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THE NEW COLD WAR IS ECONOMIC: ANTITRUST IN THE SHADOW OF GLOBAL TENSIONS

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ABSTRACT

The concept of a "New Cold War" today does not refer to ideological or nuclear standoffs but rather a more subtle, multi-dimensional war waged on the basis of antitrust enforcement, trade policy, and technological competition. This paper argues that antitrust law, whose traditional foundations have been based on consumer welfare and productive efficiency, is being shaped increasingly through the lens of geopolitics in different jurisdictions - fundamentally the United States, the European Union and China. Whether it is U.S. export controls and supply chain "friend-shoring" driven by the CHIPS Act, the European Union's Foreign Subsidies Regulation, or China's use of its Anti-Monopoly Law to block foreign acquisitions and technology transfer, competition law is being weaponized as a tool of state power.

Using a range of case studies, including Nvidia-Arm merger and DMA enforcement in the EU, this paper argues that antitrust is intertwined with national security and industrial policy. The article also advocates for a re-balancing of competition legislation that has a strategically autonomous basis, while also seeking innovation, legal certainty, and open markets. Through a comparative analysis of regulatory approaches and recent enforcement practices, this paper advocates for international coordination and greater transparency around decision-making to avoid an escalation of trade and regulatory conflict. Ultimately, this article contends that the future of global antitrust will rely on its ability to operate within the tensions existing between geopolitics and economic fairness and to maintain competition policy's original mandate of democracy and promotion of innovation amid potentially troubling divides.

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I. INTRODUCTION

"I believe it is still true that conflicts among major powers usually stem from geopolitical rivalries but rarely from economic competition."

- Robert Kagan

The twenty-first century has heralded a fundamental change in the nature of global conflict. Whereas ideological confrontation and military escalation characterized world politics in the 20th century, the current conflict represents something much more complex. This modern-day "new cold war" no longer consists of nuclear warheads and armed battalions. We are instead engaged in a competition resolved through board rooms, courts, and regulatory bodies. A new conflicted order is emerging in which economic policy, especially competition law, is now recognized as an increasingly relevant tool of national power projection, and a critical substrate of global influence.[1]

While traditional antitrust frameworks were developed to achieve consumer welfare, market efficiency, and economic freedom[2], the regulatory choices present for today's competition authorities reflect more industrial strategy, supply chain resilience, and inter-state competitive rivalry than ever before.[3] States are participants in the market, not just sources of regulation, using their antitrust laws strategically and preferentially to promote and protect domestic champions, retaliate against foreign adversaries, and stake a claim to regulatory authority over transnational digital ecosystems. In this fragmented landscape, competition law is not only back on the table, it is a statecraft tool.

This shift demands a fundamental rethinking of what "fair competition" means in a globalized but fragmented economy. If legal regimes differ in how they treat dominant firms, foreign subsidies, or data governance, then the very notion of a cohesive global competition framework begins to work against itself. The global convergence that was once envisioned in the international competition policy community now consists of a multiple, sometimes hostile, reality, whereby antitrust enforcement may now be used as a tool to reset economic dependencies, or to show national resolve.

[1] David Gerber, *Global Competition: Law, Markets and Globalization* (OUP 2010).
[2] Herbert Hovenkamp, *Federal Antitrust Policy: The Law of Competition and Its Practice* (6th edn, West Academic 2020).
[3] Dani Rodrik, 'The Return of Industrial Policy' (2004) 26(2) *Journal of Economic Perspectives* 83.

This article will consider and critically evaluate the emerging nexus of competition law and geopolitics, along with the assumption that fair competition can only be thought of in terms of efficiency, when it must also contend with factors such as technological sovereignty, economic coercion, and strategic autonomy.[1] This article documents the trajectory of antitrust into an instrument of economic statecraft and offers a comparison of enforcement, on the whole, in the United States, European Union, and China, each representing a unique regulatory philosophy shaped by the politically charged institutional and economic circumstances.

Through this endeavour, this paper advances the more expansive project of rethinking fair competition in global markets. The issue in the future about the future of antitrust enforcement will involve striking a balance between principled open markets and legitimate national security considerations. Although geopolitical pressures are unlikely to ease, there is a need for competition authorities to uphold a commitment to a normative ideal of transparency, predictability, and procedural fairness. Only then will antitrust retain its normative authority in an increasingly multipolar and polarized world.

II. ANTITRUST IN A GEOPOLITICAL CONTEXT

A. Rethinking Antitrust: From Economic Regulation to Strategic Instrument

Traditionally, the field of antitrust law emerged to counter market power and monopolistic behaviours, based on a liberal idea that competition produces new ideas that lead to lower prices and more consumer welfare. The United States fundamentally enshrined this ethos in the Sherman Act of 1890, the Clayton Act of 1914, and the Federal Trade Commission Act of 1914, which form a legal wall to block the use and unregulated growth of industrial conglomerates and trusts.[2] The EU's competition framework was derived from Articles 101 and 102 of the TFEU, where the objective was not only to foster competition to create new sources of innovation, but also harmonize the internal market to ensure economic unity for its Member States.[3] China's adoption of the Anti-Monopoly Law (AML) in 2008 represented a growing institutional commitment to the regulation of market power, yet still represents a system where industrial policy and the state exerting control over the country's economy plays an integral role. [4]

[1] Eleanor Fox and Mor Bakhoum, *Making Markets Work for Africa* (OUP 2019).
[2] Sherman Antitrust Act 1890, 15 USC §§ 1–7; Clayton Act 1914, 15 USC §§ 12–27; Federal Trade Commission Act 1914, 15 USC §§ 41–58.
[3] Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, arts 101–102.
[4] Anti-Monopoly Law of the People's Republic of China (adopted 30 August 2007, effective 1 August 2008) Order No.68 of the President of the PRC.

Yet the last few years has witnessed the repurposing and recomposition of these frameworks from geopolitical considerations. With states encountering both positive effects and trade-offs with economic interdependence such that it is simultaneously a means of growth and source of vulnerability, states have increasingly relied on antitrust enforcement to further broader geo-economic objectives. This includes defending technological sovereignty, limiting foreign influence in strategic supply chains, and responding to losses associated with perceived economic coercion.

This evolution signals a broader tension within the very idea of competition law. Is antitrust only about ensuring allocative efficiency and consumer welfare? Or, should it account for aspects of society such as technological autonomy, enabling access to the market for emerging domestic competitors, and economic resilience? There appears to be a gentle consensus forming especially amongst domestic, strategic-political decision-makers that leans toward a consideration of societal aspects, including economic resilience and technological sovereignty, raising very significant questions about the implications for legal interpretation, discretion in enforcement, and cross-border collaboration.

