

Common Threads from Common Ownership

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Legal Forum Fall Roundtable
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Delta Air Lines	[%]	Southwest Airlines Co.	[%]	American Airlines	[%]
Berkshire Hathaway	8.25	PRIMECAP	11.78	T. Rowe Price	13.99
BlackRock	6.84	Berkshire Hathaway	7.02	PRIMECAP	8.97
Vanguard	6.31	Vanguard	6.21	Berkshire Hathaway	7.75
State Street Global Advisors	4.28	BlackRock	5.96	Vanguard	6.02
J.P. Morgan Asset Mgt.	3.79	Fidelity	5.53	BlackRock	5.82
Lansdowne Partners Limited	3.60	State Street Global Advisors	3.76	State Street Global Advisors	3.71
PRIMECAP	2.85	J.P. Morgan Asset Mgt.	1.31	Fidelity	3.30
AllianceBernstein L.P.	1.67	T. Rowe Price	1.26	Putnam	1.18
Fidelity	1.54	BNY Mellon Asset Mgt.	1.22	Morgan Stanley	1.17
PAR Capital Mgt.	1.52	Egerton Capital (UK) LLP	1.10	Northern Trust Global Inv	1.02

United Continental Holdings	[%]	Alaska Air	[%]	JetBlue Airways	[%]
Berkshire Hathaway	9.20	T. Rowe Price	10.14	Vanguard	7.96
BlackRock	7.11	Vanguard	9.73	Fidelity	7.58
Vanguard	6.88	BlackRock	5.60	BlackRock	7.33
PRIMECAP	6.27	PRIMECAP	4.95	PRIMECAP	5.91
PAR Capital Mgt.	5.18	PAR Capital Mgt.	3.65	Goldman Sachs Asset Mgt.	2.94
State Street Global Advisors	3.45	State Street Global Advisors	3.52	Dimensional Fund Advisors	2.42
J.P. Morgan Asset Mgt.	3.35	Franklin Resources	2.59	State Street Global Advisors	2.40
Altimeter Capital Mgt.	3.26	BNY Mellon Asset Mgt.	2.34	Wellington	2.07
T. Rowe Price	2.25	Citadel	1.98	Donald Smith Co.	1.80
AQR Capital Management	2.15	Renaissance Techn.	1.93	BarrowHanley	1.52

The Rise of Common Ownership in the US ...

