Agility Over Stability: China’s Great Reversal in Regulating the Platform Economy

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This Article develops the five-element HAPPY model to study Chinese regulation: the regulatory process is hierarchical, the top leadership is adaptable, the Chinese regulators are parochial, the firms are pliant and the Chinese public need to yelp to be heard. By focusing on China’s great reversal in regulating the platform economy, I show that Chinese policy volatilities have stemmed from the hierarchical structure in which power is centralized among top leaders, who also suffer from a chronic deficit of information. I particularly highlight how favorable support from the top leadership, aggressive lobbying from tech firms, and the bureaucratic inertia of the regulators together contributed to a lag in regulating Chinese online platforms. When a crisis looms, the top leadership quickly mobilizes all administrative resources and propaganda to initiate a law enforcement campaign against tech giants. However, without strong judicial oversight, aggressive agency interventions create the risk of over-enforcement and administrative abuse. Thus far, China’s reorientation of its policy control has significantly bolstered its regulatory capacity across various fronts including financial, antitrust, and data regulation. By exerting greater oversight over platform governance, the government has enhanced the bargaining power of the various platform participants in dealing with the platforms. The government’s heavy-handed approach has also afforded it great leverage to nudge tech firms to prioritize developing cutting-edge technologies, and to steer them away from foreign stock markets, thus reducing reliance on the West for both technologies and capital. Despite the campaign’s immediate impact, it remains to be seen whether it will bring about lasting change, especially in light of the persistent lobbying from tech firms and the risk of regulatory capture. At the same time, the volatile policy swing has itself generated risks and uncertainties, which in turn could cause turmoil to domestic social and financial stability. As the rest of the world is similarly confronted with thorny questions about how to rein in Big Tech, China’s experience with platform regulation could offer some lessons that inform the global policy debate. Although this Article focuses primarily on the platform economy, the HAPPY model has the promise to shed light on the complexity and dynamics in other areas of regulatory governance in China and beyond.

Introduction

China possesses one of the world’s largest and most vibrant digital economies. Valued at six trillion dollars in 2020, the Chinese digital economy was second in size only to the United States’, accounting for nearly forty percent of China’s GDP.\(^1\) China also accounted for more than half of the world’s e-retailing in that same year, while Chinese companies accounted for more
than seventy percent of the global valuation of fintech businesses in 2019. Alibaba and Tencent, two of China’s most valuable publicly-listed tech companies, have emerged as global leaders in e-commerce, social media and fintech. Many observers believe that these two firms owe their successes not only to China’s large consumer market but also to a supportive and nurturing environment created by the Chinese government. The “Great Firewall,” which the Chinese government set up in the 2000s to block foreign rivals from accessing the Chinese market, shielded domestic players from foreign competition and facilitated the exponential growth of these Chinese national champions. Meanwhile, online platforms have pervaded every facet of Chinese life, resulting in both benefits and harms to Chinese consumers. Yet despite all these problems bubbling underneath the surface, Chinese regulators were slow to take a tough stance.

Since October 2020, however, a regulatory storm has blown into the Chinese tech industry. Ant Group (“Ant”), the Chinese fintech company that was about to launch the world’s largest initial public offering (“IPO”), was asked to cancel the IPO forty-eight hours before its debut. Ant is an affiliate company of Alibaba, China’s largest e-commerce giant. Many western media outlets have framed this incident as an attack on Ant’s founder Jack Ma, the flamboyant and outspoken Chinese entrepreneur who made a speech in Shanghai in late October 2020 criticizing China’s financial regulation. The speech, according to those media, offended many senior Chinese leaders, leading to the eventual cancellation of Ant’s IPO. Since then, Chinese regulation has spread like wildfire, affecting not only the fintech sector, but also

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5. See discussion infra part III.
6. See discussion infra part II.
social media, e-commerce, ride-hailing and food-delivery businesses. The State Administration for Market Regulation (“SAMR”), China’s antitrust authority, issued a set of new guidelines on the platform economy and initiated two high-profile investigations into Alibaba and Meituan, culminating in a record total fine of $3.3 billion. In July 2021, the Cyberspace Administration of China (“CAC”), China’s cybersecurity watchdog surprised investors by conducting a cybersecurity investigation into Didi Chuxing, two days after the company listed on the New York Stock Exchange. The agency then followed up by promulgating a series of stringent data rules and regulations. This sudden regulatory shift gave the impression that the Chinese law enforcement was arbitrary, fueling speculation about factional conflict among Chinese political elites.

Western commentators also viewed this incident as an example of the Chinese Communist Party’s (“CCP”) intent to ramp up control and influence over private firms in China. This Article aims to provide a more comprehensive and nuanced understanding of the driving forces behind China’s great reversal in regulating its tech firms. By targeting its superstar firms such as Alibaba and Tencent, China is actually following a global trend of reining in Big Tech. In the United States, public opinion has pressured regulators such as the Federal Trade Commission to tackle fake news and disinformation, fight infringements of privacy, and break up increasing concentration in the U.S. digital economy.

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years of lax antitrust enforcement, U.S. federal and state regulators recently brought a number of high-profile lawsuits against Google, Facebook, and Amazon.\textsuperscript{17} U.S. lawmakers are also introducing bills that could reshape the largest U.S. tech firms and force an overhaul of their business practices.\textsuperscript{18} The European Commission, even more interventionist than its U.S. counterparts, has launched investigations into major U.S. tech giants such as Google, Facebook, Amazon, and Apple.\textsuperscript{19} Unsatisfied with existing competition regulations, the Commission is introducing ex ante regulations to impose an extensive set of obligations and prohibitions on large online platforms.\textsuperscript{20}

The pendulum of Big Tech regulation has swung even faster in China. In a few short months, China has shifted from its previous lax and tolerant approach to a strict and aggressive one, becoming one of the most active and forceful jurisdictions in regulating the digital economy.\textsuperscript{21} What makes China exceptional, however, is not why it regulates, but rather how it regulates its tech firms. Indeed, China’s volatile style of policymaking is deeply ingrained in its authoritarian governance system, where regulatory authorities need to adhere to central policy initiatives and administrative power is subject to few institutional constraints. As information transmission between the regulators and the top policymakers is not always efficient, the information lag leads to a policy control mechanism that fluctuates from very lax to very harsh enforcement.

To unravel the dynamics behind China’s pendulum swing, I develop a theoretical framework that models Chinese regulatory governance as the outcome of the strategic interaction between four key players: the top leadership, the regulators, the firms, and the public. Although the top Chinese
leaders are very powerful, they are generalists who lack specialized knowledge and have limited capacity to deal with specific regulatory issues. Therefore, most decision-making is delegated to the regulators who specialize in specific areas of regulation and are proximate to information sources. Chinese tech companies are adept at seeking favorable regulatory treatment by lobbying the top leadership and by seeking regulatory arbitrage among the various regulatory authorities. Meanwhile, public discontent against the exploitation of online platforms tends to be muted in China due to censorship and political control. When the top leadership promotes a national economic agenda to encourage innovation and entrepreneurship, Chinese regulators carefully toe the line and avoid taking timely and vigorous enforcement actions that may threaten growth in the tech sector. This bureaucratic inertia discourages information transmission from the regulators to the top leadership, leading to a serious regulatory lag. As public discontent mounts and a regulatory crisis spirals out of control, the top leadership intervenes to avoid threats to social stability. In response to the call from the central top leadership, Chinese regulators at all levels quickly react by taking an aggressive stance to tackle regulatory problems.

To be sure, this volatile style of Chinese policymaking is neither unique to the regulation of the tech sector nor to the Xi Jinping administration, although arguably the centralization of power under Xi may have exacerbated the volatility. Renowned China experts observed that volatile Chinese policymaking is rooted in the revolutionary era of the CCP, when Mao Zedong and other leaders often needed to deal with a highly uncertain and threatening environment during guerrilla warfare. The evolving, complex, and large-scale features of the current platform economy present similar challenges to the CCP leadership, creating the demand for a fluid and flexible regulatory response. This authoritarian model of regulatory governance therefore has its distinct advantages and disadvantages. On the one hand, centralized political power without strong institutional constraints enables the Chinese top leadership to quickly mobilize various administrative resources and propaganda to rein in Big Tech. On the other hand, the bureaucratic constraints on professional autonomy undermine independent judgment at an early stage, resulting in a lax regulatory environment, which could lead to a regulatory crisis. Furthermore, when the government finally decides to act, there is a risk of administrative power abuse and over-enforce-


ment due to the absence of a transparent enforcement process subject to judicial oversight. Yet, such a volatile policy style is likely to persist as it is deeply seated in China’s political governance.

Thus far, some of the biggest beneficiaries of China’s great reversal in regulating the platform economy have been administrative authorities, whose power and prestige have been significantly enhanced. The tightening regulations over Chinese tech giants have given these agencies the perfect opportunity to expand both their policy control and institutional capacity. This new policy change also occurs in tandem with a gradual shift of the Chinese government’s priorities from fostering economic growth to addressing nationalism and maintaining social stability. Indeed, the Chinese government is cultivating mass support by exerting pressure on Chinese tech firms to lower prices for small merchants, drivers, and courier workers, and to improve welfare for their employees and contractors. Amid the heated Sino-U.S. tech war, the regulatory crackdown affords the Chinese government much greater leverage in steering its tech firms towards a more innovative path to stay competitive with the United States.24 By imposing additional cybersecurity review requirements on data-rich Chinese tech firms seeking to tap into overseas capital markets, the Chinese government is also enhancing the appeal of domestic stock exchanges.25 Chinese tech firms have quickly adapted to the shifting policy winds. After all, the alignment of their business plans with the top leadership’s policy agenda is an important means of self-protection for Chinese tech firms. Although it is far from clear whether China’s reorientation of its regulatory policies will lead to fundamental changes in the Chinese tech industry’s competitive landscape and bring about lasting improvement in social welfare, it does appear to have restored some of the balance between innovation and regulation, which was lost during the years of rapid growth.

This Article is organized as follows. Part I proposes a theoretical framework for analyzing volatility in Chinese policymaking. Specifically, I identify five elements of China’s authoritarian regulatory governance and explain how they account for a particularly dramatic pendulum swing in the context of regulating the platform economy. Part II explores how government support, firm lobbying, and bureaucratic inertia together contributed to a lax regulatory environment for Chinese tech firms in the past. Part III discusses how the Chinese policy pendulum swings by first examining how regulatory crises arise, then by tracing how the central government launched its current law enforcement campaign to rein in tech firms. Part IV explores the impact of China’s great reversal in regulating the platform economy. The Article concludes with some broader thoughts on the implications of China’s authoritarian regulatory governance.

24. See infra Section IV.D.
25. See infra Section IV.E.
I. The HAPPY Model of Regulation

Sebastian Heilmann and Elizabeth Perry observe that policy volatility in China has its roots in the revolutionary past of the CCP, when the ever-changing circumstances caused it to adopt a guerilla policy style and adaptive governance. In this Article, I seek to propose a new theoretical framework that includes not only the top leadership, but also the other important actors involved in the regulatory process: the administrative agencies that carry out the enforcement mandates, the firms that are targets for regulation, and the general public that engages with the firms. More specifically, I identify five main elements of China’s authoritarian regulatory governance: hierarchy, adaptability, parochialism, pliancy, and yelp; I call this the “HAPPY” model of regulatory governance. In particular, hierarchy is used to describe the regulatory decision-making process, whereas the other features are used to describe the characteristics of each of the four key players in the regulatory process. Notably, hierarchy is the dominating feature as the other four features are somewhat endogenous to this first feature. The HAPPY model particularly focuses on how the information flows among different tiers of players as the lack of information hampers efficient regulatory decision-making, hence creating more policy volatility.

The first, and by far the most important, feature is that the Chinese regulatory decision-making process is very hierarchical. The policymaking process involves the interaction among players from four tiers of the Chinese polity. At the apex is the leadership in Beijing, which enjoys the highest authority and wields tremendous power. At the same time, the top leadership lacks the expertise to make concrete decisions and has limited energy to deal with specific regulatory issues. It thus delegates most of its decision-making power to the administrative agencies, which are situated at the second tier of the Chinese polity. These Chinese regulatory authorities at all levels are nested within China’s vast bureaucratic machine, and they derive their legitimacy from the delegation of power by the central authority. Because officials are evaluated through a top-down nomenklatura process, the whole bureaucracy is organized based on an upward accountability system. Chinese regulators thus need to carefully tread the lines laid down by the top when carrying out their enforcement duties. Chinese firms are located at the third tier of the polity. They are not on an equal footing with the regulators due to the strong power imbalances between government and businesses in China. Although in theory companies have the opportunity to challenge
government actions in court, few choose to do so. Instead, businesses that are investigated tend to exhibit an unusual level of cooperation with the regulators. Platform participants, here referring to members of the Chinese public that interacted with the platforms, are located at the bottom of the hierarchy. They have very limited channels to voice their dissatisfaction due to omnipresent censorship and suppression. However, when regulatory failures deteriorate into financial and social crises, Chinese regulators and the top leadership face pressures to act and intervene.