B. The Political Economy of Antitrust in a Multipolar World

It is important for scholars attempting to understand the current reconfiguration of antitrust regimes to do so within the larger political economy of globalisation and recent de-globalisation from the 1990s to around the early 2000s which was characterised by a period of liberalisation and international convergence around the Chicago School's consumer welfare standard. The unequivocal emphasis on price effects, output, and efficiency in competition policy came to be considered central to competition policy.[1] This model was taken up by a range of developed and developing economies serving as a common, ideologically agnostic template for assessing merger, abuse of dominance, and anti-competitive agreements.

However, this consensus unravelled with the advent of state capitalism, digital monopolies, and geopolitical competition. As countries adopted the advantages of digital markets and latched on to the powerful network effects of entrenched platforms that had effectively global dominance, the familiar market definitions and thresholds for intervention became less representative and more inadequate. At the same time, certain countries, such as China, began to utilize their regulatory frameworks for the purpose of advancing industrial policy goals and not purely to address market failure, such as boosting local champions from state backed entities, technology

[1] Daniel A Crane, *The Institutional Structure of Antitrust Enforcement* (OUP 2011) 15.

transfer from foreign companies, or restricting foreign control of strategically sensitive and important sectors; thereby challenging states, even liberal democracies, to reconsider what the non-enforcement of competition law might look like, in practice.[1]

In that new context, geopolitical antitrust is understood to represent a conscious intermingling of national interest into the practice of competition enforcement, which may include a greater tolerance for scrutinizing local "champions" in sectors like semiconductors and defense, but also a higher degree of investigation on foreign investments, especially from geopolitical rivals. An example of this consideration in the United States is explicitly reflected in the collaborative work of the Department of Justice (DOJ), Federal Trade Commission (FTC), and Committee on Foreign Investment in the United States (CFIUS). In the European Union, Foreign Subsidies Regulation (FSR) and ex ante digital rules under the Digital Markets Act (DMA) mark a conscious recalibration of competition tools to appropriately intervene against global strategic distortions.[2]

This politicisation of antitrust is no longer latent as evidenced by state actions, but institutionalised. In the US, the Biden administration's enforcement philosophy includes Lina Khan at the FTC, Jonathan Kanter at the DOJ, and broadly expands the antitrust playing field to include structural market power, worker harm, and systemic democratic harm, a purely political ethos.[3] "Fair competition" requires considering not only consumer prices but also democratic accountability and fairness in the democratic process against monopolistic and bureaucratic gatekeeping. Critics would say for all of their normative centre-right authenticity, this constructive destruction of antitrust downsizes scale, innovation, and global competitiveness when also restricted to states, normatively or practical leaned-over when contrasting with state-backed Chinese firms.

C. Strategic Enforcement and the Return of Industrial Policy

The blurring of competition law with industrial strategy has asked a long-ignored question familiar to the antitrust community: Should antitrust law acknowledge development goals? Whereas lawyers have traditionally been concerned that the ability to politicise enforcement would lead to legal certainty, policymakers today feel more comfortable with a holistic, whole-of-government approach that incorporates regulatory regimes differently.

[1] Angela Huyue Zhang, 'The Antitrust Paradox of China Inc.' (2021) 36 Berkeley Tech LJ 151.
[2] Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market [2022] OJ L330/1; Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act) [2022] OJ L265/1.
[3] Lina M Khan, 'Amazon's Antitrust Paradox' (2017) 126 Yale LJ 710.

Consider the United States and the CHIPS and Science Act, which is designed to repatriate semiconductor production with provision of over USD 52 billion.[1] While it is not competition law and does not expressly dictate antitrust enforcement parameters, it will overlap with merger reviews of semiconductor makers in ways that must also be considered in assessments of market concentration in this industry. Consider the case of mergers that involve design firms for chips like Synopsys or Nvidia. These transactions will likely carry regulatory burdens not only related to competition but also with regard to foreign dependencies and control of innovation.

The Digital Markets Act of the European Union prioritizes an approach of managing "gatekeepers" versus reviewing a merger after it occurs. This signals an intent of the EU to protect smaller European players from being squeezed out by transatlantic tech giant firms that have become ubiquitous in our markets. This rationale fits squarely within the European Union's larger goal of establishing digital sovereignty, as the EU intends to make certain that its data, algorithms, and user marketplaces are not detached from foreign norms or bordering on colonial practices. Further, the Foreign Subsidies Regulation intends to protect its internal market against state financial aid distortion to competition, in this instance, to reduce distortion against competition from firms located in non-EU states, like China. [2]

By contrast, China has never hidden its current strategic rationale for its antitrust regime. The Anti-Monopoly Law (AML) lays out industrial policy and national security connections with Article 1 describing the "healthy development of the socialist market economy".[3] Antitrust enforcement is routinely used to delay and or block foreign transactions, in wrangling terms or take concessions in deals, pressing for technology transfers, often couched in notions of market stability or in terms of consumer interest. The State Administration for Market Regulation (SAMR) operates as a regulatory body, but more importantly acts an economic nationalism component of the party-state.

D. Theoretical Implications for "Fair Competition"

There is a transformation occurring in antitrust frameworks around the globe requiring a re-evaluation of the conceptual foundations of fair competition. The analysis of competitive outcomes can no longer be measured just by price and output. Rather, a multidimensional

[1] CHIPS and Science Act 2022, Pub L No 117-167, 136 Stat 1372 (US).
[2] European Commission, 'White Paper on levelling the playing field as regards foreign subsidies' COM (2020) 253 final.
[3] AML (n 3) art 1; Angela H Zhang, *Chinese Antitrust Exceptionalism: How the Rise of China Challenges Global Regulation* (OUP 2021) 28.

understanding of fair competition is beginning to take shape which recognizes fairness as including notions of openness, access, resilience, and strategic autonomy. That is not to say that the foundational principles of antitrust should be disregarded; the principles need to be applied to an environment where power asymmetries are not simply economic but geopolitical. Regulators must evaluate whether firms in dominant positions are thwarting competition not only by market circumstances but also through geo-political mechanisms of control over infrastructure, data and supply chains. As regulators wrestle with these geopolitical realities, they must also guard against extreme protectionism and politicization of the enforcement of antitrust. Such overly protectionist actions could lead to regulatory retaliation; inconsistent standards across jurisdictions; and harm to innovation. Regulators must therefore strike the correct balance by distinguishing between genuine strategic tensions from protectionism. Transparency; inter-agency cooperation; and international engagement are all reasonable expectations for regulators. Remedies such as structural remedies, behavioural remedies, or interoperability requirements must reflect market fair competition with fair use of resources and national resilience, if enforcement actions are based on evidence; procedurally fair; limited by jurisdictional authority.

