The new interventionism

Business and the state
Governments' widespread new fondness for interventionism

After a long liberalising era, the state has bounced back. That is not a good thing, argues Jan Piotrowski

Jan 10th 2022

AS WITH ALL history, capitalism's may not repeat but it does rhyme. Periods of freer enterprise give way to ones with a more meddlesome state. When change comes, it is after crisis, occasionally exogenous (war, pandemic), at other times provoked by excesses (financial crash, depression, stagflation). Yet the metre is irregular in time and space, differing from decade to decade and country to country.

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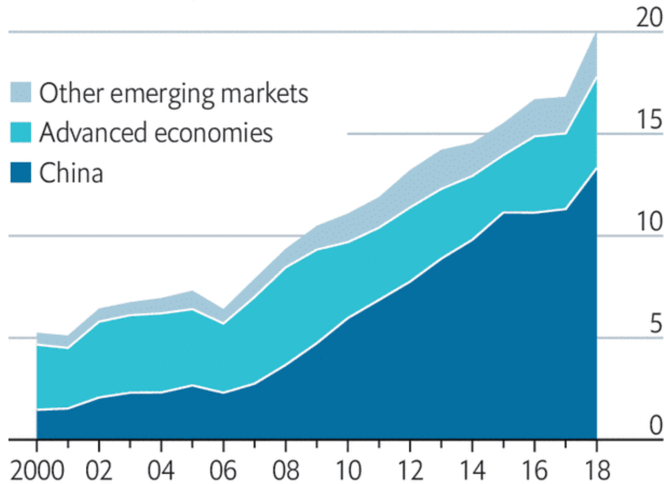
After 1945 Americans realised that, as Alan Brinkley, a historian, put it, "State power could be used not only to assist but to deny." Western Europe's mixed economies embraced elements of central planning—partly as a hangover from the war, partly to stave off communism. Even as Margaret Thatcher battled unions and privatised state-owned companies in Britain in the 1980s, in France François Mitterrand was vowing to "break with capitalism" and nationalising banks and big firms. In Beijing Deng Xiaoping was dismantling Chinese collectivism just as, in Tokyo, a supposedly free-market government was using the Ministry of International Trade and Industry to foster national champions.

It is no easier to predict the timing of capitalism's swings today. But as globalisation has knitted together world markets, governments have moved in a more synchronised fashion. In the 1990s, after the collapse of Soviet communism exposed the bankruptcy of its command-and-control model, they largely retreated from business. Now the state is again resurgent. Public spending is rising as the welfare state expands. Government is becoming bossier, especially to business. And the bossiness is manifesting itself in new as well as old ways.

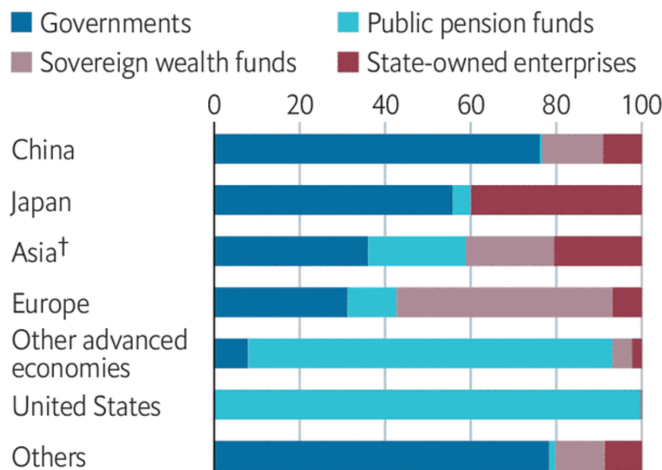
Proprietors' profits

Share of state-owned enterprise assets among the world's largest non-financial firms*, %



Public-sector holdings at market value

By investor type, end-2020



Market value of holdings, end-2020

Public-sector stake	Number of companies	Investment $trn
Less than 10%	11,652	2.28
10-29%	1,191	0.98
30-49%	584	1.08
50% and over	1,076	6.39

*2,000 largest firms by market capitalisation
†Excluding China and Japan

Sources: IMF; OECD; FactSet; Thomson Reuters; Bloomberg

The first ripples of this wave appeared a decade ago. The financial crisis of 2007-09 persuaded many that leaving markets to their own devices could lead to ruin. Stagnant real wages in large parts of the free world encouraged the perception that the market was not delivering for ordinary people, instead leading to more inequality, especially of wealth. In 2016 Brexit and the election of Donald Trump offered proof that too many people felt left behind by globalisation. Growing worries about markets' unwillingness or inability to avert climate change fuelled demands for more state involvement in promoting greener energy. Similar concerns motivated China's president, Xi Jinping, in his campaign for greater self-reliance and "common prosperity".

The resurfacing of geopolitical rivalry, pitting liberal democracies against Chinese authoritarianism, has also prompted governments to try to align business interests with national strategic ones. And this was before covid-19 made meddling in corporate affairs—from lockdowns and bail-outs to vaccine and mask mandates—look more justified than ever to voters and their political representatives. The world is entering "a political cycle where government has to be responsive to an increasingly fickle and opinionated electorate", says one asset manager. Public opinion has, in general, turned against business.

Part sincerely, part no doubt smelling the wind, bosses and big investors acknowledge the need to refurbish the capitalist model. Jamie Dimon, chief executive of JPMorgan Chase, America's biggest bank, has expressed worries about the "fraying" of the American dream. Ray Dalio, founder of Bridgewater, the world's largest hedge fund, calls for "a reformation of capitalism" to avert over-indebtedness, flagging productivity and voter polarisation. Doug McMillon, boss of Walmart, a supermarket behemoth, says "it's time to reinvent" capitalism. Paul Polman, former head of Uni lever, the Anglo-Dutch soap-to-soup group, wants to "save" it.

Yet seen from one vantage point, capitalism seems hale and hearty. In contrast to their Marx-curious 20th-century forebears, today's governments mostly eschew common ownership of the means of production. From 1990 to 2016 states around the world sold assets worth some $3.6trn. A database compiled by Katarzyna Szarzec, Akos Dombi and Piotr Matuszak, three economists, lists 1,160 privatisations in 30 European countries between 2007 and 2016, and only 61 nationalisations. According to the OECD club of mostly rich countries, the public sector owned $11trn-worth of shares in listed companies at the end of 2020, equivalent to 10% of total market capitalisation. That is down from 14% in 2017.

Roughly two-fifths of state holdings by value represent minority stakes in some 13,400 businesses. In 12,000 of these the holding is below 10%. The 1,000 or so majority-owned firms are bigger on average but they are often professionally run by experienced managers to maximise returns, not by bureaucrats eager to boost employment or national pride. A fifth of the public sector's listed assets are held by sovereign wealth funds and another 13% by pension funds. Saudi Aramco, the kingdom's oil colossus, is one of the world's most profitable companies. The world's four biggest banks by assets are fully or part-owned by the government in Beijing. Plenty of other Chinese state-run firms are at least modestly profitable—how else would 82 have entered the Fortune Global 500 list of the world's biggest companies between 2000 and 2019?

