# 1AC – Dartmouth SV

### 1AC – Plan

#### The United States federal government should not permit investors holding shares of more than a single effective firm in an oligopoly to own more than a small market share where the shareholding entity does not commit to being purely passive.

## I/L + !

### 1AC – I/L + ! – Direction of Innovation

**Common ownership produces innovation that accrues shareholder profits, not broad societal benefits.**

Schmalz ’21 [Martin; Professor of Finance @ Oxford; “Recent Studies on Common Ownership, Firm Behavior, and Market Outcomes,” *The Antitrust Bulletin*, 66(1), p. 12-38; AS]

Evidence that common ownership is a driver of mergers, and, by that token, of increasing market concentration also keeps mounting. Antón, Azar, Giné, and Lin show common ownership increases the profitability of horizontal mergers for diversified shareholders not only due to their ownership stakes in the target but also due to their stakes in nonmerging rival firms.52 Cumulative abnormal returns for acquirer shareholders are not negative when taking into account the effects of nonmerging rivals in their portfolio. These results may explain why value-destroying mergers get approved and how a high-common ownership environment is correlated with higher M&A frequency, as documented by Brooks et al.53 and covered in the previous review.54 Irani, Yang, and Zhang show that common ownership between the acquirer and potential competing acquirers reduces the likelihood that the target receives a competing bid by 45%, suggesting that common ownership reduces competition in the market for corporate takeovers.55

Complementing a large set of papers on the effect of common ownership on innovation covered in my previous review, Gao, Shan, Gao, and Chan find positive effects of common ownership on innovation among Chinese firms.56 As a reminder, positive effects of common ownership on innovation don’t imply a positive effect on welfare: procompetitive effects of cost-reducing innovation have to be weighed against the simultaneous anticompetitive effects of common ownership in product market competition.

#### Not all innovation is created equal – changing the direction of innovation is key to breakthroughs.

Meagher ’21 [Michelle; Senior Policy Fellow @ University College London Centre for Law, Economics, and Society; “Adaptive Antitrust” ABA Spring Meeting 2021 Course Materials]

The context also urges us to be circumspect and intentional when it comes to comes to innovation. Within antitrust, innovation is efficiency on steroids. According to Tad Lipsky, there is a common understanding “shared across the entire spectrum of expert economic opinion” that “the predominant determinant of overall increases in our economic well-being is innovation”. 4 That is quite a statement. When it comes to climate change, green tech innovations could certainly help us live in a zero-carbon world, but we already have the technologies we need to decarbonise. It is the structure of the economy, and politics, that must catch up. When it comes to inequality, the theory is that innovations increase productivity, raising earnings and increasing the size of the economic pie. That will only solve inequality if the gains are distributed (and redistributed) fairly, not just through the tax and benefits systems, but also at the point of production. Otherwise rising capital productivity can be accompanied by unemployment or, as we also see today, underemployment and the degradation of employment terms.

Opioids were an innovation. Fracking is an innovation. Naked Credit Default Swaps were innovations. 5 Not all innovations are good. The direction of innovation matters, and while this may be influenced along paths that are profitable, paths of innovation should not be captured, unprofitable but world-saving innovations should not be side-lined, and democratic institutions should have a say in what is acceptable. At this moment, we cannot afford anything else.

#### Optimal innovation solves existential risks.

Ó hÉigeartaigh ’17 [Seán; Executive Director @ Cambridge’s Centre for the Study of Existential Risk, PhD in Genomics @ Trinity College Dublin; “Technological Wild Cards: Existential Risk and a Changing Humanity” in *The Next Step: Exponential Life*; https://www.bbvaopenmind.com/en/articles/technological-wild-cards-existential-risk-and-a-changing-humanity/; AS]

EXISTENTIAL RISK AND A CHANGING HUMANITY

Humanity has already changed a lot over its lifetime as a species. While our biology is not drastically different than it was 70,000 years ago, the capabilities enabled by our scientific, technological, and sociocultural achievements have changed what it is to be human. Whether through the processes of agriculture, the invention of the steam engine, or the practices of storing and passing on knowledge and ideas, and working together effectively as large groups, we have dramatically augmented our biological abilities. We can lift heavier things than our biology allows, store and access more information than our brains can hold, and collectively solve problems that we could not individually.

The species will change even more over coming decades and centuries, as we develop the ability to modify our biology, extend our abilities through various forms of human-machine interaction, and continue the process of sociocultural innovation. The long-term future holds tremendous promise: continued progress may allow humanity to spread throughout a galaxy that to the best of our knowledge appears devoid of intelligent life. However, what we will be in the future may bear little resemblance to what we are now, both physically and in terms of capability. Our descendants may be augmented far beyond what we currently recognize as human.

This is reflected in the careful wording of Nick Bostrom’s definition of existential risk, the standard definition used in the field. An existential risk “is one that threatens the premature extinction of earth-originating intelligent life, or the permanent and drastic destruction of its potential for desirable future development.”3 Scholars in the field are less concerned about the form humanity may take in the long-term future, and more concerned that we avoid circumstances that might prevent our descendants—whatever form they may take—from having the opportunity to flourish. One way in which this could happen is if a cataclysmic event were to wipe out our species (and perhaps, with it, the capacity for our planet to bear intelligent life in future). But another way would be if a cataclysm fell short of human extinction, but changed our circumstances such that further progress became impossible. For example, runaway climate change might not eliminate all of us, but might leave so few of us, scattered at the poles, and so limited in terms of accessible resources, that further scientific, technological, and cultural progress might become impossible. Instead of spreading to the stars, we might remain locked in a perennial battle for survival in a much less bountiful world.

The Risks We Have Always Faced

For the first 200,000 years of humanity’s history, the risks that have threatened our species as a whole have remained relatively constant. Indonesia’s crater lake Toba is the result of a catastrophic volcanic super-eruption that occurred 75,000 years ago, blasting an estimated 2800 cubic kilometers of material into the atmosphere. An erupted mass just 1/100th of this from the Tambora eruption (the largest in recent history) was enough to cause the 1816 “year without a summer,” where interference with crop yields caused mass food shortages across the northern hemisphere. Some lines of evidence suggest that the Toba event may have wiped out a large majority of the human population at the time, although this is debated. At the Chixculub Crater in Mexico, geologists uncovered the scars of the meteor that most likely wiped out seventy-five percent of species on earth at that time, including the dinosaurs, sixty-six million years ago. This may have opened the door, in terms of available niches, for the emergence of mammalian species and ultimately humanity.

Reaching further into the earth’s history uncovers other, even more cataclysmic events for previous species. The Permian-Triassic extinction event wiped out 90–96% of species at the time. Possible causes include meteor impacts, rapid climate change possibly due to increased methane release, large-scale volcanic activity, or a combination of these. Even further back, the cyanobacteria that introduced oxygen to our atmosphere, and paved the way for oxygen-breathing life, did so at a cost: they brought about the extinction of nearly all life at the time, to whom oxygen was poisonous, and triggered a “snowball earth” ice age.

The threats posed by meteor or asteroid impacts and supervolcanoes have not gone away. In principle an asteroid could hit us at any point with little warning. A number of geological hotspots could trigger a volcanic eruption; most famously, the Yellowstone Hotspot is believed to be “due” for another massive explosive eruption.

However, on the timescale of human civilization, these risks are very unlikely in the coming century, or indeed any given century. 660,000 centuries have passed since the event that wiped out the dinosaurs; the chances that the next such event will happen in our lifetimes is likely to be of the order of one in a million. And “due around now” for Yellowstone means that geologists expect such an event at some point in the next 20,000–40,000 years. Furthermore, these threats are static; there is little evidence that their probabilities, characteristics, or modes of impact are changing significantly on a human civilizational timescale.

New Challenges

New challenges have emerged alongside our civilizational progress. As we organized ourselves into larger groups and cities, it became easier for disease to spread among us. During the Middle Ages the Black Death outbreaks wiped out 30–60% of Europe’s population. And our travel across the globe allowed us to bring diseases with us to places they would never have otherwise reached; following European colonization of the Americas, disease outbreaks wiped out up to 95% native populations.

The Industrial Revolution allowed huge changes in our capabilities as a species. It allowed rapid progress in scientific knowledge, engineering, and manufacturing capability. It allowed us to draw heavily from cheap, powerful, and rapidly available energy sources—fossil fuels. It helped us to support a much greater global population. The global population more than doubled between 1700 and 1850, and population in England—birthplace of the Industrial Revolution—increased from 5 to 15 million in the same period, and doubled again to 30 million by 1900.4 In effect, these new technological capabilities allowed us to extract more resources, create much greater changes to our environment, and support more of us than had ever previously been possible. This is a path we have been accelerating along ever since then, with greater globalization, further scientific and technological development, a rising global population, and, in developed nations at least, a rising quality of life and resource use footprint.

On July 16, 1945, the day of the Trinity atomic bomb test, another milestone was reached. Humans had developed a weapon that could plausibly change the global environment in such an extreme way as to threaten the continued existence of the human species.

Yellowstone National Park (Wyoming, USA) is home to one of the planet’s hot spots, where a massive volcanic explosion could someday occur.

Power, Coordination, and Complexity

Humanity now has a far greater power to shape its environment, locally and globally, than any species that has existed to our knowledge; more so even than the cyanobacteria that turned this into a planet of oxygen-breathing life. We have repurposed huge swathes of the world’s land to our purposes—as fields to produce food for us, cities to house billions of us, roads to ease our transport, mines to provide our material resources, and landfill to house our waste. We have developed structures and tools such as air conditioning and heating that allow us to populate nearly every habitat on earth, the supply networks needed to maintain us across these locations, scientific breakthroughs such as antibiotics, and practices such as sanitation and pest control to defend ourselves from the pathogens and pests of our environments. We also modify ourselves to be better adapted to our environments, for example through the use of vaccines.

This increased power over ourselves and our environment, combined with methods to network and coordinate our activities over large numbers and wide areas, has created great resilience against many threats we face. In most of the developed world we can guarantee adequate food and water access for the large majority of the population, given normal fluctuations in yield; our food sources are varied in type and geographical location, and many countries maintain food stockpiles. Similarly, electricity grids provide a stable source of energy for developed populations, given normal fluctuations in supply. We have adequate hygiene systems and access to medical services, given normal fluctuations in disease burden, and so forth. Furthermore, we have sufficient societal stability and resources that we can support many brilliant people to work on solutions to emerging problems, or to advance our sciences and technologies to give us ever-greater tools to shape our environments, increase our quality of life, and solve our future problems.

It goes without saying that these privileges exist to a far lesser degree in developing nations, and that many of these privileges depend on often exploitative relationships with developing nations, but this is outside the scope of this chapter. Here the focus is on the resilience or vulnerability of the human-as-species, which is tied more closely to the resilience of the best-off than the vulnerability of the poorest, except to the extent that catastrophes affecting the world’s most vulnerable populations would certainly impact the resilience of less vulnerable populations.

Many of the tools, networks, and processes that make us more resilient and efficient in “normal” circumstances, however, may make us more vulnerable in the face of extreme circumstances. While a moderate disruption (for example, a reduced local crop yield) can be absorbed by a network, and compensated for, a catastrophic disruption may overwhelm the entire system, and cascade into linked systems in unpredictable ways. Systems critical for human flourishing, such as food, energy, and water, are inextricably interlinked (the “food-water-energy nexus”) and a disruption in one is near-guaranteed to impact the stability of the others. Further, these affect and are affected by many other human- and human-affected processes: our physical, communications, and electronic infrastructure, political stability (wars tend to both precede and follow famines), financial systems, and extreme weather (increasingly a human-affected phenomenon). These interactions are very dynamic and difficult to predict. Should the water supply from the Himalayas dry up one year, we have very little idea of the full extent of the regional and global impact, although we could reasonably speculate about droughts, major crop failures, and mass starvation, financial crises, a massive immigration crisis, regional warfare that could go nuclear and escalate internationally, and so forth. Although unlikely, it is not outside the bounds of imagination that through a series of unfortunate events, a catastrophe might escalate to one that would threaten the collapse of global civilization.

Two factors stand out.

Firstly, the processes underpinning our planet’s health are interlinked in all sorts of complex ways, and our activities are serving to increase the level of complexity, interlinkage, and unpredictability—particularly in the case of extreme events.

Secondly, the fact is that, despite our various coordinated processes, we as a species are very limited in our ability to act as a globally coordinated entity, capable of taking the most rational actions in the interests of the whole—or in the best interests of our continued survival and flourishing.

This second factor manifests itself in global inequality, which benefits developed nations in some ways, but also introduces major global vulnerabilities; the droughts, famines, floods, and mass displacement of populations likely to result from the impacts of climate change in the developing world are sure to negatively affect even the richest nations. It manifests itself in an inability to act optimally in the face of many of our biggest challenges. More effective coordination on action, communication, and resource distribution would make us more resilient in the face of pandemic outbreaks, as illustrated so vividly by the Ebola outbreak of 2014; a relatively mild outbreak of what should be an easily controllable disease served to highlight how inadequate pandemic preparedness and response was.5, 6 We were lucky that the disease was not one with greater pandemic potential, such as one capable of airborne transmission and with long incubation times.

Our limited ability to coordinate in our long-term interest manifests itself in a difficulty in limiting our global resource use, limiting the impact of our collective activities on our global habitat, and of investing our resources optimally for our long-term survival and well-being. And it limits our ability to guarantee that advances in science and technology be applied to furthering our well-being and resilience, as opposed to being destabilizing or even used for catastrophically hostile purposes, such as in the case of nuclear weapons.

Collective action problems are as old as humanity,7 and we have made significant progress in designing effective institutions, particularly in the aftermath of World War I and II. However, the stakes related to these problems become far greater as our power to influence our environment grows—through sheer force of numbers and distribution across the planet, and through more powerful scientific and technological tools with which to achieve our myriad aims or to frustrate those of our fellows. We are entering an era in which our greatest risks are overwhelmingly likely to be caused by our own activities, and our own lack of capacity to collectively steer and limit our power.

OUR FOOTPRINT ON THE EARTH

Population and Resource Use

The United Nations estimated the earth’s population at 7.4 billion as of March 2016, up from 6.1 billion in 2000, 2.5 billion in 1950, and 1.6 billion in 1900. Long-term growth is difficult to predict (being affected by many uncertain variables such as social norms, disease, and the occurrence of catastrophes) and thus varies widely between studies. However, UN projections currently point to a steady increase through the twenty-first century, albeit at a slower growth rate, reaching just shy of 11 billion in 2100.8 Most estimates indicate global population will eventually peak and then fall, although the point at which this will happen is very uncertain. Current estimates of resource use footprints indicate that the global population is using fifty percent more resources per year than the planet can replenish. This is likely to continue rising sharply; more quickly than the overall population. If the average person used as many resources as the average American, some estimates indicate the global population would be using resources at four times the rate that they can be replenished. The vast majority of the population does not use food, energy, and water, nor release CO2 at the rate of the average American. However, the rapid rise of a large middle class in China is beginning to result in much greater resource use and CO2 output in this region, and the same phenomenon is projected to occur a little later on in India.

Catastrophic Climate Change

Without a significant change of course on CO2 emissions, the world is on course for significant human-driven global warming; according to the latest IPCC report, an increase of 2.5 to 7.8 °C can be expected under “business as usual” assumptions. The lower end of this scale will have significant negative repercussions for developing nations in particular but is unlikely to constitute a global catastrophe; however, the upper end of the scale would certainly have global catastrophic consequences. The wide range in part reflects significant uncertainty over how robust the climate system will be to the “forcing” effect of our activities. In particular, scientists focused on catastrophic climate change worry about a myriad of possible feedback loops. For example, a reduction of snow cover, which reflects the sun’s heat, could increase the rate of warming resulting in greater loss of snow cover. The loss of arctic permafrost might result in the release of large amounts of methane in the atmosphere, which would accelerate the greenhouse effect further. The extent to which oceans can continue to act as both “heat sinks” and “carbon sinks” as we push the concentration of CO2 in the atmosphere upward is unknown. Scientists theorize the existence of “tipping points,” which, once reached, might trigger an irreversible shift—for example, the collapse of the West Antarctic ice sheets or the melt of Greenland’s huge glaciers, or the collapse of the capacity for oceans to absorb heat and sequester CO2. In effect, beyond a certain point, a “rollercoaster” process may be triggered, where 3 degrees of temperature rise rapidly and irreversibly may lead to 4 degrees, and then 5.

Laudable progress has been made on achieving global coordination around the goal of reducing global carbon emissions, most notably in the aftermath of the December 2015 United Nations Climate Change Conference. 174 countries signed an agreement to reach zero net anthropogenic greenhouse gas emissions by the second half of the twenty-first century, and to “pursue efforts to limit” the temperature increase to 1.5 °C. But many experts hold that these goals are unrealistic, and that the commitments and actions being taken fall far short of what will be needed. According to the International Energy Agency’s Executive Director Fatih Birol: “We think we are lagging behind strongly in key technologies, and in the absence of a strong government push, those technologies will never be deployed into energy markets, and the chances of reaching the two-degree goal are very slim.”9

Soil Erosion

Soil erosion is a natural process. However human activity has increased the global rate dramatically, with deforestation, drought, and climate change accelerating the rate of loss of fertile soil. There are reasons to expect this trend to accelerate; some of the most powerful drivers of soil erosion are extreme weather events, and these events are expected to increase dramatically in frequency and severity as a result of climate change.

Biodiversity Loss

The world is entering an era of dramatic species extinction driven by human activity.10 Since 1900, vertebrate species have been disappearing at more than 100 times the rate seen in non-extinction periods. In addition to the intrinsic value of the diversity of forms of life on earth (the only life-inhabited planet currently known to exist in the universe), catastrophic risk scholars worry about the consequences for human societies. Ecosystem resilience is a tremendously complex phenomenon, and it seems plausible that tipping points exist in them. For example, the collapse of one or more keystone species underpinning the stability of an ecosystem could result in a broader ecosystem collapse with potentially devastating consequences for human system stability (for example, should key pollinator species disappear, the consequences for agriculture could be profound). Current human flourishing relies heavily on these ecosystem services, but we are threatening them at an unprecedented rate, and we have a poor ability to predict the consequences of our activity.

Everything Affects Everything Else

Once again, the sheer complexity and interconnectedness of these risks represents a key challenge. None of these processes happen in isolation, and developments in one affect the others. Climate change affects ecosystems by forcing species migration (for those that can), a change in plant and animal patterns of growth and behavior, and by driving species extinction. Reductions in available soil force us to drive more deeply into nonagricultural wilderness to provide the arable land we need to feed our populations. And the ecosystems we threaten play important roles in maintaining a stable climate and environment. Recognizing that we cannot get all the answers we need on these issues by studying them in isolation, threats posed by the interplay of these phenomena are a key area of study for catastrophic risk scholars.

All these developments result in a world with greater uncertainty, the emergence of huge and unpredictable new vulnerabilities, and more extreme and unprecedented events. These events will play out in a crowded world that contains more powerful technologies, and more powerful weapons, than have ever existed before.

HUMANITY AND TECHNOLOGY IN THE TWENTY-FIRST CENTURY

Our progress in science and technology, and related civilizational advances, have allowed us to house far more people on this planet, and have provided the power for those people to influence their environment more than any previous species. This progress is not of itself a bad thing, nor is the size of our global population.

There are good reasons to think that with careful planning, this planet should be able to house seven billion or more people stably and comfortably.11 With sustainable agricultural practices and innovative use of irrigation methods, it should be possible for many relatively uninhabited and agriculturally unproductive parts of the world to support more people and food production. An endless population growth on a finite planet is not possible without a collapse; however, growth until the point of collapse is by no means inevitable. Stabilization of population size is strongly correlated with several factors we are making steady global progress on: including education (especially of women), and rights and a greater level of control for women over their own lives. While there are conflicting studies,12 many experts hold that decreasing child mortality, while leading to population increase in the near-term, leads to a drop in population growth in the longer term. In other words, as we move toward a better world, we will bring about a more stable world, provided intermediate stages in this process do not trigger a collapse or lasting global harm.13, 14

Current advances in science and technology, while not sufficient in themselves, will play a key role in making a more resilient and sustainable future possible. Rapid progress is happening in carbon-zero energy sources such as solar photovoltaics and other renewables.15 Energy storage remains a problem, but progress is occurring on battery efficiency. Advances in irrigation techniques and desalination technologies may allow us to provide water to areas where this has not previously been possible, allowing both food production and other processes that depend on reliable access to clean water. Advances in materials technology will have wide-ranging benefits, from lighter, more energy-efficient vehicles, to more efficient buildings and energy grids, to more powerful scientific tools and novel technological innovations. Advances in our understanding of the genetics of plants are leading to crops with greater yields, greater resilience to temperature shifts, droughts and other extreme weather, and greater resistance to pests—resulting in a reduction of the need for polluting pesticides. We are likely to see many further innovations in food production; for example, exciting advances in lab-grown meat may result in the production of meat with a fraction of the environmental footprint of livestock farming.