We're entering a new era of antitrust, an era in which competition law is no longer a neutral economic referee, but a strategic, contested structure. The challenge is not only to resist politicisation, but to address the intersection between competition law and national interest with integrity and coherence. As the global economy continues to move towards multipolarity, rethinking fair competition requires more than doctrinal consistency; it requires a consideration of law as a tool of not just economic governance, but one of geopolitical negotiations.

III. WEAPONIZED INTERDEPENDENCE AND ECONOMIC STATECRAFT

A. The Vulnerability of Global Economic Networks

The post-Cold War world order was based on an important belief: that more significant economic integration would be a source of both growth and stability through mutual interdependence and, thus, peace. Organizations like the World Trade Organization (WTO), World Bank and International Monetary Fund (IMF) were premises on the idea that open trade and harmonized rules would tie countries into a cooperative international system. This vision had the support of liberal competition policy frameworks, which promoted efficiency, consumer welfare, and cross-border investment, and which supposed that economic interests would lead to cooperation and peace.

However, this model of benign interdependence has broken down. The 2008 global financial crisis, the COVID-19 pandemic, and the strategic rivalry of the United States and China laid bare the vulnerability of interconnected supply chains. What many saw as economic complements through interdependence has turned dangerous and fragile. The economic welfare of nations is now coupled with the potential for coercion and weaponized interdependence. From semiconductor scarcity to data localization skirmishes, the lines of weaponized interdependence have become starkly visible.

The concept of "weaponized interdependence", proposed by academics Henry Farrell and Abraham Newman, describes this strategic change.[1] Within their framework, the states that sit in the "nodes" of global economic or technological supply chains (the "node" of SWIFT for finance, semiconductor supply chains) can use that position asymmetrically to surveil others, coerce others, or exclude others. These choke points are not just impersonal facilitators of rendering markets operational; they are instruments of economic surveillance and sovereignty.

In such a world, competition policy cannot remain neutral. Antitrust policies are no longer located in markets; they exist in markets where other actors are manipulating access and infrastructure by embedding dependencies as strategic actions. This all creates clarity that the very structure of globalization. Financial systems, data flows, cloud infrastructure, rare earth supply chains can be weaponized. Regulators too are being brought into this.

B. Economic Tools as Coercive Instruments

This updated toolkit of economic statecraft is not theoretical; it is being utilized by significant powers now. The United States, China, and the European Union all have some variant of coercive economic measures, usually in reaction to geopolitical provocations. What is new is the legal and regulatory camouflage under which these are deployed. Antitrust law, export control, investment review, and trade remedy are, more and more, being rebranded as tools of national interest and not necessarily as tools of offensive statecraft.

i. The United States: Export Controls and Industrial Sovereignty

The U.S. is pursuing a dual approach, first, restricting adversaries' access to crucial technologies, and second, re-establishing (industrial) dominance through domestic capacity-building. The U.S.

[1] Henry Farrell and Abraham L Newman, 'Weaponized Interdependence: How Global Economic Networks Shape State Coercion' (2019) 44(1) *International Security* 42.

Bureau of Industry and Security's (BIS) Entity List has hundreds of Chinese companies on it now, including Huawei, ZTE, SMIC and Hikvision, which face stringent restrictions on their access to U.S. origin technologies, licenses, and services. Semiconductor technologies, and now AI chips, designs (in a software environment) have specific regulations, and those restrictions are legally justified under national security justifications.

Also supporting those restrictions is the CHIPS and Science Act of 2022, where $52 Billion is financial earmarked to support domestic semiconductor manufacturing and research. Projects like Intel's Ohio expansion and TSMC's Arizona project, are examples of the U.S. strategically shift from offshore production toward "reshoring" critical technologies. The policy goal is to reduce reliance on East Asian production consoles, and especially Taiwan and South Korea, while not putting U.S. companies and their strategic interests into a position of foreign coercion or disruption. Although framed in national security terms, these types of developments can create significant market-structuring impacts that create a new, investment landscape, as well as new competitive dynamics, for important sectors.[1]

These industrial policies create a tension for antitrust issues. On one hand, the FTC and DOJ in the U.S. are charged with preventing anti-competitive consolidation. On the other, a strategic argument for ensuring supply chain resilience and technological leadership often means mergers and cooperation among domestic firms are incentivized. This creates a contradiction in policy; how does one maintain competition in industries that are too strategic not to fail?

ii. China: Antitrust as an Economic Retaliation Tool

China has compiled a significant playbook of economic coercion, typically against states or companies that directly oppose China's core interests, like Taiwan, Hong Kong, and the South China Sea. Economic coercion takes many forms, including sanctions, embargoes, consumer boycotts, and now, antitrust actions against foreign firms.

In 2020, China employed its Anti-Monopoly Law to make Applied Materials' acquisition of Kokusai Electric more difficult and obstruct the Nvidia-Arm merger[2]. Analysts noted that these Anti-Monopoly reviews did not set clear procedural timelines, and could be framed as a bidding strategy slash measure to string along companies as they competed to further dominate the tech

[1] William E Kovacic, 'The Modern Evolution of US Competition Policy Enforcement Norms' (2009) 71 *Antitrust LJ* 377.
[2] Reuters, 'China targets Nvidia with antitrust probe, escalates US chip tensions' (9 December 2024).

sector in the United States. Foreign firms entering the Chinese market, or attempting to acquire an asset involving a Chinese subsidiary, routinely face opaque reviews, conditional approvals, and demands for technology transfer. Although these conditions are sometimes framed as competition remedies, they appear as a means to compete directly aim to create strategic leverage or retaliate against U.S. tech export controls.

Finally, in April, China instituted restrictions on the export of vital raw materials, including gallium, germanium, and graphite, that are necessary for semiconductors and EV production, as a direct response to the U.S. tech bans. The restrictions further suggest a tit-for-tat escalation of regulatory confrontation toward open economic warfare.

Antitrust in this scenario is not just a neutral regulator of structure of the market, it is weaponized as a sovereign strategy of control, showcasing a state-capitalist model of governance that ties discerning industrial policy, technology security, and political signalling together.

iii. European Union: From Market Integration to Strategic Autonomy

Historically, the EU has adopted a rules-governed, economic-based approach to competition. However, the bloc is increasingly engaging with the idea of "open strategic autonomy"[1]. The Foreign Subsidies Regulation (FSR), introduced in July 2023, was a noticeable shift. The FSR holds the European Commission liable for reviewing mergers, public tenders and conduct by market actors where foreign subsidies would be investigated, particularly when there were concerns that the foreign subsidies minimalized the distortions of the internal market.