Not ownership, but influence

On the surface, then, the state appears to be more hands-off. Yet direct ownership is not the only way to influence businesses. Rather than own the means of production, governments increasingly use other levers of control. This special report will explore the four most important old tools that are being dusted off and repurposed for the 21st century.

First is a renewed enthusiasm for industrial policy, defined as state support for favoured industries, technologies or specific firms, and guided by a desire to promote jobs or secure inputs needed for national security (computer chips) or the energy transition (batteries). Next is the expanding ambition of trustbusters that, tentatively in America, slowly in Europe and almost overnight in China, are moving from a focus on prices to a broader assault on corporate power to defend anything from small businesses to government itself.

Third is the growth of regulation, particularly over the environment, labour standards and corporate governance, which cut across sectors and affect all large firms. And fourth is an inflection point in what had seemed an irreversible trend to lower business taxes, as politicians have followed voters in seeing unloved big business as a convenient source of revenue.

This report concludes by arguing that greater state involvement in business is unlikely to lead to better outcomes than in the old days, when similarly interventionist tools were deployed. They may well be worse. Earlier episodes of post-war meddling were at least tempered by a near-universal consensus in favour of freer trade. The new interventionism, by contrast, coincides with barriers to international trade going up not down and a pervasive sense that globalisation and fragile supply chains must be reined in, for both economic and national-security reasons.

A strong reminder is in order that the four vintage tools—industrial policy, trustbusting, regulation and taxes—were gathering dust for a reason. And it is not just politicians and bureaucrats who should pay attention. So, too, should business leaders licking their fingers at the prospect of more state support—especially at the carrot of subsidies. ■

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The new industrial policy
Many countries are seeing a revival of industrial policy

A previously discredited approach has found new believers

Jan 10th 2022

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AS NATIONAL ECONOMIES and international trade were liberalised after the stagflation of the late 1970s, governments increasingly decided to allow corporate behaviour to follow commercial logic. Multinationals set up shop where it made most sense, allocating resources, outsourcing labour and automating factories to minimise costs and maximise profits. The reforms lifted hundreds of millions out of poverty even as they delivered fat returns for shareholders.

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But the less-state-is-better consensus is fraying. The crash of 2008, the loss of middle-class jobs to foreigners or robots and the climate crisis have led many to believe that markets cannot be trusted. Economists like Mariana Mazzucato, of University College London, believe that firms are losing the ability to innovate, weighing on future prosperity. National-security hawks on both sides of the Sino-Western divide fret about reliance on adversaries for critical resources, from semiconductors to pharmaceuticals. And Western bosses complain about "unfair competition" from China's state-backed behemoths.

"We have been destroying our national champions while China has been nurturing its own," laments Michael Pillsbury, who helped craft Donald Trump's hawkish China policy. Siemens and Alstom cited the threat from CRRC, a Chinese trainmaker, to defend the planned merger of their rail divisions, which the European Commission blocked because it would hurt competition in the EU. "Before the ink was dry [on the commission's decision] CRRC was signing contracts [with European railways]," fumes a former Siemens executive. "Do you have the right [these days] to avoid picking winners?" asks a Brussels lobbyist.

"Markets are good at allocating resources efficiently on a narrow understanding of efficient…What delivers highest returns to an individual investor is not necessarily in the economic interest of a nation," says Oren Cass of American Compass, a right-leaning think-tank in Washington. Like Ms Mazzucato, who leans left, Mr Cass blames the innovation drought on governments abandoning their role as midwife to technological breakthroughs, as they were for the internet and biotechnology.

Remembering Apollo

In China, the answer to such concerns is simple: more state. Liu He, the vice-premier, has said that the country is moving into a new phase that prioritises social fairness and national security, not the growth-at-all-costs mentality of the past 30 years. Elsewhere, the model is often China. Some Western analysts point approvingly to its ability to set strategic missions and co-ordinate the public and private sectors. There is a sense that China has learned what America has forgotten since the Apollo programme.

Since the covid-19 pandemic, many countries have tried to emulate elements of the Chinese playbook. In Japan 57 Japanese companies will get around $500m in subsidies to invest at home. The country's newish prime minister, Kishida Fumio, has created the job of economic-security minister, with a mandate to intervene in matters ranging from cybersecurity to chipmaking.

The EU has doubled down on a consortium to make batteries, earmarked some €160bn ($180bn) of its covid-19 recovery fund for digital innovations, especially chips, and, inspired by Ms Mazzucato, launched five "missions" (they include such diverse goals as to improve the lives of more than 3m people at risk of cancer, restore "our ocean and waters" and achieve 100 climate-neutral smart cities by 2030). Thierry Breton, the single-market commissioner and a former French finance minister, is dirigiste at heart. In October President Emmanuel Macron unveiled the "France 2030" programme, which will spend €30bn over five years on ten areas from the specific (small nuclear reactors, medicines) to the vague (cultural and creative content production).

In the same month Rishi Sunak, Britain's Conservative chancellor, proposed to funnel billions to the private sector. Tax relief for research and development, nearly half of which firms claimed for work done outside Britain in 2019, will be "refocus[ed]…towards innovation in the UK". One former senior official describes Boris Johnson's Tory party as "neo-Gaullist, if anything". One bank boss thinks "Britain is closest to Chinese thinking."

In Washington the words "industrial policy", once taboo lest the speaker seem a European socialist, reverberate in the White House, Congress, think-tanks and among K Street lobbyists. In one of his first acts as president, Joe Biden issued an executive order instructing government agencies to review supply chains, stretched to breaking point by the pandemic, to make them more "resilient"—which is to say more American. His signature $2trn Build Back Better climate and social-spending bill, which passed the House of Representatives only to be blocked in the Senate by the opposition of Joe Manchin, a Democratic senator from West Virginia, was peppered with business incentives.

You might expect Republicans, historically sceptical of government, to recoil. In the case of Build Back Better, they have done. Yet elsewhere a reinvigoration of American industry is one of the few areas where Democrats and Republicans agree. When a $25bn handout for semiconductor firms to make more advanced chips in America came up for a vote in the Senate in July 2020, 96 of the chamber's 100 members voted in favour.

The chip provision has since grown into $52bn and been folded into the $250bn Innovation and Competition Act, which includes $80bn for research on artificial intelligence (AI), robotics and biotechnology, $23bn on space exploration and $10bn for tech hubs outside Silicon Valley. The Senate approved it by 68 votes to 32—a huge level of support by today's standards (the House will now pick it up). Conservative senators like Josh Hawley, Marco Rubio, Tom Cotton and Ted Cruz talk of a manufacturing renaissance. "The right of centre is learning a new vocabulary," observes Mr Cass. It sounds remarkably, well, French.