Many of the processes that have resulted in our current unsustainable trajectories can be traced back to the Industrial Revolution, and our widespread adoption of fossil fuels. However, the Industrial Revolution and fossil fuels must also be recognized as having unlocked a level of prosperity, and a rate and scale of scientific and technological progress that would simply not have been possible without them. While a continued reliance on fossil fuels would be catastrophic for our environment, it is unclear whether many of the “clean technology” breakthroughs that will allow us to break our dependence on fossil fuels would have been possible without the scientific breakthroughs that were enabled directly, or indirectly, by this rich, abundant, and easily available fuel source. The goal is clear: having benefitted so tremendously from this “dirty” stage of technology, we now need to take advantage of the opportunity it gives us to move onto cleaner and more powerful next-generation energy and manufacturing technologies. The challenge will be to do so before thresholds of irreversible global consequence have been passed.

With 537 square meters of solar panels and six blocks of lithium-ion batteries, PlanetSolar is the world’s largest solar ship, as well as its fastest. It is also the first to have sailed round the world using exclusively solar power.

The broader challenge is that humanity as a species needs to transition to a stage of technological development and global cooperation where as a species we are “living within our means”: producing and using energy, water, food, and other resources at a sustainable rate, and by methods that will not impose long-term negative consequences on our global habitat—for at least as long as we are bound to it. There are no physical reasons to think that we might not be capable of developing an extensive space-faring civilization at a future point. And if we last that long, it is likely we will develop extensive abilities to terraform extraterrestrial environments to be hospitable to us—or indeed, transform ourselves to be suitable to currently inhospitable environments. However, at present, in Martin Rees’s words, there is no place in our Solar System nearly as hospitable as the most hostile environment on earth, and so we are bound to this fragile blue planet.

Part of this broader challenge is gaining a better understanding of the complex consequences of our actions, and more so, of the limits of our current understanding. Even if we cannot know everything, recognizing when our uncertainty may lead us into dangerous territory can help us figure out an appropriately cautious set of “safe operating parameters” (to borrow a phrase from Steffen et al.’s “Planetary Boundaries”16) for our activities. The second part of the challenge, perhaps harder still, is developing the level of global coordination and cooperation needed to stay within these safe operating parameters.

Technological Wild Cards

While much of the Centre for the Study of Existential Risk’s research focuses on these challenges—climate change, ecological risks, resource use, and population, and the interaction between these—the other half of our work is on another class of factors: transformative emerging and future technologies. We might consider these “wild cards”; technological developments significant enough to change the course of human civilization significantly in and of themselves. Nuclear weapons are such a wild card; their development changed the nature of geopolitics instantly and irreversibly. They also changed the nature of global risk: now many of the stressors we worry about might escalate quite quickly through human activity to a worst-case scenario involving a large-scale exchange of nuclear missiles. The scenario of most concern from an existential risk standpoint is one that might trigger a nuclear winter: a level of destruction sufficient to send huge amounts of particulate matter into the atmosphere and cause a lengthy period of global darkness and cold. If such a period persisted for long enough, this would collapse global food production and could drive the human species to near- or full-extinction. There is disagreement among experts about the scale of nuclear exchange needed to trigger a nuclear winter, but it appears eminently plausible that the world’s remaining arsenals, if launched, might be sufficient.

Nuclear weapons could be considered a wild card in a different sense: the underlying science is one that enabled the development of nuclear power, a viable carbon-zero alternative to fossil fuels. This dual-use characteristic—that the underlying science and technology could be applied to both destructive purposes, and peaceful ones—is common to many of the emerging technologies that we are most interested in.

A few key sciences and technologies of focus for scholars in this field include, among others:

Topics within bioscience and bioengineering such as the manipulation and modification of certain viruses and bacteria, and the creation of organisms with novel characteristics and capabilities (genetic engineering and synthetic biology).

Geoengineering: a suite of proposed large-scale technological interventions that would aim to “engineer” our climate in an effort to slow or even reverse the most severe impacts of climate change.

Advances in artificial intelligence—in particular, those that relate to progress toward artificial general intelligence—AI systems capable of matching or surpassing human intellectual abilities across a broad range of domains and challenges.

Progress on these sciences are driven in great part by a recognition of their potential for improving our quality of life, or the role they could play in aiding us to combat existing or emerging global challenges. However, in and of themselves they may also pose large risks.

Virus Research

Despite advances in hygiene, vaccines, and other health technology, natural pandemic outbreaks remain among the most potent global threats we face; for example, the 1918 Spanish influenza outbreak killed more people than World War I. This threat is of particular concern in our increasingly crowded, interconnected world. Advances in virology research are likely to play a central role in better defenses against, and responses to, viruses with pandemic potential.

A particularly controversial area of research is “gain-of-function” virology research, which aims to modify existing viruses to give them different host transmissibility and other characteristics. Researchers engaged in such research may help identify strains with high pandemic potential, and develop vaccines and antiviral treatment. However, research with infectious agents runs the risk of accidental release from research facilities. There have been suspected releases of infectious agents from laboratory facilities. The 1977–78 Russian influenza outbreak is strongly suspected to have originated due to a laboratory release event,17 and in the UK, the 2007 foot-and-mouth outbreak may have originated in the Pirbright animal disease research facility.18 Research on live infectious agents is typically done in facilities with the highest biosafety containment procedures, but some experts maintain that the potential for release, while low, remains, and may outweigh the benefits in some cases.

Some worry that advances in some of the same underlying sciences may make the development of novel, targeted biological weapons more feasible. In 2001 a research group in Australia inadvertently engineered a variant of mousepox with high lethality to vaccinated mice.19 An accidental or deliberate release of a similarly modified virus infecting humans, or a species we depend heavily on, could have catastrophic consequences.

Similarly, synthetic biology may lead to a wide range of tremendous scientific benefits. The field aims to design and construct new biological parts, devices, and systems, and to comprehensively redesign living organisms to perform functions useful to us. This may result in synthetic bacterial and plant “microfactories,” designed to produce new medicines, materials, and fuels, to break down waste, to act as sensors, and much more. In principle, such biofactories could be designed with much greater precision than current genetic modification and biolytic approaches. They should also allow products to be produced cheaply and cleanly. Such advances would be transformative on many challenges we currently face, such as global health care, energy, and fabrication.

Moreover, as the tools and facilities needed to engage in the science of synthetic biology become cheaper, a growing “citizen science” community is emerging around synthetic biology. Community “DIY Bio” facilities allow people to engage in novel experiments and art projects; some hobbyists even engage in synthetic biology projects in their own homes. Many of the leaders in the field are committed to synthetic biology being as open and accessible as possible worldwide, with scientific tools and expertise available freely. Competitions such as iGEM (International Genetically Engineered Machine) encourage undergraduate student teams to build and test biological systems in living cells, often with a focus on applying the science to important real-world challenges, and also to archive their results and products so as to make them available to future teams to build on.

Such citizen science represents a wonderful way of making cutting-edge science accessible and exciting to generations of innovators. However, the increasing ease of access to increasingly powerful tools is a cause of concern to the risk community. Even if the vast majority engaging in synthetic biology are both responsible and well intentioned, the possibility of bad actors or unintended consequences (such as the release of an organism with unintended ecological consequences) exists. Further, we may expect that the range and severity of negative consequences will increase, as well as the difficulty in tracking those who have access to the necessary tools and expertise. At present, biosafety and biosecurity is deeply embedded within the major synthetic biology initiatives. In the United States, the FBI works closely with synthetic biology centers, and leaders in the field espouse the need for good practices at every level. However, this area will progress rapidly, and a balance will need to be struck between allowing access to powerful tools to a wide number of people who can do good with them, while restricting the potential for accidents or deliberate misuse. It remains to be seen how easy it will be to achieve this.

Geoengineering represents a host of challenges. Stratospheric aerosol geoengineering represents a particularly powerful proposal: here, a steady stream of reflective aerosols would be released into the upper atmosphere in order to reduce the amount of the sun’s light reaching the earth’s surface globally. This effectively mimics the global cooling phenomenon that occurs after a large volcanic eruption, when particulate matter is blasted into the atmosphere. However, current work is focused on theoretical modelling, with very minimal practical field tests carried out to date. Questions remain about how practically feasible it would be to achieve this on a global scale, and what impact it would have on rainfall patterns and crop growth.

It should be highlighted that this is not a solution to climate change. While global temperature might be stabilized or lowered, unless this was accompanied by reduction of CO2 emissions, then a host of damages such as ocean acidification would still occur. Furthermore, if CO2 emissions were allowed to continue to rise during this period, then a major risk termed “termination shock” could manifest. In this case, if any circumstance resulted in an abrupt cessation of stratospheric aerosol geoengineering, then the increased CO2 concentration in the atmosphere would result in a rapid jump in global temperature, which would have far more severe impacts on ecosystems and human societies than the already disastrous effects of a gradual rise.

Critics fear that such research might be misunderstood as a way of avoiding the far more costly process of eliminating carbon emissions; and some are concerned that intervening in such a profound way in our planet’s functioning is deeply irresponsible. It also raises knotty questions about global governance: should any one country have the right to engage in geoengineering, and, if not, how could a globally coordinated decision be reached, particularly if different nations have different exposures to the impacts of climate change, and different levels of concern about geoengineering, given we are all under the same sky?

Proponents highlight that we may already be committed to severe global impacts from climate change at this stage, and that such techniques may allow us the necessary breathing room needed to transition to zero-carbon technology while temporarily mitigating the worst of the harms. Furthermore, unless research is carried out to assess the feasibility and likely impacts of this approach, we will not be well placed to make an informed decision at a future date, when the impacts of climate change may necessitate extreme measures. Eli Kintisch, a writer at Science, has famously called geoengineering “a bad idea whose time has come.”20

Artificial intelligence, explored in detail in Stuart Russell’s chapter, may represent the wildest card of all. Everything we have achieved in terms of our civilizational progress, and shaping the world around us to our purposes, has been a product of our intelligence. However, some of the intellectual challenges we face in the twenty-first century are ones that human intelligence alone is not best suited to: for example, sifting through and identifying patterns in huge amounts of data, and integrating information from vast and interlinked systems. From analyzing disparate sources of climate data, to millions of human genomes, to running thousands of simulations, artificial intelligence will aid our ability to make use of the huge amount of knowledge we can gather and generate, and will help us make sense of our increasingly complex, interconnected world. Already, AI is being used to optimize energy use across Google’s servers, replicate intricate physics experiments, and discover new mathematical proofs. Many specific tasks traditionally requiring human intelligence, from language translation to driving on busy roads, are now becoming automatable; allowing greater efficiency and productivity, and freeing up human intelligence for the tasks that AI still cannot do. However, many of the same advances have more worrying applications; for example, allowing collection and deep analysis of data on us as individuals, and paving the road for the development of cheap, powerful, and easily scalable autonomous weapons for the battlefield.

These advances are already having a dramatic impact on our world. However, the vast majority of these systems can be described as “narrow” AI. They can perform functions at human level or above in narrow, well-specified domains, but lack the general cognitive abilities that humans, dogs, or even rats have: general problem-solving ability in a “real-world” setting, an ability to learn from experience and apply knowledge to new situations, and so forth.

There is renewed enthusiasm for the challenge of achieving “general” AI, or AGI, which would be able to perform at human level or above across the range of environments and cognitive challenges that humans can. However, it is currently unknown how far we are from such a scientific breakthrough, or how difficult the fundamental challenges to achieving this will be, and expert opinion varies widely. Our only proof of principle is the human brain, and it will take decades of progress before we can meaningfully understand the brain to a degree that would allow us to replicate its key functions. However, if and when such a breakthrough is achieved, there is reason to think that progress from human-level general intelligence to superintelligent AGI might be achieved quite rapidly.

Improvements in the hardware and software components of AI, and related sciences and technologies, might be made rapidly with the aid of advanced general AI. It is even conceivable that AI systems might directly engage in high-level AI research, in effect accelerating the process by allowing cycles of self-improvement. A growing number of experts in AI are concerned that such a process might quickly result in extremely powerful systems beyond human control; Stuart Russell has drawn a comparison with nuclear chain reaction.

Superintelligent AI has the potential to unlock unprecedented progress on science, technology, and global challenges; to paraphrase the founders of Google DeepMind, if intelligence can be “solved,” it can then be used to help solve everything else. However, the risk from this hypothetical technology, whether through deliberate use or unintended runaway consequences, could be greater than that of any technology in human history. If it is plausible that this technology might be achieved in this century, then a great deal of research and planning—both on the technical design of such systems, and the governance structures around their development—will be needed in the decades beforehand in order to achieve a desirable transition.

Predicting the Future

The field also engages in exploratory and foresight-based work on more forward-looking topics; these include future advances in neuroscience and nanotechnology, future physics experiments, and proposed manufacturing technologies that may be developed in coming decades, such as molecular manufacturing. While we are limited in what we can say in detail about future scientific breakthroughs, it is often possible to establish some useful groundwork. For example, we can identify developments that should, in principle, be possible based on our current understanding of the relevant science. And we can dismiss ideas that are pure “science fiction,” or sufficiently unfeasible to be safely ignored for now, or that represent a level of progress that makes them unlikely to be achieved for many generations.

By focusing further on those that could plausibly be developed within the next half century, we can give considerations to their underlying characteristics and possible impacts on the world, and of the broad principles we might bear in mind for their safe development and application. While it would have been a fool’s errand to try to predict the full impacts of the Internet prior to 1960, or of the development of nuclear weapons prior to 1945, it would certainly be possible to develop some thinking around the possible implications of very sophisticated global communications and information-sharing networks, or of a weapon of tremendous destructive potential.

Lastly, if we have some ideas about the directions from which transformative developments might come, we can engage in foresight and road-mapping research. This can help identify otherwise insignificant breakthroughs and developments that may indicate meaningful progress toward a more transformative technology being reached, or a threshold beyond which global dynamics are likely to shift significantly (such as photovoltaics and energy storage becoming cheaper and more easily accessible than fossil fuels).

Confronting the Limits of Our Knowledge

A common theme across these emerging technologies and emerging risks is that a tremendous level of scientific uncertainty and expert disagreement typically exists. This is particularly the case for future scientific progress and capabilities, the ways in which advances in one domain may influence progress in others, and the likely global impacts and risks of projected advances. Active topics of research at CSER include how to obtain useful information from a range of experts with differing views, and how to make meaningful scientific progress on challenges where we have discontinuous data, or few case studies to draw on, or even when we must characterize an entirely unprecedented event. This might be a hypothesized ecological tipping point, which when passed would result in an irreversible march toward the collapse of an entire critical ecosystem. Or it might be a transformative scientific breakthrough such as the development of artificial general intelligence, where we only have current trends in AI capability, hardware, and expert views on the key unsolved problems in the field to draw insight from. It is unrealistic to expect that we can always, or even for the most part, be right. We need to have humility, to expect false positives, and to be able to identify priority research targets from among many weak signals.

Recognizing that there are limits to the level of detail and certainty that can be achieved, this work is often combined with work on general principles of scientific and technological governance. For example, work under the heading of “responsible innovation” focuses on the challenge of developing collective stewardship of progress in science and technology in the present, with a view to achieving good future outcomes.21 This combines scientific foresight with processes to involve the key stakeholders at the appropriate stages of a technology’s development. At different stages these stakeholders will include: scientists involved in fundamental research and applied research; industry leaders; researchers working on the risks, benefits, and other impacts of a technology; funders; policymakers; regulators; NGOs and focus groups; and laypeople who will use or be affected by the development of a technology. In the case of technologies with a potential role in global catastrophic risk, the entire global population holds a stake. Therefore decisions with long-term consequences must not rest solely with a small group of people, represent only the values of a small subset of people, or fail to account for the likely impacts on the global population.

There have been a number of very encouraging specific examples of such foresight and collaboration, where scientific domain specialists, interdisciplinary experts, funders, and others have worked together to try to guide an emerging technology’s development, establish ethical norms and safety practices, and explore its potential uses and misuses in a scientifically rigorous way. In bioengineering, the famous 1975 Asilomar conference on recombinant DNA established important precedents, and more recently summits have been held on advances such as human gene editing. In artificial intelligence, a number of important conferences have been held recently, with enthusiastic participation from academic and industry research leaders in AI alongside interdisciplinary experts and policymakers. A number of the world’s leading AI research teams have established ethical advisory panels to inform and guide their scientific practices, and a cross-industry “partnership on AI to benefit people and society” involving five companies leading fundamental research has recently been announced.22

More broadly, it is crucial that we learn from the lessons of past technologies and, where possible, develop principles and methodologies that we can take forward. This may give us an advantage in preparing for developments that are currently beyond our horizon and that methodologies too deeply tied to specific technologies and risks may not allow. One of the key concerns associated with risks from emerging and future technologies is the rate at which progress occurs and at which the associated threats may arise. While every science will throw up specific challenges and require domain-specific techniques and expertise, any tools or methodologies that help us to intervene reliably earlier are to be welcomed. There may be a limited window of opportunity for averting such risks. Indeed, this window may occur in the early stages of developing a technology, well before the fully mature technology is out in the world, where it is difficult to control. Once Pandora’s box is open, it is very difficult to close.

WORKING ON THE (DOOMSDAY) CLOCK

Technological progress now offers us a vision of a remarkable future. The advances that have brought us onto an unsustainable pathway have also raised the quality of life dramatically for many, and have unlocked scientific directions that can lead us to a safer, cleaner, more sustainable world. With the right developments and applications of technology, in concert with advances in social, democratic, and distributional processes globally, progress can be made on all of the challenges discussed here. Advances in renewable energy and related technologies, and more efficient energy use—advances that are likely to be accelerated by progress in technologies such as artificial intelligence—can bring us to a point of zero-carbon emissions. New manufacturing capabilities provided by synthetic biology may provide cleaner ways of producing products and degrading waste. A greater scientific understanding of our natural world and the ecosystem services on which we rely will aid us in plotting a trajectory whereby critical environmental systems are maintained while allowing human flourishing. Even advances in education and women’s rights globally, which will play a role in achieving a stable global population, can be aided specifically by the information, coordination, and education tools that technology provides, and more generally by growing prosperity in the relevant parts of the world.

There are catastrophic and existential risks that we will simply not be able to overcome without advances in science and technology. These include possible pandemic outbreaks, whether natural or engineered. The early identification of incoming asteroids, and approaches to shift their path, is a topic of active research at NASA and elsewhere. While currently there are no known techniques to prevent or mitigate a supervolcanic eruption, this may not be the case with the tools at our disposal a century from now. And in the longer run, a civilization that has spread permanently beyond the earth, enabled by advances in spaceflight, manufacturing, robotics, and terraforming, is one that is much more likely to endure. However, the breathtaking power of the tools we are developing is not to be taken lightly. We have been very lucky to muddle through the advent of nuclear weapons without a global catastrophe. And within this century, it is realistic to expect that we will be able to rewrite much of biology to our purposes, intervene deliberately and in a large-scale way in the workings of our global climate, and even develop agents with intelligence that is fundamentally alien to ours, and may vastly surpass our own in some or even most domains—a development that would have uniquely unpredictable consequences.

It is reassuring to note that there are relatively few individual events that could cause an existential catastrophe—one resulting in extinction or a permanent civilizational collapse. Setting aside the very rare events (such as supervolcanoes and asteroids), the most plausible candidates include nuclear winter, extreme global warming or cooling scenarios, the accidental or deliberate release of an organism that radically altered the planet’s functioning, or the release of an engineered pathogen. They also include more speculative future advances: new types of weaponry, runaway artificial intelligence, or maybe physics experiments beyond what we can currently envisage. Many global risks are, in isolation, survivable—at least for some of us—and it is likely that human civilization could recover from them in the long run: less severe global warming, various environmental disasters and ecosystem collapses, widespread starvation, most pandemic outbreaks, conventional warfare (even global).