This was important given the scope of foreign capital in sectors like telecommunications, green energy and defence, particularly, for example, the role of Chinese State-backed enterprises. The FSR's first major Phase II investigation (Emirates Telecommunications Group's acquisition of PPF Telecom) was subsequently cleared after behaviour remedies were imposed, demonstrating a stronger regulatory approach towards foreign capital.[2]

Simultaneously, the Digital Markets Act (DMA)[3] was established to bring regulation to "gatekeeping" platforms like Google, Meta, Apple, and Amazon. The DMA is written in consumer terms: interoperability, access to data, and non-discrimination. The DMA also plays into strategic narratives as European policymakers understand that these firms are contenders of foreign digital

[1] Michael K Wetzel, 'Strategic Autonomy and EU Competition Law' (2022) 59 *Common Market Law Review* 321.
[2] Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (OUP 2020).
[3] European Commission, 'Digital Markets Act' [2022] OJ L 265/1

influence that can influence domestic norms and infrastructure. Regulating them now is a way for the EU to deliver digital sovereignty and not become dependent on platform logic from Silicon Valley.

Thus, what is emerging is a European model of economic statecraft that is more legalistic and process-oriented than those developed by the US or China, but with no less emphasis on the strategic control of economic processes and technological autonomy.

C. Strategic Consequences: Fragmentation, Retaliation, and Compliance Risks

The use of antitrust, and related economic tools, as a strategy of statecraft has led to regulatory fragmentation, and firms now have to deal with the consequences of diverging standards, extraterritorial enforcement, and the duplicative compliance burden. A merger between two U.S. firms may trigger scrutiny in Brussels if the European Commission suspects the merger has distortive subsidies, and equally, a licensing agreement approved by the U.S. FTC may be allowed to strategically lie in the Beijing context.

This uncertainty now undercuts both the predictability and neutrality that antitrust law was intended to achieve. It leaves open the potential for revenge, retaliation, and escalation. When countries consider competition enforcement as a matter of their national interest, the legal outcome may merely serve as a proxy for the country's wider diplomatic argument and fallout. Absent some common framework, even effective enforcement can become a matter of trade dispute, though countervailing duties, or tit-for-tat investigations. This environment presents unprecedented challenges for multinational organizations. Compliance with the law is no longer simply about economic behaviour; it has evolved into navigating political sensitivities, state-to-state relationships, and industrial policy agendas. As governments become more interventionist, companies require more than just a lawyer; they now need a geopolitical analyst and supply chain security expert.

The era of weaponized interdependence has shifted antitrust from a methodical, technical field into a different form of geopolitical battleground. While some states are using economic governance tools to exercise power through export controls, retaliation, or taking a proactive approach with digital regulations, they are also controlling chokepoints and norms of engagement. In this regard, it is necessary to re-imagine the function of competition law—this does not mean that states can abandon it; but rather we need a re-conceptualization of competition law theory to

encompass a world where efficiency and fairness must contend on an even playing field with resilience and sovereignty.

IV. CASE STUDIES: STRATEGIC ANTITRUST IN ACTION

A. United States: Recalibrating Enforcement in Strategic Sectors

The development of antitrust law enforcement in the United States is complicated by a tension between competition aims and other national goals, particularly in high technology, defense, and critical infrastructure. Under the Biden administration, the Federal Trade Commission (FTC) and the Department of Justice (DOJ) have taken a much more aggressive stance toward merger control and unilateral conduct investigations. However, this evolution is not only doctrinal, it is strategic.

An illuminating example comes from the DOJ's investigation into the Synopsys–Ansys merger in the semiconductor design software industry. The DOJ's scrutiny of this merger and inquiry into whether it should be challenged has included asks that fall well outside traditional antitrust analysis based on price effects and market shares. For instance, the DOJ has been interested in potential national security effects[1], especially given the implications for the United States standing in advanced chip design over the long term. This move toward additional national aims in antitrust enforcement is consistent with a larger policy framework in which competition enforcement in critical industries—semiconductors, quantum computing and AI—will purposely incorporate the policy objectives of industrial policy.

In addition, the 2023 merger guidelines from the Biden administration expressly expanded the boundaries of assessment for consumer pricing to also include aspects such as labor markets, innovation suppression, and systemic resilience. Additionally, the guidelines are heavily reliant on structural presumptions to oppose mergers in loaded up sectors, signaling more skepticism toward vertical acquisitions and conglomerate mergers. For strategic sectors, this means heightened scrutiny into any deal that consolidates control over critical technologies, irrespective of the ability to achieve efficiency gains. This shift has ignited domestic debate. Critics argue that aggressive enforcement, especially against U.S.-based digital platforms, such as Amazon, Apple, and Google, will undermine national champions just when the global playing field, particularly with regards to Chinese competition, is more intense. Supporters of the new approach argue that unchecked

[1] US Department of Justice and Federal Trade Commission, 'Merger Guidelines' (2023).

market concentration undermines both innovation and our democratic resilience and that a competitive economy is much more resilient in times of geopolitical crises.

Another example of strategic enforcement can be found in the revived momentum of the FTC considering non-price competitive dimensions (e.g., data access and interoperability) as part of its ongoing investigation of Meta Platforms.[1] Albeit presented through the lens of antitrust enforcement, these initiatives align with concerns over foreign influence operations, data privacy, and information gatekeeping, illustrating a convergence of competition and digital self-determination within the U.S. regulatory sphere.

While the U.S has not yet adopted a stand-alone foreign subsidy screening process akin to the EU's FSR, enforcement agencies have been more routinely coordinating with CFIUS and the Office of the U.S. Trade Representative (USTR) concerning foreign ownership in sensitive sectors. The outcome is a quasi-integrated process where merger clearance, export control, and industrial investment policy are working in a mutually reinforcing manner.

B. China: Antitrust as a Mechanism of Retaliation and Control

China's antitrust enforcement framework works in tandem with the larger project of state-oriented economic development, while also emphasizing autonomy including technological independence, and regulatory sovereignty in the approach. Unlike the United States' model - where the Federal Trade Commission and Department of Justice are largely independent of executive direction - China's State Administration for Market Regulation (SAMR) is an agency that is tightly controlled under the central leadership of the State Council. The SAMR operates under the State Council often bordering on coordination with other agencies, such as the Ministry of Commerce (MOFCOM) as well as the Cybersecurity Administration of China (CAC)

The Anti-Monopoly Law (AML) was originally enacted in 2008, with subsequent revisions in 2022, to provide the legal basis for China's competition framework as the AML prohibits monopoly agreements, abuse of dominance and anti-competitive mergers, but much of the AML enforcement is ultimately driven by specific, strategic industrial objectives and foreign policy considerations.

[1] *Federal Trade Commission v Meta Platforms Inc* (ND Cal, 1 February 2023) No 5:22-cv-04325-EJD.

