979 Iranian Revolution, which toppled the shah and brought the Ayatollah Khomeini to power. But no longer. The shale revolution “affords Washington,” observed Thomas Donilon, national security advisor to President Obama, “a stronger hand in pursuing and implementing its international security goals.” Secretary of State Mike Pompeo would subsequently put it differently—that the shale revolution has provided the United States with a flexibility in international affairs that it had not had for decades.1 For more than a century, energy—its availability, access, and flows—has been intertwined with security and geopolitics. As a Brookings Institution study put it, “In the modern era, no other commodity has played such a pivotal role in driving political and economic turmoil, and there is every reason to expect this to continue.”2 The Middle East has been central to world oil, the security of its supplies crucially important to the world economy and a top priority for U.S. foreign policy. At the beginning of the Cold War in 1950, with Saudi oil exports starting to flow, President Harry Truman extended an explicit American security guarantee to King Ibn Saud. “No threat to your Kingdom,” the president wrote, “could occur which would not be a matter of immediate concern to the United States.”3 That commitment, at the time aimed at preventing those resources from falling into Soviet hands, continued after the Cold War. The current extensive U.S. security engagement with the Arab Gulf countries is represented in a multitude of agreements, arms deals, exchanges, and a series of bases and facilities for air, ground, and sea forces. An important element in the world oil market is “spare capacity.” This is production capacity—that is, oil wells—that are not actually in operation, but can be swiftly brought on line if prices spike or if a disruption knocks out supply elsewhere. Today, most of the world’s spare capacity is in Saudi Arabia, with some in the United Arab Emirates and Kuwait. That, combined with the size of its oil reserves and its ability to quickly increase or decrease output, makes Saudi Arabia the balancer in the world market. Sometimes it is described as the “central bank” of world oil. The nature of the U.S. commitment to Persian Gulf security, the scale of the U.S. engagement, and the size of the region’s resources led to a widespread view that the United States itself was heavily dependent on the Mideast. Yet in 2008, even before shale oil, imports from the Gulf amounted to less than 20 percent of total U.S. oil imports. As already noted, oil sands in the province of Alberta had made Canada the largest supplier of U.S. imports by far. In 2019, only about 11 percent of U.S. imports came from the Persian Gulf. For their part, Gulf producers are focused on Asia as their most important market. The U.S. commitment to the region has endured not because specific barrels of oil are departing Saudi Arabia or Kuwait or the UAE for U.S. refineries, but rather because these resources are central to the overall world economy and critical for America’s most important allies and trading partners. Disruptions of supply affect the global system into which America is so integrated—with almost 30 percent of U.S. GDP and close to 40 million jobs resulting from trade with the rest of the world. Even if the U.S. is not importing much Middle Eastern oil, a supply disruption would drive up global prices, including in the United States.4 How has the shale revolution changed geopolitics? Case study number one is Iran and the 2015 nuclear agreement. In 2012, sanctions were applied on Iranian oil exports and finance. The aim was to force Iran to the negotiating table, as we shall see later. But it wasn’t obvious that these sanctions would work. The expected shortfall in world supplies would drive prices up, hitting oil-importing countries, causing the sanctions to crumble. Certainly that is what Tehran expected as it confidently proclaimed the new sanctions “doomed to fail.” But increasing U.S. production offset the reduction in Iranian exports. As we shall see later, the oil sanctions held, buttressed by financial sanctions; and the economic pressure on Iran led finally to the 2015 agreement that constrained Iran’s nuclear program in exchange for the removal of sanctions.5 Case number two is Europe and relates back to Putin’s angry rejoinder at St. Petersburg. The rise of shale has been one of the keys to diversifying the European gas market and enhancing energy security. When European leaders talk about energy security, they are often less focused on oil and more on natural gas—and in particular the degree of reliance on Russian gas. As Europe’s top supplier of gas, Russia had, in the minds of some in the European Union and many in Washington, the ability to use gas supply as leverage for political objectives. This concern was magnified by the reliance on pipelines with their inherent inflexibility. Enter U.S. shale gas. First it eliminated the need for LNG in the United States, leading exporters to redirect some of their LNG to Europe. Then the export of LNG from the United States reinforced the shift toward competition in Europe—with U.S. gas, along with other LNG supplies, competing head-to-head with Russian gas. European buyers now had multiple options and choices, which meant diversification of supply—the keystone of energy security. “We have had many historical challenges with Russia,” said Lithuania’s energy minister. But now, as a result of the opening of the country’s LNG importing facility, he continued, “gas supply has been depoliticized.”6 — In March 2016, a supertanker filled with oil left the U.S. Gulf Coast and crossed through the Panama Canal into the Pacific. Its destination was China. The customer was Sinopec, one of China’s two major oil companies and one of the world’s largest buyers of oil. “U.S. crude oil exports are positive news for the global market and make it possible for Asia-Pacific refiners to diversify their supply,” said a Sinopec executive. A few months later, another tanker unloaded at Shenzhen the first shipment of U.S. LNG to China. These voyages demonstrated that the supposed zero-sum life-and-death competition between China and the United States for access to constrained energy, so vividly imagined just a few years earlier, was not going to happen. Global energy supplies are ample, and China and the United States can interact through the global marketplace to mutual benefit. The shale revolution removed at least one major area of contention in U.S.-Chinese relations, creating a new commonality of interests between the nations—trade wars and contention over the coronavirus permitting. Because of shale, the United States is “present” in Asia in a new and strategically important way for many countries. It adds to diversification, moderating dependence on the Middle East and the Strait of Hormuz and providing options on LNG. While the United States is only one among several suppliers of oil and LNG to India, this growing trade has brought the two nations closer together and added an important positive new dimension to a relationship that had been more contentious in the past.

### CP - Regs CP

#### The United States federal government should substantially increase prohibitions on platform utilities by creating regulations that include standards against owning and competing on the same platform and the acquisition of potential and/or nascent competitors

#### Regulations solve the aff and avoid antitrust DAs---CP’s more predictable and enforceable

Shelanski 18 [Howard Shelanski, Professor of Law, Georgetown University; Partner, Davis Polk & Wardwell LLP, “COMMENT: Antitrust and Deregulation,” 127 Yale L.J. 1922, 1926-1960, May, 2018, lexis]

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

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

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

### DA - BizCon

#### 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.

#### 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.

### DA - Congress Politics

#### Biden slaps backs to pass infrastructure.

López ’9-16 [Burgess Everett and Laura Barrón-López; 2021; reporters, citing Senate Majority Whip Dick Durbin, Sen. Richard Blumenthal, Andrew Bates, a spokesperson for Biden, and Celinda Lake, a pollster on Biden’s campaign; Politico, “Dems call in big gun as they face huge Hill tests,” https://www.politico.com/news/2021/09/16/biden-influence-capitol-democrats-511952]

The next few months will push President Joe Biden to wield every drop of his influence over Congress.

Democrats are plunging into messy internal debates over social programs from child care to drug pricing as they try to beat back GOP resistance on voting rights while steering the United States away from economic catastrophe. And in order to avert a government shutdown, avoid a debt default and fight ballot access restrictions passed in some GOP states, Democratic lawmakers are urging Biden to get more directly involved.

Senate Majority Whip Dick Durbin said that Biden, “more than anyone,” maintains sway over his caucus’s 50 members: “There is no comparable political force to a president, and specifically Joe Biden at this moment.”

Biden appears to be answering the call. The president is getting increasingly involved in Congress’ chaotic fall session as he battles sagging approval ratings, heightened concerns around the pandemic and some internal criticism over his withdrawal from Afghanistan. On Thursday, he'll speak to Senate Majority Leader Chuck Schumer and Speaker Nancy Pelosi ahead of a critical week for funding the government and lifting the debt ceiling.

Rebounding as the midterms draw nearer will depend on whether his big social spending ambitions are realized and if his party can dodge a government shutdown and credit default. But even if he has success on those fronts, he still needs to maintain momentum on Democrats’ elections legislation, which Republicans look certain to torpedo.

“I have full faith and confidence in Joe Biden in all of this,” said House Majority Whip Jim Clyburn, who's pressed Biden to endorse a filibuster carve out for voting rights legislation. “He is working this … and that’s how it should be.”

Biden met with two key Democratic holdouts on his domestic spending agenda on Wednesday, part of a sustained push to keep Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) on board with his legislative program. Biden’s met with Sinema four times this year, in addition to telephone calls made between the two, and has spoken to Manchin a similar number of times.

“Now is the time” for Biden to jump full-force into the reconciliation conversation, said Sen. Tim Kaine (D-Va.). And the White House made clear that Biden is diving into the series of tricky issues.