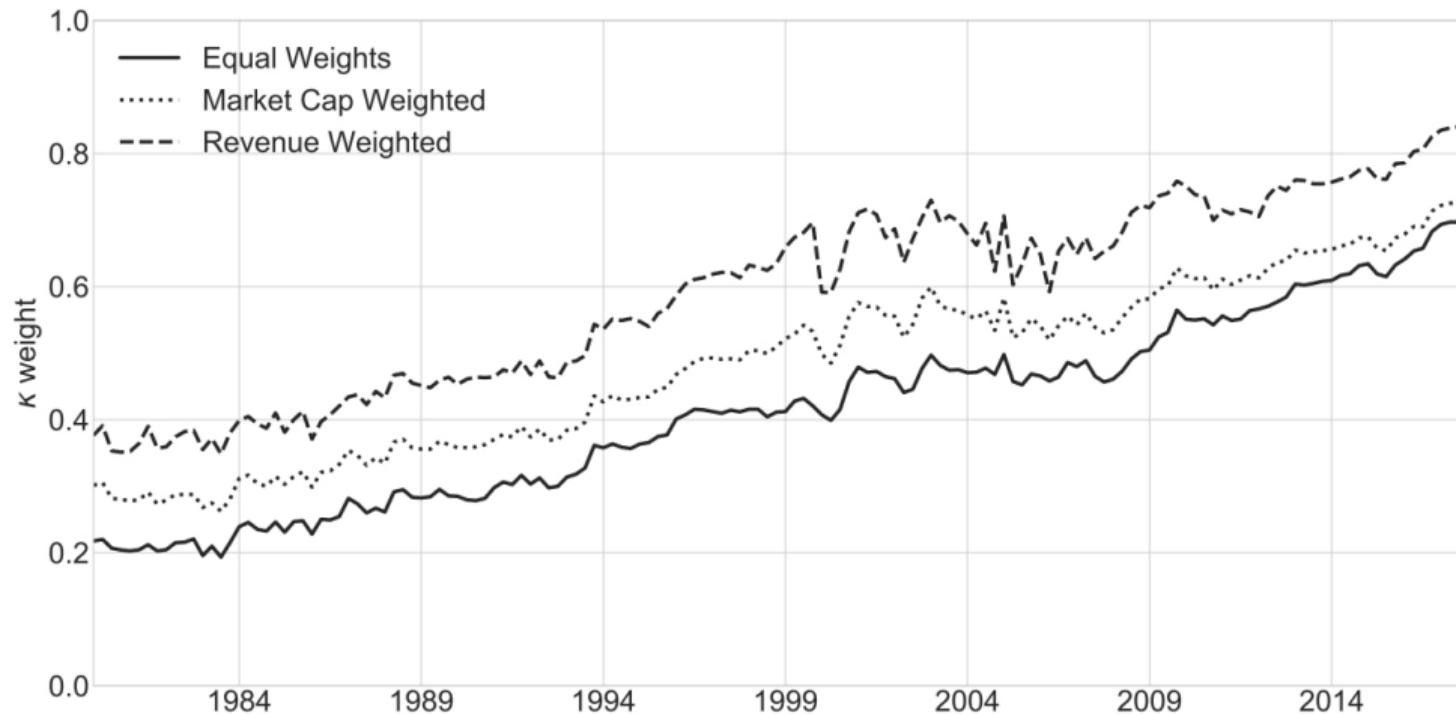
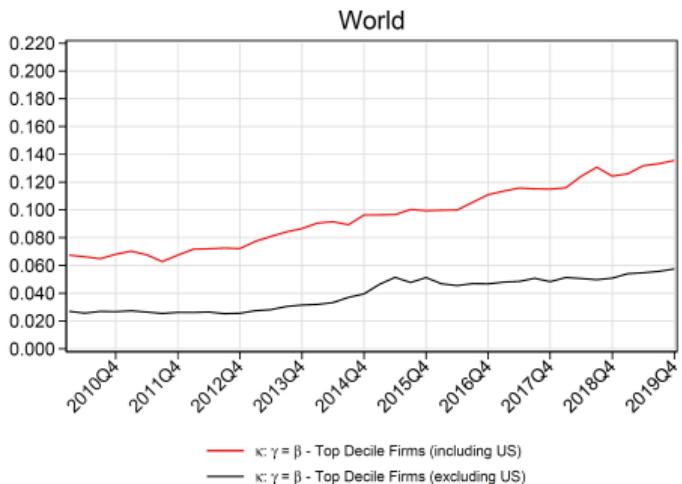
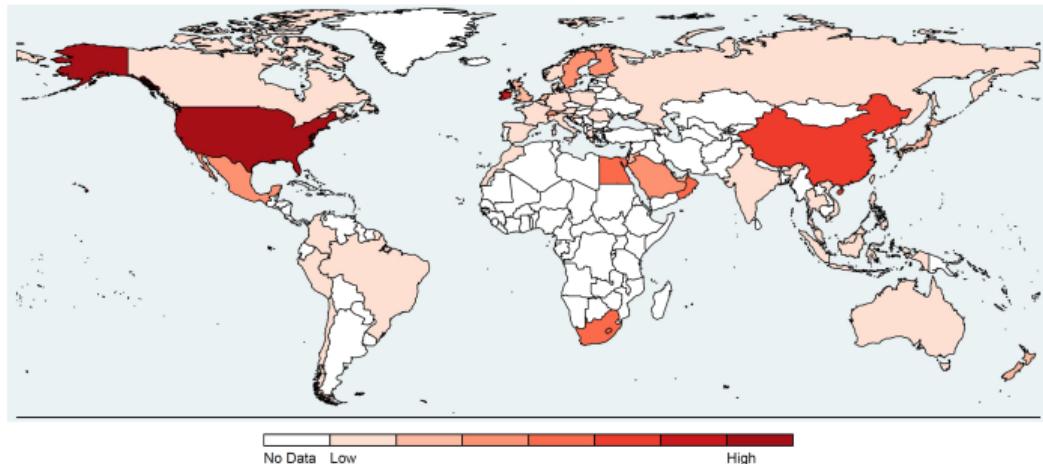