A well-known case involved the use of antitrust powers to slow or block the completion of foreign mergers thought to impede China's technological development path. With the Nvidia-Arm merger in the news, China ABD (i.e., in antitrust speak, denied approval for over 1 year) that led the parties to abandon a deal because the parties had insignificant revenue overlap in China. The delay provided the Chinese government with an opportunity to publicly show their disapproval of U.S. export controls while advancing their position/strategy to assert leverage over the discussion regarding global chip supply chain issues. The deal already received clearing from the EU and U.K. regulators, demonstrating the political nature of China's objection that was not solely based on competition assessment.

Another example concerned Applied Materials' acquisition of Kokusai Electric. SAMR delayed clearing the deal, imposed more mandatory conditions and took into account the potential concentration in the semiconductor equipment market, and monopolization of gateway nodes in the supply chain. Again, this occurred uniquely at the same time increasing U.S. restrictions on China's access to advanced chipmaking equipment and the chips themselves. China also pursued conduct investigations against multinational firms often in respect to pricing practice, handling data, or vertical agreements. The investigation into Alibaba's joint dealing practices in 2021 and record fine of $2.8 billion confirmed the willingness of China to sanction even its domestic champions when that dominance extended beyond state control.[1] Foreign businesses navigate a different world, however. Antitrust reviews are frequently used to enforce technology transfers, or data localization, or a joint venture arrangement. Commencing approval of a merger may be contingent upon the divestiture of a part of the business, or a requirement to partner with a Chinese SOE. These were framed as profit remedies in the name of competition, but are much more useful for industrial and strategic purposes than they are for remediating market failures.

Furthermore, there is greater synergy between China's antitrust and cybersecurity regimes. The Data Security Law (2021) and the Personal Information Protection Law (2021) afford authorities the ability to limit movement of data and to impose obligations upon foreign entities. As foreign companies conduct their due diligence and seek clearance for a merger, they often find compliance with China's Data Security Law (2021) and its provisions to be an obstacle that entrench a form of regulation where data nationalism and market access are intimately intertwined.

[1] Aleksandr Svetlicinii, 'China's Antitrust Penalty for Alibaba: Reading Between the Lines' (2021) *Kluwer Competition Law Blog.*

The obverse risk arising for foreign firms is even worse since Chinese courts do not provide meaningful review of administrative actions by SAMR and most companies will not seek to litigate against regulatory body out of fear of retaliation. Overall, China's competition regime acts as a discretionary tool of economic statecraft with the state wielding both regulatory leverage and strategic flexibility with respect to global commercial relations.

C. European Union: Antitrust as a Pillar of Strategic Autonomy

The competition law landscape of the European Union has long been considered the reference point for rules-based, non-discriminatory enforcement. The objective of EU antitrust law is to promote integration in the internal market. Hence, traditional EU antitrust concepts are concerned primarily with protecting a competitive process, providing access to markets and protecting consumer welfare. The EU is now reassessing its approach to deal with external distortions, especially those caused by state capitalism and concentrated dominance in digital platforms. A watershed event came with the Foreign Subsidies Regulation (FSR), adopted in 2023. The FSR provides the Commission with a tool to review subsidies granted by subsidizing authorities of non-EU countries that have the effect of distorting competition in the internal market. The FSR applies to mergers and public procurement, and pertains to ex officio investigations into foreign-backed firms.[1] The Commission's Phase II investigation into the acquisition of PPF Telecom Group by Emirates Telecommunications Group, which was apparently sparked by concerns about state subsidies from the UAE, was the first evidence of the FSR in action. While the deal was cleared with behavioural remedies, the investigation reflects a new frontier of enforcement in which foreign backings are now an object of antitrust scrutiny.[2]

The Digital Markets Act (DMA) adds to this process by imposing ex ante obligations on "gatekeepers," such as interoperability, a prohibition on self-preferencing decisions, and the ongoing obligation to separate data. The DMA will be applied more broadly, so it will apply to all firms that cross a threshold, but it is mainly assumed to target U.S. tech giants that dominate important digital markets in Europe. The DMA has an enforcement architecture that aims to stop abuse before harm is done. Essentially, the DMA gives a very specific, proactive, regulatory direction.

[1] Lidija Šimunović, 'The EU Foreign Subsidies Regulation (FSR): A Game Changer or Impossible Mission?' (2024) 8 *EU and Comparative Law Issues and Challenges* 342

[2] European Commission, *Summary notice concerning the opening of an in-depth investigation in case FS.100011 – Emirates Telecommunications Group / PPF Telecom Group* (Official Journal C/2024/3970, 21 June 2024).

The EU enforcement authorities have otherwise also responded to the organized use of antitrust by third countries. In matters including mergers involving Chinese acquirers or tech investments, the Commission is increasingly acknowledging the issue of reciprocity, transparency, and state ownership in its assessments of competition. This is particularly evident in respect of critical infrastructure, including energy, telecommunications and cybersecurity. The consequences of global shocks also produced flexible State Aid, which pivoted away from purely analyzing internal subsidy practices. Notably, through the COVID-19 pandemic, the Temporary Framework on State Aid made it possible for Member States to inject over €3.1 trillion into their economies - it does demonstrate that the EU can shift competition enforcement to accommodate occurrences of crisis. Even in cases of abuse of dominance, the European Commission has gradually altered its enforcement discourse. In investigations of Google Shopping, Amazon Marketplace, and Apple App Store, the focus is not limited to customer pricing, but extends to barriers to entry, innovation suppression, and exploitation of gatekeeping positions—these are all systemic challenges for digital sovereignty and market pluralism. The EU presents a hybrid model of strategic antitrust: a legalistic basis but cognizant of geopolitical and technological reality. Its regulatory posture demonstrates a willingness to defend an internal market while adjusting to both external economic coercion and asymmetric competition globally.

V. COMPARATIVE LEGAL ANALYSIS

The intentional adaptation of antitrust law across jurisdictions demonstrates not just differing levels of state engagement but also deeply-rooted distinctions in legal traditions, institutional structures, and geopolitical priorities. While each jurisdiction may profess a commitment to competition, the operationalized concepts of "fairness," "efficiency," and "market distortion" vary significantly. This comparative exercise indicates how the same legal instrument—antitrust—can be exploited from nearly opposite ideological and institutional contexts, raising questions about whether regulatory convergence can occur in a divided global economy.

A. Legal Foundations and Institutional Autonomy

The United States, the European Union, and China maintain strong antitrust laws. However, the antitrust philosophies and the mechanism of enforcement diverge sharply with respect to each legal regime.

The antitrust regime in the United States is based upon a hybrid of constitutional liberalism, economic efficiency, and separation of institutions. Statutes like the Sherman Act (1890), Clayton

Act (1914), and the FTC Act (1914) work together to prohibit monopolisation, collusion by and between persons and firms, and any noncompetitive mergers. Originating and implementing from the Chicago School and based upon philosophy emphasizing consumer welfare, price effects and efficiency of output, agencies traditionally have prioritised and viewed the text and reasonableness through a strict adherence to economic impact on prices. The courts are the backstop for reasonableness.