However, this latter class of risks, and factors that might drive them (such as population, resource use, and climate change) should not be ignored in the broader study of existential risk. Nor does it make sense to consider these challenges in isolation: in our interconnected world they all affect each other. The threat of global nuclear war has not gone away, and many scholars believe that it may be rising again (at the time of writing, North Korea has just undergone its most ambitious nuclear test to date). If climate pressures, drought, famine, and other resource pressures serve to escalate geopolitical tensions, or if the potential use of a new technology, such as geoengineering, could lead to a nuclear standoff, then the result is an existential threat.

For all these reasons and more, a growing community of scholars across the world believe that the twenty-first century will see greater change and greater challenges than any century in humanity’s past history. It will be a century of unprecedented global pressures, and a century in which extreme and unpredictable events are likely to happen more frequently than ever before in the past. It will also be a century in which the power of technologies unlike any we have had in our past history will hang over us like multiple Damocles’ swords. But it will also be a century in which the technologies we develop, and the institutional structures we develop, may aid us in solving many of the problems we currently face—if we guide their development, and their uses and applications, carefully.

### 1AC – S – Innovation

#### Restricting common ownership concentrates investor holdings. That fosters positive, disruptive innovations.

Borochin ’20 [Paul et al; Department of Finance @ University of Miami; Jie Yang; Board of Governors @ Federal Reserve System; and Rongrong Zhang; Professor of Finance @ Georgia Southern University; “Common Ownership Types and Their Effects on Innovation and Competition”; https://papers.ssrn.com/sol3/Papers.cfm?abstract\_id=3204767; AS]

We find that the type and investment objectives of the institutional owner matter for corporate innovation and in determining the dominant effect of common ownership on firm competitiveness. Higher common ownership by “dedicated”, or focused and long-horizon, financial institutions promotes innovation as measured by counts of patent grants. In addition, this type of common ownership promotes more impactful patenting as measured by citation counts. In contrast, we observe a reverse effect for common ownership by “transient”, or diversified and short-horizon, financial institutions. Furthermore, higher common ownership by “quasi-indexers”, or diversified and long-horizon institutions, has no significant impact on patenting volume, but results in less impactful patenting in terms of citations. The differential effects of common ownership by institutional type provide a potential resolution to the ongoing debate about its costs and benefits.

In addition to overall patent counts, we explore the impact of common ownership on the type of patenting. We categorize patents into two groups: exploratory and exploitative. Following Almeida, Hsu, Li, and Tseng (2019), we classify a patent as being the more novel but riskier “exploratory” type if a supermajority of the patents it cites are outside of the firm’s existing knowledge base and a patent as being the incremental and derivative but safer “exploitative” type if a supermajority of the patents it cites are within the firm’s existing knowledge base. When we examine the impact of common ownership on the type of patenting, we find that an exogenous increase to dedicated common ownership increases both the exploratory as well as exploitative types of patenting. In contrast, greater transient and quasi-indexing common ownership results in fewer exploratory patents and has insignificant impact on future exploitative patenting.

Next, we examine the role of industry competitiveness in modulating the effect of common ownership on innovation by looking across industries with high and low concentrations by market share. As discussed by Aghion, Bloom, Blundell, Griffith and Howitt (2005), variation in industry concentration, and therefore in competition, may have two competing effects on innovation: increased neck-and-neck competition may increase incentives to innovate to set the firm apart from its competitors, but may also discourage lagging firms from innovating to try to catch up. The authors find that incentives to escape competition through innovation dominate in low-competition industries, but the disincentive to try to catch up by innovating dominates in high-competition ones, resulting in an inverse-U relation between industry competitiveness and innovation. As such, the findings of Aghion, et al (2005) imply that industry competitiveness may have moderating effects on the relation between common institutional ownership and innovation.

We find that the relation between common ownership and innnovation does not change with industry concentration for the more active dedicated and transient institutional investors, with the former fostering (latter hindering) innovation output and impact. Interestingly, the dominant effect of common ownership by the argubly more passive quasiindexing investor depends on the competitiveness of the firm’s industry. Specifically, common ownership by quasi-indexers promotes innovation in concentrated industries, but hinders it in competitive industries, consistent with Aghion, et al (2005). That is, common ownership by quasi-indexers appears to follow the inverse U-shaped relation between innovation and competition, with the negative effects of quasi-indexer common ownership on innovation in low-concentration competitive industries being dampened by the positive effects in highconcentration uncompetitive ones.

Finally, we consider two channels through which common ownership can impact innovation: first, it can impact the valuation of investments in innovation made by commonly held firms. Second, it can help alleviate financial constraints within portfolio firms or enforce greater discipline in investment in innovation under constraint. Supporting the first channel, Hirshleifer, Hsu, and Li (2013, 2017) find that innovative firms, particularly those engaged in more original innovation, are more likely to be undervalued due to the difficulty of determining the value of a complex investment like innovation. If common ownership by institutional types can differentially alleviate or exacerbate the challenge in valuation of innovative activity, it offers a channel by which it can impact investment in innovation by commonly held firms. Supporting the second channel, access to financial resources is critical to firm innovation efforts (Schumpeter, 1942; Acharya and Xu, 2017). However, financial slack does not necessarily lead to more or impactful output of innovations (Jensen, 1993; Jaffe, 2000; Lanjouw and Schankerman, 2004; Almeida, Hsu, Li, and Tseng, 2019). As such, common ownership may help alleviate financial constraints or enforce fiscal discipline to promote more effective innovation.

To test whether these channels can plausibly drive the relation between common institutional ownership and innovative activity by portfolio firms, we estimate a two-stage model. In the first stage, we obtain fitted values of valuation error and financial constraints for the firm, estimated using common ownership measures. In the second stage, we use these fitted values to predict future innovation by the firm. This methodology ensures that a significant connection between common ownership and patenting reflects the two channels of valuation error and financial constraints. We find evidence that both valuation errors and financial constraints are statistically and economically significant channels through which dedicated common ownership in particular can impact innovation. Specifically, common ownership by dedicated institutions reduces undervaluation of innovation (Hirshleifer, Hsu, and Li, 2013; 2017) and by reducing information uncertainty (Borochin and Yang, 2017) promotes investment (Lambert, Leuz, and Verrecchia, 2011) such as innovation. In addition, common ownership by dedicated institutions also increases financial constraints, imposing discipline or efficient reallocation of financial resources to promote innovation.

### 2AC – S – Innovation [On RnD CP]

#### Cant solve without policing common ownership – it induces firms to reduce R&D expenditures.

Chiao ’20 [Cheng-Huei; Craig School of Business @ Missouri Western State University; and Bin Qiu; Craig School of Business @ Missouri Western State University; and Bin Wang; Department of Finance in College of Business Administration @ Marquette University; “Corporate innovation in a world of common ownership,” *Managerial Finance*, 47(2), p. 145-166; AS]

1. Introduction

Intra-industry diversification by a small group of large institutional investors – such as BlackRock, Vanguard, State Street Advisors and Fidelity – creates significant ownership in natural competitors. The resulting structure of overlapping institutional ownership in the same industry is referred to as common ownership. In recent decades, common ownership has increased dramatically possibly due to a wide acceptance of the notion that an investor should hold a diversified portfolio and the popularity of passive investing strategies. The proportion of American publicly traded companies owned by institutional blockholders that co-own at least 5% of the common equity of other firms in the same industry has risen from less than 10% in 1980 to approximately 60% in 2014 (He and Huang, 2017).

Common owners aim to maximize portfolio values instead of individual firm values. One way to achieve this is to enable portfolio companies to internalize between-firm externalities. Patent and R&D races are one instance where externalities are imposed on one another. Because common ownership possessed by a small set of large diversified institutional investors reduces product market competition (Azar et al., 2018), which we refer to as “the anticompetitive effect of common ownership,” and enhances market power (He and Huang, 2017), which we refer to as “the coordinative effect of common ownership,” firms could reduce R&D expenditures as a result of attenuated competition. Our empirical analysis confirms this conjecture and documents a negative relation between same-industry common ownership and corporate innovative output. Interfirm legal litigation poses another obvious example of externalities (Hansen and Lott, 1996). Common ownership should discourage commonly owned firms from suing each other due to patent infringement. Our empirical analysis on patent litigations agrees with this prediction. Common ownership correlates with less likelihood of being litigated; for the firms that are indeed involved in patent litigations, common ownership is negatively associated with the time that it takes to resolve the legal case.

To address endogeneity concerns, we employ the difference-in-differences technique to establish the causal effect of joint ownership on corporate innovation. Specifically, the acquisition of the Citi Group’s Asset Management division by Legg Mason in 2005 generated variation across firms in common ownership. We exploit this event to study the “before” and “after” treatment effect, which is consistent with our baseline finding.

This paper is closely related to the literature studying institutional investors’ impact on corporate innovation. Aghion et al. (2013) argue that a large share of institutional shareholders is instrumental in facilitating corporate innovation as these shareholders tend to pursue a long-run objective. Bena et al. (2017) find that foreign ownership increases firm innovation output. Brav et al. (2018) show that hedge fund activism leads to more efficient use of innovative resources and human capital. Yang (2016) establishes that institutional dual ownership of a firm’s debt and equity lead to fewer but more valuable patents. Geng et al. (2016) provide evidence that institutional ownership overlaps across firms with patent complementarities help mitigate holdup and correlate with more innovative success.

This paper differs from Geng et al. (2016) in that they investigate common ownership across firms in the same technology space (i.e. firms with upstream and downstream patents), while we examine common ownership across firms in the same product market space (i.e. same industry). A firm’s positions in technology space and product market space are typically different. For example, IBM, Apple, Motorola and Intel are close to one another in technology space as revealed by their patenting. However, they are in different product markets. Specifically, IBM and Apple produce PC desktops, while Intel and Motorola mainly produce semi-conductor chips not computer hardware (Bloom et al., 2013). Therefore, although Geng et al. (2016) find a positive effect of technology-complementary common ownership on patent success, we observe a negative effect of same-industry common ownership on patent grants. Furthermore, we examine the impact of common ownership on post grant patents, thereby providing a more comprehensive understanding of the effect of the ownership structure on the life cycle of corporate patents.

Several other concurrent papers also study the impact of common ownership on corporate innovation. Kostovetsky and Manconi (2019) detect a higher intensity of patent citations among firms that share institutional owners, consistent with “the coordinative effect.”In contrast, we find that commonly owned firms receive fewer citations from all other firms, no matter these other firms are commonly held or not, consistent with “the anticompetitive effect”. Borochin et al. (2019) differentiate the type of common ownership and find that common ownership by focused, long term dedicated institutional investors promotes innovation while common ownership by diversified, short-term transient investors discourages innovation. We argue that their results are consistent with ours because common ownership is mainly driven by the diversification (i.e. indexing) of institutions, therefore the negative effect should dominate. An incomplete paper by Anton et al. (2018) argues that the effect of common ownership on corporate innovation revolves around the interaction between technological spillovers and product market spillovers. Although they only show correlation evidence but not a causal link, their finding that the effect could vary from industry to industry does not contradict with the overall negative effect we observe.

A related line of research explores the effect of an investor owning multiple firms on corporate governance. Edmans et al. (2016) find that common ownership strengthens governance through both voice and exit. Although our findings about the effect of multiple holdings on corporate innovation do not require shareholder intervention [1], it is consistent in spirit with their finding because firms could reduce innovation to ease competition with their natural competitors that are also owned by the firms’ institutional investors. This anticompetitive effect of common ownership benefits the shareholders at the expense of consumers. However, a comprehensive look into how same-industry common ownership affects innovation input, innovation output and postgrant patents is missing from previous research. This paper aims to fill that gap.

### 2AC – No Shocks Impact

#### “Shocks” are inevitable and have no impact.

Bagrie ’18 [Cameron; 8/9/18; Managing Director @ Bagrie Economics; “Business Confidence Is a Hopeless Indicator. But That Doesn’t Mean the Economy Isn’t in Trouble”; https://thespinoff.co.nz/business/09-08-2018/business-confidence-is-bullshit-but-that-doesnt-mean-the-economy-isnt-in-trouble]

The good news is that business confidence is hopeless as an economic indicator. The correlation with economic growth is poor and I largely ignore business confidence readings. Changes in direction can provide some insightful information – whether things are picking up or slowing down, but not the levels.

Businesses tend to be more upbeat regarding general confidence about the economy under a blue flag as opposed to a red one. Business confidence averaged minus 18 between 2000 and 2007. The economy (measured by real gross domestic product) grew on average by more than 3.5% per year. Yep, confidence was negative, but growth was positive. So, we ignore business confidence as an economic indicator. This is nothing new. It’s surprising headline business confidence figures receive so much attention.

Commentators make the constant mistake of saying the ANZ survey is a business confidence survey. The same applies to the NZIER’s QSBO. They are surveys of business views across an array of key indicators including prospects for growth, hiring, whether firms are planning to invest and experiences with inflation / costs. These indicators matter. Business confidence is one question.

The so-called “soft” or “perception” indicators are the hard data of tomorrow. They are estimates and view based but you can’t ignore them. They are well correlated with growth.

In a perfect world we’d have timely “hard” official data and statistics. We don’t. Official data comes with a lag. So, we need to rely on sentiment-based indicators if we want timely readings on the economy and a guide as to the year ahead.

The likes of the ANZ survey are showing a sombre mood when it comes to indicators that matter. The ANZ survey asks key questions about activity, employment, investment and profitability. When these indicators head to zero, which they have done now, growth can do the same. Those indicators were weak in 2000 during the so-called winter of discontent – and growth slowed to 0.9% year on year.

Growth did rebound. But back then the economy was early in the economic expansion. The economy is late in the business cycle this time around. The economy has tended to go through a ten-year cycle, so businesses are naturally looking more nervously over their shoulders at present. The economy is going through substantial economic change too and businesses are wary. There is little argument over the need to change the economy. However, there are serious questions about the actual economic plan and what the new economy looks like. That is a key issue that needs addressed.

Some of the weakness in survey measures could be put down to the way survey questions are phrased. Firms are asked their view and given three options; will conditions improve, stay the same, or worsen. For a lot of firms’ things are damned good. It’s telling that finding skilled staff is the biggest problem firms are facing. Businesses are facing capacity constraints. So, zero readings may reflect a levelling out at a high base.

## Link/Thumpers

### 2AC – Antitrust Now

#### Laundry list of antitrust actions now

Stoller 3/24 – Matt Stoller, Director of Research at the American Economic Liberties Project, “Judges Behaving Badly: Amazon Antitrust Suit Dismissed,” 3/24/22, https://mattstoller.substack.com/p/judges-behaving-badly-amazon-antitrust?s=r

There’s a lot more happening in the world of big tech and antitrust.

Judge Jeffrey White in Northern California ruled against Apple in a monopolization case, noting that the firm has to face discovery in an antitrust suit brought by wristband producer and software maker AliveCor. Not all judging is bad!

Final negotiations are taking place in Europe over the Digital Markets Act, which will regulate dominant tech platforms. I’m skeptical over how much the DMA will matter, since I haven’t seen any real will from Europeans to enforce competition laws.

The Department of Justice Antitrust Division asked Judge Amit Mehta for sanctions against Google for hiding documents from the court.

Microsoft is offering buy now, pay later option in its Edge browser. I find this very weird, and I’m wondering if anyone has thoughts on why Microsoft is working on this technology.

Washington state’s Department of Labor and Industries fined Amazon $60,000 for “knowingly putting workers at risk of injury at its fulfillment center in Kent,” as “workers are required to perform these tasks at such a fast pace that it increases the risk of injury.” Not a good precedent for Amazon.

Nancy Pelosi said she’d work with Republicans to pass the tech antitrust bills.

Supreme Court nominee Ketanji Brown Jackson gave some vague answers on antitrust law in response to questions from Senator Amy Klobuchar. Jackson doesn’t have much of a record on antitrust, so we’ll have to wait and find out what she thinks. Or maybe another Senator will ask her questions today on the topic, but I doubt it.

The FTC is looking closely at the Microsoft-Activision merger.

#### Tons of antitrust actions now – that triggers econ links and resource tradeoffs

Reinhart 2/7 – Tara Reinhart, head of the Antitrust/Competition Group in Skadden's Washington, D.C. office, “Biden’s Broad Mandate Has Altered the Antitrust Landscape, Making Merger Clearance Process Less Predictable,” 2/7/22, https://www.jdsupra.com/legalnews/biden-s-broad-mandate-has-altered-the-1446913/

Mr. Kanter’s time as assistant attorney general has been too brief to provide clear insights into the Antitrust Division’s new enforcement priorities. But Ms. Khan’s first six months as chair of the FTC make the commission’s new direction plain. A string of moves either on a 3-2 party line commission vote or through process changes by the FTC’s director of the Bureau of Competition, have undone decades-old policies and practices and replaced them with aggressive approaches that add uncertainty to the deal process and bring additional administrative burdens.

Vertical mergers: The commission abandoned the Vertical Merger Guidelines, which for years had embraced the principle that most vertical tie-ups are pro-competitive and should not be challenged. The Khan commission advocates scrutiny of vertical mergers, considering, in particular, potential harms in the context of “modern firms,” as well as harms to labor markets. In December 2021, for example, the FTC sued to block Nvidia’s takeover of chipmaker Arm, asserting that the vertical merger would allow the combined entity to unfairly undermine competitors.

Prior approvals: The commission adopted a policy to include in merger consent orders a provision requiring firms to obtain approval before consummating future deals.

Individual commissioners can seek compulsory process: The commission adopted a resolution to authorize compulsory process — a demand for documents or testimony enforceable in federal court — at the request of a single commissioner.

Second requests: The Bureau of Competition director modified second-request requirements, making the process lengthier, and giving the FTC more time and leverage to challenge mergers.

Other process changes include the suspension of the Hart-Scott-Rodino Act early termination option, which allows deals to close before the end of the statutory waiting period with the FTC's consent, and the adoption of a practice of sending letters to merging parties warning them that the FTC will continue to investigate and reserves the right to challenge the deal after it closes.

See “Deal Uncertainty Increases as Merger Control Authorities Gain Discretionary Powers of Review.”

Antitrust Legislation May Pass in the Upcoming Congressional Session

Many Republicans are critical of the Khan FTC’s aggressive approach, calling out the Democrats for unilaterally making significant substantive changes by amending procedures. Nevertheless, the potential for antitrust legislation to pass this session is real, because Democrats in Congress enjoy Republican support to rein in the power of Big Tech.

Numerous bills have been introduced in the House and the Senate, but the most likely to advance is the Platform Competition and Opportunity Act, with the House version introduced in June 2021 and the Senate version in November 2021. The measure would prevent technology platforms valued at more than $600 million from acquiring existing or nascent competitors worth more than $50 million. The prohibition would also apply to acquirers with more than 50,000 monthly users, or that are considered to be critical trading partners, defined as owning or controlling an online platform or having the ability to prevent a business user from accessing its own customers or tools it needs to serve its customers.

Conclusion

The FTC under Chair Khan is expected to implement further policy changes, and the Kanter Antitrust Division will begin similar efforts. We also expect both agencies to attempt to test the limits of antitrust enforcement through new cases. That will stretch already-thin agency resources and require the FTC and DOJ to prevail in court. Whether the administration will succeed in pushing its progressive antitrust agenda may depend primarily on the staffs’ capacity to handle the increased workloads, and on whether Congress amends the laws to make it easier for them to prevail.

#### Rulemaking inevitable.

Okuilar ’21 [Alexander; 7/12/21; Co-Chair @ Morrison & Foerster’s Global Antitrust Law Practice Group, Former Senior DOJ and FTC Official; “FTC Meeting Signals Aggressive and Novel Enforcement to Come”; https://www.mofo.com/resources/insights/210712-ftc-meeting-signals-aggressive.html; AS]

In just over two weeks as chair of the Federal Trade Commission (FTC or “Commission”), Lina Khan already appears to be making significant changes at the agency.[1] As one of her first acts, Chair Khan called for a Commission meeting on Thursday, July 1, 2021 to consider and vote on several important changes to agency rules and procedures, as well as to open several broad investigations. The actions taken at the FTC meeting anticipated the significant Executive Order signed by President Biden last Friday (on which we will shortly send a separate client alert). It was the first public meeting of the FTC in decades (although, it won’t be the last — the FTC just announced another public meeting for July 21) and the matters adopted during the meeting promise to shape the direction of the agency and competition law enforcement in the United States for years. The agenda — published on June 24, 2021[2] — outlined votes on four issues.