Western leaders justify this revived industrial policy in two ways. One is to do with preserving countries' rightful place in the global pecking order. The second is about domestic

economic development. Politicians often trot out both at once. Presenting his "France 2030" vision, Mr Macron spoke of "a fight that is both civilisational and a value creator". No speech by Mr Johnson seems complete without a nod to "global Britain" or "levelling up", a nebulous idea to improve the lot of new Tory voters in the Midlands and north. After Mr Biden signed the $1.2trn infrastructure bill, studded with goodies for American business, Nancy Pelosi, the House speaker, said: "These investments in working families are critical to delivering economic growth at home while ensuring our ability to outcompete China now and in the years ahead."

On national-defence grounds, a dose of self-reliance may make sense. Advanced microchips are as critical to today's warfighting as missiles. A large chunk of the world's cutting-edge chips are manufactured in Taiwan, which is both an American ally (which troubles Beijing) and claimed by China (which worries Washington). Adversaries understandably covet at least some independent chipmaking capacity, just in case.

Like all insurance, this is expensive. For a narrow selection of critical resources the price is worth paying. But politicians tend to inflate the word "strategic" to cover cases where it is not. Mr Rubio thinks sugar counts. Mr Macron apparently believes cinema does.

The costs rise because, as a British business grandee notes, "Everyone has the same list of sexy stuff." Peruse government plans and most feature AI, biotech, clean energy, semiconductors and quantum computing. "It is not efficient for everyone to have a wind industry," jokes Jason Furman, Barack Obama's former chief economist, now at Harvard. In the short run extra demand risks bidding up the cost of inputs. In the long term it could mean a supply glut. The "industrial-policy arms race" may turbocharge the boom-and-bust cycles that characterise capital-intensive industries, notably chipmaking, warns Scott Kennedy of the Centre for Strategic and International Studies, a think-tank.

Companies are following the industrial-policy debate with a mix of zeal and alarm

Some public money will also bankroll projects that the private sector would have developed on its own. Carmakers already prefer to make or procure bulky electric-car batteries near their factories, given how costly they are to ship. Technology firms have every reason to keep on perfecting AI because of its moneymaking potential.

China also shows that, as ever, much government cash can simply go down the drain. Some of its most innovative companies, including tech giants such as Alibaba and Tencent, have thrived at arm's length from the state. Where the government has been actively involved, by contrast, the results look "varied and often unimpressive", says Felix Oberholzer-Gee of Harvard Business School. The Chinese state has poured more than $70bn into developing a rival to Boeing and Airbus with only limited success so far. Its biggest chipmaker, SMIC, was years behind the cutting edge even before Mr Trump's sanctions deprived it of the latest chipmaking technology. And for all the Western handwringing over superior Chinese AI skills, these are mostly confined to unsophisticated tasks such as image labelling.

To be fair, academic proponents of the "venture-capitalist state", like Ms Mazzucato and Mr Cass, are not fans of wasteful pork-barrel spending. They would like governments to back

genuinely out-there ideas ignored by the private sector, to set clear performance yardsticks and, critically, to be as ruthless as Silicon Valley at pulling the plug on failures. "You don't need the ability to pick winners. You need the ability to let losers go," says Dani Rodrik of Harvard, whose paper in 2004, "Industrial Policy for the 21st Century", helped to seed new interest in the notion.

In practice, political incentives make governments, even China's, worse at withdrawing support from duds than at identifying the next big thing. The Apollo model may be ill-suited to today's complex challenges. Ms Mazzucato herself concedes that sending the man to the Moon was primarily a technical problem. Decarbonising Europe or vaccinating America involve an awful lot of tricky social engineering, as well as the physical kind.

Even some proponents of industrial policy doubt that the goals of boosting innovation and creating lots of well-paying jobs complement each other. If your goal is to cure cancer, you should invest in an existing biotech hub like Boston not a provincial town, says Mr Furman. And if it is to shore up the middle class, there are better ways to do it. "Technological change means that promotion of manufacturing is not going to do much for employment and inclusion," says Mr Rodrik. He points to South Korea and Japan, where the share of manufacturing in GDP has risen at constant prices even as the share of manufacturing employment has kept falling, owing to automation. According to Ro Khanna, a Democratic congressman, the goals of fostering inclusion and jobs on one hand and national assets on the other "won't be harmoniously aligned. That would be wishful thinking." That he helped to craft the innovation-hub provisions in the $250bn Senate innovation bill shows how politically attractive bundling them together is.

Winners and losers

Companies are following the industrial-policy debate with a mix of zeal and alarm. Less favoured firms or sectors grumble about being left out. A Brussels lobbyist criticises the EU battery consortium for "going much too radically in one direction" by focusing on lithium-ion technology, which is useful in some areas like passenger electric cars but less so in others. What about fuel cells, which may be better suited for heavy transport, or more efficient combustion engines as a bridge to a cleaner future, he asks. Britain's creative industry looks longingly at Mr Macron's pampering of French filmmakers. Some British airlines, which unlike their European peers were left out of pandemic relief support, feel "buggered", says the business grandee.

Neil Bradley, at the US Chamber of Commerce, has no qualms about industrial policy that backs basic research or improves security and diversity of supply chains. But he is wary of "using government policy to manipulate the market". "You can see hints of it in discussions of onshoring and reshoring," he says. "The middle-class foreign-policy or worker-centric trade policy is basically protectionism," says Hank Paulson, a former Goldman Sachs boss and treasury secretary under George W. Bush and founder of the Paulson Institute for Sino-American business relations. Both Republicans and Democrats "want to tell business what to do", he sighs.

Companies which may benefit from government largesse are naturally more enthusiastic. Pat Gelsinger, boss of Intel, welcomed the news of impending semiconductor splurges with congratulatory tweets. The American giant is one of the first in line to receive a handout at home as well as in Europe, which lacks advanced chipmakers of its own. The 500 or so corporate members of the European battery consortium are hardly complaining about too much EU cash.

Even beneficiaries air gripes, however. A well-connected lobbyist in Washington reports that carmaking clients are furious about the union-labour and local-content requirements for EV subsidies in the infrastructure package. Wind-power developers have lashed out at "Buy American" provisions attached to tax credits. Elon Musk, boss of Tesla, has also panned Mr Biden's EV subsidies. An American chip entrepreneur, T.J. Rodgers, has argued against subsidies to his sector, noting that in 1987 the Sematech consortium began spending $500m in government funds "that did zero for the industry". "'Free government money' induces horribly inefficient spending and undeserved payouts to executives and shareholders," he writes. Mr Gelsinger dislikes the flipside of being part of a sensitive industry—being barred by his government from selling products to China. "If Chinese customers want more chips from the US, we should say yes," he suggests.

A consultant close to Mr Johnson reports that some British bosses are wondering how becoming wards of one government will go down in other capitals. Becoming too cosy with the state can leave you nobbled elsewhere. More chief executives face this dilemma today than in the heyday of industrial policy 40 years ago, when companies were less multinational and multinationals less global. The ultimate choice will differ from boardroom to boardroom. But one consultant has a warning to those business leaders who lap up the largesse: "Be careful what you wish for." ■

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Competition policy
The growing demand for more vigorous antitrust action

Greater concentration of market power is leading to a trustbusting revival

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OBSERVERS OF CHINA'S rise have grown used to seeing old edifices bulldozed to make way for the new. As with bricks and mortar, so with intellectual constructs. In just 12 months President Xi Jinping has replaced a "cautious and tolerant" approach to the private sector with something much less so. Nowhere has the shift towards tougher rules and enforcement been more striking than in competition policy.