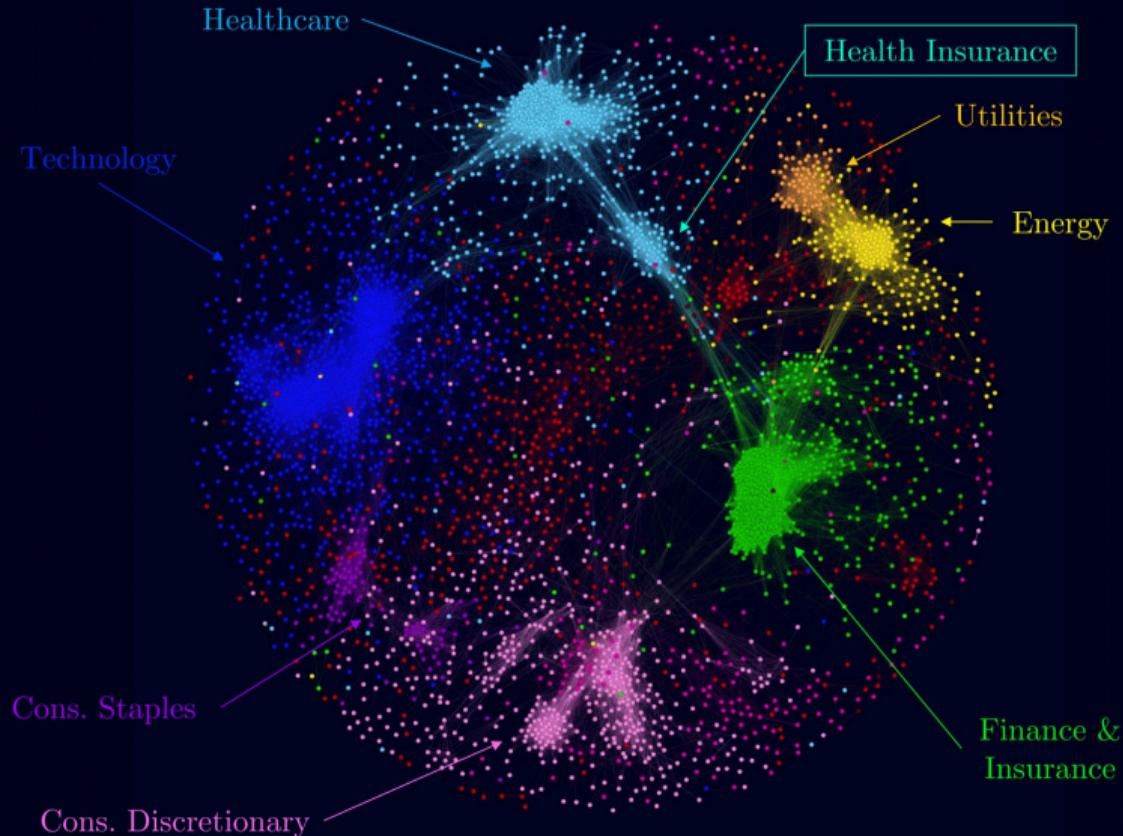
Figure: Common ownership profit weights κ over time (Backus et al., 2021b)

