

ASG Analysis: The Biden Administration and Technology Policy Challenges

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This is the second in a series of ASG Analysis papers exploring the implications of a Biden administration across some of the most important policy areas for international business. In this paper, we discuss what to expect from the Biden administration's approach to global and domestic technology issues. The previous analysis discussed [U.S.-China policy](#). Future papers will explore issues such as global trade and climate change. Find a brief primer on the U.S. presidential transition process [here](#).

Key Takeaways

- President-elect Biden will take office just weeks after the discovery of a massive cyberattack that has infected thousands of the nation's government and private networks and raised renewed questions about American cyber defense capabilities. The attack – said to be the work of the Russian intelligence agency SVR – will likely result in retaliatory measures and multiple investigations by the incoming administration while technologists attempt to remediate the damage.
- As in many policy areas, U.S. competition with China will frame the incoming administration's broader approach to technology policy. We expect President-elect Biden to seek close engagement with U.S. allies, particularly in Europe, to define, defend, and promote Western norms of an open internet over authoritarian governments' moves towards a "splinternet" led in particular by China.
- Disinformation and misinformation on social media platforms will also be a priority for the new administration. This is an area on which the U.S. and EU might align, as decision-makers on both sides of the Atlantic believe content moderation is critical to protecting democracy and national security.
- On data protection and privacy, the Biden administration will move to check big tech domestically while protecting the flow of free data across international borders. Renegotiating the "Privacy Shield" agreement with the EU will be an immediate task for the administration.
- While the president-elect will likely resist calls to "break up" big tech companies, the U.S. Department of Justice and federal agencies are expected to push forward with ongoing antitrust lawsuits against some of the major tech companies. Competition policy is another area for potential U.S.-EU policy alignment; any transatlantic precedent will reverberate in allied capitals like New Delhi.
- Domestically, the Biden administration will seek to reinstate net neutrality rules for internet service providers and improve internet infrastructure, access, and affordability. Especially on the

domestic side, much will depend on the outcome of the Georgia Senate runoff elections in January – both in terms of which issues the Biden White House might prioritize given the magnitude of other issues on its agenda and its ability to advance these policy priorities.

Cybersecurity

President-elect Biden will take office as government and private sector officials try to sort out the impact of and possible responses to a massive cyberattack – said to be the work of the Russian intelligence agency SVR – that the *New York Times* calls “among the greatest intelligence failures in modern history.” The attack, which apparently began in the spring and went undiscovered for months, allowed hackers to insert malware into software used by more than 18,000 users of American software company SolarWinds, including federal government agencies, state and local governments, and private companies.

Information to date indicates that the attack has only been used for espionage rather than offensive operations against U.S. infrastructure and vital systems. The attack will further strain relations with Russia and is expected to reinforce the incoming national security team’s mistrust of Putin. The Biden administration, the military, and Congressional committees are likely to undertake 9/11-style investigations into the attack.

Members of the Biden team have signaled that the president-elect will consider a range of retaliatory options against Russia, from further economic sanctions to attacks on Russian infrastructure. Existing sanctions include travel restrictions on certain Russian individuals and high-ranking officials, limits on access to the U.S. financial system and transactions with U.S. companies, and strict controls on exports to the Russian defense and energy sectors. The Biden administration could seek to impose more sweeping sanctions against the Russian economy, with associated compliance risks for U.S. companies that have business in or related to Russia.

Technology competition with China

Internationally, the biggest technology policy challenge facing the Biden administration is growing ideological and commercial competition with China. As with U.S.-China relations more broadly, the change in administration will not lead to a wholesale reset in the U.S. approach to China on technology issues or the overnight removal of technology-related restrictions enacted over the past four years. We expect President-elect Biden to take a more patient, strategic, approach, coordinating with likeminded governments. The Biden administration will seek to engage more closely with U.S. allies, especially EU member states; define and defend the norms of an open internet against China’s closed approach; and address longstanding shared concerns around Chinese technology exports, discriminatory cybersecurity and data practices, forced technology transfer, and intellectual property theft.

This will likely include a more coordinated approach to working with companies linked to the Chinese military and curbing the use of Chinese-produced components that may threaten national security by establishing “backdoor” access to data. The debate will continue to focus on 5G equipment manufactured by Huawei, which, under Chinese law, must share data with Beijing when asked. In contrast to the Trump administration’s heavy-handed approach, which attempted to strong-arm countries into compliance with its “clean network” policy, we expect the Biden administration to focus on establishing shared norms. In the short term, the Biden administration will likely retain export controls that the Trump administration imposed on Chinese tech companies, while refocusing U.S. efforts to confront China on IP issues. The Biden administration also is likely to seek a more effective approach to multilateral export controls targeting Chinese military end-users and Chinese companies associated with China’s civil-military fusion

program, which is championed by Chinese leaders and likely to be featured prominently in the next Five Year Plan due out in March.