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A year ago the Communist Party's body for political and legal affairs vowed to take trustbusting more seriously. Within months China revised its antitrust law of 2008, increasing sanctions and agencies' discretion. The State Administration for Market Regulation (SAMR), the antitrust watchdog, has blocked mergers and, says Angela Zhang of Hong Kong University, levied fines totalling $3.7bn on tech giants for sins ranging from price discrimination to merchant abuse. The agency's antitrust bureau is more than doubling in size, from 40 to 100 officials, and it plans to expand to 150.

Chinese bureaucrats have used state media to arouse outrage against firms' abuse of market power, enough to clobber a miscreant's sales and share price. Despite having no overt antitrust role, the People's Bank of China uses financial regulation and its bully pulpit to cow payments firms. Tencent and Alibaba, two tech titans with a payments duopoly, are being forced to drop the model in which shopping and payments are exclusive to one platform. In moves ostensibly aimed at curbing big tech, the National Press and Publication Administration has prohibited children from playing more than three hours of video games a week most of the year. Another agency barred Didi Global from Chinese app stores for data violations, days after the ride-hailing firm went public in New York before later shifting to Hong Kong.

White House staff look on antitrust as a "Swiss-army knife": a tool to fix lots of different problems

Such actions mark a departure from the antitrust philosophy that has dominated regulatory thinking and judicial decisions in the past half-century. Associated with Robert Bork, an American judge from the late 1970s, it held that consumer welfare and the protection of competition, rather than of particular competitors, should be the only goals of antitrust law. Business practices were deemed fine so long as they did not result in harm to consumers from excessive prices. Most mergers were either competitively neutral or enhanced efficiency, even if they led to oligopoly; only those creating a dominant firm or monopoly were likely to be bad for consumers.

Bork's work was itself a reaction to an earlier approach linked to Louis Brandeis, a former US Supreme Court justice. Brandeis believed that size was nefarious in itself. Curbing market power was a tool to fight other ills, such as mistreatment of workers, the stiffing of suppliers or even threats to democracy. This may have led to some perverse outcomes. In one notorious

example in 1966, the Supreme Court blocked a merger between two grocers in Los Angeles with a combined market share of 8%.

Chinese trustbusters are now the most enthusiastic in disavowing the price-centricity of Bork's "consumer-welfare standard". But it has fallen out of favour everywhere, gradually in Europe and now, tentatively, in America. One reason is a global trend towards greater corporate concentration, from medicines to manufacturing. According to *The Economist*'s calculations, two-thirds of 900-odd sectors covered by America's economic census became more concentrated between 1997 and 2012. In half of these concentration has edged up further in the subsequent five years. In the two decades to 2017 the weighted average market share of the top four firms in each industry increased from 26% to 32%. The four biggest British firms accounted for a larger share of revenue in 2018 than a decade earlier in 58% of 600-odd subsectors. Concentration in the EU has been going in the same direction, albeit more slowly.

Another good reason to bin Bork was technological change. The world's biggest tech giants charge consumers either nothing (Alphabet, Google's parent company, and Meta, formerly Facebook) or as little as possible (Amazon). Critics say this does not stop them abusing their dominance. Amazon is attacked for its treatment of workers, suppliers and third-party sellers. Google and Apple are accused of monopolistic practices against developers in their app stores. Facebook is taken to task for "killer acquisitions" aimed at neutralising innovative challengers such as Instagram and WhatsApp. (All four companies deny all these claims.)

Choice and quality

"We need to push for a broader notion of consumer harm," declares Margrethe Vestager, the EU's competition commissioner. It is no excuse that "the econometrics of price may be more straightforward than the econometrics of quality and choice", she adds. Britain's Competition and Markets Authority (CMA) has made similar noises. Like China's SAMR, it is staffing up fast, going from around 650 officials to 850 in the past five years, catching up with Ms Vestager's directorate-general.

Antitrust voices in America go further, arguing that the consumer-welfare standard was never as scientific as its advocates claimed and that Brandeis's vision deserves a second look. Mr Biden has installed "neo-Brandeisians" in senior trustbusting roles. Lina Khan, a 32-year-old academic, chairs the Federal Trade Commission (FTC). Jonathan Kanter, a long-time Google-basher, heads the Department of Justice (DoJ)'s antitrust division. Tim Wu, a law professor whose books include "The Curse of Bigness", is the White House adviser on technology and competition. "The speed of the takeover by the neo-Brandeisians of the regulatory apparatus has been extraordinary," says one big asset manager.

This new competition doctrine remains a work in progress. But its contours are becoming sharper. It expands the goals of antitrust policy in two main areas: merger control and business-model regulation. For most mergers and acquisitions (M&A), regulators used to restrict scrutiny to a small number of "horizontal" deals between firms active in the same

market that, if combined, could reduce competition and allow incumbents to raise prices. Today all these tenets are going out of the window.

Trustbusters now investigate "vertical" integrations between companies with separate lines of business, as well as horizontal ones with combined revenues that would not historically have warranted attention. A new procedure allows EU regulators to ask national authorities to submit deals that are potential killer acquisitions, particularly in the digital, pharma and biotech industries. They have used this to investigate Meta's $1bn acquisition of Kustomer, an American business-software firm with low European sales, and the purchase by Illumina, a gene-sequencing giant, of Grail, a developer of diagnostic tests that does no business in the EU. Germany's competition authority has been pushing cases like Illumina "to test its jurisdiction", says an EU official. Britain's CMA has demanded that Meta undo its recent takeover of Giphy, a database of animated GIF files.

In America the FTC and DoJ are making merger guidelines more stringent. M&A lawyers say the agencies are asking more questions, including about the impact of deals on the labour market. They already look beyond direct pecuniary harm to consumers. The FTC is backing a suit that seeks to break up Meta into Facebook, Instagram and WhatsApp, even though earlier regulators waved these takeovers through. Justifying its challenge to a merger between Simon & Schuster and Penguin Random House, the Do J said it would give the new entity "outsized influence over who and what is published, and how much authors are paid for their work". Ms Khan is expected to oppose Amazon's $8.5bn purchase of MGM Studios, arguing that it would further strengthen the e-empire's online hegemony. The fact that the entertainment market is fragmented and Amazon lets Prime-subscription customers binge-watch its videos for a fixed fee is, on this expansive view of antitrust, beside the point.

The second avenue of antitrust expansion—dictating what dominant businesses can and can't do—is more inchoate than tougher merger control. But it could prove more consequential. Especially for America's trillion-dollar tech giants it would be the first serious constraints on their activities since the internet made them the world's most valuable companies.