... and around the World

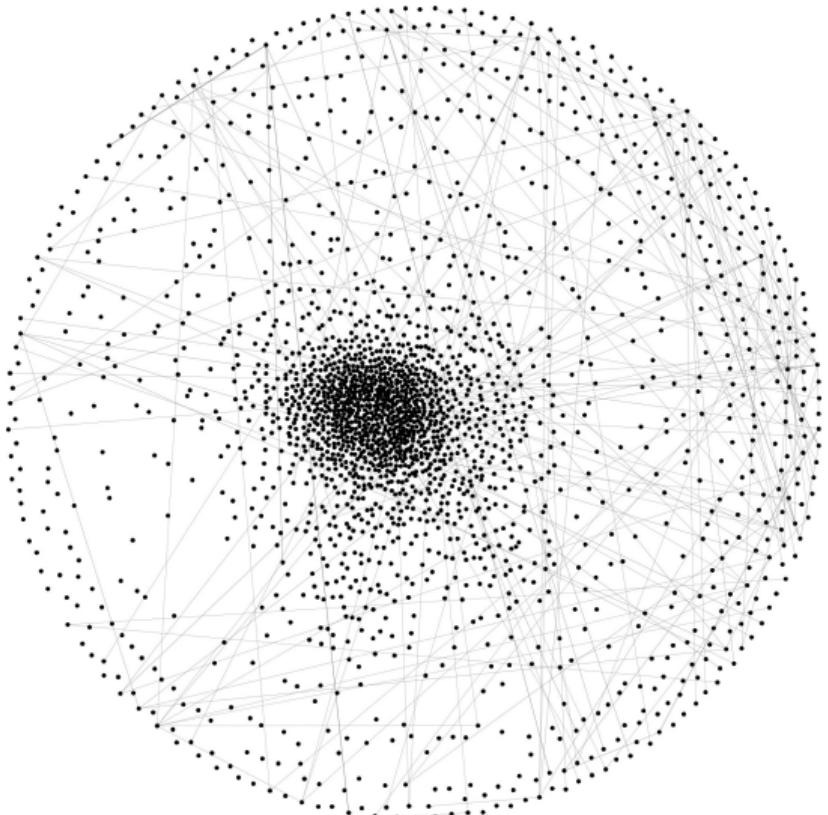


- Common ownership is rising around the world ...
- ... but the US remains an outlier.

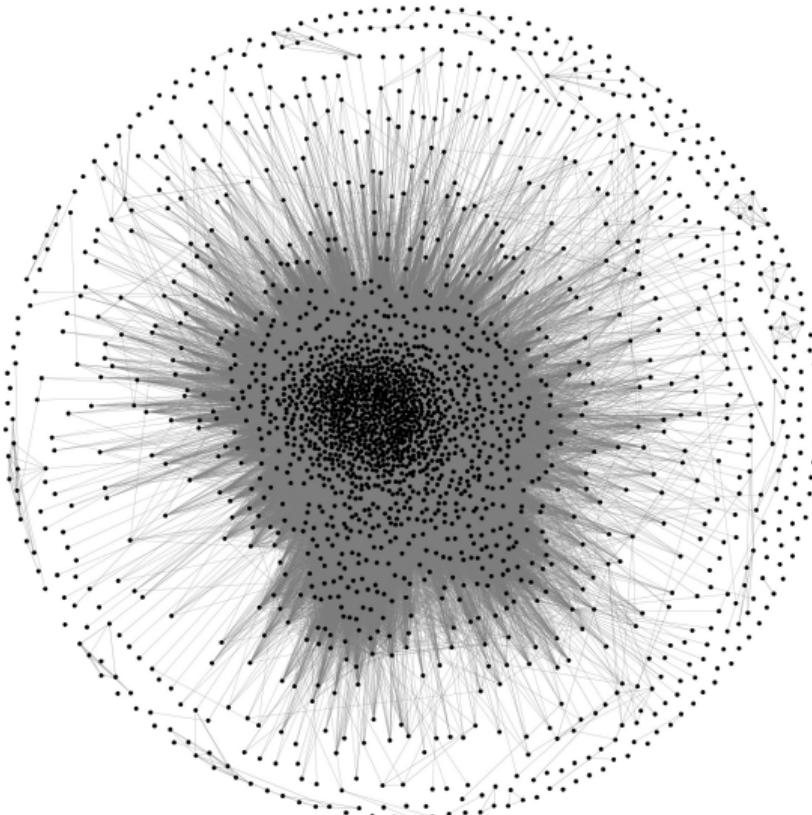
Competitive Landscape of US Public Firms



Ownership Network Evolution of US Public Firms



1995



2021

The Common Ownership Hypothesis

- “When large investors own shares in many firms within the same industry, those firms may have reduced incentives to compete.”
 - ▶ Firms produce fewer units, raise prices, reduce investment, innovate less, limit entry, ...
 - ▶ Long intellectual history starting with theoretical contributions by [Rubinstein and Yaari \(1983\)](#) and [Rotemberg \(1984\)](#)
 - ▶ But only empirically relevant due to tremendous increase in common ownership over the past 3 decades ([Azar, 2012](#); [Backus et al., 2021b](#))
 - ▶ Empirical evidence is growing and varies across industries, firm choices, methodologies, ...
- Important academic questions include:
 - ▶ “Does common ownership affect corporate conduct?” ([Azar et al., 2018](#); [Backus et al., 2021a](#))
 - ▶ “How do common owners influence firm strategy?” ([Antón et al., 2023](#); [Forsbacka, 2024](#))
 - ▶ “Does common ownership affect innovation?” ([López and Vives, 2019](#); [Gibbon and Schain, 2023](#); [Antón et al., 2024](#); [Shelegia and Spiegel, 2024](#))
 - ▶ “How big of a problem is common ownership for competition, aggregate welfare, and the distribution of surplus?” ([Ederer and Pellegrino, 2024](#))