Andrew Bates, a spokesperson for Biden, said that Biden and his administration "are in frequent touch with Congress about each key priority: protecting the sacred right to vote, ensuring our economy delivers for the middle class and not just those at the top, and preventing needless damage to the recovery from the second-worst economic downturn in American history.”

To help corral all 50 Senate Democrats for the social spending bill, the president and his party need to create an “echo chamber” around its substance, said Celinda Lake, a pollster on Biden’s campaign. But that won't be easy. Manchin has told colleagues he’s worried about whether the bill’s safety net, climate action and tax reforms will be popular in his state, according to one Senate Democrat. He's also said he won't support a measure at the current spending level: $3.5 trillion.

If Biden can hammer home the popular aspects of the spending plan, it may help assuage Manchin and improve his whip count in Congress. Underscoring the degree to which he's become the face of the multi-trillion dollar reconciliation bill, a Democratic aide said the party is increasingly seeking to frame it as Biden’s agenda, not that of Sen. Bernie Sanders (I-Vt.) or any single Democrat.

“People think they like the reconciliation package, but they really don't know what's in it,” said Lake, who added that her polling shows popularity for the measure, particularly among women and seniors.

The coming months will also challenge Biden’s relationship with Republicans, who are threatening to block a debt limit hike after many of them supported a suspension or increase three times under former President Donald Trump. Biden campaigned as a Democrat who could work with Republicans, and he succeeded this summer by rounding up 19 Senate GOP votes for a $550 billion infrastructure bill.

Yet he’s running into a brick wall in convincing Senate Minority Leader Mitch McConnell to provide at least 10 GOP votes to lift the nation's borrowing limit. Republicans say Biden’s dip in the polls isn’t driving their strategy on the debt ceiling. But it’s not helping either.

“I don’t think anything in the last month has increased the likelihood that he can now create an atmosphere of: Let’s work together,” said Sen. Roy Blunt (R-Mo.), who voted for the infrastructure bill and debt ceiling increases under Trump.

The White House is, so far, sticking by its plan to try and call McConnell’s bluff. Aides in the West Wing consider attaching a debt ceiling suspension or increase to a government funding measure the best way to pressure Republicans on the routine step required by law. Should that approach fail, they may be forced to separate the two fiscal measures to avert a shutdown.

On the debt limit, congressional Democrats are in lockstep with the administration's strategy. But they're looking for Biden to exhibit more of his arm-twisting and back-slapping skills on their social spending plan and their bid to shore up voting rights protections.

Biden “knows better than anyone the power of the United States [presidency] in persuading and sometimes cajoling the key members of Congress, when push comes to shove,” said Sen. Richard Blumenthal (D-Conn.).

#### Antitrust requires PC, knocking 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.

#### Infrastructure passage lowers clean energy costs globally and solves existential climate change.

Bordoff ’21 [Jason; March 15; J.D. from Harvard Law School, co-founding dean of the Columbia Climate School, Professor of Professional Practice in International and Public Relations at Columbia University; Foreign Policy, “The Time for a Green Industrial Policy Is Now,” https://foreignpolicy.com/2021/03/15/biden-climate-energy-transition-green-new-deal-industrial-policy/]

Now that U.S. President Joe Biden’s $1.9 trillion plan for economic stimulus and pandemic relief has become law, his administration will turn its attention to a multitrillion-dollar plan to rebuild the United States’ ailing infrastructure. Its scope goes far beyond roads and bridges. Viewed in combination with other parts of Biden’s economic agenda, it reflects a new openness on both sides of the aisle to what has traditionally been known as industrial policy. Critics deride industrial policy as protectionist and as the government picking “winners,” but when it comes to clean energy—a top priority for Biden—a push by his administration to build new and innovative clean energy sectors using industrial policy may actually be the greatest contribution it can make to combating climate change.

Industrial policy, long anathema to mainstream economic policymakers in Washington, is back in vogue. The Biden administration’s Build Back Better economic plan includes targeted support for specific industries to make them more competitive with Asia and Europe and government procurement provisions to boost domestic manufacturing with “Buy America” requirements. As White House economist Jared Bernstein wrote in Foreign Policy, “the rationale for industrial policy is as strong as ever.” Biden’s national security advisor, Jake Sullivan, similarly wrote in Foreign Policy that “advocating industrial policy … should be considered something close to obvious.” Even Republicans, such as Sen. Marco Rubio, have been willing to deviate from the free-market’s gospel by endorsing industrial policy.

The push for industrial policy has been particularly strong for clean energy—as a way to combine battling climate change with building strategically important parts of the economy. The Green New Deal in 2019 drew the link between achieving net-zero emissions and creating millions of jobs by investing in the “industry of the United States.” Biden’s top economic advisor, Brian Deese, said, “some of the biggest opportunities” in climate policy right now are “what some people would call straight-out industrial policy.”

Industrial policy is a phrase used to mean different things. Broadly speaking, it refers to government intervention in the economy to promote and protect targeted sectors, often those considered strategically important. The term is therefore instinctively distasteful to those schooled in the laissez-faire, free-market orthodoxy of Adam Smith’s “invisible hand.” They worry about a creeping state capitalism that favors well-connected companies, stifling innovation and competition.

In reality, of course, the energy sector has never been free of government intervention. Nearly every source of energy receives some degree of favorable tax treatment. Nuclear energy receives government liability protection. Government investment and research gave rise to the shale revolution. As Robert McNally points out in his book, Crude Volatility: The History and the Future of Boom-Bust Oil Prices, the Texas Railroad Commission was the most successful oil cartel in history in setting prices, and even a Republican president like Dwight D. Eisenhower protected the domestic oil industry from the threat of imported oil.

To be fair, there are good reasons for government intervention in the energy market. Energy use and production can impose harm on others, such as through air pollution and carbon emissions. Energy innovation delivers benefits to all of us beyond the economic gains the innovator can capture. Energy infrastructure investment, such as pipelines, transmission lines, and electric vehicle chargers, may be hampered if any one firm’s investments benefit all their competitors or if it risks monopolistic market power of energy delivery mechanisms.

The argument for government’s role in the energy sector is even stronger today. First, the world faces an existential threat from climate change. With time running short to begin sharply curbing emissions, market forces will not deliver the pace of transition needed without robust government intervention. Second, the scale of that transition creates enormous economic opportunity to build new energy sectors. With the economy in a deep hole from the pandemic, leading in these new sectors can spur significant job growth. Finally, given the strategic importance of energy—critical to every citizens’ economic and physical well-being and safety, as the recent crisis in Texas reminded us—there is a strong national security rationale to develop these technologies and capabilities in the United States. As the energy system transitions to cleaner alternatives, there will be new risks associated with the critical minerals’ supply chains required for renewable energy and batteries, cybersecurity, and global trade chokepoints, which argues for reinforcing the domestic U.S. industrial base in these technologies.

To tackle the problem of climate change, Sullivan and Biden’s China advisor, Kurt Campbell, persuasively argued that the United States must pursue not only cooperation but also economic competition with China, for example. Noting that both Democrats and Republicans “are making a convincing case for a new U.S. industrial policy,” they called for more government investment in infrastructure and research in clean energy, among other areas, to confront such a “challenging economic competitor” as China.

The argument against industrial policy to combat climate change is that the government cannot anticipate which technologies will deliver the cheapest solutions. Yet, as the International Energy Agency explained, most of the key technologies the energy sector needs to reach net-zero emissions are known today. Market forces are still powerful—when properly directed by a carbon price—to give firms and consumers the right incentives to adopt and develop those technologies and to determine which ones emerge as the best solutions in different energy sectors.

Moreover, critics of industrial policy argue that if the goal is to reduce emissions as fast as possible, it should matter less whether the technology is made in the United States than whether it is as cheap as possible so more people will adopt it. Germany’s Energiewende, a comprehensive plan to shift the country to renewable energy, has been criticized for its high cost per ton of emissions avoided, which economists have estimated to be between $600 and $1500, much costlier than most other policy interventions. (To put the German numbers in context: The Obama administration estimated the total harm caused by one ton of carbon dioxide to be around $50, although there are good arguments to revise that figure higher.) Jason Furman, a Harvard professor and former Obama administration economic advisor, said “if you think climate change is the biggest challenge facing the country … you should want to make sure a lot of solar and wind energy is produced in the United States. You shouldn’t care nearly as much where panels and turbines are produced.”