Some edicts come from regulatory agencies. White House staff look on antitrust as a "Swiss-army knife": a tool to fix lots of different problems, including such ills as inflation. It is early in Mr Biden's term and they are still revving up, says one lobbyist. But "once they start going, they will be pretty muscular." Last July Mr Biden issued an executive order, written by Mr Wu, instructing more than a dozen agencies vigorously to curb anticompetitive behaviour across the economy. It encourages agencies to create rules from weeding out "unfair methods of competition on internet marketplaces" to requiring railway owners "to provide rights of way to passenger rail". In a memo outlining her priorities, Ms Khan declared that she would look into whether private-equity firms contribute to extractive business models in which companies raise prices or muscle out rivals.

The 107-year-old FTC Act grants Ms Khan wide latitude, so long as her rules are designed to forestall "conduct that is unfair or deceptive". Congress may grant her even more power. Several proposals would outlaw practices deemed anticompetitive. One would treat Amazon's marketplace or Google's search engine as essential to commerce, rather like a dominant railway operator, prohibiting them from favouring their own products over others.

Another would force Apple and Google to open up their app stores to alternative in-app payment methods and search results. A third would shift the burden of proof from regulators to dominant companies, which would need to show that any merger or acquisition does not hurt competition, rather than the other way around. All three have Democratic and Republican co-sponsors.

Other places are further along the regulatory route. The EU is preparing to adopt two laws, the Digital Markets Act and the Digital Services Act. South Korea has enacted one that eliminates app stores' monopoly on payments. Britain is considering new rules, including on self-preferencing by large platform companies.

If in doubt, litigate

Unlike their Chinese counterparts, Western businesses will not take this lying down, let alone vow "comprehensive self-examination and rectification", as Meituan, a food-delivery giant, did after being fined $530m by SAMR in October. America's tech giants are deploying high-powered lobbyists to scupper or water down rules before they see the light of day. In November the US Chamber of Commerce sent three strongly worded letters to the FTC accusing Ms Khan of overstepping her brief and dismantling procedural safeguards at the agency. It will be "active in litigating", vows Mr Bradley, its policy chief.

Meta, Illumina and Penguin Random House are fighting regulators in court. Judges used to the consumer-welfare standard may resist attempts to redefine it. Corporate lawyers will remind them that, by prioritising outcomes other than price, the neo-Brandeisians "want people to pay for [their] policy preferences", as the chief counsel at a big tech firm puts it.

Big firms argue that, as they expand into adjacent markets, they increasingly compete with one another. This is especially true of big tech, whose rise has fuelled the Brandeisian revival. Amazon is the third-biggest online advertiser behind Alphabet and Meta. Apple is building a search engine to challenge Google. Google's cloud-computing division is taking on Amazon Web Services and Microsoft's Azure. Meta is getting into e-commerce. The research papers cited in Mr Biden's executive order date back half a decade. Concentration in America may since have plateaued.

This resistance ensures that the competition authorities' multipronged assault on big business will take time to play out. The new trustbusting zeal also rubs up against a rekindled affection for national champions, which are by definition big and powerful. European bosses urge Ms Vestager to take into account how competitive global markets are, not just the EU's, when deciding on mergers. The single-market commissioner, Mr Breton, is receptive to such ideas. Even Ms Vestager, who ignored Franco-German calls to permit the creation of the Alstom-Siemens rail champion, now speaks warmly of the battery consortium.

That may be why, for all the antitrust commotion, M&A activity remains strong in Europe and America, as companies take advantage of cheap capital and a surfeit of pandemic-distressed targets. Chinese tech titans have shed a collective $1.4trn in stockmarket value since China started turning the screws on them in earnest last February. America's five

biggest tech firms have added $2.1trn in the same period. The neo-Brandeisians may have "achieved political success prematurely", suggests Mr Furman from Harvard.

Yet bosses, lobbyists and corporate lawyers acknowledge that a chill has descended as regulators test their powers. The dealmaking frenzy may partly reflect a desire to get in under the wire. Without clear rules, companies no longer know when to notify regulators about a deal and must think about competition from the outset. One lobbyist claims that clients with deals pending at the FTC are not getting answers. They may face an investigation halfway through a deal or even after it closes—and in a growing number of jurisdictions. Just one hold-out can put paid to a merger. In March 2021 Applied Materials, an American semiconductor company, scrapped its acquisition of a Japanese rival, which had been approved in America, Europe and Japan, but not in China. Boeing got clearance to merge parts of its business with Embraer, a Brazilian planemaker, everywhere except Europe.

The uncertainty over mergers and rules that might curtail certain practices adds hassle, risk and cost to potential deals. Some business decisions that might once have been made will now never be considered. Value not created as a result is impossible to quantify, but it is surely there. ■

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Government regulation
Enthusiasm for regulation, often in areas like the climate, shows no sign of flagging

Red tape continues to spread inexorably

Jan 10th 2022

A COROLLARY OF Leviathan's growth is rising bureaucracy. Once a regulator is created, it is never defunded. As the state becomes more involved in citizens' lives and agencies expand, so do rulebooks. And a lot of their dos and don'ts apply to business.

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Patrick McLaughlin of the Mercatus Centre at George Mason University has tracked the number of prescriptive words such as "shall" and "must" in America's federal code and its equivalents in Australia, Britain and Canada. They have become more pervasive. In another example, the number of similar prescriptions in America has swelled from 400,000 in the 1970s to 1.1m today. Many may be out of date: an analysis by Deloitte, a consultancy, found in 2017 that 67% of sections in the US code had not been edited since they were drafted.

Purported bureaucracy slayers, such as Mr Trump, who promised to axe two rules for every one introduced, or conservative Australian prime ministers, have left more regulations than they inherited. Mr McLaughlin does not know of similar studies of the EU or Japan, let alone China. But it is a fair bet they are on a similar trend, he says. And that is without state, regional or local rules.

The pace may even be speeding up. Governments are regulating in new areas such as the climate or data protection. They are telling businesses how to treat workers, women, ethnic and racial minorities, and even shareholders. Rules are multiplying about what information companies must disclose, how to allow investors to challenge management and who should sit on boards. And as the rift between the West and China deepens, both are constraining firms' choices of business partners. Asked whether all this presents risks for companies and investors, one big asset manager responds: "Yes, absolutely."

One sign is the arrival of big laws. The federal code ballooned after the passage in 2010 of the Dodd-Frank act to regulate the financial industry. In the past two years Congress has passed two huge covid-19 stimulus bills (335 and 243 pages) and the $1.2trn infrastructure plan (1,039 pages). Mr Biden's Build Back Better extravaganza ran to 2,468 pages in the House-approved version.

The EU's Digital Services and Digital Markets acts will, once adopted, take on lives of their own as they are translated into national law. Although their toughest provisions target the tech giants (few of which are European), any big organisations that peddle data can expect to be caught up in red tape. That happened with the EU's General Data Protection Regulation in 2016.