Many people have thought about this problem more recently

HARVARD LAW REVIEW ≡

Harvard Law Review > Print > Essays

ANTITRUST ◆ ESSAY

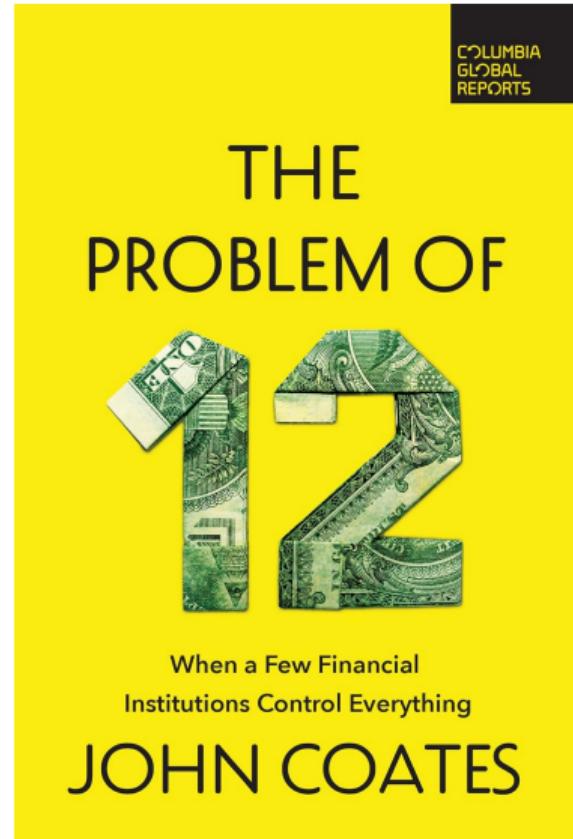
Horizontal Shareholding

EINER ELHAUGE

RESPONSE:

Overlapping Financial Investor Ownership, Market Power, and Antitrust Enforcement: My Qualified Agreement with Professor Elhauge by JONATHAN B. BAKER

VOLUME 129 ◆ ISSUE 5 ◆ MARCH 2016



Policy Importance

SEC

Common Ownership: The Investor Protection Challenge of the 21st Century



Commissioner Robert J. Jackson Jr.

New York, NY

Dec. 6, 2018

Testimony Before the Federal Trade Commission
Hearing on Competition and Consumer Protection

FTC, DOJ, OECD, EC

Institutional investors often hold shares of competing firms. Recent scholarship has considered whether such common ownership has anticompetitive effects. Antitrust theorists have long suggested that the interests of a common concentrated owner (CCO) differ from those of an owner of a single firm and that a CCO might be able to induce firms in which it holds a stake to further these interests.¹ Recent empirical evidence, finding that CCOs are associated with higher prices and lower output, seems to support this theory.²

This new evidence, along with the dramatic growth in institutional investors' holdings over the last several decades, has stimulated a major rethinking of antitrust enforcement. The Department of Justice has acknowledged concerns about the anticompetitive effects of common ownership and investigated common ownership of competing airlines.³ In 2018, the Federal Trade Commission took these concerns a step further, conducting an all-day hearing on the subject.⁴ In Europe, antitrust enforcers have taken a more aggressive approach: in addi-

2023 Merger Guidelines

U.S. Department of Justice and the Federal Trade Commission



[View the Guidelines PDF](#)

Issued: December 18, 2023

2.11. Guideline 11: When an Acquisition Involves Partial Ownership or Minority Interests, the Agencies Examine Its Impact on Competition.

In many acquisitions, two companies come under common control. In some situations, however, the acquisition of less-than-full control may still influence decision-making at the target firm or another firm in ways that may substantially lessen competition. Acquisitions of partial ownership or other minority interests may give the investor rights in the target firm, such as rights to appoint board members, observe board meetings, influence the firm's ability to raise capital, impact operational decisions, or access competitively sensitive information. The Agencies have concerns with both cross-ownership, which refers to holding a non-controlling interest in a competitor, as well as common ownership, which occurs when individual investors hold non-controlling interests in firms that have a competitive relationship that could be affected by those joint holdings.