In the last two years, there is a departure toward neo-Brandeisian views rooted in considering harm to the working class and representative democracy, with employees and working-class countries not excluded from overall labour market monetary harm, controlling knowledge systems to affect innovation, and the resilience of a nation. Law did not change, but administrative discretion may be the basis for change; most decision-making is delegated to independent agencies. Independent agencies have broad discretion with their ability to modify and the move to rulemaking. There is independence, but there remains a constitutionally managed agency, and while courts cannot repudiate agency independence, they may refuse agency actions using negative and/or proactive judicial reviews so long as their agency actions are consistent with statutory interpretations.

The approach that the European Union follows, on the other hand, is to think of competition law as a constitutional requirement under the Treaty on the Functioning of the European Union (TFEU). Articles 101 and 102 TFEU prohibit anti-competitive agreements and abuse of dominance, respectively.[1] The Merger Regulation and State Aid allow the European Commission to act as a monitoring body for market consolidation and public subsidies. The are two parts to the emphasis on competition: the EU wants to ensure competition, and the EU's goal as a multi-level framework is to further the integration of the Member States markets. The integrationist purpose allows for a wider view of cross-border effects, inter-systemic distortions and, of course, strategic congruency. The European Commission enjoys wide-ranging investigatory powers (with the DG COMP) and decision-making powers. While actions of the EU are open to judicial review from the General Court and appeals to the Court of Justice of the European Union (CJEU), EU competition law pursues a centralised enforcement model, meaning that actions can be disciplined via a number of means in all Member States. The institutional form makes it possible for the EU to shape and develop new structural instruments such as: the Digital Markets Act; or the Foreign Subsidies Regulation, which will be more than just a classical antitrust measure.

[1] *Treaty on the Functioning of the European Union* [2012] OJ C326/47, arts 101–102.

China's competition regime is a blend of formal legal structures and executive discretion, stemming from the Anti-Monopoly Law (AML), created in 2008 and revised in 2022. The AML is implemented by the State Administration for Market Regulation (SAMR), a newly-formed consolidated regulator that is directed report to the State Council of China. Although the AML prohibits cartels, abuse of dominance, and anti-competitive mergers in a manner that is consistent with best practices around the world, the stated intentions of the law are to promote the "socialist market economy" and protect industries "vital to national security."[1] Such statutory framing permits broad interpretative scope to align enforcement with state policy. In practice, SAMR operates on coordinated basis with ministries like MOFCOM (Ministry of Commerce) and MIIT (Ministry of Industry and Information Technology), especially about foreign takeovers, critical technologies, and industrial policy. The Chinese courts exercise very little review of decisions made by SAMR, and procedural transparency is particularly low for foreign parties. In this regard, the Chinese model is state-directed, opaque, and also intimately linked to geopolitical signalling.

B. Enforcement Priorities and Strategic Alignment

While all three jurisdictions share a formal commitment to competition, their enforcement priorities differ significantly.

Jurisdiction	Enforcement Priority	Strategic Dimensions
United States	Consumer welfare, labor markets, innovation	Tech rivalry with China, supply chain resilience, protection of domestic champions
European Union	Market integration, digital gatekeeping, foreign subsidy distortions	Digital sovereignty, level playing field against state-backed entrants
China	Industrial policy, tech self-sufficiency, political loyalty	Technology transfer, retaliation against trade measures, regulatory leverage over foreign firms

[1] Angela H Zhang, *Chinese Antitrust Exceptionalism: How the Rise of China Challenges Global Regulation* (OUP 2021).

In the United States, we have recently seen enforcement action against horizontal mergers (e.g., Illumina–Grail), actions against big tech (e.g., Meta, Amazon), and international mergers involving strategic technological assets. These activities increasingly are shaped by national security policy consultation, though national security has not formally been integrated with CFIUS.

In contrast, the EU's enforcement has moved away from traditional cartel-busting, and instead focused on proactive structural regulation of digital markets while taking into account foreign economic influence. For example, the FSR is the first piece of competition law to reference foreign state subsidies and finds the intersection of antitrust and trade defence. Secondly, in relation to cross-border mergers, the DMA operates ex ante: which means regulatory obligations attach before there is any anticompetitive activity.[1] This is a novel development without equal in U.S. or Chinese law. In China, antitrust review is subsumed under a larger interest to promote sovereign interests. This can take the form of delayed or conditional foreign acquisitions, mandated cooperation with Chinese firms, and disciplining domestic classes of firm conduct that undermine social cohesion or political control. Antitrust remedies can achieve non-competition objectives, such as promoting indigenous innovation or shielding a national actor from foreign predation. The regulatory asymmetry is particularly pronounced for foreign investors, who invariably will have an expanded regulatory burden, and limited rights of appeal, reinforcing the perception of strategic protectionism under the guise of enforcement.[2]

C. Extraterritoriality, Legal Certainty and Global Alignment

Another important dimension of disagreement is the scope and extraterritorial reach of competition law. All three jurisdictions claim to have jurisdiction over conduct that has transnational outcomes, but their statements of law and how the law is applied are quite varied.

The US effects doctrine allows for cases to proceed in the US for foreign conduct that has substantial and intended effects on domestic commerce.[3] While courts show considerations for

[1] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector [2022] OJ L265/1 (Digital Markets Act).
[2] Damien Geradin and Dimitrios Katsifis, 'An EU Competition Law Analysis of China's Antitrust Enforcement Trends' (2022) 18(2) *Journal of Competition Law & Economics* 205.
[3] *Foreign Trade Antitrust Improvements Act*, 15 USC §6a; *Hartford Fire Insurance Co v California* 509 US 764 (1993); *United States v LSL Biotechnologies* 379 F3d 672 (9th Cir 2004).

comity, including in politically sensitive cases, the Alcoa and Vitamin Cartel examples illustrate the reach and limitations of the doctrine, especially as against conflicting foreign laws.[1]

The EU implementation doctrine provides for proceedings against conduct that has a material effect on the internal market; with no regard for where the actor is based. The Intel and Google Shopping decisions demonstrate this broad reach. That said, the CJEU warns against unreasonable extraterritoriality.

China's AML requires competition in China, regardless of the location of the conduct.[2] The ambiguity of standards, lack of procedural clarity, and discretion all combine to add an extra layer of uncertainty regarding China's extraterritoriality for multinationals who may be belligerent held up, under conditions that do not mirror other jurisdictions.