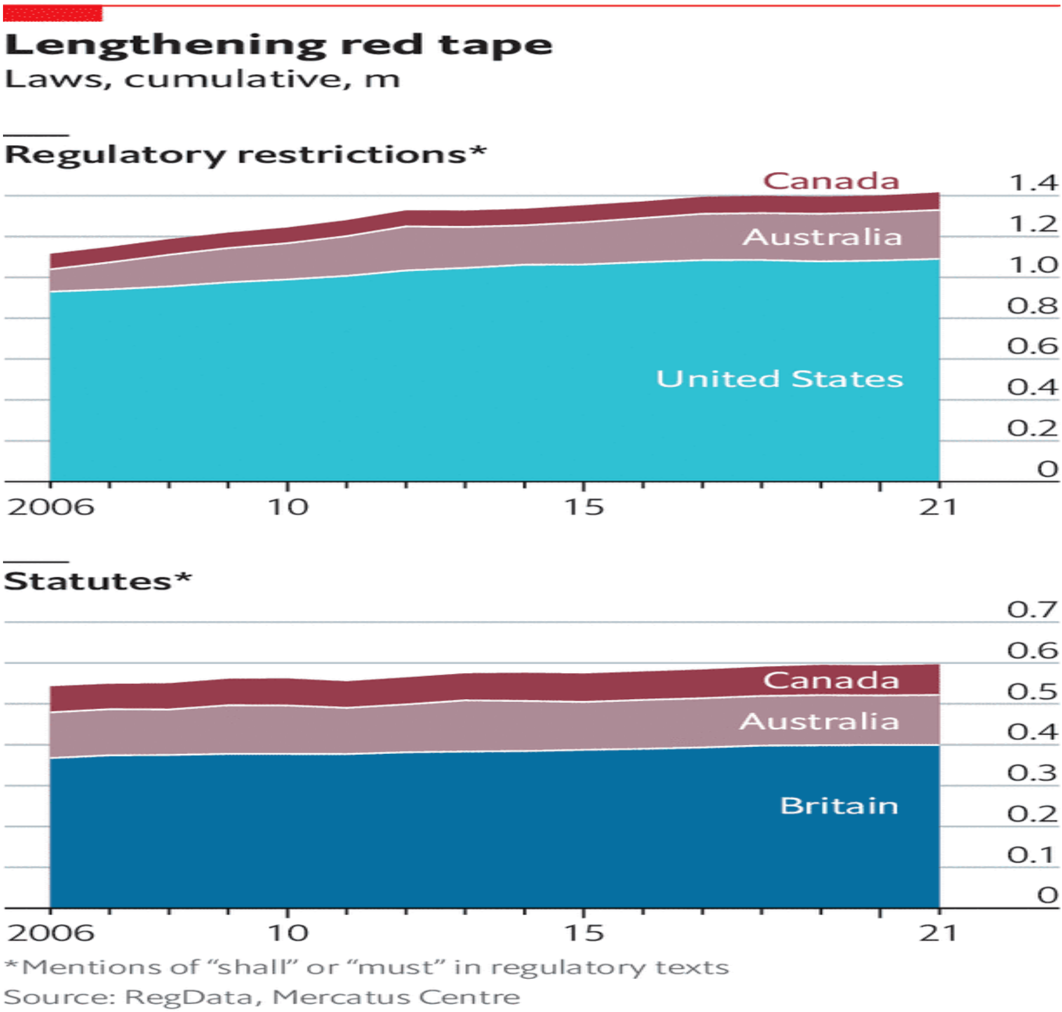
Governments everywhere seem suddenly to have become much keener on labour protection

The scope of regulatory agencies can broaden even without new statutes, if regulators reinterpret old ones. That appears to be happening at the FTC. Mr Biden's federal vaccine mandate, requiring companies that employ 100 or more to ensure that workers are jabbed or regularly tested, is based on powers of the Occupational Safety and Health Administration. The Consumer Financial Protection Bureau, created by Dodd-Frank, could in 20 years be as

large as the Environmental Protection Agency is now, predicts Mr McLaughlin. Many new instructions come not as formal rules but in ancillary guidance, which Wayne Crews of the Competitive Enterprise Institute, a think-tank, terms “regulatory dark matter”.

In environmental, social and governance (ESG) practice, companies and rulemakers are moving in the same direction. Indeed, business may be ahead. Many firms have embraced diversity and inclusion. Corporate carbon-cutting goals often exceed national ones. Partly this is a response to demands from consumers and potential hires. Partly it is a cynical effort to show that soft self-regulation obviates the need for government rules.

Regulators are catching up. “ Tenets of ESG are becoming hard law,” says Mr Rodrik of Harvard. A draft EU directive would require firms to monitor, identify, prevent and remedy risks to human rights, the environment and governance in their operations and business relations. France’s “Duty of Vigilance Act” of 2017 already requires French companies with over 5,000 employees in France or over 10,000 worldwide to monitor their firms, contractors and suppliers for potential abuses. By mid-2023 a Dutch law aimed at stopping child labour will take effect, after a three-year grace period. A similar supply-chain act has been passed in Germany.



America's Build Back Better bill is dotted with requirements for companies to employ unionised workers. The House of Representatives has passed a bill that would reverse many constraints on union power, some dating from 1947. It will stall in the Senate because of opposition from Republicans and centrist Democrats. But it is a statement of intent. Companies are braced for executive actions. A group chaired by Vice-president Kamala Harris has instructed every department and many agencies to come up with plans to push unionisation without congressional action. Some 400 ideas have been submitted.

Governments everywhere seem suddenly to have become much keener on labour protection. Mr Biden's bid to raise the federal minimum wage was foiled by moderates but the idea is far from dead. The European Commission wants common rules on minimum pay and "platform workers" who ferry passengers for Uber or meals for Deliveroo. Meituan, the food-delivery giant, is in hot water with Chinese authorities for mistreating drivers. Labour standards are being slotted into trade deals, including the United States-Mexico-Canada Agreement that replaced NAFTA.

Fighting for workers—and investors

Financial regulators are also becoming more intrusive. The Bank of England is conducting climate-risk stress tests. The European Central Bank is considering requiring firms to disclose exposure to climate-related risks, including assets that may become stranded by tougher climate legislation. A vocal American champion of this idea, Lael Brainard, has been made vice-chair of the Federal Reserve. In October the Securities and Exchange Commission (SEC) said it was working on requirements for firms to include such disclosures in public filings.

The SEC is also making it easier for investors to hold management to account. In November it simplified rules for elections to corporate boards. Dissident shareholders seeking to appoint directors will no longer need to go through the hassle and expense of sending out rival ballots. A new "universal proxy", which will come into force later this year ensures that board candidates appear on all ballots at annual general meetings, giving shareholders the choice. Another new rule makes it harder for companies to block shareholder resolutions on climate change and human rights. Both changes will empower activists. The senior lawyer at one big tech firm reports that 2021 was the first year when activists tried to ram through appointments and resolutions without seeking compromise with managers.

A final set of rules encumbering business reflects strained Sino-Western relations. In Tokyo Takayaki Koyabashi, the economic-security minister, has hinted that his mandate might extend to decisions under the Foreign Exchange and Foreign Trade Act, revised in 2019 to tighten rules on foreign investment in Japanese companies, which it ranked in three tiers of security-related sensitivity. The EU is getting more assertive. The European Commission is working on an instrument to let Brussels impose economic pain—from trade and investment restrictions to sanctions on intellectual-property rights—on any country that tries economic blackmail. The EU is often inadvertently snarled by American sanctions applying to products made with American technology.

