

Kluwer Competition Law Blog

A Pitch to J.D. Vance – Make “VCs-in-Residence” Your Antitrust Legacy

Sean Norick Long (Georgetown Law and Harvard Kennedy School) · Friday, May 2nd, 2025

This article makes a modest pitch: The Trump?Vance Administration should hire venture capitalists (“VCs?in?Residence”) in antitrust agencies to help predict the trajectory of emerging technologies. Just as antitrust agencies enlisted technologists to understand the technology *behind* today’s challenges, they should now partner with VCs to anticipate the technology *ahead*.

The Republican senator from Ohio **declared**: “We threw off the chains of monarchy in the early republic—we didn’t mean to replace them with the chains of private monopoly.” This statement was not made by John Sherman, who stood on the Senate floor in 1890 to **introduce** the antitrust legislation bearing his name, but by J.D. Vance in February 2024 at a conference hosted by Silicon Valley startup incubator Y Combinator.

For seven hours, entrepreneurs, technologists, and politicians **presented** “glimpses into alternative scenarios enabled by different regulatory landscapes.” Tim Wu gave opening remarks; Lina Khan delivered a keynote. Speaking between them, Vance **described** his time as a VC in 2015, seeing ad tech startups that showed “rapid growth” but were “fundamentally uninvestible” because the market was “already dominated by such powerful incumbents.” Vance **appreciated** what Khan recognized: Economists miss “something very fundamental” when focusing narrowly on price, ignoring “a broader understanding of how we think about competition.”

The Lawyer-Economist Gap

Despite attempts to label future competition as “nascent” or “potential,” these terms confuse even seasoned antitrust attorneys. Paul Denis, who drafted the 1992 Merger Guidelines, **admitted** mixing these terms. Debbie Feinstein, former director of the FTC’s Bureau of Competition, **said** she “never figured out how one could actually ever bring a perceived potential competition case,” preferring the term “future competition.” Given the blurred terminology, she conceded, “fundamentally the labels you put on it aren’t the question.”

A **coming wave** of overlapping technologies threatens to break the fragile legal framework of future competition. Some technologies—blockchain and synthetic biology—have **arrived** but remain early in development, while others—quantum computing and nanotechnology—are still years from practical deployment. They can reshape existing markets or create entirely new ones,

“blurring the lines between physical, digital and biological spheres.” Meanwhile, market shares will be **volatile** as AI breakthroughs disrupt competitive positions. The labels around future competition need updating, but lawyers and economists can’t do it alone.

Why VCs Fill the Gap

Lawyers are trained to look to history, but antitrust requires **predicting** future harm. In February 2020, the DOJ and Stanford co-hosted a **workshop** on Venture Capital and Antitrust. Stanford Law’s Doug Melamed **noted** that economists excel with established markets (e.g., T-Mobile/Sprint) but offer “less value in answering the Facebook/Instagram question,” which demands intervention “under conditions of substantial uncertainty.” When defendants claim that “disruptive innovation is just around the corner,” Trump’s AAG for Antitrust, Makan Delrahim, **urged** enforcers to think “a bit like venture capitalists.”

The VC industry has propelled American innovation, **providing** early capital for Apple, Google, and Facebook. It **fueled** major advances in semiconductors and mainframe computing (1960s), personal computing (1970s), biotechnology (1980s), internet/e-commerce (1990s), and mobile/cloud (2000s, 2010s). VCs bring new products to market by **providing** risk capital that banks or private equity can’t or won’t. In 2019, VC-backed companies **made up** half of U.S. public firms but were responsible for nearly 90% of total R&D spending. By seeding technological developments over decades, VCs shape the modern economy. However, limited fund sizes mean they **favor** unclaimed markets over ones controlled by entrenched incumbents.

When asked to predict the nascent future, judges oversimplify. In *Illumina-Grail*, the nascent technology was multi-cancer early detection (MCED) testing. Illumina was “**the monopoly supplier of a key input**,” and its purchase of Grail—“**the first mover**” in MCED testing—raised fears that Illumina might foreclose Grail’s rivals. The court worried this deal would “**chill[]**” investment in “**numerous firms**” developing MCED tests. While the court attempted a VC mindset, it oversimplified, making a **binary distinction** between “highly experimental” liquid biopsies and MCED testing that “all of the players” expected would “one day generate tens of billions of dollars.”

In August 2024, a court found Google had monopolized the search market, **noting**, “venture capitalists...have stayed away from funding new search ventures.” When Google **urged** the court to consider how nascent AI might erode barriers to entry, the court **replied**, “AI may someday fundamentally alter search, but not anytime soon”—oversimplifying AI as a distant, binary event.