Second, the Chinese leadership is highly adaptable. Adaptability is part of the CCP’s revolutionary tradition, which makes the Party highly resilient in meeting challenges in changing times. The contemporary Chinese leadership derives its legitimacy from three main sources: economic growth, social stability, and nationalism. As such, Chinese policymaking has been flexible and pragmatic, constantly adjusting to changing domestic and international environments. After decades of rapid economic growth, China’s economy has stalled since the financial recession in 2008. The CCP at that time saw the development of the platform economy as a new engine for growth and an opportunity to rebalance the Chinese economy from an investment-led to a consumption-led model. Burdened by high levels of debt and rising geopolitical tensions with the West, however, the Chinese government has placed a greater emphasis on social stability and nationalism in recent years. Aggressive U.S. sanctions and restrictions on Chinese tech firms such as Huawei and ZTE have generated a “sputnik moment” for China, spurring a wave of Chinese investment in foundational science and

32. HEILMANN & PERRY, supra note 23; see also Andrew Nathan, China’s Changing of the Guard: Authoritarian Resilience, 14 J. DEMOCRACY 6 (2003).
technologies to close the technological gap with the United States. 37 To be sure, adaptability does not mean that the top leaders can always react quickly to regulatory problems. As will be elaborated in Part II, information transmission from the regulators to the top leaders was initially very slow, making it difficult for the top leaders to make informed decisions during the early years of platform regulation.

Third, Chinese regulators tend to be very parochial. Power is fragmented within the Chinese bureaucracy. 38 Each regulatory agency is responsible for overseeing a specific area and officials are often deemed technocrats. Because there are often overlapping functions among agencies, Chinese regulators are in a relentless competition for policy control. 39 As such, Chinese regulators try to maximize their bureaucratic interests within their specific scope of responsibility by focusing on short-term and narrow objectives without considering the broader implications for the whole society. In the meantime, the sweeping anti-corruption campaign that President Xi’s administration initiated since 2012 has created a chilling effect on Chinese government officials who become reluctant to take new initiatives for fear of making mistakes. 40 This inertia discourages information transmission from the regulatory authority to the top leadership, contributing to an information deficit at the top. 41 As a result, many regulatory problems do not receive adequate attention from the top leadership until they begin to spiral out of control. When the top leadership intervenes, it mobilizes the entire bureaucratic machine, which then reacts with swift and aggressive legislative and enforcement actions. In the absence of judicial oversight of administrative action, administrative agencies have the tendency to over-enforce in order to expand their policy control.

Fourth, Chinese companies subject to regulation are very pliant. Despite power imbalances between government and businesses in China, Chinese businesses are not passive actors. Their pliancy thus lies in their acute ability to obey orders while still trying to shape the environment in their favor. Nurtured in the Chinese institutional environment, Chinese firms learn how to adapt to the authoritarian system by employing various intermediaries to


39. Zhang, supra note 29, at 57–63; see also Shirk, supra note 28, at 142.


41. Zhou, supra note 22, at 481.
seek favorable regulatory treatment. Crony capitalism is common as Chinese businesses share ownership stakes with political elites, effectively aligning the interests of the latter with the firms’ own. Investment and support from political elites, as well as the revolving door between businesses and government, help Chinese companies lobby for favorable government policies, which shield them from regulatory intervention. Chinese tech firms are very good at seeking regulatory arbitrage. As illustrated by the example of Ant in Section II.B, the firm sought for regulatory arbitrage by labelling itself as a tech firm rather than a financial institution. Ant innovates at a very rapid speed to take advantage of gaps in existing regulations in order to get ahead of the regulators. Ant also knows how to take advantage of the power fragmentation within the Chinese bureaucracy and appeals to the incentives of different bureaucratic departments. Ant further seized opportunities arising from the fast-changing geopolitical environment and worked them to its advantage. Knowing that it is costly to challenge administrative agencies, Chinese businesses usually acquiesce to regulatory demands and adapt their business plans to adhere to new policy agendas from the top leadership.

Fifth, platform participants in China, including the vast number of consumers, merchants, employees and contractors of these online platforms, need to yelp to be heard. As many of the transactions that occur online only involve small-value claims, consumers generally do not find it worthwhile to make formal complaints to the public institutions such as administrative agencies or courts. This phenomenon is not unique to China, but the situation is worsened in the Chinese context due to tight and pervasive media control and censorship. China is thus distinguishable from liberal democracies, where civic associations and activists are often able to push forward institutional changes to regulate businesses. Nevertheless, China’s platform participants are not completely mute, especially when personal stakes are high. For instance, delivery workers who were not satisfied with delayed payments or work conditions can organize protests, with some of them resorting to extreme measures such as suicide to gain public attention.


43. Angela Huyue Zhang, China’s Regulatory War on Ant, PROJECT SYNDICATE (Mar. 12, 2021), https://www.project-syndicate.org/commentary/china-bureaucracy-regulatory-war-on-ant-group-by-angela-huyue-zhang-2021-03 [https://perma.cc/6WG6-6GAE].

44. See King et al., supra note 31.


Despite its draconian media censorship, the top Chinese leadership is concerned with public demands and allows limited political participation.\(^{47}\) This is primarily due to three factors: first, the top leadership needs to collect information from its citizens in order to curb agency problems.\(^{48}\) Moreover, not all kinds of dissent can threaten the survival of the authoritarian regime.\(^{49}\) These factors explain why the central government limits its censoring of politically sensitive information, which partly helps the government stay responsive to public discontent before it erupts into crises.\(^{50}\) Furthermore, the Chinese government may tolerate or even provoke nationalistic sentiments in order to rally popular support and to enhance the legitimacy of its regulatory actions in matters relating to national security.\(^{51}\) But the Chinese leadership also recognizes that nationalism is a double-edged sword as it could also reveal the weakness of the regime and pose a threat to political and social stability.\(^{52}\) As such, the top Chinese leadership must strike a delicate balance between allowing public grievances to air and suppressing those that might be viewed as a threat to its rule.

The above five core features of Chinese regulatory governance affect and reinforce each other, resulting in regulatory outcomes that tend to favor agility over stability. As elaborated in Part II, the Chinese government was very supportive of the platform economy and introduced several policy initiatives to encourage innovation and entrepreneurship.\(^{53}\) Chinese tech firms have been very adept at lobbying for favorable central policies, creating products that seemingly do not fall within existing regulation, and appealing to the interests of different bureaucratic departments that have regula-
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History oversight over the tech sector. Given the overriding national agenda to promote innovation and entrepreneurship, Chinese regulators refrained from taking an aggressive stance to regulate the tech sector, despite increasing public complaints about platform exploitation. During this period, information about these emerging regulatory issues was transmitted very slowly from the regulators to the top leaders. (See Figure 1).

**Figure 1: Lax Enforcement**

[Diagram showing the relationship between Top Leaders, Regulators, Platforms, and Platform Participants, with arrows indicating information flow and regulatory actions.]

In October 2020, Jack Ma made a controversial speech in Shanghai that provided scathing criticisms of Chinese financial regulation. As elaborated in Part III.B, this speech directly challenged the legitimacy of the Chinese financial regulation and offended many senior officials. At this point, regulators could no longer withhold information and reported the severity of the matter to the top leadership.\(^{54}\) The top leadership reacted quickly by canceling Ant’s IPO and mobilized a massive regulatory enforcement campaign.\(^{55}\) Chinese administrative authorities at all levels then quickly responded by taking aggressive actions to regulate the tech sector.\(^{56}\) By enhancing the welfare of the various platform participants, the Chinese top leadership is

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\(^{54}\) See discussion *infra* Section III.B.

\(^{55}\) Id.

\(^{56}\) See discussion *infra* Section III.C.
cultivating mass support. Meanwhile, Chinese tech firms continue to lobby the regulators for lenient treatment, while reorienting their businesses to adapt to the new policy initiatives from the top leadership. (See Figure 2).

**Figure 2: Strict Enforcement**

Notably, this theoretical framework for studying volatility in Chinese policymaking is not only useful in explaining what has happened to the regulatory governance of the platform economy, but also potentially a wide range of governance issues in China. China’s handling of the COVID-19 crisis offers a case in point. Although China was able to successfully mobilize a national campaign to curb infections within months, it initially failed to control the virus before it spread widely within the country. In Wuhan, the initial epicenter of the outbreak, doctors’ early warnings about the infectious disease were ignored or suppressed for weeks largely because local offi-

57. See discussion infra Section IV.B.
58. See discussion infra Section IV.D.
cials who were highly sensitive to political pressures withheld information in an attempt to ensure social and political stability. This information lag resulted in a serious delay in controlling the virus before it became a global pandemic. It wasn’t until the central leadership decided to make the information public that the whole nation took drastic and draconian measures to conduct self-quarantine and lockdown. Scholars have attributed the contrasting organizational responses during the two periods to China’s tightly coupled political governance structure under Xi.

China’s regulatory governance is therefore a departure from the western norm of regulation, which places greater emphasis on agency accountability, legal consistency, and due process. A comparison with the United States is revealing. The Chinese bureaucracy is organized through a tightly coupled system in that different parts of the bureaucracy are connected and controlled through the nomenklatura system and are all responsible to the top leadership in Beijing. By contrast, the United States is organized through a loosely coupled system with a clear delineation of authority between federal, state, and county governments. As such, the U.S. Federal Government wields less power, and agencies tend to enjoy a higher level of independence, even if they remain susceptible to shifting policy winds in Washington. The freedom of the press in the United States also means that agencies are subject to more public scrutiny. Moreover, U.S. regulatory authorities operate under close judicial oversight since their actions are frequently challenged in court, constraining their ability to over-enforce even when administrations try to tighten regulation. This stands in contrast with the reality in China where agencies are rarely subject to judicial oversight. As such, judicial review is an important constraint in preventing the policy pendulum from swinging too quickly in the United States.


63. Heilmann & Perry, supra note 23, at 14.


65. Id.


68. Zhang, supra note 29, 68-72.
II. Why Regulation Was Very Lax

Law is never complete as it cannot possibly anticipate all contingencies.\(^{69}\) This is particularly the case for disruptive technologies such as online platforms, which have grown so rapidly that existing rules and regulations often fail to cover their innovative products or services.\(^{70}\) Moreover, when a new product or service is introduced to the market, it takes time for industry participants and regulators to understand and assess its impact. Human beings have a cognitive limitation in foreseeing and estimating the risks that come with new products and services. As such, regulators often do not become aware of problems until they become serious. Even when the regulators become aware of the problems, it still takes time for the legislature and law enforcement agents to formulate a unified and coherent response. This lag in regulating online platforms is certainly not unique to China as countries such as the United States are similarly ramping up scrutiny over their tech giants. In the following discussion, I will explain how the HAPPY model of regulation has contributed to the regulatory lag in China, focusing particularly on the government support from the top leadership, the aggressive lobbying from the tech firms, as well as the bureaucratic inertia of the regulators.