The blacklist of Chinese firms with restricted access to American technology now contains over 1,600 "entities", including affiliates of such large multinationals as Huawei and SMIC. Another 27 were added in November, in aerospace, chips and quantum computing, including two affiliates in Singapore and Japan. Deals involving Chinese companies are routinely screened by the Committee on Foreign Investment in the United States. The Holding Foreign Companies Accountable Act of 2020 requires firms traded on American exchanges to submit to audits (which Chinese ones are barred from doing by Beijing on national-security grounds) or face delisting within three years.

Things could get rockier. The international chief of a big American asset manager says Wall Street sees China as "essentially uninvestable". He puts the probability of it becoming impossible for American finance to operate in China at 30%. That is alarmingly high and could even mean the Western, dollar-centric, financial system is severed from the world's second-biggest economy.

China's response has not been to bar firms from doing business with the West—they are too reliant on Western consumers, technology and capital markets. Instead, it wants to reduce this dependence. The "dual-circulation" strategy in its latest five-year plan aims to keep China open to the world (the "great international circulation") but bolster its own market (the "great domestic circulation"). As China has closed borders to suppress covid-19, domestic circulation has gained in prominence.

The Communist Party is bossing companies around with a zeal not seen since Mao: witness a crackdown on tech and anticompetitive practices and a ban on profitmaking by online tutors. Beijing has made it harder for Chinese firms to float shares on American exchanges by cracking down on the convoluted legal vehicles they used to circumvent Chinese limits on foreign shareholders. In November it forced Didi Global, the ride-hailing giant, to delist from New York and move to Hong Kong. Chinese initial public offerings in America have all but dried up.

The economic toll of continued Sino-Western decoupling may be counted in the trillions of dollars. Nasdaq's Golden Dragon China Index, which tracks Chinese firms listed in New York, fell by 43% in 2021. The unseen costs of unconsummated business relations are incalculable. "At a stroke of a regulator's pen, 60-70% of your investment can be eroded," says an executive at a big investment fund.

Complying with domestic regulations is less costly but harder to escape. Some economists reckon it may shave several points off GDP in America. In one British survey, fewer than one business in three thought regulation enabled innovative products and services to be brought to market efficiently. In another, 69% of firms felt that regulators did not work closely enough with each other. Governments' management of new and existing regulations is still far from optimal. "Little information exists on whether they actually work in practice," observes Christiane Arndt-Bascle, who monitors regulatory regimes at the OECD.

Comments to regulators about proposed rules are published 85% of the time but sent to decision-makers in just 41% of cases in OECD member countries. Less than a fifth of OECD members systematically reflect international dimensions in domestic rule-making. Both the

British and the American governments lack senior officials with extensive private-sector experience. A consultant close to Downing Street sees “very few, if any, established lines of communication between the government and business”. This means that new rules tend to be more onerous. And it comes on top of another business cost that is about to rise after decades of decline: corporate taxes. ■

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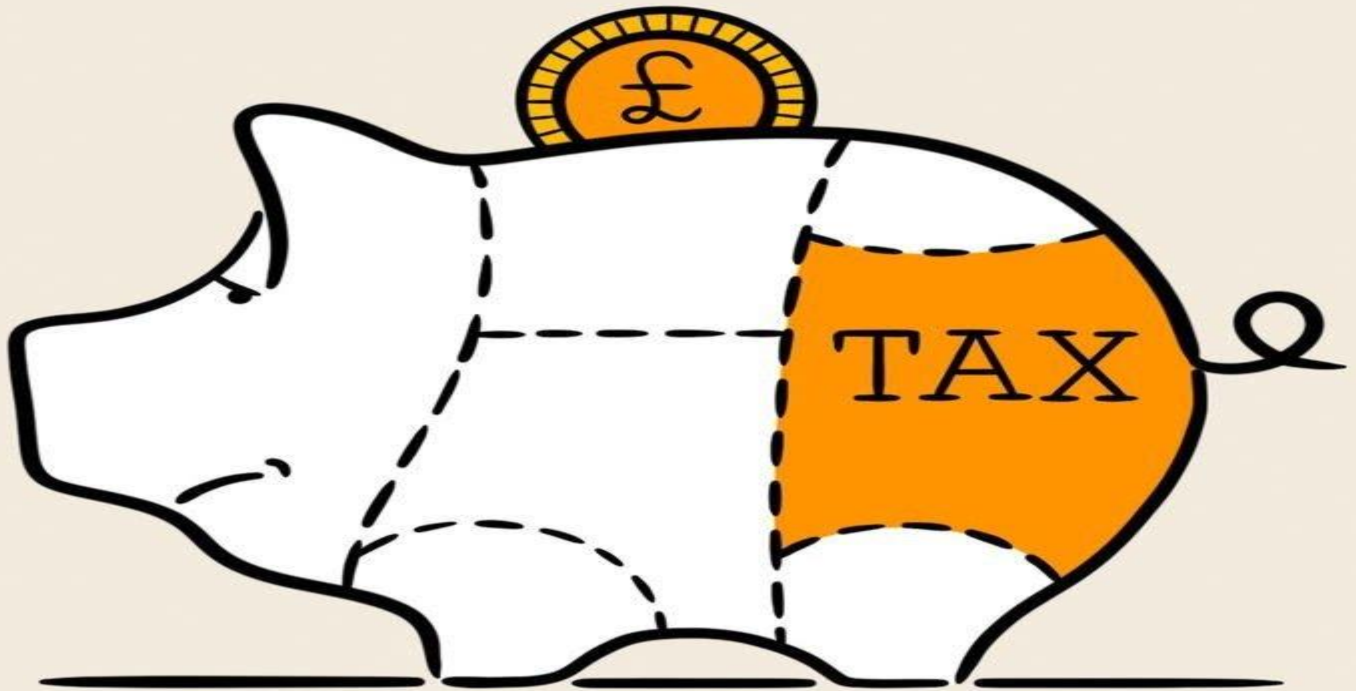

Corporate taxes
The long trend of falling corporate taxes is being reversed

After falling for decades, taxes on companies are rising again

Jan 10th 2022

FOR WORLD peace, the League of Nations was an abject failure. For companies, it has proved a great success. In the 1920s it set a basis for corporate taxation that has endured ever since.

Recognising that taxing profits in different places can hurt trade and growth, rights to tax were allocated first where profits are generated and only second where a company sites its headquarters.