Options for the long term could include working with the EU – which is in the midst of a drive to produce continental technology champions – to assemble a coalition of companies (e.g. Finland’s Nokia, Sweden’s Ericsson, and Korea’s Samsung) to offer a competitively priced alternative to Huawei. However, such an approach would require agreement by governments to subsidize the effort. There is also much talk in U.S. policy and technology circles about the possibility of forming a technology alliance of like-minded nations to take on the Chinese, although we do not know yet how much support or energy this proposal will garner in the new administration. It is also unclear what impact the long-awaited EU-China investment agreement, if it is concluded, could have on U.S.-EU cooperation on China. Whether an agreement would diminish the administration’s confidence in working with Brussels or otherwise hamper U.S.-EU cooperation to rein in market access for Chinese tech remains to be seen.

The ongoing litigation around Chinese-owned social media platform TikTok will present another short-term test for the Biden administration. If the Trump administration is unable to reach a deal with TikTok’s Chinese owner, ByteDance, for the sale of its U.S. assets, the ball will land in the Biden administration’s court. Earlier this month, a federal judge blocked the Trump administration’s ban on TikTok, on the grounds that it had “likely overstepped” its authority. This comes as ByteDance works to finalize a deal that would give Oracle and Walmart a combined 20% stake in a new company called TikTok Global and put Oracle in charge of storing all TikTok Global’s U.S. user data. Biden has not indicated what his approach would be but has expressed concerns about TikTok, which suggests he is unlikely to altogether abandon action against the app.

In addition to challenging Chinese companies directly, the Biden administration will seek to boost U.S. competitiveness vis-à-vis Chinese firms and diversify supply chains. It will cast domestic investments in basic research, infrastructure, and education not only as opportunities for job creation but as efforts to compete more effectively with Beijing. Biden’s “Made in All of America” infrastructure plan calls for \$300 billion in new federal funding for R&D in breakthrough technologies like artificial intelligence and quantum computing, though a bill of this size may be difficult to pass if Republicans retain control of the Senate. Biden is expected to also back the passage of the bipartisan CHIPS for America Act, which would provide federal investment tax credits to American semiconductor manufacturers.

Content moderation

Officials in the Biden White House and key agencies will come into office acutely focused on countering the spread of disinformation and misinformation on social media platforms. President-elect Biden rarely spoke about technology issues at length on the campaign trail except to criticize social media companies for allowing disinformation and misinformation to spread unchecked. Although they cited differential rationales, both President-elect Biden and President Trump have voiced support for eliminating Section 230 – the U.S. legal provision protecting social media companies from liability for user-generated content. We expect Congress to amend Section 230 rather than repeal it. The Biden administration’s efforts against Section 230 could embolden similar initiatives in other countries, such as the highly contentious intermediary liability expansions India has proposed.

U.S. and EU policymakers are generally aligned that countering disinformation and misinformation is critical to protecting democracy and national security. On December 15, the European Commission released drafts of the Digital Services Act (DSA) and the Digital Markets Act (DMA), a package of proposed regulations and responsibilities for tech companies that aims to promote a fair and competitive digital economy (see our recent [Analysis](#)). The DSA seeks to harmonize regulations across the bloc on the removal of illegal content and other issues and would apply to all digital services operating within the bloc, even if they are headquartered outside the EU. It will take several years for the DSA to be debated, revised, and refined before it is finalized as legislation. Disagreement has already emerged within the European Parliament over whether the DSA should also address harmful but legal content such as hate speech, disinformation, and misinformation. The Biden administration, along with U.S.-based IT companies, will closely watch and lobby Brussels as these proposals undergo changes on the road to becoming law.

The DSA is consistent with the European Democracy Action Plan (EDAP) released earlier this month, which is more internally focused and outlines legislative and non-legislative measures to counter online disinformation and misinformation and protect election integrity, democratic processes, and media freedom.

Data protection

President-elect Biden will likely seek to convince big tech to strengthen data protection and user privacy standards. The U.S. lacks a federal data protection regulation similar to the EU's General Data Protection Regulation (GDPR), which gives EU users greater control over how private companies handle user data and imposes high fines for data abuse or negligence. Similar laws do exist in the U.S. at the state level, most notably the California Consumer Privacy Act (CCPA), which establishes GDPR-style rules for state residents and online services that operate in the state.