Furman’s view is correct if the goal is to cut emissions in the United States as fast as possible. But what if the goal is to decarbonize the entire world’s emissions as fast as possible? What if the goal is to show climate leadership by helping all nations achieve net-zero emissions? In that case, the measure of U.S. climate policy should be less about how fast it brings down domestic emissions, only 15 percent of the world’s annual total, than about how fast it brings down the cost of clean technologies needed for the rest of the world to decarbonize.

Some clean energy technologies, such as solar and wind power or electric vehicles, are fairly cost competitive today relative to their carbon-intensive counterparts. Yet as Bill Gates explained in his new book, the cost difference between carbon-emitting and carbon-free production—what he calls the “green premium”—remains exceptionally high for many sectors and technologies, such as cement and steel, air travel and shipping, long-duration energy storage to cope with the intermittency of renewable energy, and steady sources of electricity like nuclear power or natural gas with carbon capture and storage. These technologies may not be needed to make a large dent in emissions by 2030, but they will absolutely be needed to achieve net-zero emissions by mid-21st century. Consider that the largest source of global greenhouse gas emissions comes from what Gates calls “making things,” such as the production of cement, steel, and plastics—sectors that will almost certainly need nascent technologies to decarbonize.

To promote domestic industries developing technologies for such hard-to-decarbonize sectors, policies should boost demand for such products, spur their deployment, and lower production costs. As first U.S. Treasury Secretary Alexander Hamilton famously explained: “In matters of industry, human enterprise ought, doubtless, to be left free in the main, not fettered by too much regulation; but practical politicians know that it may be beneficially stimulated by prudent aids and encouragements on the part of the Government.”

What might such a clean energy industrial policy look like? Dramatically increasing clean energy research and development funding can accelerate needed innovation. Subsidies can lower the cost of clean energy technologies, and a carbon price can increase the cost of carbon-intensive alternatives. The government can use its procurement power to create more demand or reduce risk for developers by signing long-term energy purchase agreements or guaranteeing them a certain price by paying the difference to prevailing market prices (the “contract for difference” model used in the United Kingdom). Low-cost loans and loan guarantees can support projects by lowering the cost of capital and the barriers to accessing private capital because of perceived technological risk. Infrastructure investment and streamlined permitting can boost demand and overcome chicken-and-egg problems. For example, there may be little incentive to develop zero-carbon hydrogen or install carbon-capture technology on power plants if there are no pipelines to transport fuel or carbon dioxide—but firms will not build the infrastructure until the new technology is commercialized. Trade and economic policy can align U.S. competitiveness with a global clean energy transition, such as through export finance to help clean energy companies compete with Chinese and other competitors in emerging markets. Some argue industrial policy should also protect U.S. firms through import tariffs or “Buy America” provisions, but such protectionist tools risk backfiring if retaliatory measures by other countries close export markets to these new domestic industries.

There are three reasons a U.S. clean energy industrial policy makes particular sense today. First, the technologies needed for sectors that are hard to decarbonize also offer many of the biggest economic opportunities for growth. According to the International Energy Agency, almost half of the cumulative emission reductions needed to achieve net-zero emissions by 2050 come from technologies that are not yet commercially available. China already dominates the market for solar panels and batteries, a result of government decisions taken more than a decade ago, so it would be very difficult for the United States to displace China in these technologies, which China already produces very cheaply. By contrast, the United States is well-positioned to build a strong industrial base to produce and export zero-carbon energy in the form of hydrogen and ammonia, fuel cells to produce zero-carbon electricity, or carbon-capture and removal technologies.

Second, these technologies will be needed to decarbonize globally, and by bringing the cost of these technologies down through government investments, Washington can help accelerate their deployment outside the United States as well. In this way, a U.S. industrial policy to promote clean energy can serve not as protectionism but as one of the country’s greatest contributions to global efforts to combat climate change. In the future, roughly 95 percent of all greenhouse gas emissions will come from outside the United States. Yet developing market countries, which are poorer and use much less energy per capita than developed countries do, will not adopt low-carbon solutions unless they are affordable.

Third, industrial policy that drives down the cost of clean energy “green premiums” while also putting U.S. citizens to work can be among the most effective ways to account for the United States’ historic responsibility for the climate change problem. Climate change results from the cumulative total of all carbon emissions over time, and as of 2019, the United States has contributed 25 percent. By contrast, the entire continent of Africa represents only 2 percent. One way to address this inequity is for wealthy countries to send cash to poorer countries. For example, the Biden administration has pledged that the United States will fulfill its 2014 commitment to provide climate-related assistance to poorer countries, of which $2 billion is still outstanding. But making it affordable for developing countries to grow their energy use and prosperity in climate-friendly ways can be a far greater contribution.

At present, U.S. climate policy ambition is being framed around what commitment Biden will make to reduce domestic emissions by 2030. Yet the steps the Biden administration takes to invest in nascent clean energy technologies and research can be even more important to long-term temperature stabilization goals, even if most of the dividends come after 2030 because of the time it takes for hydrogen, long-duration power storage, carbon capture, advanced nuclear power, and other emerging technologies to scale.

### DA - FTC

#### 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.

## Adv 1

### 1NC - Circumvention

#### Court circumvention---they ignore intent and plain meaning, reject literature bias towards optimism.

Crane ‘21 [Daniel A Crane. Frederick Paul Furth, Sr. Professor of Law, University of Michigan. I am very grateful for many helpful comments from Tom Arthur, Jonathan Baker, Steve Calkins, Dale Collins, Eleanor Fox, Rebecca Haw, Hiba Hafiz, Jack Kirkwood, Bob Lande, Christopher Leslie, Alan Meese, Steve Ross, Danny Sokol, and other participants at the University of Florida Summer Antitrust Workshop. "ANTITRUST ANTITEXTUALISM." https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr]

This view is so widely entrenched in the legal profession’s understanding of the antitrust laws—including, it must be admitted, this author’s—that it seems presumptuous to claim that the conventional wisdom is wrong, or at least significantly overstated. But it is. While the antitrust statutes may be lacking in some important particulars, they present a readily discernable meaning on many others. As Daniel Farber and Brett McDonnell have argued, “For the conscientious textualist, the statutory texts [of the antitrust laws] have considerably more specific meaning than the conventional wisdom would suggest.”5 And it is not simply the case that the meaning of the statutory texts could be rendered through ordinary methods of statutory interpretation but the courts have failed to see it. Rather, the courts frequently acknowledge that the statutory texts have a plain meaning, and then refuse to follow it.

But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in one consistent direction—toward reading down the antitrust statutes in favor of big business. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and continues to this day. In brief: within their first decade of antitrust jurisprudence, the courts read an atextual rule of reason into section 1 of the Sherman Act to transform an absolute prohibition on agreements restraining trade into a flexible standard often invoked to bless large business combinations; after Congress passed two reform statutes in 1914, the courts incrementally read much of the textual distinctiveness out of the statutes to lessen their anticorporate bite; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that not one of the principal substantive antitrust statutes has been consistently interpreted by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has bent always in favor of capital.

#### Clarifying the scope and meaning of vague language doesn’t solve---courts ignore, Congress backs down, it’s already very clear.

Crane ‘21 [Daniel A Crane. Frederick Paul Furth, Sr. Professor of Law, University of Michigan. I am very grateful for many helpful comments from Tom Arthur, Jonathan Baker, Steve Calkins, Dale Collins, Eleanor Fox, Rebecca Haw, Hiba Hafiz, Jack Kirkwood, Bob Lande, Christopher Leslie, Alan Meese, Steve Ross, Danny Sokol, and other participants at the University of Florida Summer Antitrust Workshop. "ANTITRUST ANTITEXTUALISM." https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr]

This Article has shown that, historically, the judiciary has treated the antitrust statutes as broad delegations to the courts to create a pragmatic common law of competition, even when the statutes plainly said something more specifically prohibitory. What, then, are the strategies available to a reformist Congress seeking to rein in business power through remedial antitrust legislation?

The one strategy that does not seem especially promising is simply writing clearer statutes. The antitrust statutes that the courts wrote down in favor of big business did not suffer from a lack of clarity or, if they did, not in the textual implications the courts chose to ignore. Strikingly, the courts continue to insist that the antitrust statutes are indeterminate delegations of common-law power, even while admitting in candor that they have simply chosen to ignore the statutes’ plain meaning in favor of a common method of deciding antitrust cases. For instance, in Professional Engineers, Justice Stevens remarked for the Court that “the language of § 1 of the Sherman Act . . . cannot mean what it says” and therefore that Congress must not have intended “the text of the Sherman Act to delineate the full meaning of the statute or its application in concrete situations,” thus justifying the courts in shaping the “statute’s broad mandate by drawing on common-law tradition.”255 Given over a century’s tradition of interpreting antitrust statutes as invitations to continue a common-law process whatever else is suggested by the statute’s text, it is difficult to see how simply accumulating stern new language in new texts would lead to a different result.