These differences complicate global convergence initiatives. Bodies such as the International Competition Network (ICN) and OECD Competition Committee[3] have made efforts to create a consensus about due process, transparency, and economic rationality. Complicating matters is the recent convergence of competition law and national security/industrial policy considerations leaving such initiatives more aspirational than ever. For global firms navigating in this environment, the divergence of objectives, remedies, and procedural apparatus contribute to regulatory uncertainty and compliance risk. Transactions that are cleared in one jurisdiction could be blocked or conditioned in another territory - not based on different economic assessments but rather because of geopolitical signalling. This would not only dissuade investment across borders, but would erode faith in the universally hegemonic nature of antitrust principles.

VI. IMPLICATIONS FOR THE GLOBAL ECONOMIC ORDER

The refocusing of competition law as a strategic asset has begun to have sweeping ramifications for the global economic order. As states now deploy antitrust enforcement for strategic objectives—national security, technological sovereignty, and economic retribution—the initial purpose of competition policy—maximizing market efficiency for consumer welfare and fostering transnational cooperation—has begun to take on a new meaning. This relates to different and

[1] *United States v Aluminum Co of America (Alcoa)* 148 F2d 416 (2d Cir 1945); *In re Vitamin Antitrust Litigation* 120 F Supp 2d 58 (D.D.C. 2000).
[2] Anti-Monopoly Law of the People's Republic of China (2022 Amendment), art 2.
[3] OECD and ICN Procedural Principles; OECD, *Procedural Fairness in Merger Review* (2015).

broader implications with respect to multilateralism, global value chains, the legitimacy of regulatory actions, and the future of international economic governance.

A. Erosion of Legal Harmonisation and Regulatory Fragmentation

Perhaps the most prominent effect of geopolitical antitrust is the fragmentation of competition law norms. For many years, there was a stream of international dialogue facilitated by entities such as the OECD, ICN, and UNCTAD which resulted in some degree of convergence around fundamental principles like due process, transparency, and economic analysis. While every jurisdiction has its own nuances when it comes to thresholds and procedures, there appeared to be a tacit consensus regarding the neutrality of competition law and its status as a technocratic, effective, and quasi-independent tool, unaffected by political considerations. That consensus now appears to be unravelling. China is using antitrust as a tool to retaliate against Western export controls, the EU is using competition law to regulate foreign subsidies, and the U.S. is vetting mergers for national security reasons. What was once pure economics is now political. Competition law is no longer just about markets; it is a tool of asserting sovereignty.

What results is a mosaic of legal regimes, all reflecting differing political economies and strategic objectives. This presents a compliance nightmare for multinational corporations. Mergers and acquisitions, licensing agreements, and data-oriented business models now must be evaluated against a number of factors, not just anti-competitive conduct, but also foreign policy interests, the country and source of subsidies, and implications for digital infrastructures. This level of complication reduces both legal certainty and investor confidence. Companies in strategic sectors (semiconductors, pharmaceuticals, digital services) face added time, uncertainty, and often inconsistent results. A merger cleared in Brussels could be blocked in Beijing. A pricing algorithm found efficient in California could have abuse of dominance concerns in New Delhi. As antitrust becomes increasingly territorial and political, the vision of having a single global competition architecture becomes even more aspirational.

B. Retaliatory Enforcement and the Rise of Regulatory Nationalism

The politicisation of antitrust has also increased the risk of retaliatory enforcement. As jurisdictions are starting to view competition decisions, not as impartial legal outcomes but as proxies for diplomatic or industrial interests, the opportunities for escalatory tit-for-tat behaviour can widen.

The delays in Chinese reviews of western tech deals, the U.S. scrutiny of TikTok and Huawei[1], and the EU's targeting of U.S. tech platforms under the DMA show how strategic tensions are refracted through competition and antitrust enforcement.

This retaliatory cycle erodes institutional trust between regulators and diminishes possibilities for cooperation across borders. Bilateral and plurilateral arrangements—the U.S.–EU Joint Technology and Competition Policy Dialogue, the EU–China Competition Policy Conference—are at risk of becoming meaningless to the extent that parties view one another's enforcement activity as politicised or asymmetric. The situation is exacerbated by the absence of binding dispute resolution mechanisms in a global antitrust context.

In the current context, regulatory nationalism can become self-reinforcing. States are seeing incentives for adopting unilateral instruments—such as digital services taxes, data localization rules, or foreign subsidies controls—to protect domestic markets. This results in a vicious cycle of losing open markets to protect control while allowing regulatory exceptionalism to displace multilateral coordination.

C. Chilling Effect on Innovation and Global Market Access

One of the less explored ramifications of strategic antitrust is its potential chilling effect on innovation and global entrepreneurship. Startups and scale-ups are reliant on rule sets that are predictable in order to attract investment, break into international markets, and seek exits through M&A. If large firms are already under intense scrutiny for acquiring innovative challengers, as evidenced by the rising number of killer acquisition reviews, firms might not be as incentivized to incubate startups or fund R&D. Similarly, firms in the commercial realm that are developing innovative technologies—especially those in the domains of AI, fintech or health tech—are now confronted with an overlapping confluence of regulations relevant to antitrust, data protection, export control, and cybersecurity. The level of difficulty will depend on the jurisdiction in which these firms operate. For instance, it is not unusual for firms in China to enter into even basic commercial transactions by first complying with opaque data transfer rules and AML reviews.[2] That said, in the EU DSS firms must not only comply with DMA obligations, but may also need to notify M&A deals which fall below some market threshold.

[1] Federal Communications Commission, *FCC Designates Huawei and ZTE as National Security Threats* (30 June 2020).
[2] Standing Committee of the National People's Congress, *Personal Information Protection Law of the People's Republic of China* (adopted 20 August 2021, effective 1 November 2021)

The complexity of regulatory compliance puts up barriers to entry for firms, especially smaller firms or firms based overseas, while favouring those that have the legal and financial resources to deal with multiple regimes. The prospect of balkanization is real. In time the world might not be ready for a global, interoperable marketplace, as firms will be designing products and business models not for global scalability, but for compliance with either jurisdiction-specific or other regime-specific rules. Innovation ecosystems also rely on global collaboration - academic links, access to open-source platforms, international talent, and for instance venture capital syndicates - US antitrust law restrict using antitrust law to stop foreign actors or to require tech-transfer to access a market may lead to a loss of innovation diffusion, including in sensitive areas like AI safety, green tech, or biotech.[1]

D. Burden on Multinational Enterprises: The Compliance Spiral

The increasing convergence of competition law and economic security requires a complete rethinking of corporate compliance frameworks. General counsels can no longer look at antitrust discretely as an area of regulatory scrutiny. The risk profile of lawyering today requires comprehensive assessments of law and policy, taking into consideration trade sanctions, investment screening, national security reviews, data governance, supply chain risk and more.