A. Government Support

After decades of phenomenal expansion with a GDP growth rate averaging ten percent, the Chinese economy began to slow down after the financial recession in 2008.\(^{71}\) The top leadership, which, as suggested by the HAPPY model, is very adaptable, recognized the need for China to depart from its previous export-driven and investment-dependent model and prioritized innovation in its new economic blueprint.\(^{72}\) Indeed, online platforms have brought about tremendous efficiency for consumers by lowering transaction costs and reducing information asymmetry between buyers and sellers. It has created more employment opportunities for the Chinese labor force, despite the loss of jobs amid the disruption caused by digitalization.\(^{73}\) In China, innovative financial products also offer an appealing investment opportunity in the volatile Chinese stock market. The Chinese government was therefore

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70. See Elizabeth Pollman & Jordan M. Barry, Regulatory Entrepreneurship, 90 S. CAL. L. REV. 383 (2016) (explaining how U.S. tech firms such as Uber and Airbnb try to take advantage of the legal grey area to lobby for favorable legal treatment).
very supportive of the digital economy with the hope of moving the country up the technological ladder.74

In 2015, the State Council unveiled the “Internet Plus” initiative, a five-year plan to upgrade traditional manufacturing and service industries by integrating them with big data, cloud computing, and other “internet of things” technologies.75 The State Council also released five guidelines to implement the initiative, detailing policy support in various aspects such as cross-border e-commerce, commerce circulation, rural e-commerce, innovation, and entrepreneurship.76 Recall that the first element of the Chinese regulatory process is that it is very hierarchical. Given the overriding national agenda to promote innovation, various central ministries and local governments quickly responded by issuing concrete guidelines and implementation measures.77

Within the same year, the Ministry of Commerce formulated various action plans for implementing the “Internet Plus” initiative.78 Sector regulators ranging from the Ministry of Agriculture to the financial regulators such as the People’s Bank of China (“PBOC”) were also busy promoting this initiative in their relevant sectors.79 In the following year, the National Development and Reform Commission (“NDRC”) announced a three-year plan with the goal of building an artificial intelligence application market worth over RMB 100 billion.80 Chinese tax departments further offered preferen-

74. See infra Part IV.
76. See *China International Electronic Commerce Center, 2015 Report on E-Commerce in China* 11 (2015) [hereinafter E-Commerce Report] (including the following guidelines: The Opinions on Striving to Develop E-commerce to Speed up the Cultivation of New Economic Driving Force, the Guiding Opinions on Promoting the Healthy and Rapid Development of Cross-border E-commerce, the Opinions on Promoting Online and Offline Interaction to Accelerate the Innovative Development, Transformation and Upgrading of Commerce Circulation, the Guiding Opinions on the Promotion of the Development of Rural E-commerce and the Opinions on Several Policy Measures for Vigorously Promoting Public Entrepreneurship and Innovation. These documents not only clarify the strategic orientation for the development of e-commerce, but also put forward specific policies and measures from such aspects as cross-border trade, commerce circulation, rural area, innovation, and entrepreneurship). To further stimulate entrepreneurship, the Chinese government established national venture capital funds for emerging industries, national development funds for small and medium-sized enterprises, as well as national funds for transforming technological achievements. Yongqi Hu, *Startups to Gain Government Funds*, *China Daily* (July 28, 2017, 7:13 AM), https://www.chinadaily.com.cn/business/2017-07/28/content_30275307.htm [https://perma.cc/LHA9-RNJX].
78. See E-Commerce Report, supra note 76, at 11.
tial tax schemes to encourage mass entrepreneurship and innovation. In July 2017, eight Chinese ministries jointly issued a guiding opinion to promote the sharing economy, which laid down comprehensive measures for market access, regulatory supervision, and the creation of a nurturing environment. Further, local governments responded to Beijing’s call by issuing measures accelerating the development of e-commerce. Local governments ran pilot programs to explore the implementation of the “Internet Plus” initiative in various sectors such as logistics, social security, health care, and other government services. Government-sponsored incubators for startups also mushroomed in large cities such as Beijing and Shenzhen.

These government initiatives created a very supportive and favorable policy environment for Chinese tech firms. When Premier Li Keqiang addressed the Summer Davos Forum in 2017, he touted that “an accommodating and prudent regulatory approach towards new industries, new business forms, and models” had facilitated the healthy development of China’s tech companies. Indeed, for three consecutive years between 2018 to 2020, the annual government reports by the State Council advocated for a “tolerant and cautious” approach in regulating the Chinese platform economy. Not surprisingly, Chinese regulators carefully toed the line by applying...
ing a relatively “light-touch” approach in regulating the Chinese digital economy.

Alipay, created by Alibaba to offer consumer-to-merchant money transfers on its e-commerce platform Taobao, is one firm that thrived under a supportive policy environment. Alipay provides escrow services for Taobao consumers, only releasing payments to sellers after buyers have received the goods they ordered. This important innovation resolved mistrust between transacting parties, facilitating Taobao’s exponential growth. However, third-party payment was a legal gray area in China. Jack Ma, the founder of Alipay, was even prepared to go to jail for launching this service. But Ma’s gamble paid off. Alipay became widely popular and ultimately won endorsement from regulators. In 2010, the PBOC issued administrative measures on non-financial payment services and its implementing measures, retroactively recognizing the legal status of online payment platforms such as Alipay. The following year, Alipay obtained a payment business license as one of the first non-financial institutions to conduct payment operations.

Yu’e Bao, an online money market fund introduced by Alibaba in 2013, offers another example. Yu’e Bao allowed Alipay customers to deposit the money left in their accounts to earn interest rates higher than those offered by banks. It soon became China’s largest online market fund, whose explosive growth surprised industry participants and stimulated new entrants from other tech firms such as Baidu and Tencent. Although Chinese financial regulators were under pressure to impose regulatory restrictions on Yu’e Bao, it was not until 2017 that the PBOC started to impose limits to regulate the fund. In fact, the central bank was supporting the growth of Yu’e Bao during its early days as a means to push forward financial market liberalization.

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This “invest first, get approval later” business model was also prevalent in China’s ride-hailing businesses. Despite their exponential growth in China, ride-hailing businesses such as Didi and Uber had operated in the legal gray area in their early years. In 2016, the State Council issued a national policy on reforming and promoting the development of the taxi industry, offering favorable policy support for the ride-hailing platforms. In the same year, seven Chinese central ministries including the Ministry of Transportation jointly issued interim measures regulating the ride-hailing businesses, effectively legitimizing their operations.

The enactment of China’s E-Commerce Law, a comprehensive legislation that regulates e-retailing, further illustrates the Chinese government’s support for the tech industry. During the legislative process of the law, Chinese tech firms lobbied top Chinese leaders including President Xi Jinping, Premier Li Keqiang, and Chairman Zhang Dejiang of the Standing Committee of the National People’s Congress, all of whom endorsed an open and participatory approach in drafting the law. The tech industry was thus granted the opportunity to closely interact with academics and officials during the entire drafting process. It is estimated that over 100 public conferences were held by the drafting entities, and the draft law went through an unprecedented four rounds of review by the National People’s Congress (“NPC”). The law was finally passed in August 2018, after five years of
intensive debate among various stakeholders. The E-Commerce Law’s polycentric, participatory, and collaborative drafting process stands in contrast with that of other areas of law; for example, the drafting process of the Cyber Security law took only one year and allowed only non-negotiated formalistic participation. Scholars ascribed the short drafting process of the Cyber Security Law to directives from the top leadership, who viewed internet security as an important safeguard for national security and sovereignty and explicitly suggested a short drafting process. This further illustrates the hierarchical nature of the HAPPY regulation, in that the top leaders’ directives can directly influence the legislative process of a particular piece of legislation.

B. Firm Lobbying

In the United States, scholars have attributed weak law enforcement against Big Tech to political contributions and lobbying expenditures. However, unlike U.S. tech firms, which can contribute to campaigns and by extension, influence the political process, Chinese tech firms face a much more opaque lobbying process. Moreover, unlike state-owned firms, which enjoy bureaucratic ranks, Chinese tech firms have less direct means to lobby China’s internal bureaucracy. That said, Chinese tech entrepreneurs are able to participate in politics through a variety of alternative channels. The most straightforward channel is to take a part in the policy-making process itself. For instance, Jack Ma, the founder of Alibaba and Ant Group, has been a CCP member since the 1980s. Some tech entrepreneurs serve in the NPC, China’s top legislative body, or the Political Consultative Conference, the top advisory body (the two bodies are known collectively as the “two sessions”). For instance, top executives from large Chinese tech firms have actively participated in the two sessions and submitted proposals for

102. See Deng & Liu, supra note 98, at 683–84.
103. Id. at 687.
the digital economy. Commentators note, however, that these proposals serve more “as gestures of fealty to the Communist government than real policy initiatives” because the NPC is a toothless rubber stamp parliament. Yet other scholars have suggested that legislative membership signals a tech company’s political capital, which helps them receive preferential treatment and fend off property appropriation from the government bureaucracy.

Recall that one of the elements of the HAPPY regulation is that Chinese tech firms are very pliant—they are not only obedient but also flexible and know how to work the environment to their favor. Given the limited influence they can exert through the formal lobbying channels, tech companies rely heavily on intermediaries to exert influence from behind the scenes. The first type of intermediary consists of political elites, who either have strong family connections with the top leadership at the central or local governments (for example, the princelings), or themselves enjoy high bureaucratic status at places such as the powerful Chinese SOEs or state sovereign funds. Because these politically connected investors can exert political influence over the legal process, I call them “political intermediaries.” These political intermediaries, many of whom work in private equity or venture capital, are often offered the opportunity to invest in tech firms at an early stage, thus allowing them to reap a bonanza later when the tech firms become public. Since any harsh regulatory interventions into tech firms will negatively impact investments made by political elites, regulatory authorities would be more reluctant to act against these firms, especially in the absence of a strong and clear policy signal from the top. This “ownership sharing scheme” effectively aligns the interests of Chinese tech firms with those of the political elites who can exert influence on the bureaucracy.

Ant Group, China’s largest fintech giant, is a prime example. One of the reasons why the CCP leadership decided to suspend Ant’s IPO was reportedly a growing unease towards Ant’s complex ownership structure. A central government investigation revealed that a group of well-connected Chinese political elite entities have invested in Ant, as well as China’s national pension fund and several large state-owned banks and investment companies. Alibaba is another example. When Alibaba first went public in 2014, the New York Times ran a sensational report about investment from Chinese po-

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109. See Yuan, supra note 107.
111. See Wei, supra note 14.
itical elites in the e-commerce giant. As one analyst put it: “It would take, at this point, a seismic effort to topple an Alibaba. They’ve got so many different allies across so many different ministries.”

The second type of intermediary is former government officials or academics, who are either hired as in-house staff, or are engaged or sponsored through academic or research organizations. As this type of intermediary mainly facilitates information exchange between firms and regulators, I call them “information intermediaries.” In the past few years, China’s largest tech firms, such as Tencent, Alibaba, Bytedance, Didi Chuxing, and Meituan have poached former regulatory officials and offered them generous payouts. Seeing little prospect for career advancement in their departments, many officials either move to positions in research centers or government relations departments at Chinese tech giants. Chinese academics, many of whom advise the government departments in drafting new laws or provide expert opinions for investigations, also play a very important role in facilitating this process. Given the lack of transparency in China’s legislative and enforcement processes, it is critically important for Chinese tech firms to have access to valuable information so they can gain first-mover advantage in shaping their responses to new policy developments. As information intermediaries are also legal experts in the relevant policy areas, they can help Chinese tech firms lobby against unfavorable legislative changes and obtain favorable treatment during ongoing investigations. However, it is also well-known that the revolving door can distort the incentives of regulators, resulting in regulatory capture.

Thus far, information intermediaries have been particularly useful in helping Chinese Big Tech lobby for favorable laws. Scholars have observed that Chinese tech firm representatives were heavily involved in the drafting of the E-Commerce Law, and their opinions played a critical role in influencing the drafting process. The initial draft of the law, which was drafted by agencies with authority to oversee various aspects of the digital economy,
put more emphasis on regulation than development. Internet companies lobbied aggressively against the early drafts and recruited support from academia by funding scholars’ projects and conferences. Representatives from Alibaba and Tencent were also able to take advantage of informal channels to submit their reports on the E-Commerce Law to the top leadership, including President Xi and Premier Li, who endorsed the companies’ view that the regulations should facilitate development. The law went through an unprecedented three rounds of public consultation. In the end, many rules that would have imposed stricter responsibilities on online platforms were either abandoned or significantly diluted in the final version.

Firm lobbying was similarly observed in the ride-hailing business. In response to public complaints and inconsistent judicial treatment of drivers’ legal statuses, the original version of the 2015 Interim Measures regulating the ride-hailing businesses included a strict legal requirement that companies must enter into labor contracts with their drivers. This provision, however, was significantly diluted in the final version, leaving the online platforms with great freedom to sign different types of contracts with drivers. As a consequence, ride-hailing companies continue shedding their liabilities by avoiding formal labor contracts with their delivery drivers.

Even during the current round of enforcement against Big Tech, Chinese tech companies appeared successful in fending off some unfavorable legislative proposals. In November 2020, the Anti-Monopoly Bureau of the SAMR released draft antitrust guidelines on online platforms. The guidelines included several provisions that could have reduced the burden of proof
for the antitrust regulator in proving online platform dominance, making it easier for them to prosecute cases against the platforms. For instance, the draft guidelines allowed regulators to avoid defining the relevant market in difficult cases. The draft also indicated that the possession of data could be used as a consideration in deciding whether a platform constitutes an essential facility. However, the final version of the guidelines removed all these controversial provisions, added many business justifications in considering abusive conduct, and gave more room for tech firms to defend themselves when they are subject to antitrust scrutiny.