Partial acquisitions that do not result in control may nevertheless present significant competitive concerns. The acquisition of a minority position may permit influence of the target firm, implicate strategic decisions of the acquirer with respect to its investment in other firms, or change incentives so as to otherwise dampen competition. The post-acquisition relationship between the parties and the independent incentives of the parties outside the acquisition may be important in determining whether the partial acquisition may substantially lessen competition. Such partial acquisitions are subject to the same legal standard as any other acquisition.⁵³

The Agencies recognize that cross-ownership and common ownership can reduce competition by softening firms' incentives to compete, even absent any specific anticompetitive act or intent. While the Agencies will consider any way in which a partial acquisition may affect competition, they generally focus on three principal effects:

Common Owners Influence Strategy (Shekita, 2022)

Interventions by Common Owners

[Get access >](#)

Nathan Shekita 

Journal of Competition Law & Economics, Volume 18, Issue 1, March 2022, Pages 99–134,

<https://doi.org/10.1093/joclec/nhab006>

Published: 06 May 2021

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Abstract

Common ownership exists when investors concurrently hold partial and significant shares in related firms. In this paper, I compile, document, and taxonomize 30 separate cases of intervention to demonstrate how common owners influence firm behavior. Although previous literature has identified a

A portfolio manager at Hodges Capital Management noted he would "like to see [Southwest Airlines] boost their fares but also cut capacity. That's what the market wants. That's what the market is telling everyone." Hodges owned shares in rival airlines including United, Continental, Delta, American, and Southwest. Other investors had also called for airlines to rein in capacity growth. Evidence from earning calls also showed CEOs reiterating the message of capacity reduction.

Legal Scholarship on Common Ownership

- Legal scholars quickly engaged with the economic evidence of anticompetitive effects.
 - ▶ [Elhauge \(2016\)](#) argues that “horizontal shareholdings” are already illegal under existing antitrust law (Clayton Act Section 7; Sherman Act Section 1).
 - ▶ [Scott Morton and Hovenkamp \(2018\)](#) discusses application of these statutes to common ownership and possible litigation pathways.
 - ▶ [Elhauge \(2020\)](#) extends arguments to EU law (Articles 101–102 TFEU) and defends enforcement feasibility.
- Challenges highlighted by critics
 - ▶ Courts unfamiliar with the economic theory of common ownership ([Posner, 2021](#))
 - ▶ Incremental, index-based ownership stakes may appear “passive” and thus difficult to litigate

Antitrust Lawsuits

Texas, other states sue BlackRock, Vanguard for ‘conspiring’ to restrict US coal market

The lawsuit alleged the firms are using the influence gained through their stock holdings to pressure coal companies to reduce output in alignment with the asset managers' net-zero goals.

Published Dec. 3, 2024



Lamar Johnson
Reporter

in f X t e-mail g



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ATTORNEY GENERAL KEN PAXTON SUES BLACKROCK, STATE STREET, AND VANGUARD FOR ILLEGALLY CONSPIRING TO MANIPULATE ENERGY MARKETS, DRIVING UP COSTS FOR CONSUMERS

November 27, 2024 | Press Release

Attorney General Ken Paxton Sues BlackRock, State Street, and Vanguard for Illegally Conspiring to Manipulate Energy Markets, Driving Up Costs for Consumers

Attorney General Ken Paxton sued BlackRock, State Street Corporation, and Vanguard Group, three of the largest institutional investors in the world, for conspiring to artificially constrict the market for coal through anticompetitive trade practices.

Over several years, the three asset managers acquired substantial stockholdings in every significant publicly held coal producer in the United States, thereby gaining the power to control the policies of the coal companies. Using their combined influence over the coal market, the investment cartel collectively announced in 2021 their commitment to weaponize their shares to pressure the coal companies to accommodate “green energy” goals. To achieve this, the investment companies pushed to reduce coal output by more than half by 2030.

Blackrock, Vanguard, and State Street utilized the Climate Action 100 and the Net Zero Asset Managers Initiative to signal their mutual intent to reduce the output of thermal coal, which predictably increased the cost of electricity for Americans across the United States.

Texas v. BlackRock et al. (2024–25)

- First case to bring both **Section 7 (Clayton Act)** and **Section 1 (Sherman Act)** claims against the “Big Three”
- Allegations: joint ownership and coordination among investors reduced output in U.S. coal markets.
- Combined holdings in major coal producers: 8% to 34%
- Court **denied motion to dismiss** (Aug 1, 2025), allowing the case to proceed

FTC and DOJ Statement of Interest (May 22, 2025)

- FTC and DOJ urged the court to “reject the asset managers’ claims, citing multiple errors of law regarding the application of the nation’s federal antitrust laws to the actions of institutional shareholders in their role as common owners.”
- Minority stakes are not automatically protected by the “solely for investment” exception.
- Liability possible when ownership stakes are **used to substantially lessen competition**.
- Reaffirms support for index investing and governance, focus remains on evidence of harm to competition

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