Change “Made in the USA” Rules. The Commission’s first order of business was to consider adopting a “Made in the USA” rule imposing civil penalties on marketers making unqualified claims that their products are “Made in the USA” unless 1) final assembly or processing of the product occurs in the United States, 2) all significant processing that goes into the product occurs in the United States, and 3) all or virtually all ingredients or components of the product are made and sourced in the United States.[3]

Remove ALJ as Presiding Officer of Mag-Moss Rulemakings. Next, the Commission debated whether to change Section 18 of the Magnuson-Moss Warranty Act (“Mag-Moss”) rulemaking procedures[4] by 1) making the FTC chair, rather than the chief administrative law judge, the presiding officer, 2) eliminating the requirement of a staff report, and 3) eliminating recommendations as to the final rule for public comment.[5]

Rescind the UMC Policy Statement. Third, the Commission was asked to look at its competition enforcement standards and rescind the 2015 “Statement of Enforcement Principles Regarding ‘Unfair Methods of Competition’ Under Section 5 of the FTC Act” (“UMC Policy Statement”).

Open Industrywide Investigations and Minimize Procedures for Compulsory Process. Finally, the Commission considered whether to open several broad investigations and minimize Commission oversight of compulsory process initiated by career lawyers. The resolutions cut across the economy, including “technology platforms, health care, and pharmaceuticals,” mergers (both proposed and consummated), “repeat offenders” of FTC orders, “business practices that target workers and operators of small business,” and “potential infractions of FTC-administered statutes as they relate to COVID-19.”

In a sometimes contentious meeting, the Commission approved each measure along party lines, with all three Democrats voting in favor and Republicans Christine Wilson and Noah Phillips voting against and offering topping motions that were defeated by the three Democrats. While each of the issues is important, the latter two regarding the rescission of the UMC Policy Statement and the expansion and consolidation of investigative power in the chair have raised a raft of questions among the antitrust community and portend a potentially major departure for the agency in its enforcement approach. We discuss the implications of these competition policy changes below.

Rescinding the 2015 UMC Policy Statement: A Possible Rejection of the Consumer Welfare Standard and Traditional Rule of Reason

The Commission rescinded a bipartisan 2015 UMC Policy Statement that laid out the framework for enforcing Section 5 of the Federal Trade Commission Act. Section 5 makes “unfair methods of competition” unlawful and is the basis by which the FTC brings competition actions.[6] Case law establishes that Section 5 sweeps in conduct condemned by the Sherman Act and Clayton Act, but there is longstanding ambiguity about how far Section 5’s prohibitions extend beyond the Sherman and Clayton Acts. The 2015 UMC Policy Statement contemplated case-by-case Section 5 enforcement “guided by the public policy underlying the antitrust laws, namely the promotion of the consumer welfare standard” using a framework “similar to the rule of reason” requiring evidence of “harm to competition or the competitive process,” including taking into account “cognizable efficiencies and business justifications.”[7] The 2015 UMC Policy Statement was intended to place reasonable bounds on the agency’s ambiguous Section 5 authority and to harmonize its approach to antitrust with that of other government enforcers, private parties, and courts.

Although the 2015 UMC Policy Statement explicitly noted that Section 5 reaches conduct outside the letter of the Sherman Act, [8] Chair Khan criticized it as artificially limiting the scope of the FTC’s authority by tying it to existing antitrust jurisprudence. According to Chair Khan, “coupling Section 5 to the Sherman Act has led courts to bind the FTC to liability standards created by generalist judges in private treble-damages actions under the Sherman Act.”[9] Further, she said, “in practice, the 2015 statement has doubled down on the agency’s longstanding failure to investigate and pursue unfair methods of competition.”[10]

Neither Chair Khan nor any other commissioner supporting rescission has advanced a framework to replace the old 2015 policy. But Chair Khan intimated that the FTC may engage in substantive rulemaking on the matter,[11] stating that “in the coming months, the Commission will consider whether to issue new guidance or to propose rules that will further clarify the types of practices that warrant scrutiny under this provision. In the meantime, the Commission will exercise responsibly its prosecutorial discretion in determining which cases are appropriate under Section 5, consistent with legal precedent.”[12]

Senator Klobuchar praised the move  saying, “We need aggressive action from our antitrust enforcers. Chair Khan has a bold vision for the FTC, and I am encouraged that the Commission is taking steps to use its full legal authority to protect competition.”[13]

Both Republican commissioners opposed rescinding the policy statement.[14] Commissioner Wilson noted that the 2015 UMC Policy Statement was bipartisan, and expressed discontent that it was repealed on a party line vote. She stated that the repeal is an “unfortunate first step” towards a “new concerted effort by the Commission to exceed the FTC’s authority regarding the use of Section 5 of the FTC Act.”[15] Commissioner Phillips also objected to the repeal, arguing that it was unclear what guidance would replace the policy statement and that the decision to rescind without a meaningful opportunity for public input was “inconsistent with the rhetoric” of transparency from Chair Khan.[16]

Rescinding the 2015 UMC Policy Statement has wide ranging and potentially dramatic implications for FTC enforcement under Chair Khan. As a threshold matter, it is consistent with an aggressive, populist neo-Brandeisian view of antitrust that is skeptical of the consumer welfare standard as the cornerstone of competition enforcement. It also shows hostility toward the antitrust laws as interpreted by the federal judiciary. Chair Khan criticized the 2015 UMC Policy Statement as binding the FTC to Sherman Act case law developed by “generalist judges.” Rescinding the policy statement also opens the door to FTC rulemakings for new substantive competition rules. (For a more in-depth discussion of a potential substantive competition rulemaking, see our previous Client Alert.) Finally, it could signal future Robinson-Patman Act enforcement by the FTC. The Robinson-Patman Act prohibits price discrimination, and has been widely criticized as protecting competitors and not competition.[17] While still on the books, neither the FTC nor the U.S. Department of Justice’s Antitrust Division have brought any Robinson-Patman Act enforcement actions in decades.[18] Some neo-Brandeisians have advocated a return to active Robinson-Patman Act enforcement by the federal government,[19] however, and rescinding the 2015 UMC Policy Statement would be consistent with such a return.

Investigations and Enforcement Resolutions

By another 3-2 party-line vote, the Commission approved a series of resolutions authorizing agency staff to investigate and use compulsory process (e.g., civil investigative demands or subpoenas) in seven areas deemed to be “enforcement priorities.” Although the specific resolutions are not publicly available, based on Chair Khan’s remarks and the FTC’s press release, the resolutions appear to cover wide segments of the American economy, including “technology platforms, health care, and pharmaceuticals”

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and a “general resolution authorizing the use of compulsory process when investigating mergers.” Other resolutions capture investigations involving “repeat offenders,” investigations of “business practices that target workers and operators of small business,” and investigations of “potential infractions of FTC-administered statutes as they relate to COVID-19.”[20] Chair Khan justified the new resolutions as eliminating “extra bureaucratic hurdles [that] slow down and hobble investigations unnecessarily.”[21]

The new procedures will empower staff to issue compulsory process within these broad investigations, including issuing demands for documents and testimony through civil investigative demands (CIDs) and subpoenas,[22] without receiving further authorization from the entire Commission. Under the previous rules, compulsory process in antitrust investigations could only be issued if a majority of the Commission voted to do so, typically on a matter-by-matter basis.[23] After such a vote, individual CIDs could be authorized by the signature of a single commissioner. But under these resolutions, one commissioner now has the power to authorize the use of compulsory process for investigations in the enforcement priority areas. In practice, since the chair directs FTC staff on a day-to-day basis, this will give the chair the unilateral ability to authorize compulsory process without any need to keep other commissioners informed. The “bureaucratic hurdles” that Chair Khan referred to are staff recommendations making the case for compulsory process in a particular matter and the occasional back-and-forth across the Commission pending a vote. These changes could result in less involvement by all commissioners in ongoing investigations, prior to an enforcement decision requiring a full Commission vote.

In opposing the resolutions, Commissioner Phillips argued that they exceed the agency’s congressionally given powers. Phillips observed that “Congress gave the Commission, not a single commissioner or staff, the authority to bless compulsory process in its investigations” because “[i]t envisioned an informed and deliberated decision by all commissioners before unleashing the FTC’s considerable investigative power.” These resolutions “undermine all that,” Phillips observed, “[f]or what are likely to be our most prominent and expensive investigations.” Additionally, Phillips noted that the authorizing language in the resolutions — “unfair, deceptive, anticompetitive, collusive, coercive, predatory, exploitative, or exclusionary acts or practices” — extends beyond the FTC’s authority to investigate “unfair methods of competition . . . and unfair or deceptive acts or practices.”[24] His proposed amendment to conform the authorizing language  to be consistent with the FTC’s statutory mandate was voted down.

Commissioner Wilson argued that the FTC commissioners should not abrogate their authority at such a “critical time for both consumer protection and antitrust enforcement” by removing “significant swaths of Commission oversight from our investigations.” As one practical example of why Commission oversight matters, she observed that, in the past, she had used her “vote on compulsory process to narrow the burden of third parties that are not targets of an investigation.” She flagged that the resolutions contain “many broad and vague terms” and queried whether “authorizing investigations into ‘exploitative,’ ‘collusive,’ ‘coercive,’ or ‘predatory’ acts or practices will lead to investigations outside the bounds of judicially recognized antitrust principles[.]”[25]

Looking Ahead: Further Implications for FTC Enforcement

The adoption of these resolutions signifies an attempt to expand the authority of the FTC and increase the volume and scope of its investigations, particularly for the technology and health care sectors. The Commission majority has signaled its interest in scrutinizing digital platforms, technology companies, pharmaceutical companies, pharmacy benefits managers, and hospitals, among others. Merging parties in key areas of interest (including those with consummated deals) should anticipate more frequent and extensive use of agency process, including inquiries with respect to new or historically less commonly explored theories of harm. Moreover, FTC staff will be more likely to issue compulsory process to third parties. Companies operating in or adjacent to markets in which there are pending mergers or FTC conduct investigations should also be prepared to receive compulsory process, potentially multiple times on distinct investigations that touch on common issues. For better or worse, it is clear from the July 1 meeting that Chair Khan and the Democratic majority on the Commission want the FTC to become a more central feature of corporate life in America. The last time the Commission attempted a similar move in the 1970s, it ended with curtailment of the agency’s powers by Congress and the courts. In her dissenting statement, Commissioner Wilson warned that “there are many at the FTC who lived through the 1970s and 1980s and experienced the public and Congressional backlash during those dark days of the agency’s history. There are many others who worked with and lived through that period. Current management would be wise to seek their guidance.”[26] Only time will tell.

#### FTC overburdened now – post dates their ev by 5 months.

Tiffany Aguiar, Kari Ferver & Holly Melton on 3/25, 2022<https://www.retailconsumerproductslaw.com/2022/03/ftc-updates-march-14-18-2022/>

The FTC had a busy week in the consumer protection realm. The agency settled with several companies over allegations ranging from shoddy data security to a full-on credit card laundering scam. Chair Khan and DOJ Assistant AG Kanter have remained busy in their efforts to gather information on merger guidelines, and, in case there wasn’t enough on the FTC’s plate, a U.S. Senator has asked the agency to dig up evidence of wrongdoing in the gas and oil markets. More on all of this after the jump.

Tuesday, March 15, 2022

Bureau of Consumer Protection: Consumer Data Privacy and Security

The FTC filed an administrative complaint and a proposed consent order against the former and current owners of online customized merchandise platform CafePress. The complaint alleged that the company failed to implement security measures to protect the information of buyers and sellers stored on its network. Due to this alleged failure, in February 2019, a hacker was able to access consumers’ Social Security numbers, credit card numbers, names, physical and email addresses, and security questions and answers; some of this information was later placed on the dark web for sale. Upon being notified of the breach, CafePress allegedly failed to promptly investigate the breach or notify affected customers. As part of the consent order, the owners must implement new security programs, replace inadequate authentication measures, minimize data collected and retained, and encrypt Social Security numbers. In addition, the former owner will pay $500,000 in redress to victims of the data breach. The Commission voted unanimously to issue the complaint and accept the consent agreement.

Bureau of Consumer Protection: Deceptive Advertising and Marketing

The Commission also unanimously voted to file an administrative complaint and a consent agreement against Electronic Payment Systems and its owners in relation to an alleged “Money Now Funding” scam. Specifically, the agency alleged that the company opened credit card processing merchant accounts for fake companies, and then used those companies to help Money Now Funding launder millions of dollars of consumers’ credit card payments, a growing practice called “factoring” or “credit card laundering.” The consent agreement imposes a number of restrictions on the company, but the FTC did not pursue money damages on behalf of consumers due to the limitations on its authority to seek such relief in federal court imposed by an April 22, 2021 Supreme Court decision.

Wednesday, March 16, 2022

Bureau of Consumer Protection: Deceptive Health Claims

The FTC announced a settlement with Health Research Laboratories LLC, Whole Body Supplements LLC, and their owner stemming allegations contained in a 2020 complaint. In the complaint, the Commission claimed that the defendants had made unsubstantiated claims that their supplements could treat, cure, or reduce the risk of certain diseases, including diabetic neuropathy. As part of the settlement, which the agency unanimously approved, Defendants are permanently banned from the supplement industry.

Thursday, March 17, 2022

Bureau of Competition: Mergers and Acquisitions

FTC Chair Lina Khan and DOJ Assistant Attorney General Jonathan Kanter will host a series of public virtual “listening forums” to hear from individuals and companies who are not antitrust experts, including consumers, workers, entrepreneurs, start-ups, farmers, investors, and independent businesses. Each forum will focus on a different industry, including Food & Agriculture, Health Care, Media & Entertainment, and Technology. The forums, which take place from March 28 through May 12th, are designed to supplement the agencies’ recent requests for comments on merger enforcement guidelines. The deadline to submit comments on those guidelines was recently extended to April 21, 2022.

FTC Internal Operations: Gas and Oil Market

S. Senator Roger Wicker, R-Miss, part of the Senate Committee on Commerce, Science, and Transportation, issued a letter to FTC Chair Lina Khan, requesting that the agency help Congress “be fully informed of the potential underlying causes of skyrocketing gas prices.” Specifically, Senator Wicker requested any evidence the FTC has gathered showing market manipulation, collusion, or other improper or illegal behavior in the gas and crude oil markets. Senator Wicker requested a response by March 25, 2022.

### 1AR – Antitrust Now

#### Bipartisan and international action on antitrust now

Schiff 3/31 – Allison Schiff, managing editor for AdExchanger.com, “Antitrust Regulators Around The World Are More Than Ready To Rein In Big Tech,” 3/31/22, https://www.adexchanger.com/politics/antitrust-regulators-around-the-world-are-more-than-ready-to-rein-in-big-tech/

Lawmakers and enforcement authorities on both sides of the aisle and across the globe agree it’s time to rewrite the rules that regulate competition for a new internet age.

“Distinct features of digital technologies have ushered in new market dynamics and business strategies that require us to update our approach,” said Lina Khan, chair of the Federal Trade Commission, addressing a room of her European peers on Thursday at an antitrust event hosted by global consulting firm Charles River Associates in Brussels.

The European Union passed sweeping antitrust legislation last week in the form of the Digital Markets Act, which has Big Tech platforms directly in its crosshairs.

The new law prevents large platforms from combining data sources without an explicit opt-in, prohibits self-preferencing across services, requires interoperability between messaging apps and generally aims to keep “gatekeepers” in check by forcing them to engage in fair business practices.

The US trails the EU in terms of federal antitrust legislation, but there are multiple antitrust bills floating around Congress right now backed by bipartisan politicians, including Sen. Amy Klobuchar (D-MN) and Rep. Ken Buck (R-CO).

One such bill, the American Innovation and Choice Online Act, which aims to stop companies like Amazon or Google from bundling or preferencing their own products, was publicly endorsed by the Department of Justice on Monday.

Making the frame work

The legal frameworks that enforcers have relied on in antitrust suits for the past three decades were developed based on precedent and economic theory when the US economy still revolved around factory smokestacks and linear supply chains, said Jonathan Kanter, assistant attorney general in charge of the DOJ’s antitrust division.

Although some of that precedent may still be applicable in certain instances, Kanter said, the underlying rules of business have changed, and if enforcers don’t roll with those changes, “we’re missing the boat.”

“We should focus on competition rather than a theoretical model of what someone thinks competition looks like,” Kanter said.

There is movement toward modernized antitrust enforcement. The DOJ and the FTC announced in January the agencies will rewrite their merger guidelines to reflect today’s market realities. One important concept to take into account is that price controls – often the only metric a regulator can use to legally define monopoly power – doesn’t make sense when we’re talking about free consumer products like social media platforms and search engines.

#### Increased merger scrutiny triggers uncertainty and biz con links

Arends 2/23 – Wendy Arends, antitrust attorney at Husch Blackwell, “Biden Antitrust Enforcers Take Aim at Mergers and Acquisitions,” 2/23/22, https://www.huschblackwell.com/newsandinsights/biden-antitrust-enforcers-take-aim-at-mergers-and-acquisitions

President Biden’s top antitrust cops, Jonathan Kanter at the U.S. Department of Justice Antitrust Division (DOJ) and Lina Khan at the Federal Trade Commission (FTC), are putting more arrows in their quiver to take aim at perceived consolidation in a variety of industries. Their changes to long-standing tenets of U.S. merger review policy fall in line with the Biden Administration’s whole-of-government approach to ferreting out concentration in a wide variety of industries. The FTC also cited a significant increase in mergers in the last year and over the past decade as the impetus for some of these reforms. While more change is expected, the recent pronouncements by the FTC and DOJ are likely to lead to increased scrutiny of reportable transactions under the Hart-Scott-Rodino Act (HSR), more uncertainty about the process, and a broader view of whether a transaction harms competition.

Increased scrutiny of transactions

HSR changes. Among the FTC’s announcements are changes to the HSR Act premerger notification process. The FTC indefinitely suspended early terminations of the 30-day HSR waiting period. Previously, the agency would grant early terminations upon request and the deal could be reviewed before the 30 days had run, allowing the parties to close prior to the expiration of the waiting period. Since the start of the Biden Administration, the FTC is no longer granting early terminations—for the time being, all deals will have to wait at least the full 30 days after filing the HSR notification before the parties can close.

In addition, the FTC also reversed course on well-established guidance regarding retirement of debt in connection with acquisitions—parties can no longer subtract the amount paid to retire debt when calculating the HSR size of transaction value. This will likely increase the number of HSR reportable transactions.

Prior approval policy is reinstated. The FTC voted to change its Prior Notice policy and turned back the clock to again require prior approval in settlement agreements. This means if the parties settle a merger investigation with the FTC, the FTC will require a consent decree provision requiring that the parties receive prior FTC approval of future acquisitions for the term of the decree. This will likely result in more acquisitions being subject to FTC scrutiny. Whether DOJ adopts this stance remains to be seen.

Second requests—broader in scope and duration. Additionally, the FTC has announced other changes to merger review that will lead to increased scrutiny

. In particular, the FTC changed its procedures for Second Requests. A Second Request may be issued if the FTC or DOJ continue to investigate a transaction beyond the 30-day HSR waiting period, and it generally consists of a very lengthy request for documents and information. The FTC announced that the Second Request process will be more demanding by heightening the requirements to request a modification to limit the scope of a Second Request, the effect of which may be to give the FTC more time and leverage to challenge a deal. The FTC also noted that a Second Request “may factor in additional facets of market competition that may be impacted,” including labor markets, crossmarket effects and market incentives following investment firm involvement.

More unpredictable merger review process

FTC warning letters. In addition to the increased scrutiny outlined above, the FTC has also introduced reforms that will increase the uncertainty of the process. For instance, for deals in which the HSR waiting period has expired but the FTC has not completed its review, the FTC may decide to send warning letters advising the parties that the investigation remains open and that they will close the transaction at their own risk. Some practitioners report that the FTC is reaching out prior to the parties’ receipt of a warning letter, although this does not seem to be occurring in every instance.