C. Bureaucratic Inertia

As a result of strong government support and active lobbying from Chinese tech firms, Chinese regulatory authorities are averse to taking aggressive stances towards regulating Chinese tech giants. This inertia is also deeply ingrained in the HAPPY model of regulation. All central ministries and local governments are part of China’s vast bureaucracy that derives its legitimacy from the delegation of power by the top leadership in Beijing. Because officials are evaluated through a Leninist-style nomenklatura process, the whole bureaucracy is organized on an upward accountability system. This tightly-coupled organizational structure undermines the effectiveness and authority of local governance. Recall that an essential element of the HAPPY regulation is that regulators tend to be parochial. In the face of an overall national economic agenda of fostering innovation and entrepreneurship and high uncertainty about the consequences of regulating innovation, Chinese regulatory authorities treaded cautiously by adopting lax rather than drastic actions against tech firms.

A good example can be found in the regulation of peer-to-peer ("P2P") platforms that connect borrowers and lenders without the intermediation of banks. P2P platforms act as information intermediaries by gathering information, evaluating credit, and facilitating information exchange between

130. Id.
131. Id.
132. Id.
136. Id.
137. Id. at 481.
borrowers and lenders.138 As the Chinese banking industry is dominated by state banks that prefer to lend to large state-owned firms, this form of business garnered strong demand from small private businesses that cannot get credit from big banks.139 At the same time, because P2P platforms only facilitate lending but do not provide credit themselves, they are normally not viewed as commercial lenders.140 Indeed, P2P activities were not covered in pre-existing financial regulations, nor was it clear which regulator had the authority to oversee this sector.141 Instead, they were subject to piecemeal rules scattered in different areas of commercial laws such as the Criminal Law, the Consumer Protection Law, the Securities Law, and the Supreme People’s Court’s judicial interpretation.142 This regulatory vacuum, however, enabled the P2P industry to grow exponentially.143 It was not until 2015 that the State Council issued guiding opinions that laid down the regulatory blueprint to regulate internet finance.144 And the China Banking Regulatory Commission finally tightened regulation by setting up a comprehensive legal regime to oversee the P2P industry in 2016.145

Another example is China’s regulation of the variable interest entity (“VIE”) structure.146 In a typical VIE structure, foreign investors acquire stakes in an offshore holding company, usually based in tax havens such as the Cayman Islands. The holding company then sets up a Chinese subsidiary, which signs contracts with a third-party company in charge of running the business and which then pledges to send profits to the Chinese subsidiary. Thus far, many Chinese tech firms have adopted a VIE structure to


140. Id. at 800; see also You, supra note 138, at 93–94.

141. Wei, supra note 139, at 800, see also You, supra note 138, at 95–96.

142. See You, supra note 138, at 88.

143. Cheng Ding et al., Lessons from the Rise and Fall of Peer-to-Peer Lending in China, 22 J. BANKING REG. 133, 136 (2021) (observing that between 2011 and 2015, the number of P2P lenders grew from 50 to 2,595); see also Chao Deng & Xie Yu, China’s Once-Hot Peer-to-Peer Lending Business Is Withering, WALL ST. J. (Feb. 2, 2020, 7:00 AM), https://www.wsj.com/articles/china’s-once-hot-peer-to-peer-lending-business-is-withering-11580641804?mod=article_inline (noting that the total volume of lending totaled almost $100 billion in 2015, compared to $34 billion in the United States).


146. For a comprehensive overview of the VIE structure, see Marcia Ellis et al., The VIE Structure: Past, Present and Future - Part I, H.K. LAW. (June 5, 2020), http://www.hk-lawyer.org/content/vie-structure-past-present-and-future-%E2%80%93-part-i [https://perma.cc/7CBD-BSQY].
circumvent a government restriction on foreign investment in the internet sector. Because VIEs operate in a legal grey area, none of the Chinese bureaucratic departments want to regulate VIEs for fear of legitimizing them.147 As a result, tech giants such as Alibaba and Tencent have made hundreds of acquisitions without needing to notify the Chinese antitrust authority at all.148 In fact, Alibaba and Tencent have become two of the largest investors in the Chinese digital economy, together owning most of the unicorns in the industry.149 At the moment, Tencent is only second to Sequoia Capital, a Silicon Valley investment fund, in terms of the unicorns it has invested in.150 It was not until late 2020 that the Chinese antitrust authority started to actively intervene in merger cases involving a VIE structure.151

While tech companies in China were met with limited regulatory obstacles over the past decade, complaints about their anticompetitive conducts, in the e-commerce especially, were prevalent. For example, JD.com, a fierce rival to Alibaba, filed a complaint with the Chinese antitrust regulator about the “choose one from two” exclusionary practices that Alibaba has implemented since 2015.152 The Chinese antitrust authority did not initiate any formal antitrust investigations, but opted for more lenient regulatory tools such as the Anti-Unfair Competition Law or the E-Commerce Law to deal with these complaints.153 These laws lack teeth, as the maximum fines that can be imposed are rather low.154 Firms therefore ignored regulatory demands and treated the penalties as a cost of doing business—they paid fines and continued with their exclusionary practices. Similar to the serious lag in intervening in mergers with a VIE structure, the Chinese antitrust

147. Id.
153. Id.
154. Id.
III. How the Pendulum is Swinging Towards Harshness

The lax regulatory environment nurtured domestic tech giants to become tech goliaths, commanding attention and loyalty from a large population of Chinese users. While online platforms and digitalization bring about enormous benefits for the economy, they also generate unintended consequences and pose significant risks. Armed with troves of data, deep coffers, and an influence that spans many aspects of people’s lives, these internet giants have become an important target for regulation in China. In the following discussion, I will first explore how growing public dissatisfaction with Chinese tech firms has been shifting the balance between innovation and regulation over the years. I then apply the HAPPY model of regulation to explain how Jack Ma’s controversial speech in Shanghai eventually tipped the balance between innovation and regulation. Finally, I will use HAPPY to explain how China initiated a massive law enforcement campaign against the Big Tech firms since the debacle of Ant’s IPO.

A. Growing Public Complaints

As Chinese tech firms expand and permeate many aspects of people’s lives, they have also given rise to growing public concern about their excessive power. First, serious cases involving personal safety and financial stability issues started to emerge soon after the introduction of new platform products and services. Some of these incidents have triggered public uproar, posing a threat to social stability. Indeed, given the outsized influence of Big Tech, even a seemingly small probability of operational failures can generate strong regulatory repercussions. Take Didi Chuxing for example. In 2015, Didi launched Shunfengche, a “hitchhiking” service that matched car owners who were willing to offer a free ride to those needing a lift. In a few years, problems started to emerge when a few female passengers using the Shunfengche service were raped and murdered by their drivers. Although these incidents were infrequent, they triggered massive public up-

roars, leading Didi to shut down the Shunfengche service.\textsuperscript{158} Regulators from various major cities also tightened regulation, ordering Didi to overhaul its screening mechanisms for drivers and improve safety protection for passengers.\textsuperscript{159} The series of scandals that erupted in the P2P industry offer another example. In 2015, Ezubao, one of China’s largest P2P lenders, was found to be engaging in a Ponzi scheme.\textsuperscript{160} As of January 2016, Ezubao had defrauded over 900,000 users who lost almost RMB fifty billion.\textsuperscript{161} Angry protests erupted in thirty-four Chinese cities.\textsuperscript{162} The collapse of Ezubao generated a domino effect, with almost fifty percent of the P2P platforms being identified as “problematic” with serious operational difficulties in 2016.\textsuperscript{163} A series of subsequent regulatory crackdowns gave rise to another wave of scandals and defaults in 2018.\textsuperscript{164} By late 2020, Chinese banking regulators had all but shut down P2P platforms.\textsuperscript{165}

Moreover, as online platforms serve as intermediaries connecting buyers and sellers, it is often not entirely clear what their legal responsibilities are with respect to conflicts arising from their platforms. As such, online platforms have the incentive to engage in excessively risky transactions without bearing any liabilities. Chinese regulators have grown increasingly wary of the risks of moral hazards associated with platform operations. Consider an example in the food delivery industry. Meituan and Ele.me, two major food delivery companies, have been criticized for using smart algorithms to set up routes and impose tight deadlines on delivery drivers, resulting in many traffic accidents.\textsuperscript{166} As most of these drivers are crowdsourced couriers rather than full-time employees, they cannot receive social security benefits or compensation for work-related injuries.\textsuperscript{167} The absence of formal legal protection for drivers resulted in many labor disputes, some of which escalated

\begin{itemize}
  \item Id.
  \item Ponzis to Punters, \textit{Economist} (Feb. 6, 2016), https://www.economist.com/china/2016/02/06/ponzis-to-punters [https://perma.cc/4FXJ-N38W].
  \item Id.
  \item Id.
  \item See You, \textit{supra} note 138, at 96.
\end{itemize}
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into strikes.\textsuperscript{168} In one tragic instance, a driver who was not able to receive compensation protested by setting himself on fire.\textsuperscript{169} These incidents generated a public outcry and heated debate in China about the liabilities of online platforms. Another example is micro-lending, a popular financial service introduced by Chinese fintech companies. For instance, Ant Group, China’s largest fintech company, partnered with Chinese state-owned banks to extend microloans to hundreds of millions of small businesses and individuals.\textsuperscript{170} According to Ant’s IPO filing, banks extend almost ninety-eight percent of the loans.\textsuperscript{171} As Ant did not need to bear much of the risk of default, it generates concerns that Alibaba might engage in excessively risky lending. Indeed, Ant has been found to have employed deceptive tactics to induce young students to spend money on Taobao by conveniently borrowing through its microlending channels.\textsuperscript{172}

Furthermore, the Chinese digital economy has grown to be highly concentrated, giving rise to a whole host of antitrust and competition issues. In the past few years, Tencent and Alibaba have become China’s most formidable competitors, operating like a duopoly in the Chinese digital economy.\textsuperscript{173} Tencent is a mega-entertainment firm with strong market positions that span across social media, music, and gaming. Alibaba is a conglomerate with its core business in e-commerce but also invests heavily in social media, entertainment, logistics, and cloud computing. Each of these two tech giants owns a few super-apps, which are highly popular apps that are not only have a vast number of users, but also provide access to countless “mini-programs” that can be launched instantly.\textsuperscript{174} Over the years, the intense rivalry between Alibaba and Tencent has carved up China’s tech sector into two competing ecosystems, each side blocking users from sharing content to

\begin{itemize}
\item \textsuperscript{169} See Yang & McMorrow, supra note 167.
\item \textsuperscript{170} Nan Li & John Darwin Van Fleet, \textit{Ant’s Road to Redemption: How the Fintech Giant Can Save Itself}, SUPChina (May 18, 2021), https://supchina.com/2021/05/18/ants-road-to-redemption-how-the-fintech-giant-can-save-itself/ [https://perma.cc/UHF6-7T2J].
\item \textsuperscript{171} Id.
\item \textsuperscript{172} Id.
\item \textsuperscript{174} Caleb Foote & Robert D. Atkinson, \textit{Chinese Competitiveness in the International Digital Economy}, INFO. TECH. & INNOVATION FOUND. 4 (2020) (“WeChat, which was released in 2011 as a messaging service akin to WhatsApp (indeed, most major Chinese Internet firms started as copies of U.S. digital products or services), now has nearly 1.2 billion monthly active users and, as of early 2019, has 2.3 million mini programs—more than the 2.1 million apps on the App Store. WeChat mini programs had transactions worth $115 billion in 2019, all moderated through Tencent’s digital payment system WeChat Pay, which is accepted by 79 percent of small and medium-sized Chinese retailers. Alipay, owned by Alibaba affiliate Ant Financial, and led by Alibaba’s founder Jack Ma, is a strong second with 647 million monthly users mid-2019, 401 million of whom used mini programs.”).}
\end{itemize}
the other’s ecosystem.\textsuperscript{175} For instance, users of WeChat couldn’t open a link to a product from Taobao, and had to copy and paste the URL in a browser to access the content. Taobao, on the other hand, does not allow Tencent’s WeChat Pay as a payment service. Because of the lack of interoperability between these two ecosystems, most new start-ups have no choice but to join either the Alibaba or the Tencent camp in order to survive.\textsuperscript{176} To further entrench their own dominant positions, leading e-commerce firms such as Alibaba and Meituan also imposed restrictive conditions to force merchants to stay on their platforms.\textsuperscript{177}

Last but not least, once online platforms gain monopoly power, they can abuse their power by exploiting platform participants. By leveraging the vast amount of data collected from their consumers, Chinese e-commerce platforms can employ smart algorithms to price discriminate and extract more surplus from Chinese consumers. Meanwhile, Chinese tech giants have taken advantage of cheap labor in China to aggressively expand their businesses. Due to the high concentration of the Chinese tech industry, large online platforms can behave like a monopsony by exploiting their suppliers, contractors, and employees. Online platforms’ dominant power over both upstream merchants and service producers and downstream consumers therefore could further exacerbate income inequality in China.\textsuperscript{178} Indeed, top executives and engineers in Chinese Big Tech are rewarded with generous paychecks and lucrative options while the vast population of frontline workers such as delivery workers and ride-hailing drivers earn little.\textsuperscript{179} In 2020, the Guangdong Restaurant Association publicly accused Meituan, a top food delivery app, of significantly increasing the commission for restaurants since the outbreak of the pandemic.\textsuperscript{180} In response to the public uproar, Meituan

\textsuperscript{175} Louise Lucas, Long Freeze Between Tencent and Alibaba Thaws, FIN. TIMES (Apr. 30, 2019), https://www.ft.com/content/c3402462-6728-11e9-a79d-04f350474d62 [https://perma.cc/8DDV-3GXK].