For instance, consider a global merger of a global cloud service provider. Without context, the merging companies might need to assess:

i. Antitrust review in the U.S., EU and China.
ii. Digital sovereignty assessments due to the EU's DMA (Digital Markets Act) or Data Act.
iii. National security review from the U.S. CFIUS review or India's DPIIT review.
iv. Data localization and cybersecurity review in China or Brazil.
v. EU FSR requirements with respect to foreign subsidies disclosures, and more.[2]

This multi-faceted review adds to the cost, time and uncertainty of executing strategic transactions. More companies may reject cross-border counterparty arrangements, re-organize operations to limit regulatory exposure, or implement "jurisdictional ring-fencing" (i.e. product lines, data flows or IP rights compartmentalized by region). Although such responses might provide a rationale

[1] JL Contreras, 'Data Sharing, Antitrust and Innovation: A Proposed Path Forward' (2022) 15 *Stanford Journal of Law, Business & Finance* 191.
[2] European Commission, *Guidance on the Application of the Foreign Subsidies Regulation* (2023).

from a risk management perspective, this means less integrated and less dynamic global marketplace.

E. Decline of the Rules-Based Order and Global Antitrust Governance

At the end of the day, the strategic instrumentalization of antitrust at a normative level constitutes a retreat from the rules-based international order. Institutions that had fostered legal harmonisation and economic openness (the WTO) are stalled and eroding legitimacy.[1] In absence of strong multilateral institutions, states are defaulting to regulatory unilateralism.

Afghanistan is an example of a trade policies with binding rules without an antitrust treaty; furthermore, compounding the challenges present with international treaty systems, e.g., no international appellate mechanism. Soft-law instruments (e.g., OECD's Competition Recommendations; guiding principles of international competition network) fall short of being binding and can set moral standards, but again lack force. Because there is a shift from state commitments to legal convergence or convergence without rules, regulatory unilateralism can emerge largely unchecked. Secondly, like nationalism, the surging idea of "regulatory sovereign" rests on the notion that it is permissible for states to reclaim unilateral control over data and technology and capital flows; this has precedence in public international law as a conceptualisation of statehood ideologies and legitimacy. For agencies that have long (perhaps rightly) taken an activist view of neutrality, it is hardly settled if they are charged with serving "national interest" or often, under an agenda of national economic resilience through protectionism, as a result of executive foreign and trade policy.

If not managed thoughtfully, this situation has every prospect of undermining both the moral authority and normative legitimacy of antitrust enforcement itself; if firms perceive antitrust as a form of disguised economic warfare, compliance may well change from good faith cooperation to defensive strategy and litigation and lobbying; this not only detracts from efficiency in enforcement, but also trust in the legitimacy of antitrust.

VII. CONCLUSION

The changing shape of global competition enforcement is indicative of a more noteworthy change in how states enact and understand economic power. This paper has shown that an antitrust system is not limited, or confined by, its classical role of correcting market failures and promoting

[1] Daniel Hofmann, *Multilateral Trade in Crisis: The WTO's Appellate Body and Risk of Paralysis* (Istituto Affari Internazionali 2024) 1–3.

consumer welfare. Antitrust law is now influenced by concerns over technological sovereignty and geopolitical competition, and it exists at the intersection of imprecise legal doctrine and finely tuned strategic calculation. This change has produced both urgency and complexity of states. On the one hand, using antitrust and related regulatory tools as weapons allows states the opportunity to demonstrate economic autonomy in an increasingly competitive international arena. On the other hand, this new practice threatens to invalidate all of the property rights, predictability, fairness and internationalism that previously characterized the global competition regime.

All of the three, United States, the European Union, and China have embarked on their distinct antitrust paths in this new antitrust landscape. The U.S. has injected its enforcement with concerns for labor, innovation, and systemic resilience, while wrestling with the hybrid reality that often promotes domestic champions in priority sectors. The EU has embraced a hybrid approach, oiling the wheels of market integration and the rule of law while mobilizing new interventions, such as the DMA and FSR, that leverage digital and economic sovereignty. In contrast, China has lodged antitrust within its larger industrial and political apparatus, using enforcement as a stick to shape not just conduct domestically but also as a stick to internationally project regulatory power and condition access to its domestic market.

While this strategic divergence makes perfect sense according to national interests, it creates real threats to the global economy. Regulatory fragmentation, retaliatory enforcement, and compliance asymmetries raise transaction costs and other barriers to cross-border investments while undermining trust that competition authorities are neutral. Startups, small and medium-sized enterprises (SMEs) and cross-border investors— especially from the Global South—are usually worse off in complex, inconsistent and politicised enforcement landscapes.

To traverse this fractured landscape, we must have a re-imagined concept of antitrust, not one that pulls back to technocratic formalism or one that gives in to strategic overreach. That concept should be thought of in the following imperatives:

A. Separating competition from retaliation

National security has to be taken into consideration, but antitrust enforcement has to remain separate and not be used as a proxy for potentially retaliatory behaviour. Competition authorities have to maintain their institutional autonomy and not be drawn into a game of zero-sum economic conflict. If the national interest overlaps with exploring competition, e.g., in respect of critical

infrastructure or dual use technologies, that context ought to come through augmented inter-agency coordination rather than be cloaked inside the rationale for enforcement.

B. Innovating Within the Legal Framework

Antitrust instruments can be repurposed, often by revising market definitions, considering multi-sided platforms, and modelling dynamic effects to address new harms without sacrificing the integrity of economic analysis. Ex ante regulation (such as the DMA) and merger notifications can supplement, rather than supplant, classical enforcement, as long as there is recourse to a court and periodic review.

C. Fostering Global Regulatory Dialogue

In the context of globalized business models, bilateral and plurilateral regulatory partnerships must be put in place. Existing dialogues, including the U.S.–EU Technology Council, should be expanded to include convergence of competition laws in the context of digital platforms, data governance, and foreign investment. In a similar way, forums that could facilitate interaction, such as the BRICS Competition Conference[1], are a way to ensure developing countries are not left to subordinate their regulatory needs to the whims of unilateral states, and so become victims of unilateralism.

D. Fostering Equity and Resilience in Antitrust Goals

An effective 21st century competition policy must be sensitive to distributional effects, structural inequalities, and systemic risk. As global markets become more concentrated and platform power builds, competition enforcement should prioritize efficiency, as well as access, plurality, and resilience. This requires synthesis of insights from data law, labor law, and industrial policy, without losing sight of the constitutional and economic boundaries within which antitrust must operate.

To conclude, antitrust is at a crossroads. It can either proceed into the multipolar world by aligning itself with broader goals for society, openness, equity, and trust in institutions or it can simply become an instrument of strategic contestation and be stripped of normative content.

[1] BRICS Coordination Committee on Antimonopoly Policy, *Meeting of the BRICS Coordination Committee on Antimonopoly Policy* (BRICS Competition Conference, 2 July 2024).