Even where reform statutes are textually honored in their immediate aftermath, history shows a creeping judicial tendency to begin integrating the reform statutes into the mainstream of antitrust jurisprudence within a few decades. This has been the fate of the four major antitrust reform statutes— the FTC, Clayton, Robinson-Patman, and Celler-Kefauver Acts—each of which was meant to rein in capital in ways that the Sherman Act did not. In all four instances, however, the courts incrementally began mainstreaming the statutes into Sherman Act precedent, creating a homogenous antitrust jurisprudence that read the textual distinctiveness out of the reform statutes. Thus, today, cases under the FTC Act, section 3 of the Clayton Act, and the Robinson-Patman Act are largely indistinct from Sherman Act cases,256 and merger cases have been rolled into the same modes of price-theoretic analysis that would be employed in a Sherman Act case.257 Given that neither statutory text nor legislative history seems to have deterred the courts from this process within a few decades after the passage of the statutes, there is little reason to believe that a “this time we mean it” statutory reform would not meet the same fate. If the courts continue to understand aspects of the antitrust statutes as aspirationally motivated and operationally impracticable, the previously observed pattern is likely to continue.

### 1NC - Turn

#### **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

### 1NC - Defense

#### No AI arms race.

Drezner 19 Daniel W. Drezner, international politics professor at Tufts University. [What if AI is just BS? 5-1-19, the Washington Post, https://www.washingtonpost.com/outlook/2019/05/01/what-if-ai-is-just-bs/]

The hard-working staff here at Spoiler Alerts has been attending way too many conferences in the past half-year or so. Big conferences with thousands of political scientists. Small conferences with just a few political scientists. Posh conferences with lots of management consultant types and I am the academic brought in for the sake of intellectual diversity. There has been one constant running through all of them: people who want to sound savvy keep talking about artificial intelligence as the New New Thing. This is what you read in the popular press as well. There are lots of ways that AI could affect the social fabric: there is the potential of lost jobs, or at least a radical reorientation of what jobs would look like. There are the unexpected effects of artificial intelligence, which I believe the sci-fi genre has tackled with a great deal of enthusiasm. And for my bailiwick of international relations, there is a lot of talk about an AI “arms race” that could alter the balance of power in the future. Are these people correct? I am legitimately unsure, but I confess to wariness about claims of technological game-changers. All too often, I hear colleagues reference AI the way that they would reference “globalization” or “Big Data” — terms so amorphous that there is no consensus about the definition. On that question and many others, I strongly recommend perusing Michael Horowitz’s essay in the Texas National Security Review, which makes some very useful distinctions. Horowitz points out that AI is more of a continuum than a precise technology. He also acknowledges that the future of AI is far from clear. He writes, “even experts disagree about whether artificial general intelligence of the type that could outpace human capabilities will emerge in the short to medium term or whether it is still hundreds of years away. AI experts also disagree about the overall trajectory of advances in AI.” For Horowitz, one of the key questions is whether the engine of innovation comes from the private sector (because of AI’s utility as a general purpose technology) or the defense sector (because of AI’s utility for the military). I have some skin in this game, because I wrote something about technological change and international relations for the centennial anniversary of the journal International Relations that was just published. My interest is more in whether AI is a technology that gets standardized pretty quickly, or whether it requires massive fixed costs to develop properly. If it is the former, then industrial policies do not matter much, because the technology will diffuse rapidly. First-mover advantages might matter in terms of standard-setting but not much else. If it is the latter, however, then industrial policy could matter a great deal, with all sorts of unpleasant international implications. Another problem that AI exemplifies is the ways in which old metaphors are applied to news technologies — sometimes inaccurately. In the Bulletin of the Atomic Scientists, Heather Roff has an interesting essay on this very question, in which she notes, “It would help matters if artificial intelligence discussions were framed in an ‘AI +’ framework, because in many cases, AI is merely a tool included in a system involving other functions or capabilities. The news media should stop framing the global artificial intelligence competition as an ‘arms race.’ This misrepresents the competition going on among countries.” I am old enough to remember all the times that a new technology was declared to be the New New Thing. In the late 1980s, it was high-definition television. In the 2000s, it was nanotechnology or biotechnology. AI is the big thing now, unless it is 5G. None of this means that AI is not a significant technology. But it does mean that very often the people proclaiming that are selling you something.

#### No China wars.

Thompson 17 – Timothy Heath, a senior international defense research analyst at the RAND Corporation. William R. Thompson, Political Science Professor at Indiana University. [U.S.-China Tensions Are Unlikely to Lead to War, https://www.rand.org/blog/2017/05/us-china-tensions-are-unlikely-to-lead-to-war.html]

Graham Allison's April 12 article, “How America and China Could Stumble to War,” explores how misperceptions and bureaucratic dysfunction could accelerate a militarized crisis involving the United States and China into an unwanted war. However, the article fails to persuade because it neglects the key political and geostrategic conditions that make war plausible in the first place. Without those conditions in place, the risk that a crisis could accidentally escalate into war becomes far lower. The U.S.-China relationship today may be trending towards greater tension, but the relative stability and overall low level of hostility make the prospect of an accidental escalation to war extremely unlikely.

In a series of scenarios centered around the South China Sea, Taiwan and the East China Sea, Allison explored how well-established flashpoints involving China and the United States and its allies could spiral into unwanted war. Allison’s article argues that given the context of strategic rivalry between a rising power and a status-quo power, organizational and bureaucratic misjudgments increase the likelihood of unintended escalation. According to Allison, “the underlying stress created by China’s disruptive rise creates conditions in which accidental, otherwise inconsequential events could trigger a large-scale conflict.” This argument appears persuasive on its surface, in no small part because it evokes insights from some of Allison’s groundbreaking work on the organizational pathologies that made the Cuban Missile Crisis so dangerous.

However, Allison ultimately fails to persuade because he fails to specify the political and strategic conditions that make war plausible in the first place. Allison’s analysis implies that the United States and China are in a situation analogous to that of the Soviet Union and the United States in the early 1960s. In the Cold War example, the two countries faced each other on a near-war footing and engaged in a bitter geostrategic and ideological struggle for supremacy. The two countries experienced a series of militarized crises and fought each other repeatedly through proxy wars. It was this broader context that made issues of misjudgment so dangerous in a crisis.

By contrast, the U.S.-China relationship today operates at a much lower level of hostility and threat. China and the United States may be experiencing an increase in tensions, but the two countries remain far from the bitter, acrimonious rivalry that defined the U.S.-Soviet relationship in the early 1960s. Neither Washington nor Beijing regards the other as its principal enemy. Today’s rivals may view each other warily as competitors and threats on some issues, but they also view each other as important trade partners and partners on some shared concerns, such as North Korea, as the recent summit between President Donald Trump and Chinese president Xi Jinping illustrated. The behavior of their respective militaries underscores the relatively restrained rivalry. The military competition between China and the United States may be growing, but it operates at a far lower level of intensity than the relentless arms racing that typified the U.S.-Soviet standoff. And unlike their Cold War counterparts, U.S. and Chinese militaries are not postured to fight each other in major wars. Moreover, polls show that the people of the two countries regard each other with mixed views—a considerable contrast from the hostile sentiment expressed by the U.S. and Soviet publics for each other. Lacking both preparations for major war and a constituency for conflict, leaders and bureaucracies in both countries have less incentive to misjudge crisis situations in favor of unwarranted escalation.

To the contrary, political leaders and bureaucracies currently face a strong incentive to find ways of defusing crises in a manner that avoids unwanted escalation. This inclination manifested itself in the EP-3 airplane collision off Hainan Island in 2001, and in subsequent incidents involving U.S. and Chinese ships and aircraft, such as the harassment of the USNS Impeccable in 2009. This does not mean that there is no risk, however. Indeed, the potential for a dangerous militarized crisis may be growing. Moreover, key political and geostrategic developments could shift the incentives for leaders in favor of more escalatory options in a crisis and thereby make Allison’s scenarios more plausible. Past precedents offer some insight into the types of developments that would most likely propel the U.S.-China relationship into a hostile, competitive one featuring an elevated risk of conflict.