\textsuperscript{176} Wee, supra note 157.


\textsuperscript{178} Sonali Jain-Chandra et al., Inequality in China—Trends, Drivers and Policy Remedies (IMF Working Paper No. 18/27, 2018) (noting that China is now home to 878 billionaires, the highest number in the world); Nikki Sun, China’s Tech Boom Leaves Wide Rich-Poor Chasm, NIKKEI ASIA (Sep. 18, 2018), https://asia.nikkei.com/Spotlight/Asia-Insight/China-s-tech-boom-leaves-wide-rich-poor-chasm [https://perma.cc/FPJ3-L2LA] (citing a 2016 study from Peking University, which found that the top one percent of the population controls one-third of the country’s wealth while the bottom twenty-five percent holds less than one percent); see also Branko Milanovic, China’s Inequality Will Lead It to a Stark Choice, FOREIGN AFFS. (Feb. 11, 2021), https://www.foreignaffairs.com/articles/china/2021-02-11/chinas-inequality-will-lead-it-stark-choice [https://perma.cc/ND9L-TPER] (noting that China’s Gini coefficient, which measures wealth and income distribution, was 0.47 in 2019, compared with 0.41 in the United States).

\textsuperscript{179} Yang & McMorrow, supra note 167.

made some concessions and negotiated a deal with the association to lower its commission.181

B. The Tipping Point

Although regulatory tensions in the tech sector had been building up for many years, they had yet to tip the balance between innovation and regulation until mid-2020. In fact, the State Council’s annual work report released in May 2020 continued to put an emphasis on applying a “cautious and tolerant” approach in regulating the platform economy.182 But one event directly triggered the dramatic reversal of China’s regulatory approach. On October 24, 2020, Jack Ma made a highly controversial speech at the Bund Financial Summit in Shanghai. Ma scathingly criticized Chinese financial regulation, chiding state banks for operating with a “pawn shop” mentality.183 He also referred to the Basel Accords, a set of agreements on banking regulation issued by the Basel Committee on Banking Supervision, as a “club for the elderly.”184 On November 3, 2020, the Shanghai Stock Exchange halted the IPO of Ant, citing changes in the regulatory environment.185 The balance was then tipped decisively towards regulation. So how did Jack Ma’s speech and Ant’s mega IPO, which would have brought China tremendous pride, become the tipping point in regulating the Chinese platform economy?

The HAPPY model of regulation is helpful for us to understand the driving forces behind this Ant IPO debacle. First, the role Ant played in tipping the scales had much to do with the firm’s pliancy. Similar to other Chinese tech firms, Ant is well-adapted to the weak institutions in China and knows how to navigate the complex regulatory environment and grow its business in the legal grey areas. Since its establishment in 2014, Ant has created many new financial products in microlending, insurance, and wealth management, none of which seem to fall within the existing regulatory framework. Although almost ninety percent of Ant’s revenue is derived from financial services, Ant has been trying hard to label itself as a technology company.186 This allowed Ant to seek arbitrage among different regulatory

183. Yang & Wei, supra note 7.
184. Id.
185. Id.
186. See Li & Van Fleet, supra note 170 (noting that six months before the IPO, Ant changed its name from Ant Financial to Ant Group to avoid regulatory scrutiny).
authorities and find room to grow and expand very quickly. Ant saw a good opportunity when the Trump administration threatened to delist many Chinese companies from the U.S. stock exchanges. To lure Chinese tech firms back home to trade in China, China launched the Technology and Innovation Board (the “STAR market”), a new Chinese technology stock market similar to NASDAQ. As Ant’s IPO debut could give a significant boost to the STAR market, the China Securities Regulatory Commission fast-tracked the listing process for Ant. Ant’s IPO was highly oversubscribed, giving the firm a high valuation akin to a technology company rather than that of a bank.

The parochialism of the regulators also played a crucial role in contributing to the great reversal of regulation. Unlike other regulatory authorities that do not face many consequences from their regulatory failures, the PBOC is the lender of last resort and needs to bear the residual risk of bailing out troubled banks. Concerned about the risk of moral hazards, the PBOC has long been pressing for legislation to regulate Ant as a financial holding company. In 2018, the PBOC was already drafting regulations that proposed increased regulation of fintech companies via stricter capital reserve requirements and risk management rules. During the summer of 2020, the PBOC issued a spate of regulations, guidelines, and notices to try to curb excessive risk from digital finance. Even after Ant filed for IPO, the PBOC issued draft guidelines indicating that it would regulate Ant and other fintech companies as financial holding companies. During Ant’s IPO process, the PBOC and other financial regulators grew more alarmed as Ant’s high valuation as a tech firm rather than as a bank stoked fears of a bubble. Indeed, Jack Ma’s controversial speech in Shanghai appeared to have been the entrepreneur’s last attempt to lobby for favorable regulatory treatment in anticipation of tightening regulation over his business.

189. See Yu & Mitchell, supra note 187.
190. See Li & Van Fleet, supra note 170 (noting that the price-to-earnings ratio of tech firms are four times of that of banks).
193. Yang & Wei, supra note 7.
195. See Zhang, supra note 43.
Yet Jack Ma’s speech backfired as it violated the taboo of directly challenging the authority and legitimacy of existing financial regulations. This reportedly infuriated senior Chinese leaders, who stepped out and voiced their displeasure with Jack Ma and Ant Group. At this point, the regulators decided that they would no longer withhold any information and reported the matter to the highest level of Chinese leadership. They also launched a media campaign against Ant. A few days after Jack Ma’s controversial speech in Shanghai, Finance News, a newspaper affiliated with the PBOC, published commentaries for three days that rebutted Ma’s Shanghai speech argument by argument. These commentaries elaborated on the systematic financial risks posed by Ant and other fintech companies. They also chided Ant for seeking regulatory arbitrage by trying to disguise itself as a technology firm, encouraging wanton consumption among young students, collecting excessive amounts of consumer data, and infringing personal privacy. They called for tightened control of market access, enhancement of consumer and data protection, and regulatory improvement. These three commentaries presented a strong rebuttal to Jack Ma’s speech; in publishing them, the PBOC appeared to seize the first mover advantage to shape public rhetoric around the case. The fact that the PBOC took such a high-profile approach in voicing dissent also demonstrates the resolution and determination of the central bank in trying to rein in Ant Group. It further provides strong evidence that the genesis of the law enforcement campaign was the regulatory tensions between Ant and the financial regulators.

As elaborated in Part II, the Chinese leadership is very adaptable and derives its legitimacy from economic growth, social stability, and nationalism. In recent years, the Chinese leaders have grown increasingly wary of opaque ownership structures and the regulatory arbitrage of non-financial institutions providing financial services. In the aftermath of the financial
fallouts involving HNA Group and Anbang Insurance Corp Co., as well as the fraud cases that have erupted in P2P lending, the central leadership implemented a series of organizational shakeups to exercise comprehensive oversight. In 2017, the central government created the Financial Stability and Development Commission headed by Vice Premier Liu He to coordinate the various financial regulators in order to ensure that new financial innovations do not fall through the cracks of traditional regulation.203 The next year saw a massive new government overhaul that further consolidated financial regulatory power by merging the banking and insurance regulators.204 And the PBOC took over the banking regulator’s legislative functions, further solidifying its leading role in maintaining financial stability.205 Given the Chinese top leaders’ sensitivity to any perceived risk to financial stability, it is not surprising that they took a decisive step to rescind Ant’s IPO.206 On October 31, 2020, the Financial Stability and Development Committee headed by Liu He decided that all kinds of financial activities and similar businesses should be regulated in the same way, clearing the way for regulators to tighten their scrutiny of Ant.207 This message was further reiterated by the Politburo on December 11, 2020, when it declared “strengthening antitrust regulation and preventing the excessive expansion of capital” to be a top work priority.208 A massive law enforcement campaign then ensued, as elaborated below.

C. Law Enforcement Campaign

Sebastian Heilmann and Elizabeth Perry observe that policy volatility in China is partly derived from the adaptive governance by the CCP.209 Even though the bureaucracy has gained a more prominent role after Mao, Heilmann and Perry argue that top-down initiatives, interventions, and campaigns are still employed frequently to disrupt bureaucratic routines.210 In particular, campaigns are a very powerful governance tool in the pocket of

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204. Id.
205. Id.
206. Yang & Wei, supra note 7.
207. Id.
209. Heilmann & Perry, supra note 23, at 11.
210. Id. at 14.
the CCP to overcome bureaucratic resistance and rigidity.\textsuperscript{211} They trace their roots to the revolutionary period, when mass mobilization ("yundong") was a defining feature of Mao’s governance strategy.\textsuperscript{212} Although mass campaigns have largely vanished after Mao, the Chinese government continued to employ campaign techniques by mobilizing grassroots party networks along with propaganda blitzes intended to enlist mass support.\textsuperscript{213}

In the past, campaigns were deployed in a wide range of legal areas such as crime and punishment, anti-corruption, environmental protection, and financial regulation.\textsuperscript{214} Since the debacle of Ant Group’s IPO, the Chinese central leadership has similarly resorted to a law enforcement campaign by mobilizing various legislative and administrative resources and propaganda to tighten regulation over Chinese tech firms. Recall that the most distinguishing feature of HAPPY regulation is that the regulatory decision-making process is very hierarchical. Upon receiving the clear signal from the top leadership to tighten regulation over the tech sector, regulators from different ministries have the strong incentive to demonstrate their loyalty by taking an aggressive stance to regulate these tech firms. The regulators’ responsiveness to the top leadership’s initiatives are perfectly consistent with their parochial bureaucratic interests as it can further help expand their policy control.\textsuperscript{215} Similar to many previous law enforcement campaigns, the Chinese regulators hastily introduced a myriad of laws and regulations, while imposing legal sanctions swiftly and severely on Chinese tech firms.\textsuperscript{216}

On November 2, 2020, four financial regulators jointly released draft rules on microlending which required microlenders, among other things, to contribute at least thirty percent of the loans they fund jointly with their

\textsuperscript{211} See, e.g., Nicole Ning Liu et al., Campaign-style Enforcement and Regulatory Compliance, 75 PUB. ADMIN. REV. 85 (2015); Benjamin van Rooij, The Campaign Enforcement Style: Chinese Practice in Context and Comparison, in COMPARATIVE LAW AND REGULATION: UNDERSTANDING THE GLOBAL REGULATORY PROCESS 217–37 (Francesca Bignami & David Zaring eds., 2016).

\textsuperscript{212} Xin Frank He, Sporadic Law Enforcement Campaigns as a Means of Social Control: A Case Study from a Rural-Urban Migrant Enclave in Beijing, 17 COLUM. J. ASIAN L. 121, 134 (2003) (noting that "during the revolutionary period, the CCP had to rely on mass movements and campaigns to implement its policies because it had no state institutions."); see Shiping Zheng, Party v. State in Post-1949 China: The Institutional Dilemma 154 (1996).