### 1AC – Rulemaking – Certain

#### FTC rulemaking provides predictable enforcement that reins in institutional investors.

Posner ’17 [Eric et al; Kirkland & Ellis Distinguished Service Professor @ University of Chicago Law School; Fiona Scott Morton; Theodore Nierenberg Professor of Economics @ Yale School of Management; and E. Glen Weyl; Senior Researcher @ Microsoft Research, Visiting Senior Research Scholar @ Yale University Department of Economics and Law School; “A Proposal to Limit the Anticompetitive Power of Institutional Investors,” *Antitrust Law Journal*, 81(3), p. 669-728; AS]

No institutional investor or individual holding shares of more than a single effective firm in an oligopoly may ultimately own more than 1% of the market share unless the entity holding shares is a free-standing index fund that commits to being purely passive.

We now define the terms above.

\* An institutional investor is said to hold or be invested in the set of firms representing the aggregate holdings of the entire investment company reporting to or under the corporate control of the same firm. Different "institutions" run by the same management company are treated as part of the same set of holdings and whenever we refer to an "institution," a "fund," or an "institutional investor," we mean the broad fund holding company (e.g., Vanguard, BlackRock, Fidelity, etc.), not the specific fund offered by these companies (e.g., Vanguard S&P 500 Admiral Shares).

\* An institutional investor is invested in more than a single effective firm if it is invested in more than one firm, and the total market share of all firms it holds any stake in is greater than HHI10,000 in the oligopoly. The effective firm definition allows an institutional investor to hold multiple competing sufficiently small fringe firms instead of a large firm.

\* Prior to the start of each calendar year, the DOJ and FTC would make a list of industries constituting oligopolies and company market shares based on the standards discussed in Part J.C above. There would be some mechanism to solicit comments from any interested parties. The DOJ and FTC would then finalize the list with at least a month before the beginning of the new year to allow the institutional investors time to rearrange their holdings to comply with the policy.

\* The market share ultimately owned by an institution or individual i is the sum over all firms j of the product of the share that institution has in that firm /3, and the market share of firm sj: pysj.

\* An index fund that is purely passive commits to engage in no communication with top managers or directors, 98 to vote its shares in proportion to existing votes so that it has no influence in any corporate governance decision, and to own and trade stocks only in accordance with clear and non-discretionary public rules, such as matching an index as closely as possible.

While we have generally assumed that our policy should take the form of an enforcement policy issued by the DOJ and the FTC analogous to the Guidelines, there are other possible approaches. It is possible that the FTC could issue formal rules under Section 5 of the FTC Act. 99 In addition, the policy could be enacted as legislation. There are different advantages to each of the approaches. The DOJ and FTC could adopt an enforcement guideline at their discretion, while a regulation would require notice-and-comment rulemaking and be subject to judicial review under the Administrative Procedure Act, and legislation would require an act of Congress. Thus, it would be easiest to put in place an enforcement guideline, relatively difficult to issue a regulation, and (we suspect) nearly impossible to enact legislation, at least in the near term. However, the major disadvantage of an enforcement guideline is that it might not block the complex and uncertain private litigation that we are concerned about. That outcome would depend on the courts, which might-or might not-interpret the statute considering the enforcement guidelines.100 If varied court rulings caused difficulty for the business operations of institutional investors, they might prefer a formal rule to this policy. A regulation would result in greater judicial deference, and legislation the greatest.

Should the enforcement policy be absolute or create a rebuttable presumption? Lawyers are more comfortable with the latter approach. As we acknowledge, our policy might create some false positives; it may well be appropriate to give defendants an opportunity to rebut. Suppose, for example, a defendant can show that it is highly decentralized, with independent boards of directors and firewalls making any amount of coordination within the firm highly implausible. It may therefore be better conceptualized as many small independent funds that fall below the 1 percent threshold than as a single huge fund. The "no talking rule," discussed below, illustrates another possible defense.

#### Normal case-by-case adjudication generates uncertainty that hinders investor compliance. The plan’s centralized rule establishes clear guidelines for enforcement.

Posner ’17 [Eric et al; Kirkland & Ellis Distinguished Service Professor @ University of Chicago Law School; Fiona Scott Morton; Theodore Nierenberg Professor of Economics @ Yale School of Management; and E. Glen Weyl; Senior Researcher @ Microsoft Research, Visiting Senior Research Scholar @ Yale University Department of Economics and Law School; “A Proposal to Limit the Anticompetitive Power of Institutional Investors,” *Antitrust Law Journal*, 81(3), p. 669-728; AS]

C. IMPLICATIONS FOR LITIGATION

The most natural solution to these harms is to simply enforce Section 7 of the Clayton Act, accounting for effects through MHHJ and coordinated effects enabled by common ownership. 7 9 Ultimately, we agree with this conclusion, but we are concerned that, absent clear guidelines for when such cases would or would not be brought, such litigation could lead to a combination of chaos and stasis. In this subsection, we use simulations to illustrate some of the difficulties plaintiffs, institutional investors, and courts would face without further guidance.

An initial problem is that it is not even clear what standard a court would use to determine liability. Without guidance from regulators, a court may not even use an MHHI threshold; even if it did, it would not necessarily choose the threshold that other courts used. Normal case-by-case adjudication would most likely result in a range of different rules, standards, and approaches. 0 But to fix ideas imagine, for example, that courts found liable any institutional investor whose holdings increased MHHI by 200 points relative to the counterfactual of the investor not being in the industry at all; other natural counterfactuals can be used to reach similar conclusions to what follows. We now illustrate some of the cases that could succeed under such a standard:

1. Suppose that there is an industry with four symmetric firms (so that without common ownership the industry has MHHI of 2500) and that each has a large concentrated shareholder with 15% of the stock. Each also has a CEO who holds 0.1% of equity. There is also a single moderate-sized fully diversified shareholder with 2% holdings in each firm and no one else owns a non-trivial fraction of the stock. In such a setting MHHIA becomes 130 because the 15% concentrated holdings undermine the influence of the 2% diversified holder. It seems unlikely a suit against the 2% holder could succeed.

However, now suppose that one of the 15% concentrated holders faces financial distress and is forced to liquidate its holdings. The MHHIA then jumps to almost 2000. If the 2% diversified holder were forced to sells its holding, the MHHIA would fall to 0. Thus, after the concentrated holder exits, a possible antitrust case could be made against the 2% holder. One can see here that an institution that was initially not liable would in this case become liable purely based on the behavior (exit from the industry) of another institution. This would make it very hard for institutions to plan their activities to conform to the law.

2. Consider the same symmetric four-firm industry and suppose again that there are (roughly as at present and as we discuss further in the next Part) managers of each firm with 1% concentrated holdings and five diversified institutions holding respectively 6%, 5%, 4%, 3%, and 2% of the industry. (By "diversified institution," we mean a firm with a stake in every firm in the industry.) The MHHIA is huge in this case: 7420, almost fully monopolizing the industry. The question now is which institution could/should have liability? The unilateral divestiture of holdings by any of the institutions barely budges MHHI: even if the 6% institution exits, MHHI falls by less than 100 points. Exit of the 2% institution reduces MHHI by only 4 points. Institutions might play a game of "chicken," waiting for the others to sell their holdings so that the last institution is no longer causing a significant increase in MHHI and can maintain its investments. In this case, which we think is common in current US data, MHHIA is a "collective responsibility" of the holding pattern. It would be very difficult for institutions to protect themselves in this case also; an aggressive court might hold all liable. But what are the limits of this collective responsibility? How small would an institution have to be to avoid it? These questions would make investment planning challenging.

3. A third issue concerns market definition. Suppose that a product market such as premium groceries is a tight oligopoly of four publicly traded firms. On the other hand, suppose the market for groceries broadly is diffuse and has many privately held companies, so that even if all publicly traded grocers were to merge, this would not cause significant competitive concern in the market for groceries. Would an institution that held all premium grocers be liable under the Clayton Act? On the one hand, it could not have any effect on the market for groceries more broadly as it faces so many privately held competitors. On the other hand, a private suit might succeed against it based on the narrower market definition, but it would be very hard for the institution to predict whether this is the case or not.

Of course, issues like this arise all the time in standard merger review, but a standard merger is a single, large decision made by a pair of corporations. Institutional investors constantly acquire and sell equities and so must worry continuously about falling out of compliance with the Clayton Act. An institution trying to comply with the Clayton Act would have to sort out these issues in hundreds or thousands of industries, even if it held only a small and fully diversified holding. Without some centralized process of determining market definitions of concern, institutions would find it extremely challenging to comply with the law.

4. Finally, consider an industry composed of four equally sized firms where the only non-trivial holding is by a single fully diversified institution holding only 0.2% of the shares in that industry and by the managers who hold 1% concentrated in each firm. In this case the HHI is already 2500 and the MHHIA would be 300. The entire MHHIA would be eliminated by the diversified institution exiting the industry.

Such an institution would clearly be liable. However, it seems hard to imagine such an institution having a significant impact on competition in the industry. Managers are likely to have enough control to disregard most of the investor's power in corporate governance and ensure profit maximization. By the same token, this power is so small that it is unlikely to enable the institution to participate in corporate governance. If it refrained from doing so, it is hard to imagine it being desirable to force it to exit. Yet it would be liable under the definition above.

Of course, the MHHI standard we use in the four examples above is only one of many standards that a decentralized process led by courts and plaintiffs could eventually settle on. We do not mean to predict that it would be the final standard that would emerge; courts might recognize the problems we identify and avoid them. However, other standards that might emerge could be equally problematic; and worst of all would be if no standard emerged of any sort, with different courts making different, case-by-case judgments. If that happened, there would be little an institutional investor could do to stay on the right side of the law.

Moreover, if courts identify these problems, they might become apprehensive about throwing an enormous industry into confusion and carve out broad exemptions that would allow all or nearly all the status quo harms to continue. Consider the following examples:

1. Suppose courts were to decide that a firm could be liable only if the unilateral MHHI reduction-given current holdings-caused by the firm entirely exiting the industry exceeded 200 points. In this case, as highlighted above, very few institutions would be liable at present. Given that the MHHIA is already thousands of points in many industries," this would allow the persistence of enormous harms of a quarter percent of GDP based on our calculations in Part II.E below.

2. Suppose that courts decided that any existing holdings are too hard to unscramble and only find against additional marginal acquisitions that sufficiently increased MHHI. This would clearly allow for the persistence of status quo harms. Furthermore, it is hard to imagine how such a standard could prevent the situation from worsening. Suppose that Vanguard gradually receives an inward flow of funds over many years causing it to grow, with all holdings perfectly diversified. With such gradual monopolization of many industries over a long period of time, at what point could a suit against Vanguard succeed? In any given year MHHI might not increase by more than a few points.

3. Suppose that the courts decided that either extremely narrow or extremely broad market definitions were appropriate. In either of these cases, very few if any harms would create liability.

We do not highlight these problems to promote despair; we do believe there exist standards consistent with reasonable interpretations of existing antitrust laws that would be workable and effective. However, it seems unlikely that without clear thought and guidance that a decentralized process of litigation will happen upon such guidelines in the medium term.8 2 In the next subsection, we aim, through simulation examples, to construct a simple interpretation.

## UQ

### 1AC – I/L – Investment-Profit Gap

#### Horizontal shareholding drives the investment-profit gap. Cross-industry empirical studies price in alt causes and confirm it’s the primary factor.

**Elhauge ’20** [Einer; Professor of Law @ Harvard; “How Horizontal Shareholding Harms Our Economy - And Why Antitrust Law Can Fix It,” *Harvard Business Law Review*, 10(2), p. 207-286; AS]

C. New Empirical Evidence on the Investment-Profit Gap

New empirical studies also indicate that horizontal shareholding can help explain the rapid increases over recent decades both in the gap between corporate profits and investment and in economic inequality. This new literature shows that we had a sharp rise in horizontal shareholding from 1999 to 2014, with the probability of two competing firms in the S&P 1500 having a large horizontal shareholder increasing from 16% to 90% over that period.35 This sharp rise in horizontal shareholding coincides with the fact that the recent large divergence between corporate profits and investment began in 2000.36 It also coincides with the period during which we have had the highest growth in corporate profits and greatest decline in labor's share of national income since World War II.11

Standing alone, such parallel timing could be a coincidence and reflect economic factors other than horizontal shareholding that changed during the same time period. However, a new cross-industry empirical study has directly found that the gap between corporate investment and profitability is mainly driven by the level of horizontal shareholder ownership in concentrated markets.38 Further, the new study found that, within any industry, the investment-profit gap is mainly driven by those firms with high horizontal shareholding levels.39 While parts of the study used MHHI measures of horizontal shareholding, others avoided any concerns that MHHI might reflect endogenous effects on market share by instead using the firm's level of quasi-indexer ownership as a proxy for horizontal shareholding levels. 40 This new empirical evidence now affirmatively establishes a link between anticompetitive horizontal shareholding and the economy-wide lack of corporate investment that has contributed to low economic growth in recent decades.

This new empirical evidence also indicates that the main cause of the investment-profit gap cannot be general macroeconomic, technological, or policy trends, such as recessions, increased automation, decreased productivity, a slowdown in technological innovation, or changes in government spending, taxes, or labor law. If such general trends were the main cause, they should result in a similar profit-investment gap across the economy, rather than a gap that is mainly driven by concentrated markets with high horizontal shareholdings. Even less can such general trends explain why, within any industry, the investment-profit gap is mainly driven by firms with high horizontal shareholding levels. If automation, technological factors, or government policies were the main driver of low investment, that should apply equally to all firms in an industry, not mainly to those firms with high levels of horizontal shareholding.

Although this new cross-industry study does not directly examine economic inequality, a connection to economic inequality is logically suggested by its proof of an empirical connection between horizontal shareholding in concentrated markets and a gap between high corporate profits and low corporate investment. The reason is that those high corporate profits go to shareholders who are disproportionately wealthy and reflect high prices that are disproportionately borne by the non-wealthy, and the lack of corporate investment depresses employment and wages in a way that further disproportionately harms the non-wealthy. 4

#### Common ownership undermines welfare gains by incentivizing buybacks at the expense of investment.

Gutierrez ’18 [German; PhD Candidate Finance @ NYU Stern School of Business; and Thomas Philippon; Max L. Heine Professor of Finance @ Stern School of Business NYU; “Ownership, Concentration, and Investment” AEA Papers and Proceedings 2018, 108: 432–437 p. 432-436]

We argue that changes in firm governance have contributed to the weakness of corporate investment in recent years. Our initial motivation comes from four trends affecting the US corporate sector during the 2000s:

(i) Concentration and profits have increased in most industries (Furman 2015; Grullon, Larkin, and Michaely 2016; Barkai 2017).

(ii) Business investment has been weak relative to profitability, funding costs, and market values (Gutiérrez and Philippon 2017b).

(iii) Payout rates of US-incorporated public firms, including buybacks, have increased markedly, as shown in Figure 1, panel A.

(iv) The fraction of the equity market owned by institutional investors, quasi-indexers in particular, has increased, as shown in Figure 1, panel B.1

Two main explanations have been proposed for the joint evolution of concentration and invest- ment: intangible capital (Alexander and Eberly 2016; Crouzet and Eberly 2018) and increased market power (Gutiérrez and Philippon 2017a). These two explanations do not account for the entire investment gap, and we study the role of corporate governance.

Firms must continuously choose what fraction of earnings to retain, invest, and pay out. Shareholders and managers often disagree about these choices. A large literature in corporate finance argues that managers have a tendency to prefer larger firms. One can also argue that equity markets put excessive emphasis on quarterly earnings. Almeida, Fos, and Kronlund (2016) show that the probability of share repurchases is sharply higher for firms that would have just missed the earnings per share forecast in the absence of a repurchase. Terry (2017) shows that firms just meeting Wall Street forecasts have lower research and development growth. Managers can also be shortsighted, however, and Kaplan (2017) argues against the idea that markets have a short-term bias. The nature of the potential bias, if any, is therefore an empirical question.

The joint evolution of investment, payouts, and market value can help us understand these governance issues. Suppose that managers’ incentives become more aligned with shareholders’ preferences. Market values unambiguously increase. Payouts to shareholders increase at some horizon. And, if managers prefer larger firms, and if the change in governance is correctly identified, investment decreases. A shift in governance can therefore account for the gap between Tobin’s Q and investment documented in Gutiérrez and Philippon (2017b). Consistent with this idea, Figure 2 shows that buybacks increased faster for firms with high quasi-indexer ownership.2 In the remainder of the paper we test more formally this hypothesis.

I. Ownership and Investment

We first want to test whether high institutional ownership, particularly quasi-indexer owner- ship, leads to higher payouts and lower investment. The assumption is that quasi-indexers affect governance and therefore investment. The literature has argued that quasi-indexers affect governance through voice (Appel, Gormley, and Keim 2016a), cooperation with activists (Appel, Gormley, and Keim 2016b) and, to a lesser extent, rebalancing (Wurgler 2011). The identification issue is that ownership, payouts, and investment are jointly endogenous.

One possible identification strategy relies on the recomposition of Russell indices. These indices are re-constituted annually and result in differential weights for firms around the 1,000/2,000 cutoff. In 2005, for example, the ten smallest firms in the Russell 1,000 had a combined index weight of 0.004 percent, and the next ten largest firms were in the Russell 2,000 with a combined index weight of 2.3 percent (Crane, Michenaud, and Weston 2016). The differential weights lead to sharp exogenous variation in institutional ownership. Crane, Michenaud, and Weston (2016) use a regression discontinuity (RD) design to show that an increase in institutional ownership causes an increase in payouts.3 They find that the elasticity of log-payouts to percentage point changes in ownership is 4.57 (Crane, Michenaud, and Weston 2016, Table 3). When we run a simple OLS regression of log-payouts on lagged ownership we obtain a coefficient of 3.05. We are thus confident that we are not over estimating the impact of owner- ship. More importantly, we find that investment decreases with rising payouts.

The index-recomposition identification is appealing but too local given our goal to explain broad trends in payouts and investment. To be able to consider a large panel of firms, we use pre-2000 quasi-indexer ownership as an instrument for post-2000 buybacks and investment, controlling for initial firm characteristics. This approach is supported by two facts. Firstly, firm ownership is highly persistent within quasi-indexer institu- tions: a regression of ownership at t on ownership five years prior yields a coefficient above 0.8, even after controlling for firm characteristics such as market capitalization. Secondly, activism—one oftheprimarymechanismsthroughwhichqua- si-indexer ownership affects buybacks—increases only after 2004. For this governance impact, pre- 2000 ownership is therefore a valid instrument in the sense of Bartik (1991).

Columns 1 and 2 of Table 1 present our base results. We include industry and year fixed effects and a wide range of pre-2000 firm-level controls (e.g., size, market capitalization, etc.). We instrument buybacks with pre-2000 quasi-indexer ownership, and then use the portion of buybacks that is explained by ownership to predict investment. We also instrument firm Q with its industry average to mitigate measurement error (unreported). We find that higher pre-2000 quasi-indexer owner- ship appears to cause higher buybacks and lower investment.4 In unreported tests, we interact pre- 2000 quasi-indexer ownership with the aggregate buyback-to-assets ratio and include firm as well as year fixed effects. We find that firms with higher quasi-indexer ownership are more sensi- tive to aggregate buyback trends.

II. Interaction between Competition and Ownership

The welfare consequences of stronger governance depend crucially on the degree of competition in the goods market. In noncompetitive industries, an increase in firm value can come from an increase in markups, and shareholders are likely to favor inefficiently low levels of investment. Under perfect competition, by contrast, shareholder value and social welfare are more likely to be aligned. Moreover, an important paper by Giroud and Mueller (2011) shows that governance is primarily an issue for firms in noncompetitive industries. Managers of firms in highly competitive industries are under constant pressure to innovate. We therefore focus on the interaction between governance, concentration, and investment. We measure concentration in the product market and in the asset management industry. We define the modified Herfindahl as MHHI = HHI+CO, where HHI denotes the import-adjusted Herfindahl constructed in Gutiérrez and Philippon (2017a) and CO accounts for anti-competitive effects of common ownership following Schmalz (2018).5

#### Margins have no relationship to corporate investment – buybacks are a drain on corporate treasuries.

Schwarz ’22 [Jon, citing Economists; 2/9/22; Senior Writer @ The Intercept; ““A PURE SIDESHOW”: NOW MORE THAN EVER, THE STOCK MARKET DOESN’T MATTER”; https://theintercept.com/2022/02/09/stock-market-doesnt-matter/; AS]

THERE’S A MORE complicated aspect of the stock market, one understood by almost no one in the U.S.

For a society to thrive and improve, businesses need to continually spend money on investments: new factories, new equipment, research and development, etc.