The most important driver, as Allison recognizes, would be a growing parity between China and the United States as economic, technological and geostrategic leaders of the international system. The United States and China feature an increasing parity in the size of their economies, but the United States retains a considerable lead in virtually every other dimension of national power. The current U.S.-China rivalry is a regional one centered on the Asia-Pacific region, but it retains the considerable potential of escalating into a global, systemic competition down the road. A second important driver would be the mobilization of public opinion behind the view that the other country is a primary source of threat, thereby providing a stronger constituency for escalatory policies. A related development would be the formal designation by leaders in both capitals of the other country as a primary hostile threat and likely foe. These developments would most likely be fueled by a growing array of intractable disputes, and further accelerated by a serious militarized crisis. The cumulative effect would be the exacerbation of an antagonistic competitive rivalry, repeated and volatile militarized crisis, and heightened risk that any flashpoint could escalate rapidly to war—a relationship that would resemble the U.S.-Soviet relationship in the early 1960s.

Yet even if the relationship evolved towards a more hostile form of rivalry, unique features of the contemporary world suggest lessons drawn from the past may have limited applicability. Economic interdependence in the twenty-first century is much different and far more complex than in it was in the past. So is the lethality of weaponry available to the major powers. In the sixteenth century, armies fought with pikes, swords and primitive guns. In the twenty-first century, it is possible to eliminate all life on the planet in a full-bore nuclear exchange. These features likely affect the willingness of leaders to escalate in a crisis in a manner far differently than in past rivalries.

More broadly, Allison’s analysis about the “Thucydides Trap” may be criticized for exaggerating the risks of war. In his claims to identify a high propensity for war between “rising” and “ruling” countries, he fails to clarify those terms, and does not distinguish the more dangerous from the less volatile types of rivalries. Contests for supremacy over land regions, for example, have historically proven the most conflict-prone, while competition for supremacy over maritime regions has, by contrast, tended to be less lethal. Rivalries also wax and wane over time, with varying levels of risks of war. A more careful review of rivalries and their variety, duration and patterns of interaction suggests that although most wars involve rivalries, many rivals avoid going to war.

## Adv 2

### AT: Protectionism

#### Zero empirical basis for protectionism – only our study is complete

Bradford et al 17 [Anu H. Bradford is a Finnish-American author, law professor, and expert in international trade law. In 2014, she was named the Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School. She is the author of The Brussels Effect: How the European Union Rules the World. "Is EU Merger Control Used for Protectionism? An Empirical Analysis." https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3094&context=faculty\_scholarship]

Previous work on the determinants of Commission antitrust enforcement has produced decidedly mixed results. Bergman et al. (2005), relying on a sample of 96 mergers notified to the Commission between 1990 and 2002, find that political variables—such as the nationality of the merging firms—have no significant effect on the probability of an adverse ruling. Similarly, Lindsay et al. (2003), examining 245 Commission merger decisions between 2000 and 2002, do not find the nationality of the bidder to be a statistically meaningful predictor of Commission action.

By contrast, Aktas et al. (2004, 2007, 2012) have published a series of papers seeking to establish whether Commission merger review reflects a pro-EU bias. In their initial 2004 study, the authors found that investors anticipate higher costs to merging parties when the Commission intervenes in a case involving a non-EU bidder. In a 2007 follow-up piece, the authors examined a sample of 290 Commission merger decisions between 1990 and 2000, finding that the Commission is more likely to oppose a merger when the bidder is a foreign national and when the merger adversely affects European competitors.11 But in 2012, Aktas et al reevaluated that finding, concluding on the basis of an updated sample that the bidder’s status as a foreign national is not a meaningful predictor of outcomes in the Commission merger-review process.

By contrast, Ozden (2005) studies the 209 largest mergers between 1995 and 1999 involving at least one US firm. That study finds that more extensive merger review is more likely if, among other things, the target is European or all U.S. firms in the industry have high market share. Ozden concludes that the higher likelihood of merger review in cases involving a European target reveals a political and economic tendency to protect European firms. 12

None of this prior work, however, made use of a comprehensive sample of all mergers reported to the Commission since the inception of the merger-review process in 1990. Nor, for the reasons described below, did those studies feature covariates addressing significant variation over time, among industries, and among nations. In this Article, we introduce a novel dataset that offers the most comprehensive view of the Commission’s antitrust decisions to date. We describe that dataset in detail in the next section.

### 1NC – AT: Protectionism

#### Strategic self-restraint solves protectionism.

Davis & Pelc 17 Christina L. Davis, Government Professor at Harvard and Politics Professor at Princeton, & Krzysztof J. Pelc, Political Science Professor at McGill University. [Cooperation in Hard Times: Self-Restraint of Trade Protection, Journal of Conflict Resolution, 61(2), 398–429]

Strategic self-restraint. There are two ways in which a pervasive crisis raises the stakes for any single decision to protect domestic industries. First, the presence of common economic hardship in trade partners increases the likelihood of retaliation. These other states facing hard times all come up against the same factors that render them ex ante more likely to impose a remedy measure because their industries suffer injury in a legal sense and mobilize for protection. As all actors are credibly on the brink of imposing remedies, any nudge may push them to respond in kind. Second, the consequences of a trade conflict, were it to arise and reduce trade volume, grow more dire during crisis. As domestic demand declines, states often turn to export markets to restore growth. When markets close, this strategy will fail. To the extent that the remedies imposed by trade partners affect other industries, the trade war will spread the economic hardship from the declining industry that sought the remedy to adversely impact the most productive firms engaging in exports. Without any outlet for growth, production levels and confidence further decline. As a result, states have an incentive to temper their response to domestic troubles if those hard times are shared by others. Altruism plays no role here: a self-interested state can recognize that the odds of retaliation are a function of pressure for relief in other countries that also experience an economic downturn. What we refer to as ''strategic self-restraint" occurs when the home country preference to impose import relief during crisis is offset by the fear that hard times abroad will trigger foreign country retaliation. This resembles patterns of behavior when creditors may resist increasing the risk premia of a troubled debtor in order to avoid pushing the debtor into default (Akemann and Kanczuk 2005; Chapman and Reinhardt 2013). In normal times, trade remedies or rate hikes play an important role to punish those that dump cheap goods or engage in poor management. But when balance sheets are in the red, an actor may decide they cannot afford to risk the possible trade war or default that could result from such actions. Our emphasis on the sensitivity of trade policy to for¬eign country economic conditions augments studies that have largely seen probabil¬ity of retaliation as function of trade dependence and market size (Blonigen and Bown 2003). Further, it is not simply a bilateral fear of tit-for-tat retaliation that motivates restraint. Governments in a network of trading partners with cross-cutting dependencies on trade are closely connected to know what other states are doing and anticipate future repercussions. The tariff raised by country A against country B impacts third countries that fear trade diversion effects flooding their own markets and future policies that will target their own exports. Once protectionism becomes the default response to hard times, other states will not wait to get caught as the last open market and will instead preemptively move to raise barriers. This is the specter haunting governments during the double crisis of economic downturn at home and abroad—their own decision to increase protection could be the tipping point leading to widespread actions by other governments to close markets.

# 2NC

# 2NC

## States

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

#### 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---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.

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

#### ‘Its’ requires a federal possessive.

Merriam-Webster ’20 [Merriam-Webster; updated annually; Online English-language dictionary; Merriam-Webster, “Its,” <https://www.merriam-webster.com/dictionary/its>]

Definition of its:

of or relating to it or itself especially as possessor, agent, or object of an action

### 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.

#### States can de-monopolize Big Tech---subnational antitrust is superior.

Mathis ’19 [Joel; September 10; Writer, B.A. in Communications from Tabor College; The Week, “The federal government is abusing antitrust law,” <https://theweek.com/articles/863797/federal-government-abusing-antitrust-law>]

The very best thing about the multi-state antitrust investigation of Google is that the federal government isn't involved at all.

In normal times, you'd expect — even hope for — the feds to lead an inquiry into a company that captures more than [75 percent](https://www.washingtonpost.com/technology/2019/09/09/states-us-territories-announce-broad-antitrust-investigation-google/) of all spending on online search ads, and whose influence extends into nearly [every aspect](https://gizmodo.com/i-cut-google-out-of-my-life-it-screwed-up-everything-1830565500)of our digital lives. But these aren't normal times. President Trump runs the federal government, and in his hands, antitrust law is a dangerous weapon.

We know this because the investigation into Google is just the second major antitrust investigation announced in the United States during the last week. The other, from the Department of Justice, is [an investigation](https://www.cnn.com/2019/09/06/business/automakers-antitrust-investigation/index.html) into four car companies — Ford, Honda, Volkswagen, and BMW.