\textsuperscript{213} Elizabeth J. Perry, Mass Campaigns to Managed Campaigns: “Constructing a New Socialist Countryside,” in MAO’S INVISIBLE HAND 50 (Elizabeth J. Perry & Sebastian Heilmann eds., 2011) (quoting Zhao Ziyang, the former general secretary of the CCP: ‘I specifically stated that The Third Plenum resolved that there would be no more mass campaigns. However, people are accustomed to the old ways, so whenever we attack anything, these methods are still used.’).


\textsuperscript{215} See supra note 31.

\textsuperscript{216} See, e.g., Van Rooij, supra note 214; see also Trevaskes, supra note 214.
partner bank.217 This new rule was aimed at ensuring that microlenders such as Ant would have skin in the game, thus reducing the risk of moral hazards. On the same day, Jack Ma and a few executives of Ant were summoned for a meeting with four financial regulators.218 About a week later, the antitrust authority of the SAMR released draft antitrust guidelines on the platform economy, which aimed to tighten the antitrust regulation of online platforms.219 On December 26, 2020, four Chinese financial regulators invited Ant for an administrative interview.220 Seeing that Ant appeared slow to follow these directives, Chinese financial regulators invited thirteen fintech businesses including Ant for a second administrative interview in April 2021 and imposed more specific and stringent requirements.221

Although the campaign was initially triggered by the regulatory tensions in the fintech sector, it quickly spread to many other sectors permeated by these large online platforms. Since much of the tech firms’ influence derives from their possession of strong market power, antitrust became an important regulatory tool to discipline Chinese Big Tech. Since November 2020, the antitrust bureau at the SAMR began vetting a large number of past mergers and acquisitions involving VIE structures and penalized many that failed to disclose their transactions.222 However, the fines that were imposed were relatively low as the statutory limit is only RMB 500,000; the authority also did not unwind any of the past deals.223 In July 2021, the SAMR blocked a merger between Huya and Douyu, the two largest live-streaming video game platforms in China.224 It also imposed remedies on the 2016 merger between Tencent Music and China Music Corporation, requiring Tencent Music to end exclusivity arrangements with global record label companies.225


218. See Yang & Wei, supra note 7.

219. See King & Wood Mallesons, supra note 129.

220. John Liu et al., China Tells Ant to Return to Its Payment Roots, Places Curbs, BLOOMBERG (Dec. 27, 2020), https://www.bloomberg.com/news/articles/2020-12-27/china-asks-ant-to-return-to-origin-of-payments-service [https://perma.cc/BTX7-Y4YU] (noting that the regulators imposed several directives on Ant: first, Ant was to disconnect its payment services from its microlending business; second, all of Ant’s financial services were to be subject to strict capital requirements; and third, Ant should restructure as a financial holding company with Chinese walls to separate its payment services, banking, insurance and investment services to prevent conflicts of interest.)

221. See Li & Van Fleet, supra note 170.


223. Id.


In addition to active merger enforcement, the SAMR also initiated a few high-profile conduct investigations. On Christmas Eve of 2020, the SAMR announced an investigation into Alibaba for conducting a “choose one from two” business practice, the misconduct its competitor JD.com accused Alibaba of in 2015. The regulator concluded its investigation in four months and imposed a fine of almost $2.8 billion on Alibaba. The lightning speed of the investigation was a sharp departure from previous practice in large dominance cases, which could take years to conclude. After the record fine on Alibaba, four central ministries including the SAMR summoned thirty-four tech firms for an administrative interview, requesting these firms to rectify their exclusionary conduct within a month. All these firms vowed to adhere to the regulatory demand by issuing public statements promising to improve legal compliance. In late April 2021, the SAMR launched another antitrust investigation into Meituan for conducting exclusionary practices similar to Alibaba’s.

Since tech firms’ misuse of consumer data could pose a serious threat to personal privacy and national security, data security also became a flash point during this round of the enforcement campaign. On July 2, 2021, the Cyberspace Administration of China (“CAC”) announced a cybersecurity investigation into Didi Chuxing, two days after the ride-hailing giant’s debut on the New York Stock Exchange. This action appears to have been a deliberate and strategic tactic to inflict a reputation sanction on the firm in retaliation of its failure to heed the CAC’s earlier advice to postpone its IPO. In response to growing pressures on U.S.-listed Chinese companies to turn over audit papers to American securities regulators, Chinese regulators have been tightening scrutiny over cross-border data transfer in recent
years. The CAC reportedly urged Didi to conduct a thorough cyber-
security review before its U.S. listing, but the firm went ahead with its
listing at lightning speed. This prompted the regulator to escalate its
action by publicly announcing the investigation and ordering the removal of
the Didi app from Chinese app stores. Fueled by nationalistic fervor and
speculation about Didi’s transfer of critical and sensitive data to the U.S.
government, Chinese policymakers rushed to fill in a regulatory loophole
with overseas listings. Shortly thereafter, the State Council released a gui-
dance opinion, calling for relevant government departments to increase over-
sight of overseas listing rules. The CAC immediately followed up with
detailed measures requiring data-rich tech firms to undergo cybersecurity
review before their overseas listings.

IV. Impact of the Great Reversal

As I have shown above, China’s authoritarian regulatory governance
comes with significant strengths but also with fundamental flaws. The vast
discretion possessed by China’s administrative authorities allows them to
adapt and experiment with different policy initiatives, but also generates
problems such as a lack of political accountability and undue administrative
discretion. In the past, law enforcement campaigns induced “policy over-
shooting” during their intensive phases, but ended up with few long-term
deterrent effects as the market expected these campaigns to be temporary.
This makes it hard to predict the impact that the current law enforcement
campaign will have. In the following discussion, I will examine some im-
pacts that the current campaign has had on administrative agencies, societal

234. Wei & Zhai, supra note 233.
237. Wertime & Lu, supra note 235.
239. HEILMANN & PERRY, supra note 23, at 24.
240. Chen Li et al., The Hybrid Regulatory Regime in Turbulent Times: The Role of the State in China’s Stock Market Crisis in 2015-2016, 16 REG. & GOVERNANCE 392, 397-98 (2022), see also supra note 212.
welfare, the consumer internet business, Chinese technology, as well as the
global investment community.

A. Administrative Agencies

Chinese administrative enforcement agencies that exercise policy control
over the tech sector appear to be some of biggest beneficiaries from the law
enforcement campaign. The top Chinese leadership’s endorsement of the
campaign cleared the political hurdles and bureaucratic resistance for these
regulators and enhanced the legitimacy of their actions. Meanwhile, in-
creased influence and prestige enable an agency to request a larger budget
and more personnel. The expansion of agencies also allows individual case
handlers more opportunities to advance their careers within the bureaucracy,
while enhancing their exit options when they leave the government to work
for the private sector.241 This is particularly the case for the PBOC, the
SAMR, and the CAC, the three most active enforcers during this enforce-
ment campaign.

The PBOC, China’s central bank, is not only in charge of monetary policy
but also macroprudential regulation. It had been concerned about Ant
Group’s ability to extend its dominance from the online payments sector
into other financial services, which would infringe on the interests of its
competitors, including the state banks.242 To create a level-playing field be-
tween Ant and other fintech companies, the regulator asked Ant to decouple
inappropriate links between Alipay and its other financial products.243 To
further enhance the legitimacy of its actions, the agency announced new
draft guidelines in January 2021 to regulate the online payment industry.244
The guidelines include antitrust provisions such as the definition of the rele-
vant market in the online payment industry, as well as the consequences of
abuse by online payment firms.245 Strikingly, the PBOC’s guidelines also
indicate breaking up an online payment platform as a form of remedy.246
Despite being a very powerful financial regulator, however, the PBOC has
no authority to enforce the Anti-Monopoly Law (“AML”), which is a pre-
rogative of the SAMR. Moreover, under China’s AML, there is no legal basis

241. Zhang, supra note 29, at 35. See generally James Q. Wilson, Bureaucracy: What Govern-
ment Agencies Do and Why They Do It (1991).
242. See Zhang, supra note 43.
243. Id.
244. Id.
245. See Josh Ye et al., Why China’s Central Bank Leads Antitrust Drive and How This May Affect Alipay,
EU4V-R5JT]; Tom Mitchell et al., Crackdown on Jack Ma’s Empire Gathers Pace Despite Reappearance,
FIN.
TIMES (Jan. 21, 2021), https://www.ft.com/content/3a7438c5-9fe4-4b8e-99c5-6ce5f543cb4 [https://
perma.cc/jP6A-BR2P].
246. Mitchell et al., supra note 245.
to break up a firm for abuse of dominance. The most the regulators can do is to impose a fine, confiscate illegal gains, and ask the firm to desist from anticompetitive conduct. Indeed, as the PBOC’s guidelines are departmental rules, they cannot preempt the AML, which is a national law. It thus appears that the PBOC is trying to expand its turf so that it can have more policy control over Ant and other Chinese fintech companies.

We can observe similar cases of policy spillover in recent Chinese antitrust enforcement. Along with the record fine on Alibaba in April 2021, the SAMR released administrative guidance on the firm. Administrative guidance is not legally binding. It does, however, set out the regulator’s expectations for the e-commerce giant. The guidance made sixteen compliance requests, covering areas such as antitrust compliance, platform self-governance, data protection, fair competition, consumer protection, dispute resolution, and improvement of experience for online merchants. Not coincidentally, these areas of compliance also fall within the broader mandates of the SAMR, a vast conglomerate that oversees various aspects of market regulation. It thus appears that the SAMR is trying to leverage its antitrust functions to enhance its authority in other areas of market regulation. The SAMR and other regulators also applied similar tactics to thirty-three other Chinese tech firms, which were required to conduct self-examinations and submit rectification plans within a month. As revealed in the public statements released by these tech firms, the agencies ordered them to improve compliance in a wide range of areas that go far beyond antitrust obligations. For instance, the public statement by JD.com vowed to improve compliance with the Consumer Protection Law, the E-Commerce Law,

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248. Id.
253. Id.
the AML, the Advertising Law, and the Price Law, all of which fall within the broader mandate of the SAMR. 254

The CAC, a relatively new government department set up in 2014 to coordinate a fragmented regulatory structure to govern China’s cyberspace, also gained significant clout during this enforcement campaign.255 Prior to Didi’s U.S. listing, China already passed an array of cybersecurity laws and data protection laws that govern cross-border data transfers.256 However, there were few investigations and no publicly available precedents. The CAC’s investigation into Didi represents the first major cybersecurity review of Chinese tech firms, setting up an important precedent for future compliance. By issuing new draft guidelines on cybersecurity reviews, the CAC gained an indispensable regulatory role in vetting overseas listings of data-rich Chinese firms.257 Meanwhile, the Cyber Security Review Office under the CAC, once an obscure bureau created in 2020 as a joint task force by twelve central ministries to assess cybersecurity risks, rose to become the key gatekeeper in overseeing cross-border data transfer issues.258

In addition to expanding the regulatory turf, this enforcement campaign has also led to institutional changes. Although enforcement campaigns can be short-lived, the institutional changes they bring about can have long-lasting impact. In November 2021, the antitrust bureau at the SAMR, founded in 2018 after the consolidation of the three former antitrust authorities, was upgraded to vice-ministerial status.259 The newly elevated antitrust bureau will reportedly expand by increasing its number of officials from about forty to 100, before reaching 150 in five years.260 The budget for the antitrust bureau will also increase, with more funding for daily opera-
tions and research projects. This will be an important boost to this small bureau which used to face significant resource constraints. The empowerment of the Chinese antitrust regulator, however, also comes with a further risk of abuse of administrative power, given that agency actions are seldom challenged in court. As pointed out by Wentong Zheng, agencies have incentive to over-enforce in order to broaden their turf and expand their influence. With so much at stake, Chinese tech firms are increasing efforts to lobby these regulators, further heightening the risk of rent seeking and regulatory capture.

B. Social Welfare

The most important question for the great reversal in regulating Chinese tech giants is whether it will ultimately benefit the hundreds of millions of Chinese consumers, small merchants, delivery workers, and ride-hailing drivers, who are connected by these behemoth online platforms, as well as the employees and contractors of those platforms. During the ongoing law enforcement campaign, it appears that Chinese central administrative authorities have leveraged law enforcement, one of its most potent legal weapons against Big Tech, to achieve welfare redistribution goals. Meanwhile, Chinese tech firms have appeared very pliant by quickly adapting to the demands from the regulators.

The case against Alibaba serves as a good example. After receiving its record fine, Alibaba promised to invest billions of dollars to reduce access fees for merchants and to enhance merchant experience. While this commitment is not legally required, it does echo some of the requirements laid out in the administrative guidance issued by the SAMR. Among other things, the administrative guidance stipulates that Alibaba cannot charge unreasonably high service fees and that the firm should provide small- and medium-sized merchants with more convenient and high-quality services.