Most Americans have an inchoate, general sense that higher stock prices make companies more willing and able to make such investments. But in fact, stock prices have little or no relationship to corporate investments, either in theory or reality.

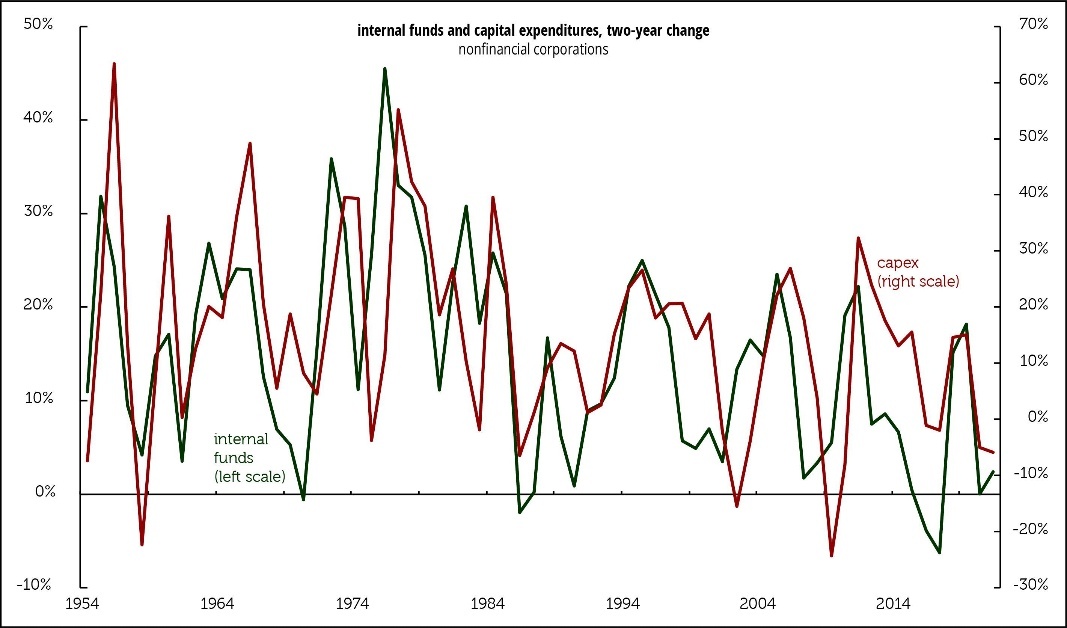
The key fact here is that corporations don’t own their stock; hence an increase in their stock price doesn’t make the company itself richer, just its stockholders. Corporations can raise money to get going via an initial public offering, and that has been important for some technology companies. But that’s generally it.

You might imagine that companies raise money from time to time by issuing new stock. The truth, however, is exactly the opposite. According to the Federal Reserve, corporations have bought and retired an incredible $6.8 trillion more of their stock over the past 25 years than they have issued new stock. The companies generally do this to please their stockholders (including their own executives), since it raises the price of the remaining stock. But it means the stock market has been a gigantic drain on corporate treasuries, rather than filling them.

Where, then, do companies get the cash for investments? The answer’s simple: from the money they make selling their products (with a bit added from borrowing).

The empirical reality of this can be seen in two graphs created by Doug Henwood, the host of KPFA’s “Behind the News” and author of “Wall Street: How It Works and for Whom.”

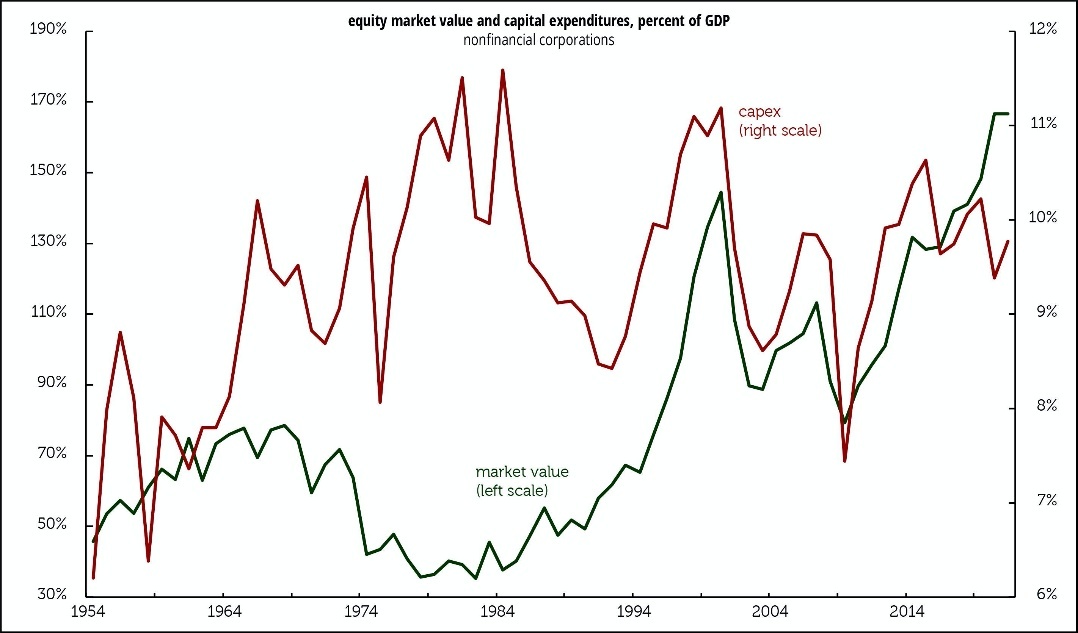
First, we can see how closely increases in internal corporate funds mirror corporate capital expenditures. When companies have more money, they spend more on investments to increase productivity.



Corporate internal funds vs. their capital expenditures. Source: Federal Reserve.

Chart: Doug Henwood

Next there’s the change in the value of the stock market versus the level of corporate investment. As Henwood puts it, “When the great bull market began in 1982, which we could call the onset of the neoliberal era, the market value of the stock of nonfinancial corporations was 35 percent of GDP and their capital expenditures (capex) were 10 percent of GDP. Almost 40 years later, in 2021, the market value of stock was 167 percent of GDP and capex, 10 percent.” Notably, corporate investments were highest as a share of the economy in the late 1970s and early ’80s, when the stock market’s value was far, far lower as a percentage of the overall economy.



The value of the stock market vs. corporate capital expenditures. Source: Federal Reserve.

When you add it all up, the vast difference between the stock market’s significance for Americans, and our cultural obsession with it, is bizarre. It’s as though the only weather reports we ever got were about the temperature and precipitation in Greenwich, Connecticut. We need to stop worrying about those people — and start paying attention to the weather where we live.

#### The stock market is an irrelevant economic metric. Margins reflect the gains of the richest, not macroeconomic welfare.

Schwarz ’22 [Jon, citing Economists; 2/9/22; Senior Writer @ The Intercept; ““A PURE SIDESHOW”: NOW MORE THAN EVER, THE STOCK MARKET DOESN’T MATTER”; https://theintercept.com/2022/02/09/stock-market-doesnt-matter/; AS]

THE STOCK PRICE of Meta (i.e., Facebook) plunged 27 percent in one day last week! The S&P 500 is veering into correction territory! The ballyhooed ARK Innovation ETF, made up of dozens of tech stocks, has plummeted 50 percent in the last year!

You’re supposed to feel anxious about this, even if you don’t know what those words mean. The U.S. media constantly screeches at us about the stock market: It’s up, it’s down, it’s sideways, it’s sprouted bright rainbow-colored plumage. Whatever happened in the stock market on any given day often leads the evening news. There’s a stock ticker running constantly at the bottom of the screen on many cable news shows. Times Square has a ticker that movies use for New York City establishing shots almost as often as the Statue of Liberty or the Empire State Building. And obviously the stock market going up is portrayed as an unmitigated good, while declines are disastrous.

This means there are probably more ominous headlines coming, because even after its recent fall, the stock market remains significantly overvalued.

THE MOST COMMON way to measure whether stocks are undervalued or overvalued is their price-to-earnings, or P/E, ratio. Price is the dollar cost per share, and earnings are the company’s net proceeds per share.

There are slightly different ways of figuring P/E, and many different stock indices. But one widely used P/E ratio calculation for the S&P 500 shows it’s currently about 25. This means that for every $100 in price for the stocks on the index, the companies are accruing $4 in earnings. But the median historical P/E ratio for the S&P is far lower, about 15. In other words, if earnings levels stay the same, the S&P would have to fall 40 percent from where it is now to be priced normally.

The cost of famous individual stocks appears even more out of whack. As of today, Microsoft’s P/E ratio is about 32. Amazon’s is 49. Tesla’s is an eye-bulging 186.

After the stock market bubble of the late 1990s or the housing bubble of the 2000s — or for that matter, the Dutch tulip bubble of the 1600s — you’d think we’d have learned our lesson about financial bubbles. They feel great on the way up, and with stock market bubbles in particular, people have some vague sense that this means good things about the overall economy in the future. But bubbles do not represent real wealth, and the high never lasts.

In theory, stock prices represent the future value of after-tax corporate profit. That’s all. And the higher corporate profits move, the less money there is to pay wages. So higher stock prices can represent a greater level of corporate power and less for workers trying to exact better pay from their employers. Likewise, as Dean Baker, senior economist at the Center for Economics and Policy Research, points out, “If we cut corporate taxes, and offset the cut with an increase in taxes on ordinary workers, that should make the stock market go up, but there is no reason to think this move would lead to more rapid economic growth.” (I briefly worked for Baker long ago.)

In other words, profits and hence stock prices are, as much as anything else, a measure of the balance of power in society. The famed 18th-century economist Adam Smith — so popular on the right that White House staffers in the Reagan administration wore ties with pictures of him — explicitly explained this in his book “The Wealth of Nations”: “The rate of profit does not, like rent and wages, rise with the prosperity, and fall with the declension of society. On the contrary, it is naturally low in rich, and high in poor countries, and it is always highest in the countries which are going fastest to ruin.”

So unless you’re C-suite executive with tons of stock (or are nearing retirement age and have made extremely risky decisions with your savings), a stock market plunge generally won’t be bad for you. And it also probably wouldn’t be good for you. “If you don’t have much wealth,” says Josh Bivens, director of research at the liberal Economic Policy Institute, the stock market is “a pure sideshow for your own economic circumstance.”

According to the Federal Reserve’s most recent survey, Americans in the bottom 90 percent of net worth own just 16 percent of stocks overall. Strikingly, the bottom 50 percent own just 1 percent.

Meanwhile, the top 10 percent have 84 percent of all stocks. The top 1 percent of households alone have 38 percent of stocks.

Given these numbers, stock ownership by race is about what you’d expect. African Americans make up 14 percent of households but have just 3 percent of stock wealth.

Some older members of the upper-middle class are often upset by anyone saying the stock market doesn’t matter, because they’re counting on selling their own stock holdings to finance their retirement. But this is exactly why all financial advisers recommend that everyone but the ultra-rich gradually reduce any stock holdings as they age, replacing the stocks with bonds that may have lower returns but won’t lose value in a stock crash. The long run-up in stock prices over the past several decades has made many people believe they can get the higher possible returns in the stock market without real downside risk. But they can’t.

While few people care about it, there’s also the moral quandary of retiring by selling stocks when they’re overpriced. Perhaps you can successfully offload such stocks to younger people before prices fall. But this would essentially entail scamming all your buyers.

But what about younger members of the upper-middle class, who probably are heavily invested in the stock market? A stock plunge would make them feel poorer for a while, but in the long run they’d be better off with a cheaper market. Regular contributions they’re making into a 401(k) plan, for instance, will buy more stock for the same amount of money. This is exactly analogous to home prices. Overpriced homes are good for older people who already own a house, as long as they can sell before prices fall — but terrible for young people who don’t own a home and would benefit from lower prices.

#### Competition spurs productivity growth – combatting market power accesses trillions of dollars of gains.

Philippon ’21 [Thomas; Stern School of Business @ New York University; “The Case for Free Markets,” *Oxford Review of Economic Policy*, 37(4), p. 707–719; AS]

(i) Concentration and entrenchment

Trends in industry concentration are by far the most discussed in mainstream media, so I will be brief. Many studies have shown that concentration has increased in more than three-quarters of US industries since the 1990s (Grullon et al., 2019; Autor et al., 2020). Concentration is a useful but imperfect indicator because it is the outcome of a dynamic process. As a result, concentration can be benign or harmful depending on the underlying driving force. Concentration is beneficial when it is driven by lower trade costs, e.g. lower shipping costs or lower search costs. When these costs are low the best producers expand at the expense of inefficient ones, which improves consumers’ welfare and increases concentration simultaneously. This reallocation can happen within a country (geographical expansion, Rossi-Hansberg et al. (2018)) or across countries (international trade, Covarrubias et al. (2019)). An important point is that this type of concentration is beneficial precisely because new competitors enter into existing markets. Some industries—in manufacturing, in retail and wholesale trade—fit this pattern, but many—in telecom, air transportation, or healthcare—do not.

Instead of looking at the concentration of market shares at fproa point in time, Figure 1 considers the reshuffling of markets shares. In competitive industries entrants should challenge dominant firms and thus we would expect market shares to change over time. To test this idea, we rank all large firms—by market value or by revenue—in a particular year, and we rank them again 5 years later. The change in rankings over a 5-year window is a measure of reshuffling. Figure 1 shows that reshuffling has decreased over the past 20 years.1 Hamel and Zanini (2021) make a similar point by looking at top 100 (or 500) companies. In 2000 only 45 of the largest 100 American companies had been in the top 100 every year between 1991 and 2000. In 2019 that figure was 71 out of 100.

I find this statistic useful because it provides a dynamic view of the economy. It suggests that dominant firms have become more entrenched over the past 20 years.

(ii) Profits and pay-outs

Figure 2 shows the evolution of after-tax non-financial corporate profits in the US since 1946. After-tax profits used to fluctuate around 6 percent of GDP for most of the post-war period. After 2000, however, they increased substantially to around 9 per cent of GDP. Several factors could explain this evolution. Technological change, for instance, could have increased the role of capital in production. This explanation would imply a boom in investment, however, and Gutiérrez and Philippon (2017) show that investment—both tangible and intangible—has been lower than expected over the past 20 years.

High corporate profits did not, in fact, lead to high investment but, as Figure 3 shows, to high pay-outs to shareholders. Figure 3 also shows that the increase in pay-outs is entirely explained by the increase in share buybacks. Dividends have been roughly constant as a share of assets.

(iii) Specific studies

In addition to the broad trends discussed above, there are several detailed studies of specific industries. For instance, Gaynor and Town (2012) study hospital consolidation and show that it generally results in higher prices, and Gaynor (2021) provides a recent review of competition in the US healthcare system. Micro studies make it possible to carefully study prices, how they relate to costs, and how they vary across locations (Cooper et al., 2019, 2021).

Faccio and Zingales (2017) estimate that US consumers would gain $65 billion a year if US mobile service prices were in line with German ones, and Philippon (2021) shows that American consumers pay more for broadband and wireless services than consumers in other industrialized nations.

Several studies point out that the weakening of antitrust enforcement is at least partly responsible for the decline in competition (Kwoka, 2015). Ashenfelter et al. (2014) survey 49 studies that estimate the price effects of consummated horizontal mergers in 21 industries over 30 years. Of the 49 studies surveyed, 36 find evidence of mergerinduced price increases.

(iv) Explanations

There are, of course, several plausible explanations for the increase in concentration, profits, and pay-outs. We need to consider other indicators to tell them apart. In Philippon (2019) I consider various explanations and I argue that declining competition in many US industries over the past 20 years is a major contributor to the rise in profits. Let me discuss some alternatives and explain where I think that they fall short. For instance, one could hypothesize that technology has changed in such a way as to increase the role of capital in production. Formally, we would write y = kα­1−α and hypothesize an increase in α. This would provide a competitive explanation for an increase in the capital share of income. It would, however, also predict a counterfactual boom in investment. Gutiérrez and Philippon (2017) show that investment—both tangible and intangible—has been lower than expected over the past 20 years.

Alternatively, one could hypothesize that the selection effect has increased as in Autor et al. (2020). The selection effect refers to the exit of weak firms from the market. The strength of the selection effect depends on the degree of competition in the market. When competition is intense ex post, only the best firms can survive. Holding constant the entry cost, a lower survival probability must lead to higher ex post profits for those firms that actually survive. The key equation here is the entry condition (1 − p) E [V] ≤ κ where p is the exit rate, κ the entry cost, and E [V] the discounted value of profits conditional on survival. Holding κ constant, an increase in p must be compensated by an increase in E [V]. This explanation, however, relies on an increase in the exit rate, while empirically the exit rate has declined. Another issue is that the selection effect increases aggregate productivity. This class of explanations must therefore also posit another, independent mechanism to explain the productivity slowdown.

It is quite important, however, to understand that these various explanations are not mutually exclusive. For instance, the main result in Autor et al. (2020) is that the change in the labour share is driven by reallocation towards firms with low labour shares, especially in manufacturing and especially during the 1990s. There is no disagreement about the statistical decomposition. There is also no disagreement about the dynamics within manufacturing, where globalization plays a major role. Covarrubias et al. (2019) show that trade-adjusted concentration has not increased in manufacturing. Similarly, the evolution of the retail industry since the 1990s supports the relevance of ‘star’ firms (Hortacsu and Syverson, 2015). The entry condition (1 − p) E [V] ≤ κ is also common to virtually all models, and the main point of Philippon (2019) is that the dynamics of many industries only make sense if we posit an increase in κ, i.e. if we posit that incumbents are protected by higher barriers today than 20 years ago. This argument does not preclude other changes, in α, p, or a variety of other factors.

Monopsony versus labour power

Industry consolidation can affect workers as well as consumers. Dominant employers can mark down wages and have weak incentives to improve working conditions. They can also impose non-compete agreements on their employees. Azar et al. (2017) show that employers in many local labour markets enjoy monopsony power. The academic discussion centres on the size of the effect. Schubert et al. (2021) argue that the aggregate impact is relatively small since most US workers are not in highly concentrated labour markets, but they find that a subset of workers experience meaningful negative wage effects from employer monopsony power. Stansbury and Summers (2020), on the other hand, emphasize the decline in unionization and argue that a decrease in labour power (the opposite of monopsony) can account for recent trends in the US economy.

Monopoly and monopsony power have broadly similar implications for the distribution of national income. Monopsony power, however, is also likely to increase inequality among workers. As far as investment is concerned, a rise in monopoly power predicts a decline, while the implications from monopsony or labour power depend on the elasticity of substitution between capital and labour and on the nature of bargaining. For instance, with efficient firm-level bargaining, investment, output, and prices do not depend directly on labour power. All these models, however, predict an increase in investment in response to the increase in expected profits unless barriers to entry also increase. Once again, then, the main point in Philippon (2019) is that we must posit an increase in κ to get a full account of the trends.

Inflation

At first glance, a rise in monopoly power might seem difficult to reconcile with low inflation since monopoly power allows firms to raise prices (Stansbury and Summers, 2020). This argument, however, only holds in partial equilibrium. Jones et al. (2020) show in a dynamic equilibrium model that an increase in entry costs has a negligible impact on inflation because the negative effect of lower investment and labour demand cancels the positive effect of mark-ups.

Intangibles

An important trend of the past 40 years is the rise of intangible assets. A key point of intangible assets is that they are both factors of production (that need to be compensated) and potential barriers to entry (notably in industries with network or scale effects). Crouzet and Eberly (2019) find that intangibles contribute significantly to the gap between valuations (Tobin’s Q) and investment, particularly in fast-growing sectors. To the extent that intangible assets allow dominant firms to prosper, they can blur the line between efficient concentration and barriers to entry. Intangible expenses explain a large part of the rise in mark-ups documented by De Loecker et al. (2020).

(v) Consequences for consumers and workers

The economic consequences of monopoly power are complex and sometimes difficult to analyse, so I find it useful to decompose them into redistribution effects (inequality and transfers of wealth) and production effects (investment, productivity growth).

Let us start with the redistribution effects. Combining data on prices, wages, concentration, and investment, Philippon (2019) concludes that prices in the US are somewhere between 7 and 8 percent too high. Let us translate this estimate into concrete numbers. The typical household spends about $4,400 each month.2 Increased monopoly rents over the past 20 years thus represent an additional cash outlay of about $310 each month for the median household, or about $3,700 per year. This is a significant expense. According to the 2019 ‘Report on the Economic Well-being of US Households’ from the Federal Reserve, ‘relatively small, unexpected expenses, such as a car repair or a modest medical bill, can be a hardship for many families’. In their survey, only about 60 percent of adults report that they would be able to cover a hypothetical expense of $400 with cash (or its equivalent).