The car companies crossed Trump: They have jointly agreed to meet tough air standards set by California, rather than go along with softer rules announced by the Trump administration. So Trump is plainly using the power of the federal government to intimidate them and other car companies — and to make them pay a price for not getting on board with his agenda. That is the very definition of an abuse of power.

"I think this has now become a personal thing between Trump and California," Andrew Linhardt, deputy director of the Sierra Club's clean transportation campaign, [told Politico.](https://www.politico.com/story/2019/09/06/doj-auto-trump-fuel-efficiency-1483589)

It's possible that dark political impulses lurk behind the Google investigation, as well, but the multi-state nature of that investigation makes that much less likely. Fifty states and U.S. territories have joined the effort — only California and Alabama aren't participating — and the officials involved represent such a cross-section of political interests that it seems nearly impossible they would be colluding together to, say, punish the company for its [alleged liberal tendencies](https://www.foxnews.com/opinion/dan-gainor-yes-google-censors-conservatives-even-liberal-journalists-now-admit-it).

Indeed, the [Department of Justice](https://www.cnbc.com/2019/05/31/doj-preparing-antitrust-probe-of-google---dow-jones.html) has launched its own antitrust probe into Google — but that investigation came on the heels of Trump's [repeated complaints](https://www.washingtonpost.com/technology/2019/06/26/trump-signals-us-government-should-be-suing-google-facebook/) that the tech industry is trying to silence conservative voices. Again, the federal inquiry appears to serve the president's desires instead of the public's needs.

The state-led inquiry into Google, meanwhile, isn't focused on whether digital media is sufficiently amplifying Trump's voice, but whether its [near-monopoly power](https://theweek.com/articles/693488/google-monopoly--crushing-internet) might be distorting the markets.

"There's definitely concern on the part of the advertisers themselves that Google wields way too much power in setting rates and favoring their own services over others," Jen King, the director of privacy at Stanford's Center for Internet and Society, [told CBS News.](https://www.cbsnews.com/news/google-antitrust-probe-48-u-s-states-launch-antitrust-investigation-of-google-dominance-in-search-ads-and-data/)

That's a legitimate — even classic — area of antitrust inquiry. Which suggests that if Americans and American businesses are to put their trust in government to rein in the power and excesses of Big Business, possibly by breaking Google up into several smaller businesses, they're better off letting the states, rather than the Department of Justice, lead the way. For now, the federal government simply isn't trustworthy.

Complicating these matters is that antitrust law is undergoing a period of evolution. For decades, the federal government has declined to bring antitrust actions if it could be determined that consumers weren't harmed — financially or with a loss of service options — by a company's monopoly power. But some experts increasingly argue for a return to an older standard that focuses more on [market dominance](https://www.pbwt.com/antitrust-update-blog/congress-hears-challenges-to-the-consumer-welfare-standard) and gives trust-busters more power to break up big companies. Google can argue that its broad power benefits consumers, but it will be more difficult for the company to deny its sheer size within the market.

There is now, however, the question of whether the federal government can be trusted with those expanded powers. The funny thing is that conservatives and libertarians have long complained that antitrust law is potentially abused by overreaching government officials. Now it is a Republican president who seems hell-bent on proving them right.

The difference between these two antitrust inquiries, though, is pretty simple. The state-led effort intends to prevent and curb the abuse of corporate power. The federal probes are an abuse of power. Who do you trust? As the the trust-busters like to say: There's no competition.

### AT: International Signaling

#### Federal inaction bolsters the signal of unified state action.

Spiegel ’21 [Julia; March 3; a Deputy County Counsel in the Santa Clara County Counsel’s Office and Lecturer in International Policy Studies and Law at Stanford University; Lawfare, “Embracing Foreign Affairs Federalism in a Post-Trump Era,” https://www.lawfareblog.com/embracing-foreign-affairs-federalism-post-trump-era; kp]

When Others Have Failed to Act. In the current political climate, a more common scenario is when the federal government and/or global bodies have failed to act in response to a crisis. The global community’s halting response to the coronavirus pandemic is now the paradigmatic example. The absence of national and global action is a form of quiescence—when national governments and global bodies effectively abdicate power—and localities should seize it.

Local to corporate and local to global action would be particularly impactful in the absence of national and global action or guidance. Such local initiatives could play a significant role in places like the Rust Belt, where many communities have felt that foreign affairs issues like global trade have failed to serve their interests. A more assertive approach to foreign affairs—driven by localities—could help to shift that dynamic. While this approach could create a “patchwork” of local responses, patchworks and coordination are not mutually exclusive. And innovation at the local level often spawns more robust and meaningful action at the federal and multilateral levels.

There may be instances where the patchwork creates competing outcomes or confusion with global partners over who represents America’s interests. But, due in part to globalization’s reach, a multifaceted approach to foreign affairs is already a feature of the American political landscape, as California’s shaping of the global car market has shown. The U.S. has more to gain by embracing this reality than by fighting it.

### Theory

#### It's hotly debated, core of the topic, and predictable.

Hildabrand ’15 [Clark; January 16; J.D. candidate at Yale Law School, B.A. from Washington and Lee University, writing under review by Professor George Priest; Tennessee Journal of Business Law, “Interactive Antitrust Federalism: Antitrust Enforcement in Tennessee Then and Now,” vol. 16]

In recent years, state antitrust enforcement has risen to some degree, and state attorneys general have begun supplementing federal enforcement, such as in the notable antitrust litigation involving Microsoft.14 Federal prohibitions against indirect purchaser antitrust actions15 have opened an area of antitrust regulation for state enforcement dominance.16 Some commentators view the heightened state enforcement as a completely novel deviation from the traditionally “passive” state antitrust role,17 but the current trend of more active state enforcement is, in fact, a revitalization of historic state antitrust enforcement activity.18 State antitrust enforcement overlapped and occasionally exceeded federal enforcement in the years before World War I, and, in the absence of negative economic effects from over-regulation, the resurgence of state antitrust enforcement is not inherently troubling.19

In light of the recent debates surrounding the proper relationship between federal and state antitrust enforcement, this Article explores the early years of state antitrust enforcement to see how the Sherman Act impacted state antitrust enforcement. Since Tennessee was the location of the first federal case brought under the Sherman Act20 and has been involved in a recent indirect purchaser action against Microsoft Corporation,21 this Article specifically focuses on the development of antitrust law within Tennessee. Before the Sherman Act, Tennessee antitrust enforcement was limited to the narrow confines of common law restraint of trade,22 but the implementation of the Sherman Act and the national acceptance of stronger antitrust regulation contributed to state antitrust enforcement that surpassed and supplemented the limited federal antitrust capacity in the first few decades following the enactment of the Sherman Act. For these reasons, the author contends that the development and implementation of Tennessee’s antitrust law demonstrates the usefulness of federalism in providing two avenues for consistent enforcement of antitrust law when political and legal limitations preclude one of the methods of enforcement from adequately punishing behavior that harms consumer welfare within states, while simultaneously discouraging the inefficient over-enforcement of antitrust laws.

## ADV 1

### 2NC - Solvency

### 2NC - Circumvention

#### Clarifying the scope and meaning of vague language doesn’t solve---courts ignore, Congress backs down, it’s already very clear.

Crane ‘21 [Daniel A Crane. Frederick Paul Furth, Sr. Professor of Law, University of Michigan. I am very grateful for many helpful comments from Tom Arthur, Jonathan Baker, Steve Calkins, Dale Collins, Eleanor Fox, Rebecca Haw, Hiba Hafiz, Jack Kirkwood, Bob Lande, Christopher Leslie, Alan Meese, Steve Ross, Danny Sokol, and other participants at the University of Florida Summer Antitrust Workshop. "ANTITRUST ANTITEXTUALISM." https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr]

This Article has shown that, historically, the judiciary has treated the antitrust statutes as broad delegations to the courts to create a pragmatic common law of competition, even when the statutes plainly said something more specifically prohibitory. What, then, are the strategies available to a reformist Congress seeking to rein in business power through remedial antitrust legislation?

The one strategy that does not seem especially promising is simply writing clearer statutes. The antitrust statutes that the courts wrote down in favor of big business did not suffer from a lack of clarity or, if they did, not in the textual implications the courts chose to ignore. Strikingly, the courts continue to insist that the antitrust statutes are indeterminate delegations of common-law power, even while admitting in candor that they have simply chosen to ignore the statutes’ plain meaning in favor of a common method of deciding antitrust cases. For instance, in Professional Engineers, Justice Stevens remarked for the Court that “the language of § 1 of the Sherman Act . . . cannot mean what it says” and therefore that Congress must not have intended “the text of the Sherman Act to delineate the full meaning of the statute or its application in concrete situations,” thus justifying the courts in shaping the “statute’s broad mandate by drawing on common-law tradition.”255 Given over a century’s tradition of interpreting antitrust statutes as invitations to continue a common-law process whatever else is suggested by the statute’s text, it is difficult to see how simply accumulating stern new language in new texts would lead to a different result.