In past antitrust investigations, especially in cases investigated by the former agency the National Development and Reform Commission ("NDRC"), firms under antitrust investigation were pressured to lower...
prices as part of their settlements with the agency. For instance, Qualcomm, which was fined by the NDRC in 2015 for abusing its dominant position in China, offered to reduce thirty-five percent of its royalty rates for its licensees in China. This important remedy was curiously omitted in the final penalty decision, so it appears that Qualcomm offered an extralegal remedy to appease the NDRC.

The fact that Chinese antitrust enforcement is being used to address income inequality and redistribute wealth was also evident in a recent central enforcement action against Chinese online food delivery and ride-hailing platforms. In May 2021, eight central ministries summoned ten delivery and ride-hailing businesses, urging them to reduce fees charged to merchants and drivers, enhance driver benefits, and improve their security. One major public complaint about firms such as Didi, the largest ride-hailing business in China, relates to the practice of charging unfairly high commissions on drivers. Didi explained that it charged more than thirty percent commission in only 2.7% of all orders, operating overall on a thin margin of 3.1%. Didi and other food delivery companies have also been criticized for the opaque mechanisms they use to distribute orders and the lack of labor and safety protection for their drivers. After the meeting, all ten companies concerned promised to conduct a comprehensive review of their operations and rectify their business practices to improve conditions for their drivers. In late July 2021, the SAMR and six other central ministries issued guidelines to protect labor rights for delivery drivers, setting out requirements on minimum wage, improvements of work conditions, and welfare benefits. It thus appears that the central administrative agencies are...
leveraging the ongoing enforcement campaign to negotiate better conditions for merchants and workers of big platforms.

In addition to the various “soft” regulatory tools such as administrative guidance and administrative interviews, the Chinese government also tries to influence the tech firms through propaganda. A recent commentary from an affiliated newspaper of China’s top political advisory body criticized the infamous “996 working culture,” which refers to the unwritten rules in the Chinese tech sector that push employees to toil from 9 a.m. to 9 p.m. six days a week.274 Using terms from Karl Marx’s influential critique of capitalism, the author called for the tech giants to refrain from “limitless exploitation of surplus labor for high surplus value.”275 Amid the heightened public scrutiny, firms such as ByteDance and Kuaishou announced plans to reform their controversial working cultures.276 In an effort to reduce employees’ work hours and to answer Beijing’s call to boost employment, tech firms such as Alibaba, ByteDance, Tencent, and Meituan were also hiring more college graduates during the regulatory crackdown.277

Meanwhile, Chinese tech executives appeared to curry favor with the Chinese public by donating more of their personal wealth to charities. In 2021, Wang Xing, the CEO of Meituan, promised to donate $2.27 billion shares for environmental and social initiatives.278 During the same year, Pony Ma, the founder of Tencent, pledged two billion dollars of his shares to charity, while Tencent promised to spend around $7.7 billion in social and environmental initiatives.279 Colin Huang, who just departed Pinduoduo, also promised to devote more time to basic research, while Zhang Yiming at ByteDance was recently quoted saying he is “giving back to society.”280 The current enforcement campaign therefore appears to be redistributing income from platform shareholders to the users and the general public, thus helping

275. Id.
279. Yuan Yang, How China is Targeting Big Tech, FIN. TIMES (June 18, 2021), https://www.ft.com/content/baad1a14-efbc-4601-8ce4-406d56d8f2a7 [https://perma.cc/L64B-RQMY].
280. Id.
the government accrue popular support. In fact, the cultivation of mass support is reminiscent of the populist strategies often employed by the CCP to enhance its legitimacy. This phenomenon also echoes what scholars have long identified as a strategy of the authoritarian rule: to survive and stay in power, an authoritarian government not only “suppresses” but also “pleases” its citizens by rewarding them direct and tangible economic benefits.

As I have shown above, Chinese central administrative agencies are employing a variety of informal legal tools such as guidance and interviews to pressure Chinese tech firms into reducing prices and improving conditions for their employees, contractors, and suppliers. However, the existing antitrust legal framework does not appear to offer a clear and strong legal basis for the agencies to do so. The lack of a strong institutional basis for requesting these types of remedies thus casts doubt on their legitimacy and effectiveness. For instance, the administrative guidance issued on Alibaba will last three years, suggesting that the firm will be subject to close monitoring by the SAMR. Given the vagueness of the guidance’s language, it is not entirely clear what exactly Alibaba must fulfill in order to meet those “soft requirements” laid down in the guidance, nor is it clear what the administrative process is to ensure that the SAMR’s monitoring is adequate, transparent, and fair, without being subject to potential interference from interest group lobbying. Above all, there are significant uncertainties with compliance when the administrative guidance expires in three years. Indeed, when this law enforcement campaign ends, it is highly uncertain whether these “voluntary” commitments offered by Chinese tech firms and their executives will last.

Besides leveraging antitrust law as a powerful instrument to combat income inequality, the Chinese government is also starting to initiate labor law reforms. A longstanding concern is that delivery workers do not receive adequate labor protection due to their status as contractors rather than employees. In fact, many large platforms do not directly sign contracts with the delivery workers, but rather outsource this task to third party contractors. As such, there is no direct contractual relationship between the online platform and the gig workers, allowing the former to obviate the need to pay


social security to the latter.284 In practice, Chinese judges are disinclined to recognize an employment relationship between drivers and the platforms except when the drivers have caused liabilities to third parties.285 To enhance their bargaining position, delivery drivers have tried to organize unions or launch strikes to collectively negotiate with the tech giants.286 Yet, local governments have often cracked down on such efforts for fear of social instability.287 Moreover, unions have been of little help to courier workers because unions lack standing to represent independent contractors.288 In July 2021, the All-China Federation of Trade Unions, the only legal labor union in China, issued opinions calling for the improvement of labor rights in China’s digital economy.289 A few days later, eight Chinese regulators including the SAMR, the Ministry of Human Resources and Social Security, and the Supreme People’s Court issued guidance on safeguarding the basic rights of gig economy workers, suggesting platforms should sign labor contracts with a worker whenever there exists a clear labor relationship between them.290 It remains to be seen how such requirements will be implemented in practice. Above all, it is not entirely clear whether the strengthening of labor protection for gig workers will necessarily benefit them. Indeed, if the regulation becomes too burdensome for tech firms, it could lead to the unintended consequences of unemployment and lower wages. Hence, the regulators will need to strike a very delicate balance between labor protection and economic growth.

Meanwhile, tax reforms, the traditional tool to address income inequality, have yet to be introduced in China. In recent years, many countries have considered imposing a digital service tax on large platform businesses.291


285. Zou, supra note 125, at 279.


288. Id.


China is closely watching this development; indeed, some Chinese government officials have suggested that China should follow this international trend. Proponents argue that because platforms are mining user data, citizens should be able to share in the revenues generated by their own data. There is, however, a fierce debate among Chinese academics and policymakers over the ownership of user data, and China has yet to come up with a detailed proposal to levy a digital tax on its domestic tech giants.

C. Consumer Internet Competition

Although the aggressive law enforcement campaign against Chinese Big Tech held the promise of giving smaller companies more opportunities to grow and succeed outside of Alibaba’s and Tencent’s ecosystem, it has yet to address the three most fundamental issues in the consumer internet business. The first is data monopolization. Both Tencent and Alibaba have amassed troves of consumer data over the years, creating barriers to entry for smaller rivals. This is particularly the case in the area of fintech businesses, where big data analysis plays a crucial role in supporting lending services. For this reason, the PBOC has been trying to break the two companies’ data monopolies and has been aggressively pushing them to share their data with the government and other tech firms. There are limits, however, to what the PBOC can do: although the central bank is a powerful institution, it is not an antitrust regulator. Moreover, government mandates to share data may face significant obstacles as consumer consent is usually required for data sharing, especially for commercial purposes.
In the past, Alibaba and Tencent refused the PBOC’s request to transfer data, citing a lack of consumer consent.297 Given that the PBOC has gained much more leverage over Ant and other fintech giants now, it remains to be seen whether it can successfully enforce data sharing this time. Instead of a direct transfer of data, it appears that the PBOC is pressuring Ant to create a credit scoring company with a few other shareholders (including two state-owned firms) that would oversee Ant’s vast amount of data.298 One major obstacle for the PBOC in breaking up data monopolies, however, is regulations that protect consumer privacy. Consumers could be reluctant to share their data with online platforms other than those they use.299 As such, there is an inherent tension between consumer privacy protection and competition law concerns.300 China promulgated its Personal Information Protection Law in November 2021, which imposes obligations on online platforms to obtain consent from consumers if there is any data transfer in the case of mergers or divestiture.301 It remains to be seen how the PBOC will be able to push forward its data sharing initiative under China’s existing regulatory framework.

The second challenge is interoperability.302 As noted earlier, Tencent and Alibaba have each created their own ecosystem, providing companies within their systems with convenient access to super-apps such as WeChat, Taobao, and Alipay. But outsiders have restricted access to these apps, creating high barriers of entry for smaller rivals. Without addressing these interoperability issues, the current antitrust enforcement actions are unlikely to bring about changes in the competitive landscape of the Chinese tech industry. For instance, ByteDance, the parent company of Douyin and TikTok, has long had tensions with Tencent in that the latter blocked WeChat users’ access to Douyin’s content. In early February 2021, ByteDance filed a lawsuit against Tencent in Beijing for its restrictive business practices in violation of


China’s AML. Tencent countersued, claiming that Douyin was blocking links to WeChat and Tencent’s messaging app QQ, and banning its influencers from redirecting content to these platforms. Beijing’s ruling on this case could be a game changer for the tech industry. Meituan, the largest food delivery company in China, was also challenged by a Chinese consumer in December 2020, accusing it of abusing its dominance by temporarily removing Alipay as a payment option. Unlike speedy and hectic administrative enforcement, however, the litigation process is very protracted in China. In the past, tech firms have been able to fend off unfavorable lawsuits by raising jurisdictional issues, which further prolong the battle and complicate the cases.

In July 2021, Alibaba and Tencent reportedly considered gradually opening up services to one another, although it remains to be seen how far these two firms will go in removing the virtual barriers they have built around their own ecosystems. A few days later, the Ministry of Industry and Information Technology (“MIIT”), China’s telecom regulator, initiated a six-month rectification program aimed at tackling a whole host of consumer protection and unfair competition violations, including the interoperability issues. Notably, although the MIIT lacks the power to enforce the AML,
it can rely on its own departmental guidelines to request firms to rectify their behavior.

Last but not least is the challenge of dealing with the aggressive acquisitions of start-ups by incumbent monopolies. As noted in Section III.A., Alibaba and Tencent have invested in hundreds of start-ups in the past decade. Although some of these investments are only minority interests, the two tech giants’ common ownership over a large portfolio of start-ups poses anti-competitive concerns as it facilitates coordination among these companies. Although the antitrust agency started to retroactively review these past acquisitions, it has only levied small fines on the firms for their procedural failures to notify. The agency has not imposed any structural remedies, even in cases where the transaction parties have significant direct overlaps in the market. Tencent Music’s acquisition of China Music Corporation offers a prime example. According to the SAMR’s analysis, the two firms respectively possess thirty percent and forty percent of the market shares in the relevant market of online music broadcasting. Instead of directly addressing the horizontal overlap concern in the merger review, the SAMR imposed behavioral remedies on Tencent Music to end its exclusive dealings with leading record label companies. Notably, the SAMR launched an investigation into the exclusive arrangement between Tencent Music and a few leading record label companies in 2019, but the case was suspended in 2020. It appears that the SAMR tried to avoid directly addressing the concentration issue by imposing remedies that treated the issue like an abuse of dominance case.

Another example is the SAMR’s investigation into the merger between Huya and Douyu, which respectively possess forty percent and thirty per-


314. Id.

315. Xue & Deng, supra note 225.
cent market shares in the livestream gaming market. A close look at this case reveals that Tencent actually already possessed sole control over Huya and joint control over Douyu, so this proposed transaction would only change Tencent’s control in Douyu from joint control to sole control. In the end, the SAMR prohibited the merger transaction. However, no further remedies were imposed on either transaction party, despite Tencent’s common ownership over these two companies and the risk of coordination.