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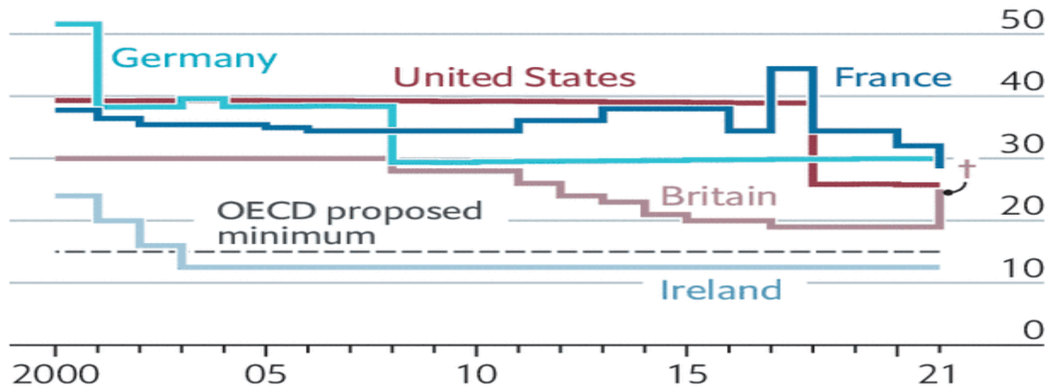
This principle has now been enshrined in bilateral tax treaties—with unintended consequences. Governments have realised they can lure investment with lower tax rates. Between 1985 and 2018 the average corporate-tax rate fell from 49% to 24%. Many tax havens charge zero. The idea has grown that collecting taxes from rapidly growing, efficient firms is "whipping the fast ox".

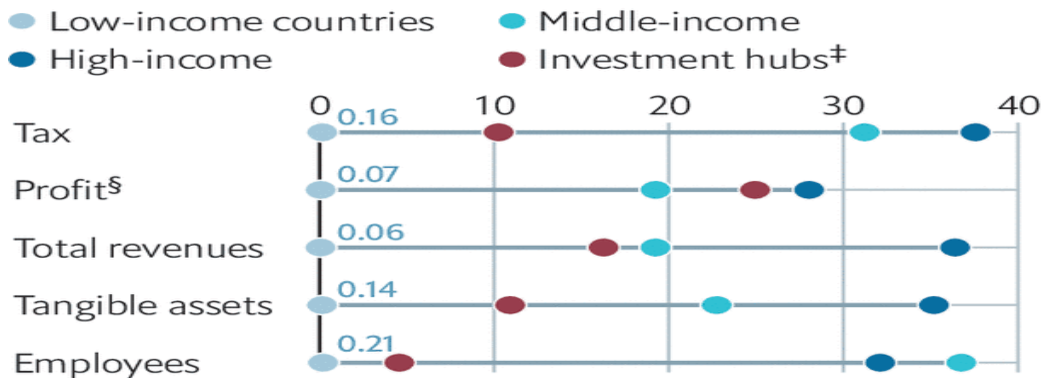
Companies have also learned to pay less tax by shifting reported earnings, which is easier with the rise of intangible assets such as brands. Although only 5% of American multinationals' foreign staff work in tax havens, they book nearly two-thirds of foreign profits there, twice as much as in 2000. In 2016 around $1trn of global profits were booked in "investment hubs" such as the Cayman Islands, Ireland and Singapore, whose average effective tax rate on profits is 5%. According to an OECD study in 2015, this robbed public coffers of $100bn-240bn a year, equivalent to 4-10% of global corporate-tax revenues.

Inflection point

Statutory corporate-tax rate*, %



Share of multinational enterprises' foreign activities by location, 2016, %



*Includes central and sub-central rates †Proposed for 2023
‡Countries with inward investment exceeding 150% of annual GDP
§Profits could double-count intracompany dividends

Source: OECD

The Economist

Some action to improve and simplify corporate taxation was long overdue. But with business fast going from sacred ox to whipping boy, governments have become less concerned with creating a better system and more with just getting firms to pay more tax. Britain has decided to raise its corporate-tax rate from 19% to 25%, becoming only the second OECD country to do so since 2000 (the first, Chile, has reversed its decision). In America moderate Democrats stopped Joe Biden undoing his predecessor's tax reform, which cut the corporate-tax rate from 35% to 21%. But his Build Back Better bill floated a tax on share buybacks and an excise tax of 95% on sales of drugs for which drug firms refused to negotiate prices with the Medicare system.

The bill would also have raised the minimum rate that American multinationals pay on global profits from 10.5% to 15%. This could have raised an extra $30bn a year. It would also have aligned America with a new tax pact negotiated through the OECD. Fully 136 countries have signed up to a 15% global minimum rate, and allocated more taxing rights from where companies book profits to where they make sales. The OECD hopes to get this deal into force in 2023. Mr Furman, the former economic adviser to Barack Obama, calls it "a real sea change" in how companies are taxed. Others throw around terms like "once in a century" and "revolution".

The reallocation of taxing rights will apply only to companies with global turnover above €20bn ($24bn), and only on pre-tax profits exceeding 10% of revenues. It is likely to raise a "modest amount", thinks Michael Devereux of Oxford University's Said Business School. Some estimates put it at a trifling $5bn-12bn a year worldwide. Mr Devereux reckons the global minimum may raise an extra 4-5% on top of what companies already pay, or around $100bn annually.

Yet this underplays the significance of the shift. The reallocation affects some 110 multinational groups says David Bradbury of the OECD. Most are American. They probably include the usual suspects such as Apple and Amazon, which have perfected the art of tax optimisation. These firms face a costly and tedious unwinding of their tax arrangements—and a higher overall bill. As for the global minimum, Mr Bradbury expects countries and companies to alter their behaviour. Switzerland, which supports the pact, is murmuring about new tax incentives to remain attractive. "It will be messy," sums up an executive at one American multinational.

Companies might once have kicked up a fuss over the OECD deal. They have thought better of it, given intensifying anti-business sentiment. Some have even praised the harmonisation effort. In private, though, executives grumble that the OECD plan is "a convenient vehicle" to raise taxes at home. That, says one tech boss, is what Mr Biden is doing. Neil Bradley of the US Chamber of Commerce warns of moving from a race to the bottom to "a race to the top". If tax authorities believe they will avoid leakage, he says, they may conclude "We can tax as much as we want." Mr Devereux would not be surprised if corporate taxes creep up.

There may be more unintended consequences. One mysterious feature of the 40-year slide in corporate-tax rates has been that companies' contribution to public coffers has remained flat in rich countries, at about one-tenth of the tax take, or 2-3% of GDP. In poorer ones the figures are slightly higher but equally steady. Analysts put this down to more firms paying tax, corporate profits growing and wealthy individuals using companies to reclassify highly taxed personal income as lower-taxed corporate income.

The base of payers looks unlikely to dwindle. Once known to taxmen, firms rarely extricate themselves from their grasp. How the changes affect profits is harder to judge. Experts do not expect the overhaul to dampen pre-tax profits, though that could happen if higher rates discouraged investment. Some signatories to the deal may retain their edge with offsetting sweeteners such as lower taxes on individuals or property.

There are also unknown unknowns which may become clearer only once firms have adjusted. Two things can be predicted. A bonanza awaits tax lawyers and accountants. And the new equilibrium will be less favourable to companies. One boss of a big multinational company suggests that the tax system is the ultimate test of what countries care about. The implication is that they care less than before about keeping business happy. ■

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