Even where reform statutes are textually honored in their immediate aftermath, history shows a creeping judicial tendency to begin integrating the reform statutes into the mainstream of antitrust jurisprudence within a few decades. This has been the fate of the four major antitrust reform statutes— the FTC, Clayton, Robinson-Patman, and Celler-Kefauver Acts—each of which was meant to rein in capital in ways that the Sherman Act did not. In all four instances, however, the courts incrementally began mainstreaming the statutes into Sherman Act precedent, creating a homogenous antitrust jurisprudence that read the textual distinctiveness out of the reform statutes. Thus, today, cases under the FTC Act, section 3 of the Clayton Act, and the Robinson-Patman Act are largely indistinct from Sherman Act cases,256 and merger cases have been rolled into the same modes of price-theoretic analysis that would be employed in a Sherman Act case.257 Given that neither statutory text nor legislative history seems to have deterred the courts from this process within a few decades after the passage of the statutes, there is little reason to believe that a “this time we mean it” statutory reform would not meet the same fate. If the courts continue to understand aspects of the antitrust statutes as aspirationally motivated and operationally impracticable, the previously observed pattern is likely to continue.

#### Historically, not a single law has been interpreted faithfully

Crane 21 [Daniel A Crane. Frederick Paul Furth, Sr. Professor of Law, University of Michigan. I am very grateful for many helpful comments from Tom Arthur, Jonathan Baker, Steve Calkins, Dale Collins, Eleanor Fox, Rebecca Haw, Hiba Hafiz, Jack Kirkwood, Bob Lande, Christopher Leslie, Alan Meese, Steve Ross, Danny Sokol, and other participants at the University of Florida Summer Antitrust Workshop. "ANTITRUST ANTITEXTUALISM." https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr]

In sum, from the courts’ earliest forays into interpreting the Sherman Act up through contemporary antitrust jurisprudence, the courts have manifested a systematic tendency to interpret the substantive antitrust statutes contrary to their texts, legislative histories, and often their spirit.236 Sometimes, as with the rule of reason and labor exemption, the judicial disregard of text and purpose has occurred fairly immediately. In other cases, as with the Robinson-Patman and Celler-Kefauver Acts, an initial period of statutory fidelity has slipped gradually into a period of statutory infidelity. In some cases, as with respect to section 5 of the FTC Act and section 3 of the Clayton Act, the courts continue to proclaim their fidelity after they functionally move to infidelity. In many cases, the courts stop pretending after a while and admit quite candidly that they are taking liberties with the statute.

If this antitrust antitextualism is merely the product of common-law methodology, one would expect to see movement away from the statute’s text in both permissive and restrictive directions, or, to put it more crassly, both in favor of big capital and against it. But the movement has all been in one direction: loosening a congressional check on big capital. Thus, the rule of reason allowed courts to bless large combinations of capital that the courts deemed reasonable; narrowing the labor exemption frustrated labor’s ability to countervail capital’s power; restricting the private right of action for treble damages significantly curtailed the private-litigation check on business; judicial narrowing of the Clayton Act’s exclusive dealing and tying restrictions allowed (mostly big) firms to exploit market power; reading “unfair” out of the FTC Act eliminated section 5 as a check on business morality; eviscerating the Robinson-Patman Act protections for small and independent businesses favored large and powerful businesses; and requiring proof of likely price increases and technical relevant market definition in merger cases immunized many large-scale mergers from legal challenge. Throughout the history of American antitrust law, the courts have shown a systematic tendency to read down the antitrust statutes in favor of big capital.

But the story of antitrust antitextualism is not simply one of conservative/progressive ideological struggle between Congress and the courts. Much of the action away from statutory text and purpose was accomplished by, or with the support of, judges of the political left. Unlike in other fields, Congress has not responded with statutory overrides. And far from buttressing its atextual statutory readings of the antitrust laws through veiled constitutional warnings about congressional overreaching, the Court has repeatedly pulled in the opposite direction, asserting quasi-constitutional reverence for antitrust law.237 Despite ample opportunity to do so, the Court has not removed antitrust law from the reach of congressional reconsideration by constitutionalizing its atextual readings. Antitrust antitextualism does not follow a conventional left/right ideological pattern. Its actual pattern is more subtle.

#### Courts ignore the law---clarity, congressional intent, and precedent are all irrelevant

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Judges and scholars frequently describe antitrust as a common-law system predicated on open-textured statutes, but that description fails to capture a historically persistent phenomenon: judicial disregard of the plain meaning of the statutory texts and manifest purposes of Congress. This pattern of judicial nullification is not evenly distributed: when the courts have deviated from the plain meaning or congressional purpose, they have uniformly done so to limit the reach of antitrust liability or curtail the labor exemption to the benefit of industrial interests. This phenomenon cannot be explained solely or even primarily as a tug-of-war between a progressive Congress and conservative courts. The judges responsible for these decisions were far from uniformly conservative, Congress has not mobilized to overturn the judicial precedents, nor, despite opportunities to do so, have the courts constitutionalized their holdings to prevent congressional overriding. Antitrust antitextualism is best understood as an implicit political arrangement in which Congress writes broad statutes expressing anti-bigness republican idealism, and then the courts read down the statutes pragmatically to accommodate competing demands for efficiency and industrial progress.

#### Congress won’t check---decades prove they avoid conflict with the courts over interpretive issues

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Congress writes expansive statutes reining in business power, the courts (either immediately or over time) disregard the plain text of the statutes and trim them down in favor of capital, and Congress acquiesces through inaction. Why? The best-fitting explanation is this: the antitrust laws reside in perennial tension between two fundamental impulses of the American political psyche—the romantic and idealistic attachment to smallness over bigness, and the pragmatic and often grudging realization that large-scale organization may be necessary to achieve material advantages. The romanticism and idealism of the anti-bigness impulse pushes it to the fore in the popular political arena. Congress legislates on the popular aspiration for an egalitarian economy organized around small proprietors and independent local businesses and freedom from economic dominance. When the statutes come to the courts or antitrust agencies, judges and antitrust enforcers play the pragmatic role of balancing those popular aspirations against the contending impulse for efficiency and material benefit. This balancing act induces them to give less effect to the statutes than the broad statutory texts suggest. So long as the judicial decisions achieve results that strike a politically acceptable outcome between the aspirational and pragmatic impulses, Congress is content to leave the judicial and enforcement decisions alone.

### Turn

#### Brink is now---America's responding to adversaries but cannot afford antitrust expansion.

CCIA '9/13 [Computer & Communications Industry Association; 9/13/21; "National Security Issues Posed by House Antitrust Bills," https://www.ccianet.org/wp-content/uploads/2021/09/CCIA-KS-NatSec-White-Paper.pdf/]

The United States is at a critical inﬂection point in its innovation race with China and the economic, geopolitical, and national security stakes could not be higher. Chinese President Xi last year announced his government would invest $1.4 trillion by 2025 to overtake the United States in key technology ﬁelds, and as of 2018, nine of the top twenty technology ﬁrms by market valuation are now based in China. In response to this ongoing threat, the Senate recently passed an ambitious proposal to empower U.S. technology research and development, particularly in key emerging technologies like artiﬁcial intelligence, quantum computing, and cloud services.

However, the House of Representatives is considering several bills targeting leading U.S. technology ﬁrms with sweeping provisions that are in serious tension with the overall U.S. national innovation strategy to combat China and other adversaries. In fact, these bills contain provisions that, as drafted, may inadvertently undermine U.S. national security by transferring sensitive data to adversaries and granting foreign competitors access to U.S. digital platforms, hardware, and software. Additionally, these bills would weaken the U.S.’s ability to counter foreign cyber attacks, espionage, inﬂuence and surveillance efforts. Furthermore, only a small group of U.S. tech companies are in scope under these bills, while a much larger set of foreign rivals in China, Russia, and other markets are entirely exempt from the legislation.

#### Biden's building on Trump's hardline approach with proactive investments and partnerships.

Kharpal '21 [Arjun; 4/28/21; senior technology correspondent for CNBC; "First 100 days: Biden keeps Trump-era sanctions in tech battle with China, looks to friends for help," https://www.cnbc.com/2021/04/29/biden-100-days-china-tech-battle-sees-sanctions-remain-alliances-made.html/]

In his first 100 days as president, Joe Biden has made one thing clear — he wants to make sure the U.S. outcompetes China on a number of fronts, with technology being front and center.