Thus far, in cases where the incumbent tech giants acquired a competitor in an adjacent market, the SAMR has cleared all such cases without imposing any remedies. For instance, the SAMR unconditionally approved Tencent Holding’s acquisition of Sogou, the second-largest search engine in China in July 2021. As Tencent is mostly active in social media and gaming, it has few direct overlaps with Sogou. However, Sogou has a user base of over 700 million that could pose a competitive threat to Tencent. Instead of preemptively banning the incumbent’s acquisitions of adjacent firms, the SAMR appears to have taken a rather conservative approach by focusing on the direct competition between transaction parties. The measures undertaken by SAMR could therefore further entrench the dominance of the incumbents without fundamentally tackling the market concentration problem in the digital economy.

D. Sino-US Tech Rivalry

While this law enforcement campaign has mostly affected the consumer internet business, it has also caused spillover effects in the hardcore technology sector. In fact, the Chinese government appears to be leveraging antitrust enforcement to steer Chinese tech giants towards a more innovative path to stay competitive with the United States. Since the intensification of the U.S.-China tech war, moving China up the technological ladder has
become the top priority of the Chinese leadership. In March 2021, Premier Li Keqiang outlined key areas where major breakthroughs in core technologies are needed, including semiconductors, operating systems, computer processors, and cloud computing. Unlike U.S. tech giants such as Google and Facebook, which have gained a strong foothold all over the world, China’s largest tech firms such as Alibaba and Tencent have yet to become internationally competitive. Although they stand at the forefront of mobile payment and e-commerce, their success is largely owed to China’s vast consumer market and cheap labor.

Daron Acemoglu, a prominent economist, has argued that the most pernicious effects of Big Tech firms stem from their ability to direct technological changes as these companies only have incentives to fund research that is compatible with their own interests and business models. Due to the gargantuan size of Big Tech, smaller players have few options but to make their products and services interoperable and subordinate to the major platforms, resulting in less diversity in research and development. Acemoglu envisages a best-case scenario in which the government chooses a more diverse research portfolio that would induce a higher growth rate. To some extent, the Chinese government is heading in the direction suggested by Acemoglu to diversify the innovation portfolios of Chinese tech firms.

In December 2020, a commentary appeared in the People’s Daily, a party mouthpiece, criticizing Chinese tech firms for their excessive competition in community group-buying businesses, and urged them to forge ahead with higher ambitions to advance China’s technological innovations. Plant tech firms quickly adapted to the government’s objective by further committing to investment in foundational sciences and technology. Indeed, the more useful these firms are to the government, the more protection they can seek, and the more room they will have to lobby for favorable policy treatment. In some ways, Chinese Big Tech has been heading in this direction for a while. Tencent has promised to invest seventy billion dollars in new digi-

323. Yuan, supra note 37.
325. Zhang, supra note 322.
326. Id.
328. Daron Acemoglu, Diversity and Technological Progress, in The Rate and Direction of Inventive Activity Revisited 319, 345 (Josh Learner & Scott Stern eds., 2012).
329. Id.
tal infrastructure. 331 Alibaba has invested in semiconductors and, in 2019, unveiled its first chip designed to power artificial intelligence. 332 Baidu is betting heavily on driverless cars. 333 Since the recent law enforcement campaign, Chinese Big Tech has kicked off a new investment spree in hardcore innovation. 334 Alibaba has pledged one billion dollars to nurture 100,000 developers and tech startups over the next three years, and another twenty-eight billion dollars to boost its cloud computing division to invest in technologies relating to operating systems, servers, chips, and networks. 335 Notably, Alibaba is also a major contributor to China’s Digital Silk Road, which provides technology to support China’s Belt and Road Initiative. 336 Very recently, Meituan raised a record ten billion dollars to develop autonomous delivery vehicles and robotics. 337 It thus appears that Chinese regulation of the platform economy has better aligned the interests of the Chinese tech firms with the government’s goal to achieve technological self-sufficiency.

E. Global Investing

China’s dramatic policy swing in regulating Big Tech has imposed a negative externality on global investments. As the world’s second largest economy with a vast lucrative market, China is a leading driver of growth. 338 Despite the tumultuous Sino-U.S. relationship, Chinese companies have

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queued up to tap the U.S. capital market, while U.S. investors flocked to invest in Chinese stocks and bonds. However, the recent crackdown on Chinese tech giants has led to significant stock volatility, undermining investor confidence in these companies. Indeed, since their peak in February 2021, Chinese tech firms had experienced over 800 billion dollars’ loss of market capitalization within six months. The spate of hectic enforcement has made investors highly sensitive to any sign of perceived negative news. A particularly dramatic example occurred recently when Meituan’s CEO Wang Xing posted an ancient poem about a misguided Chinese emperor suppressing dissent on a blog. Investors speculated that Wang posted the poem to voice discontent with the Chinese government’s on-going antitrust probe. The market reacted very negatively, with the firm losing twenty-six billion dollars over the next two days. The Chinese cyberspace regulator’s high-profile and unexpected probe into Didi dealt a further blow to international investors. China’s sudden ban on for-profit home-schooling and private tutoring companies, many of which were backed by Chinese tech giants, caused panic among foreign investors and generated a sell-off of Chinese stocks. This series of high-profile government interventions seems to have dramatically increased the risk premiums investors place on Chinese tech stocks, discouraging foreign investment in this sector.


340. Over the past year, global investors have also increased their holdings in Chinese stocks and bonds by almost forty percent to over $800 billion. Hudson Lockett, Global Investors’ Exposure to Chinese Assets Surges to $800 Billion, FIN. TIMES (July 14, 2021), https://www.ft.com/content/0871c66b-b386-45e9-879e-438f47356a56 [https://perma.cc/XV83-9KTC].


343. Id.

344. Id.


346. Ryan McMorrow et al., China’s Education Sector Crackdown Hits Foreign Investors, FIN. TIMES (July 26, 2021), https://www.ft.com/content/dhac3282-e14e-4fca-a25c-cf6914444b8 [https://perma.cc/3BDY-JXJS].
Meanwhile, China’s newly imposed regulatory requirement of cybersecurity review creates an additional transaction cost for Chinese companies seeking to tap the U.S. capital market. This indirectly increases the appeal of Chinese stock exchanges based in Hong Kong and mainland China. In the past, some of the largest Chinese tech companies were drawn to the U.S. capital markets not only because the United States has the deepest and most liquid capital market, but also due to its friendly listing rules for issuers. One prominent example is Alibaba, which initially preferred to get listed in Hong Kong but chose the New York Stock Exchange instead because the Hong Kong bourse did not allow the dual class share structure.

Escalating Sino-U.S. tensions in recent years, however, have increased many uncertainties for Chinese companies listed in the United States. Following former U.S. President Trump’s executive order, the three largest Chinese state-owned telecom companies were delisted from the New York Stock Exchange in 2021, for their alleged links to the Chinese military. Other U.S.-listed Chinese companies also face the threat of delisting as the U.S. securities regulator is ratcheting up pressures on accounting firms to share auditing documents, a requirement that is in conflict with Chinese laws. Thus far, this heightened U.S. scrutiny has caused little financial distress to Chinese firms since they can list elsewhere and alternative financing abounds. Nonetheless, it accelerated Chinese efforts to develop a domestic capital market. In 2018, President Xi Jinping unveiled a proposal to create the STAR market to invigorate science and technology. Notably,

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Ant Group’s scheduled debut at the STAR board last year was expected to give a significant boost to the new exchange.353 Through its increased oversight over cross-border data transfer, the Chinese government has gained significant leverage in steering Chinese tech companies away from overseas exchanges. One notable example is ByteDance, which cautiously decided to shelve its IPO after being warned about the cybersecurity risks and other regulatory issues.354 However, if overseas stock exchanges are off limits to certain data-rich Chinese tech firms, it could potentially affect their valuation and liquidity if these firms have difficulty meeting the requirements from other listing venues.355 For instance, Didi initially wanted to list in Hong Kong but was unable to fulfill the Hong Kong bourse’s requirement of obtaining valid licenses to operate in many Chinese provinces.356 At the same time, the fact that the Chinese government chose to ramp up control over its tech sector despite the anticipated adverse financial consequences also reveals the diminishing importance of foreign venture capital in China. Indeed, while foreign investors used to play an outsized role in funding the first generation of Chinese tech firms such as Alibaba, Baidu, and Tencent, they are now locked in fierce competition with home-grown funds, state-sponsored incubators, as well as Chinese internet giants to fund China’s booming tech sector.357 That said, foreign investors remain heavyweight players in China’s private equity market, despite the stunning speed with which China has been able to develop its onshore venture capital market.358 Above all, the recent developments provide a further illustration of a phenomenon I coined as “regulatory interdependence,” that is, how China is regulated will affect how China regulates.360 As the United States tightens

357. Lysenko, supra note 351, at 6–7.
359. Lysenko, supra note 351, at 6 (“In 2020, 54% of all transactions measured by total invested capital included at least one offshore investor, with the U.S. participation rate at 29%.”).
securities regulation of Chinese companies listed in U.S. stock exchanges, China will be prompted to accelerate its efforts to develop its own capital market to reduce its reliance on the United States, further exacerbating financial decoupling between two of the world’s largest economies.

**CONCLUSION**

In this article, I develop the HAPPY model containing five essential elements to study Chinese regulation: the regulatory process is *hierarchical*, the top leadership is *adaptable*, the Chinese regulators are *parochial*, the firms are *pliant*, and the Chinese public need to *yelp* to be heard. By focusing on China’s great reversal in regulating the platform economy, I show that policy volatilities have stemmed from the hierarchical regulatory structure in which power is centralized among top leaders, who also suffer from a chronic deficit of information. I particularly highlight how favorable support from top leadership, aggressive lobbying from tech firms, and the bureaucratic inertia of the regulators together contributed to a lag in regulating Chinese online platforms. As platforms gain pervasive influence, public dissatisfaction grows. The aggressive regulatory arbitrage sought by the platforms jeopardized the bureaucratic interests of Chinese financial regulators, who stepped out to voice public dissent and reported the matter to the top leaders. As soon as they became informed, top leaders quickly mobilized all administrative resources to initiate a massive enforcement campaign against Chinese tech firms. Chinese tech firms swiftly adapted to the regulatory demands of agencies and adhered to the top leadership’s new policy initiatives.

Chinese administrative agencies in charge of regulating the digital economy are among the biggest beneficiaries of the current enforcement campaign, which has significantly enhanced their power and prestige. Although the long-term consequences remain unclear, China’s dramatic reversal in regulating its platform economy appears to have produced the short-term effects of safeguarding data security, cultivating mass support, and reducing the country’s reliance on the West for both technologies and capital. At the same time, the volatile policy swing has itself generated risks and uncertainties for social welfare and global investment, which in turn could cause disruption and turmoil to domestic social and financial stability. The government’s heavy-handed approach in regulating the tech sector therefore also comes with a dear price, which may cause regulators to relax their harsh regulation to provide more breathing room for businesses.

In the West, U.S. tech giants have been accused of exacerbating societal inequality and there has been heated academic and policy debate regarding
whether antitrust is the right tool to deal with income inequality issues.\textsuperscript{361} China presents an almost-extreme scenario where government authorities are able to intervene with lightning speed and velocity. However, without strong institutional oversight, intense law enforcement campaigns create the risk of over-enforcement and administrative abuse. Given the high stakes involved, Chinese tech firms will likely exert greater efforts in lobbying agencies in the future, giving rise to concerns about regulatory capture. China’s experience with platform regulation could therefore offer some lessons that should inform the global policy debate about how to rein in Big Tech.

Thus far, much of the public discourse and academic scholarship on Chinese regulatory governance have focused on the preference and actions of the policymakers and the regulators, without giving adequate attention to roles of the firms and the general public.\textsuperscript{362} The HAPPY model provides a more comprehensive and nuanced perspective by examining the incentive structure of each of the four main actors involved in the regulatory process, as well as the strategic interaction among them within a hierarchical regulatory process. Although this Article focuses primarily on Chinese platform regulation, the HAPPY model I develop here could shed light on the complexity and dynamics in many other areas of regulatory governance in China and beyond.

\textsuperscript{361} See Jonathan B. Baker & Steven C. Salop, Antitrust, Competition Policy, and Inequality, 104 GEO. L.J. 1 (2015) (arguing that tackling income inequality could be an implicit goal of antitrust); Carol Shapiro, Antitrust in a Time of Populism, 61 INT’L. J. INDUS. ORG. 714 (2018) (arguing that antitrust should not be the primary means to reduce income inequality).

\textsuperscript{362} See supra note 7; see also Liu et al., supra note 211; van Rooji, supra note 211; He, supra note 212.