President-elect Biden has signaled that he sees data protection legislation as a priority. Bruce Reed, who leads his team of advisors on tech issues, was an architect of the CCPA. Vice President-elect Kamala Harris also has a track record of interest in data privacy issues – as attorney general of California, she launched the Privacy Enforcement and Protection Unit, which now oversees enforcement of the CCPA. However, progress on major federal data privacy legislation will be difficult as Congressional Republicans are already signaling they will resist such an effort, citing fears that it will interfere with free markets.

Although the Biden administration will seek to narrow the divide that has emerged between the U.S. and EU on data protection issues, finding common ground with Brussels will not be easy. Negotiations to replace the "Privacy Shield" – the agreement that allowed multinational companies to easily move user data between the U.S. and Europe for the past several years – will present the most immediate challenge. In July, the European Court of Justice (ECJ) struck down the Privacy Shield over concerns that U.S. government data surveillance rules were too intrusive for EU users. While we expect the Biden team will want to work quickly with the EU to negotiate a new Privacy Shield-style agreement, the EU Data Protection Supervisor warned earlier this month that he does not expect a new deal for "weeks and probably not even months."

Efforts by the Biden administration to reinstate free data flows between the U.S. and EU could prompt the U.S. to similarly seek similar arrangements with other allies. For example, the Biden administration could advocate for softening India's controversial upcoming data localization rules. This would build on

the Trump administration's efforts, but Indian policymakers could be more open to U.S. input now, given their recent and increasing interest in "interoperability" with other parts of the world on data protection and localization issues.

Antitrust

We also expect the Biden administration to challenge big tech companies on competition issues. The incoming administration will likely continue to pursue the antitrust lawsuits filed against Google earlier this year and Facebook earlier this month. The Biden administration could also bring cases against other tech giants like Amazon and Apple, which the Trump administration has investigated for more than a year. However, we expect the Biden administration will resist calls from the progressive wing of the Democratic Party – including from some of Biden's erstwhile Democratic primary rivals like Senator Elizabeth Warren – to "break up" big tech.

Competition is another area of potential U.S.-EU policy alignment under the Biden administration. The newly released draft [EU Digital Markets Act \(DMA\)](#) sets out rules for defining and prohibiting anti-competitive practices by tech "gatekeepers" – companies with outsized economic influence and large numbers of users. The DMA will complement antitrust investigations at the EU and national level, addressing unfair practices that either fall outside of or cannot be effectively addressed by existing rules. Whereas competition law typically operates on a case-by-case basis, the DMA aims to anticipate and address unfair practices on a more systematic basis. As with the DSA, it will take several years for the DMA to be finalized; disagreements have already emerged within the European Parliament over the proposed definition of gatekeeper.

The Biden administration's potential alignment with the EU on competition matters, and any resulting amplified competition scrutiny in either region, could amplify scrutiny in other markets such as India, given the U.S.' and EU's enormous precedential value among competition regulators and policymakers worldwide. In India, this could bolster even initiatives that relate only indirectly to competition, such as the recent, highly contentious non-personal data initiative proposing, in sum, that companies share data with Indian competitors and the Indian government.

Net neutrality and access

In addition to collaborating with the EU and other allies to defend the shared values of an open internet internationally, President-elect Biden pledged during the campaign to defend an open and free internet in the United States. Biden has made clear he intends to reverse the Trump administration's rollback of so-called net neutrality – an Obama-era rule requiring internet providers to treat all traffic equally. However, practical hurdles could delay Biden's efforts. Earlier this month, the Republican-controlled Senate confirmed Trump nominee Nathan Simington as an FCC commissioner, creating a 2-2 deadlock between Republicans and Democrats for control of the FCC. Biden will seek to nominate a fifth commissioner to break the tie, but a Republican Senate could block his pick. The reinstatement of net neutrality would bring the U.S. into closer alignment with the EU, which has had net neutrality rules in place since 2015.

The Biden administration has also promised to enact measures to close the digital divide, by expanding internet access and making it affordable for low-income households. This has become an increasingly high priority as the pandemic has forced millions of Americans to work or go to school remotely. The Covid-19 relief deal that Congress announced Sunday night reportedly includes \$7 billion for broadband infrastructure and access.



ASG Reality Check: Technology

Want to learn more about the Biden administration's likely approach to global and domestic tech policy? Please check out our recent ASG Reality Check video featuring ASG Senior Vice President Robert Boorstin, who previously served as Director of Public Policy at Google and on the senior staff of the White House National Security Council. **View the video [here](#).**

About ASG

Albright Stonebridge Group (ASG) is the premier global strategy and commercial diplomacy firm. We help clients understand and successfully navigate the intersection of public, private, and social sectors in international markets. ASG's worldwide team has served clients in more than 120 countries.

ASG has extensive experience helping technology sector clients navigate markets around the world. For questions or to arrange a follow-up conversation please contact [Kyle McFadden](#).