His policies continue the Trump-era hardline on export controls to Chinese technology companies but adds some new elements — collaboration with allies in areas seen as critical, such as semiconductors and a focus on beefing up domestic capabilities.

“The priority is on domestic innovation and forging technology alliances to coordinate confrontation against China in the tech domain,” Paul Triolo, head of the geo-technology practice at Eurasia Group, said.

What has Biden done so far?

The Biden administration has kept some Trump-era export bans on Chinese companies. Under Trump, telecommunication equipment maker Huawei and China’s largest chipmaker SMIC were put on the so-called “entity list,” which restricts American firms from exporting technology to companies on this blacklist.

Last year, the Trump administration introduced a rule that effectively cut Huawei off from critical semiconductor supplies, a move which has hurt the technology giant’s smartphone business. The U.S. maintains Huawei is a national security threat, a claim the Chinese firm has repeatedly denied.

For Trump, ensuring U.S. technology did not make it into the hands of Chinese companies was key, especially in critical areas like chips.

While Biden has kept these rules in place, he has also announced policies aimed at boosting American innovation.

“Where the Trump administration tended to focus on defensive measures (e.g., restrictions on Chinese military companies), early messaging about Biden’s approach suggests that it pairs those with more offensive, or proactive ones — investments, for example, in alternatives to China,” said Emily de La Bruyere, co-founder of consultancy Horizon Advisory.

In his American Jobs Plan, Biden calls on Congress to make a $180 billion investment in advancing “U.S. leadership in critical technologies and upgrade America’s research infrastructure.” There is also a call to invest $50 billion in manufacturing and research, via the bipartisan CHIPS Act.

Earlier this month, a number of Democrat and Republican lawmakers reintroduced the Endless Frontier Act to the legislative process. This proposes changing the name of the U.S. National Science Foundation (NSF) to the National Science and Technology Foundation (NSTF). This is an independent agency of the U.S. government aimed at advancing scientific research.

A technology directorate would be set up under the newly-named NSTF and would be given $100 billion over five years to “reinvigorate American leadership in the discovery and application of key technologies that will define global competitiveness.”

The directorate would fund research in 10 key areas including artificial intelligence, semiconductors, robotics, materials sciences, advanced communications technologies, among others.

The focus on domestic investment but also maintaining export controls is “primarily driven by the perceived need to protect the U.S. company technology leadership in key areas such as semiconductor manufacturing,” Triolo said.

But “raising new barriers around U.S. technologies and essentially weaponizing key supply chains as part of an effort to contain China’s rise are (also) part of the Biden strategy,” he added.

#### 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.

## ADV 2

### AT: Protectionism – Anti-Trust Exploit – 2NC

#### No protectionist anti-trust – it backfires on domestic industries and it’s too cumbersome to enforce

Bradford 12 [Anu H. Bradford is a Finnish-American author, law professor, and expert in international trade law. In 2014, she was named the Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School. She is the author of The Brussels Effect: How the European Union Rules the World. "Antitrust Law in Global Markets." https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2977&context=faculty\_scholarship]

Other authors have questioned that trade fl ows could lead to biased antitrust enforcement. Einer Elhauge and Damien Gerardin note that the effects doctrine compromises states’ ability to engage in systematic underenforcement or overenforcement.135 If a net- exporting country were to enact overly lax antitrust laws, its producers would still be subject to the antitrust laws of the importing jurisdiction, assuming their activities have an eff ect on that market.136 The prospect of a concurrent jurisdiction by importing jurisdictions renders net- exporting countries’ underenforcement irrelevant, steering them towards optimal regulation.137 Elhauge and Geradin point out that the importing jurisdiction also has optimal incentives to regulate as long as it embraces the consumer welfare standard.138

Michael Trebilcock and Edward Iacobucci question whether trade defi cits or surpluses would ever determine countries’ preferred level of antitrust regulation, given that trade imbalances usually constitute only a small percentage of any nation’s GDP.139 John McGinnis notes that tr ade fl ows have a tendency to fl uctuate, and doubts that countries amend their antitrust laws in response to their changing trade balances.140 McGinnis further argues that trade- flow bias would be infeasible to apply in practice, considering that it is often difficult to categorize a multinational corporation as ‘domestic’ or ‘foreign’. Hence, exercising bias against a ‘foreign’ corporation may have the unintended eff ect of harming the corporation’s many domestic shareholders and employees.141 Anu Bradford points out that biased policies may have similar unintended consequences on domestic industries that rely on intermediate goods, since such goods comprise approximately 50% of the total imports in developed countries.142 Thus, if a country is a net- importer, predisposed to adopt overly strict antitrust laws, those strict antitrust laws would not only target the foreign producers attempting to penetrate the market but also domestic firms that depend on imported goods as inputs or raw materials.143 This criticism, if accepted, suggests that trade flows have, at best, only a marginal effect on countries’ level of antitrust regulation.

#### No stats for protectionism – it’s political bluster, the best data says they prefer US firms

Bradford et al 17 [Anu H. Bradford is a Finnish-American author, law professor, and expert in international trade law. In 2014, she was named the Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School. She is the author of The Brussels Effect: How the European Union Rules the World. "Is EU Merger Control Used for Protectionism? An Empirical Analysis." https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3094&context=faculty\_scholarship]

As noted above, the Commission has routinely been criticized for being particularly interventionist when a firm based in the United States is a party to the transaction. This could be, for instance, because of the inevitable economic and political rivalry between two major economic powers that (combined) host the majority of the world’s major companies. Some critics also suggest that the EU is particularly envious of the US technological dominance and the demonstrated success of the many IP-rich US firms that risk leaving less innovative European companies behind.23

We therefore repeat our above regressions with a constructed dummy variable for whether the merger has a US-based acquirer and an EU-based seller. Table 7 mirrors Table 4 and compares mergers with US acquirers and EU sellers with all other mergers in the sample. Again, we find nothing but negative effects of US-based acquirer and EUbased seller on probability of Commission challenge, which suggest that, if anything, mergers with US acquirers and EU sellers are less likely to be challenged.

[Insert Table 7 Here.]

It is again instructive to further partition the dataset. In Table 8, we partition the mergers with non-EU acquirers and EU sellers into those with US acquirers and those with nonUS non-EU acquirers, and compare these different categories against the baseline of mergers with EU acquirers and EU sellers. The table shows that, compared to mergers with EU acquirers and EU sellers, neither the acquisitions of EU firms by US-based acquirers nor the acquisitions of US firms by US-based acquirers face greater likelihood of Commission intervention.

[Insert Table 8 Here.]

In Table 9, we find no evidence of protectionism when we include an interaction term with high-tech industries. The lack of evidence of protectionism remains when we perform the analysis using the primary place of business instead of the Commission’s designated nationality, or when we designate the nationality of the firms based on the acquirer’s ultimate parent’s place of business instead of that of the direct acquirer’s. Appendix Table 11 contains additional robustness checks.

#### Zero protectionism – no stats

Bradford et al 17 [Anu H. Bradford is a Finnish-American author, law professor, and expert in international trade law. In 2014, she was named the Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School. She is the author of The Brussels Effect: How the European Union Rules the World. "Is EU Merger Control Used for Protectionism? An Empirical Analysis." https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3094&context=faculty\_scholarship]

In this Article, we have introduced a unique dataset including all mergers reported to the European Commission between 1990—the year when EU merger control was established—and August 2014. Our data has allowed us, for the first time, to examine systematically several long-hypothesized assumptions of the protectionist foundations of EU competition policy.

Our finding challenges the conventional wisdom that portrays the European Commission as a protectionist institution that deploys its vast merger control powers as a tool for industrial policy. We find no evidence that the Commission has systematically used its authority to intervene more frequently or more extensively in transactions involving a foreign firm’s acquisition of an EU-based firm, or transactions involving a firm based in the United States. If anything, our results suggests that the Commission is less likely to challenge transactions involving foreign acquirers. While we cannot claim to have conclusively proven that protectionism is absent from Commission merger control, we argue that our analysis has, at the minimum, turned the tables and shifted the burden of proof to those entertaining these claims.

Our results have significant implications, both theoretical and practical. Beyond their direct contribution to the debate on the drivers of European merger policy, our findings provide an important corrective to the broader public debate regarding the behavior of one of the most powerful regulatory institutions in the world. Our analysis also makes a contribution to the more general academic debates on international spillovers of domestic regulatory policies, regulatory constraints on global M&A deals, as well as modern manifestations of economic protectionism.