Proposing “VCs-in-Residence”

Over the past decade, the FTC and DOJ have recognized that lawyers and economists alone are insufficient for modern enforcement. In 2011, Obama’s FTC **appointed** its first Chief Technologist—a position filled eight times overall, including once under Trump. In 2019, Trump’s FTC **launched** the Technology Enforcement Division, whose technologists even right-leaning commissioners **praised** for filling “research gaps outside economists’ typical areas.” In February 2023, Biden’s FTC **established** a dedicated Office of Technology.

Parallel shifts at the DOJ reinforced this trend. In 2022, the Antitrust Division hired a “[technology economist](#)” as Chief Economist. Recognizing the need was more than one person could fill, the Division launched a strategic realignment: hiring a [Ph.D. data scientist](#) as its first Chief Technologist, [rebranding](#) the Economic Analysis Group as the “Expert Analysis Group,” and [securing](#) a \$45 million Technology Modernization Fund (TMF) investment. As of April 2025, more than [\\$35 million](#) remains unobligated and available to spend, suggesting room to fund a pilot “VC-in-Residence” as the agencies retool for the future.

The world might look different had VCs been in the room with antitrust enforcers during Facebook’s 2012 acquisition of Instagram. That deal, [challenged](#) by Trump’s FTC in 2020, [went to trial](#) last week. UK regulators [noted](#) Instagram had “generated no revenue” and cited “one third party” seeing no “significant marketing opportunities.” Meanwhile, Mark Zuckerberg [emailed](#) a colleague that businesses like Instagram “are nascent, but the networks are established [and] the brands are already meaningful.” A VC-in-Residence might have understood that a 13-employee photo app with filters could, in Zuckerberg’s words, “be very disruptive” to Facebook’s social network.

VCs-in-Residence can also develop agency guidance. The 2010 Horizontal Merger Guidelines [recognized](#) “maverick” firms that play a “disruptive role in the market,” yet offered little clarity on weighting intangible assets (e.g., Instagram’s brand). The 2023 Merger Guidelines [mention](#) “nascent threats” and “ecosystem competition” but do not clearly distinguish good from bad acquisitions. VCs routinely scrutinize [intangibles](#)—vision, talent, product potential, and ability to access data—that economists and lawyers struggle to quantify.

An Alternative to Heavy-Handed Regulation

If the Biden Administration was too heavy-handed, VCs-in-Residence carefully weigh trade-offs. For example, regulation reshapes startup incentives. Without viable exit strategies, the [incentives](#) to invest time (for founders) and money (for investors) into the ecosystem diminish. Proposed rules that prevent incumbents from buying nascent competitors could [stifle](#) investment precisely where needed. Meanwhile, Michael Kratsios, [director](#) of the White House Office of Science and Technology Policy, has [said](#), “There needs to be a place for Big Tech to ...allow space for little tech to be able to grow and flourish.”

Would VCs-in-Residence create conflicts of interest? [Revolving door conflicts](#) are *already* rampant: 75% of top FTC officials over two decades came from or went to firms appearing before the agency, and 60% had technology-related conflicts. Because many venture investors back startups, not incumbents, VCs-in-Residence could equally act as a counterweight to existing capture by Big Tech. Strict disclosure and recusal rules, hiring retired VCs, or limiting their role to advisory functions mitigates the risk of capture. An open, multi-phase application (e.g., [Presidential Innovation Fellows](#)) or alternating the profile of appointees (between Silicon Valley and emerging geographies) would make selection more transparent.

Still, can’t enforcers just [pick up the phone](#) to call experts for free? While one-off questions may be free, most expertise is not. An open line of dialogue is far more valuable than an ad hoc phone call. Further, while agencies have expertise in fields they routinely scrutinize (e.g., hospitals and pharmaceuticals), nascent competition lacks frequent transactions. VCs often miss big

trends—Airbnb was [repeatedly](#) rejected—but they also develop pattern recognition that provides an early warning system about new business models. When the DOJ [closed](#) four of its seven antitrust field offices, VCs [invested](#) less in those regions. Startups in more concentrated industries were [hit hardest](#). An enforcer once [quipped](#), “I personally find it to be scary...to consider having actual technologists at the FTC.” Scarier is not being equipped to manage the coming wave.

The Next Century

In 2015, the FTC celebrated its 100-year anniversary by commissioning artwork that [featured](#) a “winged flywheel”—symbolizing “progress” and commitment to protecting consumers “in a world of evolving technology.” Nearly a decade later, the FTC sued Amazon for “[fuel\[ing\] a flywheel of anticompetitive harm](#),” and Live Nation-Ticketmaster for a flywheel that “[suffocate\[d\] competition](#).” Had the FTC consulted J.D. Vance, they may have picked a different symbol.

The Trump-Vance Administration recognizes the need to retool antitrust review for the next 100 years. Pairing VCs with technologists, economists, and lawyers fosters cross-pollination, leaving behind future-savvy lawyers and law-savvy investors. Never have VCs been so close to DC. VCs-in-Residence are a practical way to put this expertise to use.

The author declares no conflicts of interest.

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