If we aggregate these extra payments across all households and over 12 months, we find that American families pay around $600 billion each year in excessive monopoly rents. These transfers of wealth increase inequality because capital income is more highly concentrated than labour income. The median household does not earn much capital income compared to households in the top deciles or percentiles of the income distribution.

Let us now turn to production effects. The estimates we have just discussed reflect direct wealth transfers from households to corporations, and from workers to shareholders, but they do not take into account changes in quantities of goods and services produced. An increase in market power not only redistributes income, but it also affects GDP. To understand the full consequences of monopoly power we must therefore take into account its impact on investment, employment, and production. I use a simple model to perform the following thought experiment: suppose we could roll back the barriers to entry, undo the bad mergers, and somehow return to the level of competition we had in the late 1990s. How much better off would we be?

A model is a set of equations that represent the decisions of economic agents and the clearing of all markets.3

The virtue of a model is that we can compute the evolution of the economy when all agents adjust their behaviour. We start from an economy where GDP is 100 units and labour earns 65 of these units, so the labour share is exactly 65 per cent. Firms include a 5 per cent mark-up in their (gross) output prices and their net profits exactly cover their fixed costs. We then engineer an increase in gross mark-ups from 5 to 10 per cent.4 The demand for capital, labour, and intermediate inputs decreases. In this economy with lower competition, GDP drops to 95 units and labour income drops to 58 units. The new labour share is therefore 58/95 ≈ 0.61, which is in line with the decline observed in the US. The stock of productive private capital decreases by 10 per cent, consistent with Gutiérrez and Philippon (2017).

Let us put these numbers into perspective. US GDP is about $20 trillion. If we could make the economy as competitive as it was 20 years ago, this would increase by 5 percent to $21 trillion. The compensation of employees is about $11 trillion. In a competitive economy it would be 65/58\*11 ≈ $12.3 trillion. These calculations suggest that the lack of competition has deprived American workers of about $1.3 trillion of labour income, which is somewhat more than the entire cumulative growth of real compensation between 2012 and 2018.

#### Inflation is at record-highs – market power gives dominant firms cover to raise prices.

Smith ’22 [Molly; 1/14/22; Editor @ Bloomberg, BS in Finance @ Syracuse; and David McLaughlin; MBA @ NYU, BA in Econ @ CUNY; “Inflation Risks Getting Sticky as Big Firms Flex Pricing Power”; https://www.bloomberg.com/news/articles/2022-01-14/inflation-risks-getting-sticky-as-big-firms-flex-pricing-power; AS]

Economists have largely dismissed the Biden administration’s efforts to blame the inflation surge in part on big companies padding profits, but some warn that these firms could still keep prices higher for longer.

Consumer prices rose 7% in 2021, the fastest calendar-year increase in 39 years, according to government figures released this week. Analysts generally agree on the cause: massive fiscal and monetary stimulus that swelled demand, coupled with supply disruptions and tectonic labor-market shifts triggered by the pandemic -- rather than pricing decisions by big business.

They also concur that the disruptions will ease over the course of the year, returning inflation closer to its muted, roughly 2% pace of the pre-Covid part of the century.

Yet, there are risks that price gains will stick, some economists say. One reason is that corporate consolidation has accelerated during the past two decades, leaving more and more industries across the economy controlled by dominant companies.

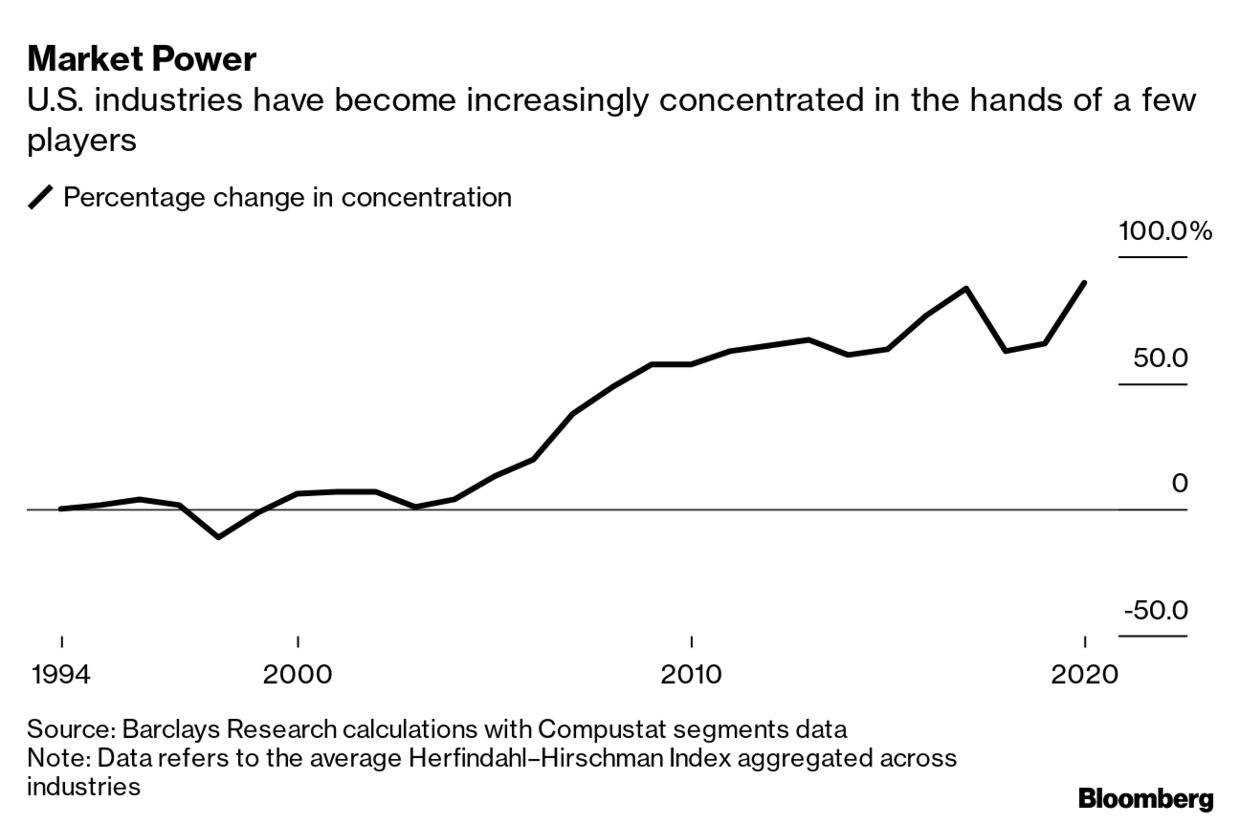
The more control a company has in an industry, the more room it has to push up prices and fatten profits. The worry from some quarters is that in moments of general economic disruption, dominant companies can potentially exacerbate price spikes and heap additional pain on American consumers.

“The current CPI only reflects this on the margins, but the contribution will grow over time as companies with market power feel increasingly comfortable raising prices,” said Jeffrey Meli, global head of research at Barclays Plc and the author of a recent report on the impact of Covid-19 on market power.

Before the pandemic, the rise of dominant companies caused concern among economists and policy makers that weak competition was contributing to other problems, such as growing inequality, falling business dynamism and a decline in worker power and income share. Now, an emerging fear is that companies with market power are exacerbating inflation driven by supply-chain distortions caused by Covid-19.

Take a look at Coca-Cola Co. and PepsiCo Inc., which raised prices within days of each other in July and subsequently recorded substantial margins. Or the meatpacking industry, where Biden is trying to curb the power of conglomerates like JBS SA and Tyson Foods Inc. Meat prices rose nearly 15% last year.

“You’re left with a couple of giants in each industry,” said Jan De Loecker, a professor at KU Leuven in Belgium. “Then this crisis happens, demand contracts, and because these other guys are no longer there to create competition, they can do whatever they want.”



Others argue that the link between price increases and market dominance is weak. Concentration in U.S. industries has been rising steadily since around 2000, but inflation has been stubbornly low in that time period.

Another counterpoint is that by breaking up industry giants, antitrust officials risk unraveling market efficiencies that help keep prices low. And when there are only a few employers in town, workers have less opportunity to bargain for higher pay, another disinflationary force.

A survey of a group of economists published by the University of Chicago Booth School of Business this week showed most don’t believe that a “significant factor” behind higher inflation today is dominant companies using their market power to raise prices. Three winners of the Nobel Prize in economics, however, disagreed.

Surging profits at some firms show how price increases are contributing to higher margins. Three months after they raised prices to offset higher input costs, PepsiCo registered more than $3 billion in operating profits and Coca-Cola posted a 28% profit margin. Both have said since they’ll continue to raise prices.

A representative for Coca-Cola said the company adjusts its pricing to balance “premiumization and affordability,” while PepsiCo declined to comment.

What's driving the global economy

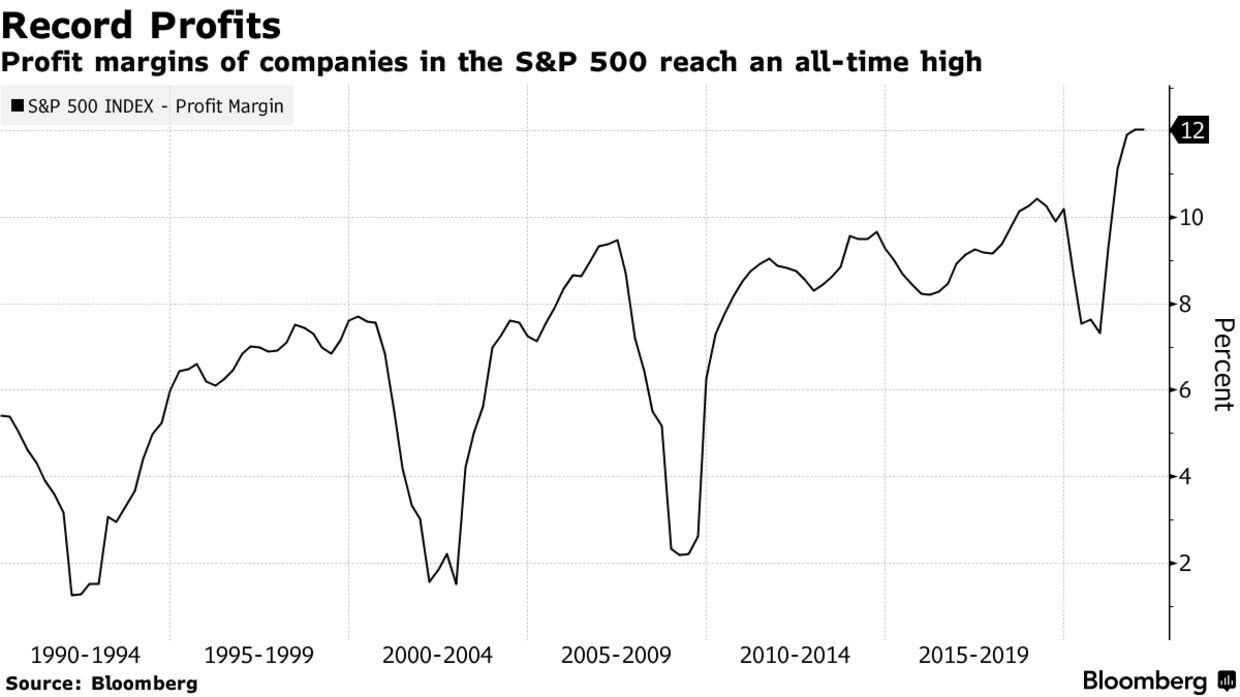
The Biden administration often points to meat processing giants Tyson and JBS, saying that if price hikes were the result of rising costs, profit margins would be flat. Both reported gross margins of around 20% in the fourth quarter, some of the highest ever. Meatpackers deny they’re exploiting their market position to raise prices, arguing that labor shortages and strong demand are to blame for higher costs and lower production.

In a confirmation hearing for Federal Reserve Chair Jerome Powell’s renomination Tuesday, Senator Elizabeth Warren -- who’s long been critical of technology giants -- pressed him on the relationship between market concentration and higher prices. Powell said price increases can be attributed in part to strong demand, and added that big companies are charging more “because they can.”

Companies in the S&P 500 Index are reporting record profit margins despite rising costs, helping the benchmark surge 27% last year. Some companies are touting their ability to charge higher prices.

Norwegian Cruise Line Holdings Ltd.’s Chief Executive Officer Frank Del Rio told analysts on the company’s earnings call in November that he expects higher margins despite inflation pressure because “we’ve got that pricing power that is translating into high yield.”

The question is whether soaring inflation will dent demand. U.S. consumer sentiment declined in early January to the second-lowest level in a decade, according to University of Michigan data released Friday. Another report showed U.S. retail sales slumped in December by the most in 10 months.



The challenge for antitrust cops at the Justice Department and the Federal Trade Commission is that it’s not illegal in the U.S. for a company to hold a monopoly position or take advantage of its market power to raise prices.

Companies are free to follow a rival’s price increase with their own -- especially if there’s no competitive threat to keep price hikes in check. That’s why antitrust enforcers are tasked with preventing markets from consolidating before it’s too late.

The Fed is fighting the inflation battle by withdrawing monetary stimulus at a faster pace than initially planned, opening the door for earlier rate hikes, possibly as soon as March. However, companies with market power are less affected by higher interest rates, which risks making it harder for the Fed to tamp down inflation, according to a July paper from the International Monetary Fund.

That’s why the latest inflation spike could prove to be more persistent, especially if fed by big business, Barclays’s Meli said.

“The longer inflation lasts and the more widespread it is, the more air cover it gives companies to raise prices,” Meli said. “It feeds on itself.”

### 1AR – Decline Now

#### Recession coming now – robust historical evidence

Domash 3/15 – Alex Domash, MPA from the Harvard Kennedy School of Government, writing with Larry Summers, “History Suggests a High Chance of Recession over the Next 24 Months,” 3/15/22, https://medium.com/@alex.domash/history-suggests-a-high-chance-of-recession-over-the-next-24-months-78e38d468e05

As the Federal Reserve moves this week to raise interest rates by a quarter of a percentage point, there is much discussion over the likelihood that the central bank can achieve a soft landing in the economy. While engineering a soft landing is historically very rare, Fed Chair Jerome Powell told lawmakers in early March that he believes achieving a soft landing is “more likely than not.” The Fed’s latest forecast, as well as the consensus forecast from the Federal Reserve Bank of Philadelphia’s Survey of Professional Forecasters (SPF), supports this claim: in both forecasts, inflation recedes to below 3 percent and unemployment remains below 4 percent over the next year.

To examine the plausibility of these forecasts, we look at quarterly data going back to the 1950s and calculate the probability that the economy goes into a recession within the next 12 and 24 months, conditioning on alternative measures of inflation and unemployment. We find that, given the current inflation level of nearly 8 percent and unemployment below 4 percent, historical evidence suggests a very substantial likelihood of recession over the next year or two.

Table 1 shows the historical probability of a recession occurring within the next 12 and 24 months, conditional on contemporaneous measures of CPI inflation and the unemployment rate. The results indicate that lower unemployment and higher inflation significantly increase the probability of a recession over the next 12 and 24 months. Historically, when average quarterly inflation rises above 5 percent, the probability of a recession over the next two years is above 60 percent, and when the unemployment rate drops below 4 percent, the probability of a recession over the next two years approaches 70 percent.

Since 1955, there has never been a quarter with average inflation above 4 percent and unemployment below 5 percent that was not followed by a recession within the next two years.

The above results do not reflect our use of the CPI rather than alternative inflation measures, or the use of the unemployment rate rather than alternative labor market tightness measures. Measuring labor market tightness with the job vacancy rate, which we have advocated for in our prior work (Domash and Summers 2022), suggests an even higher probability of recession over the next 12 and 24 months. Similarly, using Core PCE inflation or wage inflation rather than the CPI also yields the same conclusions. These results are included in tables A.1 and A.2 in the Appendix.

Some may argue that the historical data presented in these tables overstate the probability of recession, since there has been a trend towards greater business cycle stability in recent decades. Motivated by this concern, and to make maximum use of available information, we use a probit model to predict the probability of a future recession based on current economic conditions and controlling for a time trend.

Table 2 presents the results from our probit models. The predicted probability of a recession over the next 12 months in Q1 2022 is highlighted in blue, and is very high across all our model specifications. In our baseline model, we use a four-quarter trailing average of inflation and a one-quarter lag of unemployment as our main explanatory variables. To allow for the possibility that recession probabilities have declined over time, we also have specifications that include a time trend (column 2) and a dummy for years after 1982 (column 3). We find that a trend towards greater business cycle stability does not appear in any significant way once one controls for economic conditions. Finally, we include a specification with a dummy for whether the economy is more than 6 quarters into an economic expansion (column 4), and with the time trend and expansion dummy (column 5).

Table 3 presents the same models, using instead the predicted probability of a recession over the next 8 quarters as the dependent variable. The results suggest a strikingly high probability of recession over the next two years, given current levels of inflation and unemployment. We also repeat the above analysis using a quadratic model, and find similar predicted probabilities of a recession over the next 4 and 8 quarters.

Table 4 below summarizes the predicted probabilities of a recession occurring over the next 12 and 24 months for each of the 5 model specifications. The results suggest a very high likelihood of recession in the coming years, and are robust across all our specifications. Moreover, the findings do not reflect our choice to use the CPI as the inflation measure or the unemployment rate as the slack measure. Using wage inflation, rather than the CPI, results in higher predictions of the probability of recession, and using Core PCE inflation results in similar predictions. Replacing the unemployment rate with the vacancy rate (which we believe to be a better slack indicator) also yields higher predicted probabilities of a recession over the next years.

Overall, the evidence we present in this note suggests that engineering a soft landing is a very difficult thing to do in a rapidly growing, inflation economy. Arguably the only time the Fed has been successful in achieving a soft landing occurred in 1994–1995 when the Fed doubled interest rates to 6 percent and was able to slow economic growth without triggering a recession.

But with inflation nearing 8 percent and unemployment below 4 percent, the Fed today is way behind the curve, and now has to play catch-up to try to tame price increases. The historical evidence indicates that when inflation is as high as it is today, and the unemployment rate is as low as it is today, the probability of a recession over the next one and two years is extraordinarily high. Moreover, none of these calculations account for the recent supply shocks associated with the war in Ukraine, which will only increase the probability of recession even further. We therefore believe that the likelihood that the Fed achieves a soft landing in the economy is low.

#### Economic decline coming – COVID in China, commodity prices, and Fed hikes

Rampell 3/14 – Catherine Rampell, economics writer for the Washington Post, “The outlook for the U.S. economy has darkened,” 3/14/22, https://www.washingtonpost.com/opinions/2022/03/14/inflation-recession-risk-about-to-get-much-worse/

The outlook for the U.S. economy has darkened.

Just as it seemed as though the global economy and its tangled supply chains could be getting back to normal, three factors might supercharge inflation and/or raise the risk of recession.

The first of the three developed in just the past few days: a new covid wave in China that has already led to major lockdowns and will further stress the world’s struggling supply chains. If you haven’t heard much about this yet, you probably will soon.

Daily covid cases in China have reached numbers not publicly reported since 2020. Thanks partly to low vaccination rates for the elderly in China, plus the relative ineffectiveness of Chinese-made coronavirus vaccines, the Chinese government has responded to outbreaks with an iron fist. Under its so-called “zero covid” policy, several areas have been locked down in recent days, with nonessential workers mostly barred from leaving their homes in the major manufacturing hubs of Shenzhen (a city of 17.5 million people) and Changchun (9 million).

Transportation to Shanghai, the country’s largest city (25 million), has been severely restricted, raising fears of a possible lockdown there, too.

These measures have forced factories, including plants affiliated with Apple, Toyota and Volkswagen, to suspend operations. The backlog of container ships waiting off Qingdao, one of the country’s biggest ports, has also swelled, with nearly twice as many ships queued up Monday as at the end of February. These bottlenecks are expected to drive container freight prices (even) higher.

All of this will be bad for already elevated inflation, in both the United States and the rest of the world. The only possible economic upside is that factory shutdowns will likely reduce global demand for oil.

This might be helpful in light of Shock No. 2: the disruptions in commodity markets, including oil, resulting from Russia’s unprovoked invasion of Ukraine.

This issue has obviously generated more coverage. Oil and natural gas prices have climbed in recent weeks as governments and individual corporations have placed new restrictions on transactions with Russia. Oil prices have fallen back a little in the past few days but remain high.

Equally worrisome are rising prices for other commodities produced in that part of the world. Russia and Ukraine together supply nearly a third of global wheat exports, with the Ukraine planting season usually occurring in mid-March (i.e., now). Even before the war, global stocks of wheat were low, and prices high, thanks to unfavorable growing weather over the past two years. In the wake of Russia’s invasion, wheat prices have skyrocketed, threatening to boost food inflation more broadly. The risk of widespread hunger and economic hardship is especially high in lower-income countries that are most reliant on Europe’s breadbasket.

Finally, there’s the third risk: tightening financial conditions, thanks to the Federal Reserve.

The Fed is widely expected to raise interest rates at its meeting this week. Given that U.S. inflation is already at a 40-year high, this is hardly surprising. In a different era, few would have predicted that interest rates could be at zero when inflation hit nearly 8 percent (as happened in February). With hindsight, even Fed officials would probably agree that they should have begun tightening months ago.

Fed officials had delayed taking these measures earlier because they feared doing so would derail the post-pandemic recovery. Most previous Fed efforts to tamp down inflation by making it harder to borrow ended with the Fed plunging the U.S. economy into recession, after all.

Central bankers have been hoping to avoid that outcome this time, particularly because there are still 2 million fewer jobs today than existed before the pandemic. And for a long time, most economic forecasters believed inflationary pressures would largely abate on their own as supply chains normalized. That clearly hasn’t happened.

Engineering a “soft landing” for this hot economy was always going to be difficult. But it got more difficult in light of recent global events, because the Fed is being pulled in conflicting directions. Chinese supply chain problems and Russia/Ukraine commodity market disruptions are widely expected to push overall inflation even higher, which would normally nudge the Fed to raise interest rates faster. But those same forces are also expected to drag down economic growth, which usually suggests the Fed should raise rates more slowly.

It’s not obvious what path the Fed should or even could take to get inflation under control without tipping us into recession. Frankly, even without aggressive rate hikes, recession risks are piling up.

### 2AC – UQ – Innovation

#### Dynamic innovation low – declining competition means its focused on lobbying or minor efficiency improvements.

Frey ’21 [Carl; 2/24/21; Oxford Martin Citi Fellow @ Oxford University, PhD @ Max Planck Institute for Innovation and Competition, Senior Fellow of the Department of Economic History @ Lund University, Fellow @ Royal Society for the Encouragement of Arts, Manufactures and Commerce; “How behemoth companies quash innovation”; https://www.technologyreview.com/2021/02/24/1018126/apple-facebook-google-silicon-valley-innovation/; AS]

The coronavirus has shattered many people’s lives, but most of us held on to one bit of optimism from the outset: the belief that we’d eventually invent a vaccine, that we would find a way to move beyond the pandemic. But it’s important to remember that, just like the vaccine, the belief in constant progress itself had to be invented. We can’t just presume it will continue.

Progress these days hinges on the interaction between larger incumbent companies and nimbler startups. The big, established companies focus more on improving efficiency and protecting their positions, while the smaller, fast-moving startups are more likely to provide the breakthrough inventions.

The problem is that over the past few decades the larger companies have, with the help of regulators, gotten better at edging out startups. The pandemic has in some ways worsened this trend. It is even harder for many cash-strapped young firms to survive. And that doesn’t portend well for innovation.

One recent study from researchers at the University of Chicago and Northwestern University shows that breakthrough inventions are more likely to come from individual inventors or smaller teams. Corporations excel at bringing about incremental improvements, like those that make the production process more efficient. But major leaps in technology tend to come from newer, smaller firms. You can make a better horse carriage, but eventually it takes a radical innovation to make a motorcar—otherwise progress stalls.

Covid-19 has caused more churn of companies entering and exiting the marketplace than any other event since World War II, but we can’t read that to mean we’ll see a faster rate of technological progress. Instead, we’ve seen the opposite: restrictions on immigration, plummeting travel, and the isolation of knowledge workers in home offices have made the kinds of interactions that drive innovation less likely to happen.

A bias toward profit

Besides this, there’s evidence that venture capitalists have devoted more of their energies to guiding companies already in their portfolios through the pandemic, rather than looking outward for new investments. As a result, the prime beneficiaries from the pandemic have been incumbents with deep pockets. Giants like Apple, Alphabet, Amazon, Facebook, and Microsoft collectively hold more than $570 billion in gross cash.

As covid-19 solidifies the market position of behemoths, it also increases their political clout, which tends to stifle the kind of dynamic environment in which nimble startups take risks and create bold new innovations.

The British historian Eric Hobsbawm once wrote, “It is often assumed that an economy of private enterprise has an automatic bias towards innovation, but this is not so. It has a bias only towards profit.” He was right.

In the early stages of a product’s life cycle, a company will focus on innovation. But once a prototype has been established, that company’s efforts shift toward incremental improvements in production to cut costs. At a certain point a company finds that it’s more cost-efficient to focus on political lobbying to protect itself from competition than to spend money on innovating. And that’s ultimately terrible for the state of progress: research from the National Bureau of Economic Research shows that companies with more political connections tend to be less innovative and apply for fewer patents.

The economy had been trending in this direction since before the pandemic. The French economist Thomas Philippon has documented how business dynamism has declined dramatically in the US since the 2000s, while business spending on lobbying has skyrocketed. In a separate study, Philippon and Germán Gutiérrez show that recent regulations “have a negative impact on small firms, especially in industries with high lobbying expenditures.” In other words, powerful firms encourage regulations that hinder the competition and boost their own profits. This is a path toward stagnation, not progress.

Covid makes it worse

One way of halting this economic equivalent of atherosclerosis is to encourage more free trade and global competition. But thanks in part to covid-19, we’re moving in the opposite direction. As the pandemic took off in the first 10 months of 2020, G20 members undertook 1,371 policy interventions, of which 1,067 harmed trading partners, according to a recent report by the Centre for Economic Policy Research.

The solutions might have less to do with restraining the billionaires and more with reining in the corporate behemoths.

Should we worry that we’re slowing the speed of progress? Absolutely. To take the most immediate example, without progress we would have no vaccines—nor would we be capable of mass-producing them. What’s more, innovation is a prerequisite for sustained growth, and an economy that isn’t growing becomes a zero-sum game. When growth is static and resources are limited, that leads to greater competition for those resources, which helps explain why violence was more pervasive before modern growth began, as Steven Pinker has shown.

Much has been written about the political power of the top 1% in the US, but the vast majority of campaign contributions come from business lobbying groups rather than wealthy individuals. If innovation has been stifled and people somehow sense that democracy is rigged, the solutions might have less to do with restraining the billionaires and more with reining in the corporate behemoths.

## If Relevant

### 1AC – Prices

**The three largest asset management companies are the lead investor in 90% of firms in the stock market. Common ownership by institutional investors stifles incentives for firms in the same sector to compete.**

Torshizi ’21 [Mohammad; Assistant Professor in Faculty of Agricultural, Life and Environmental Science @ University of Alberta, PhD in Agricultural Economics @ University of Saskatchewan; and Jennifer Clapp;Professor and Canada Research Chair in Global Food Security and Sustainability @ University of Waterloo; “Price Effects of Common Ownership in the Seed Sector,” *The Antitrust Bulletin*, 66(1), p. 39-67; AS]

Common Ownership

The rise in common ownership of large corporations within the same sector is in large part a consequence of an enormous increase in institutional investment in equity shares in publicly traded firms. Much of this increased institutional investment is associated with the rise of equity-based index funds—both mutual funds and exchange traded funds—that are dominated by large asset management companies, such as BlackRock, Vanguard, State Street, Capital Group, and Fidelity.13 These firms have grown to be truly giant in size in recent years due to the high demand for the index fund investment products that they have on offer to investors, including both institutional and retail investors. Common ownership patterns intensified after the 2008 financial crisis when institutional investors started to diversify their investments after mortgage-backed securities lost their attractiveness.14 The amount of capital invested in index funds rose from US$2 trillion in 200815 to US$8.3 trillion by the end of 2015, which represented approximately one third of the US$24.6 trillion managed by asset management firms at that time.16 By late 2019, the amount invested in index funds climbed further to reach US$11.4 trillion.17

Index funds typically offer returns based on an index of a range of firms within a sector—often holding shares in all of the major firms in that market segment, including those that are normally competitors with one another. Retail and other institutional investors that own shares in these index funds do not own shares in the firms that comprise the index. Rather, the asset management companies that offer index fund products to other investors are the holders of the shares in those firms. As index investing ballooned over the past decade, large asset management firms have come to hold significant shares in most companies listed in the Standard and Poor’s 500 (S&P 500) stock market index. According to Fichtner et al.,18 the big three combined—BlackRock, Vanguard, and State Street—are the largest shareholder in 438 of the 500 most important companies in the United States. Together, these three large asset management companies can hold anywhere from 10% to 35% of the largest firms on the stock market. According to the Organization for Economic Cooperation and Development (OECD), by 2015 “the mean ownership of 1,662 listed U.S. corporations by the Big Three [BlackRock, Vanguard and State Street] was over 17.6 percent.”19

Although the institutional owners, even collectively, typically do not hold a majority share in the firms in which they invest, there is growing concern in the literature regarding the broader impact of these new patterns of common ownership. Some scholars have stressed the potential for common ownership to result in anticompetitive behavior on the part of the firms in which institutional investors collectively own significant shares.20 In particular, firms with common shareholders have an incentive to maximize not their own firms’ profits but instead to maximize the portfolio value of their largest shareholders, which includes firms that are normally their competitors. In other words, there is little incentive for managers of commonly held firms to compete with their rivals.21 As Schmalz22 provocatively asks: “ ... if firms have no incentives to compete, why would they?”

The prospect of weak incentives for competition among firms within sectors characterized by common ownership has led to questions about the potential impact of common ownership within the economy. In the broader economic literature, a lack of competition can result in effects such as higher prices, collusion among firms (to fix prices or to erect barriers to entry), weakened incentives for investment, and a tendency toward greater market concentration through mergers and acquisitions (M&As).23 Each of these concerns has also been raised with respect to the rise of common ownership.24 Further, some scholars have pointed to broader macroeconomic trends that might arise from anticompetitive practices among firms, such as growing inequality.25 Azar et al. and Ant´on et al.26 warn that common ownership patterns can encourage these types of outcomes, even if firms are not explicitly colluding with one another and even if they are not explicitly pushed to do so by their largest shareholders. In other words, these outcomes may result simply from the fact that firm managers are acting in the interests of their largest shareholders under their own direction. Additionally, Azar et al. and Ant´on et al.27 claim that the so-called passive mutual funds or “lazy investors” could create a suboptimal equilibrium outcome by doing nothing (i.e., not pushing the firm managers to follow competitive strategies).

Empirical studies investigating whether such outcomes are occurring in practice are still in their early days and have sparked much debate among scholars studying common ownership impacts. One of the first studies to examine this relationship focused on the airline industry in the United States.28 This work found an increase in effective levels of market concentration as a result of common ownership, resulting in airline prices that were 3%–7% higher than would have been the case in the absence of common ownership. In a study focused on common ownership in the banking sector,29 researchers also found elevated effective levels of market concentration that resulted in higher banking fees, signaling a weakening of incentives to compete.

More recent studies include an investigation of the impact of common ownership on barriers to entry in the pharmaceutical sector.30 This work found that a one standard deviation (SD) increase in common ownership resulted in decreased probability of entry into the market by generic drug firms by 9%–13%. Another study found that firms commonly owned by large institutional investors were more likely to experience a merger or acquisition event.31 And in yet another study, researchers found that voluntary disclosure among firms is greater when there are higher levels of common ownership, suggesting weakened competition, which lowers the cost of disclosure and improves coordination among firms.32 Further, Guit´errez and Philippon33 found that commonly owned and concentrated industries invest less, which could weaken innovation.

**Best and most recent studies confirm – horizontal shareholding increases prices and suppresses competition.**

**Elhauge ’20** [Einer; Professor of Law @ Harvard; “How Horizontal Shareholding Harms Our Economy - And Why Antitrust Law Can Fix It,” *Harvard Business Law Review*, 10(2), p. 207-286; AS]

INTRODUCTION

When the leading shareholders of horizontal competitors overlap, horizontal shareholding exists.' Based on economic theory and empirical studies of airline and banking markets, many scholars have argued that high levels of horizontal shareholding in concentrated product markets can have anticompetitive effects that should be redressed by antitrust law. 2 Others have been skeptical of these claims, based largely on critiques of the airline and banking studies, as well as on arguments that existing antitrust law cannot tackle horizontal shareholding.' I show that new proofs and empirical analysis strongly support the view that horizontal shareholding can have anticompetitive effects and that new legal analysis establishes that antitrust law can tackle those anticompetitive effects.

As I show in Part I, new proofs and empirical evidence, ranging far beyond the original airline and banking studies, have confirmed that high levels of horizontal shareholding in concentrated product markets can have anticompetitive effects, even when each individual horizontal shareholder has a minority stake. One new economic proof establishes that, if corporate managers maximize either their expected vote share or re-election odds, they will maximize a weighted average of their shareholders' profits from all their stockholdings and thus will lessen competition the more that those shareholdings are horizontal, even if each horizontal shareholder has a minority stake. Another new economic proof shows that with horizontal shareholding, corporations maximize their shareholders' interests by making executive compensation less sensitive to their own firm's performance because that reduces competition between firms in a way that increases shareholder profits. Neither new proof requires any communication or coordination between different shareholders, between different firms, or between shareholders and managers. Thus, any absence of such communication or coordination does not indicate the absence of anticompetitive effects.

These new economic proofs have been confirmed by two new crossindustry empirical studies, three new market-level studies, a massive crossmarket study of hundreds of consumer goods, a study of common owners by venture capitalists, and a study of entry into the S&P 500. One crossindustry study shows that increased horizontal shareholding does make executive compensation less sensitive to their own firm's performance, just as the economic proof predicts. The other new cross-industry study shows not only that the recent historically large gap between corporate investment and profits is mainly driven by horizontal shareholding levels in concentrated markets, but also that within any industry, the investment-profit gap is mainly driven by those firms with high horizontal shareholding levels. The three new market-level studies find that horizontal shareholding increases seed prices and both reduces and delays competitive entry into pharmaceutical markets. The cross-market study of hundreds of consumer goods not only found that higher levels of horizontal shareholding raised prices, but also found that the price effect was higher on products catering to lower-income households, thus exacerbating the negative effect on economic inequality. The venture capitalist study finds that horizontal ownership by venture capitalists makes startups less likely to compete with each other. The study of entry into the S&P 500 shows that when such entry increases horizontal shareholding, it increases the stock market price of both the entrant and its product market rivals, just as the anticompetitive theory of horizontal shareholding would predict.

I further provide new analysis rebutting various critiques of the earlier studies of airline and banking markets. Some of these critiques are valid, but addressing them actually increases the estimated adverse effects. For example, some critiques stress the valid concern that these studies use a measure of horizontal shareholding levels (MHHI or GHIH) that turns on ownership levels and market shares, which might themselves be endogenously affected by price. However, both theory and evidence indicate that endogeneity issues mean that the airline and banking studies, if anything, understate the anticompetitive effects. That conclusion is confirmed by the fact that if one eliminates endogeneity issues by using an exogenous change that affected horizontal shareholding levels, the airline and banking studies show greater adverse effects. (Further, all the other studies mentioned in the preceding paragraph found anticompetitive effects even though they used different measures of horizontal shareholding levels that were not subject to these endogeneity concerns.) Other critiques pointed out that the airline study incorrectly defined markets as routes rather than city pairs, lacked an interaction variable for fuel costs, and assumed shareholders did not lose any rights in bankruptcy, but when one corrects each of those issues, it increases the estimated adverse price effects.

Other critiques of the airline and banking studies rely on methodologies that are biased against finding adverse effects. Some critiques try to address the endogeneity concern by using a proxy for shareholding levels that is negatively correlated with actual horizontal shareholding levels. Other critiques use proxies for market shares whose inaccuracies are biased toward finding a negative price effect. They both find that higher horizontal share holding reduces prices, but that just reflects their use of negatively biased proxies. If one instead proxies market shares more neutrally by assuming each firm has a share equal to 1/N, where N is the number of firms in the market, the airline and banking studies continue to show adverse price effects, albeit lower effects given the attenuation bias that results from not using real market shares. One critique even assumes longer airline routes have lower costs, which conflicts with the physical reality that it takes more fuel to fly a longer distance.

Others critique the MHHI measure of horizontal shareholding because it assumes that shareholder influence turns on relative shareholdings, aggregates shareholdings at the fund family level, or fails to assume that the financial incentives of institutional investors equal only 1% of owned stock value. These critiques are mistaken on theoretical grounds, but more generally miss the point that whether MHHI levels affect prices is a hypothesis that the studies empirically tested and validated. To the extent that alternative measures fail to predict price effects as well as MHHI levels do, it suggests that those alternative measure are failing to include an important feature of horizontal shareholding that MHHI picks up. In any event, even if one uses a measure of horizontal shareholding that does not assume relative influence or aggregate shareholding, the studies continue to show adverse price effects.

Finally, several critiques find that the effects of horizontal shareholding are weaker in less concentrated markets or become weak, mixed, or statistically insignificant if one tries to measure the effect of horizontal shareholding across all markets, concentrated and unconcentrated. However, the same is true of horizontal mergers, since standard antitrust economics finds that they can create anticompetitive effects only in concentrated markets. No one would think that the proposition that horizontal mergers can cause anticompetitive effects would be disproven if those effects were weaker in less concentrated markets or if the effects of all horizontal mergers (including those in unconcentrated markets) were weak, mixed, or statistically insignificant. Horizontal shareholdings cannot create anticompetitive effects when even horizontal mergers could not, so it is not surprising that the same propositions apply to horizontal shareholding.

Nor are the findings of anticompetitive effects undercut by two recent cross-industry studies that purport to show that horizontal shareholding has no robust effect on profits or investments. Both of these studies define markets using industry definitions that are vastly larger than actual markets, creating a mismeasurement bias toward finding no effect because it means they are systematically understating levels of horizontal shareholding and market concentration. Both also make various other choices that bias their regressions toward finding no effect. Moreover, both focus on testing whether any increase in horizontal shareholding has anticompetitive effects, when the relevant anticompetitive theory is actually that large increases in horizontal shareholding in concentrated markets have anticompetitive effects. Remarkably, despite all these problems, both of these studies actually do confirm anticompetitive effects from horizontal shareholding in some of their regressions, but they dismiss those findings on erroneous grounds.

#### The mere existence of common ownership elevates corporate profit margins at the expense of output and growth. An antitrust remedy is critical.

Azar ’18 [José et al; School of Economics and Business @ University of Navarra; Martin Schmalz; Professor of Finance @ Oxford; and Isabel Tecu; PhD in Economics @ Brown University; “Anticompetitive Effects of Common Ownership,” *The Journal of Finance*, 73(4), p. 1513-1565; AS]

To see why doing nothing is sufficient for common ownership to lead to higher prices, assume that increasing market share requires managerial effort, which is privately costly. For instance, entering new markets and attracting new customers may require successful R&D, extensive market research, unpleasant price wars with incumbents, and effort at a personal cost. If “lazy investors” do not insist on the implementation of expansion strategies, managers can enjoy the “quiet life” that comes with choosing suboptimal quantities (Hicks (1935)).17 If a match between lazy principals and lazy agents becomes pervasive in an industry, then in a Cournot model context, industry output declines and margins increase (see Ant´on, Ederer, Gin´e, and Schmalz (2017)). Diversified shareholders have little incentive to intervene and change such an equilibrium. One should therefore not expect large diversified mutual fund families to actively push for more aggressive product market behavior between portfolio firms, given that doing so would not only be costly, but also go against incentives to maximize the value of the family’s total portfolio. Also, we are not aware of any evidence to that effect.

By contrast, it is well documented that campaigns by activist investors, which typically concentrate their capital in one target firm per industry, lead to increases in target market share at the expense of its rivals (e.g., Aslan and Kumar (2016)). When industry competitors are owned by concentrated activists that push their targets to compete aggressively, a more competitive outcome obtains.

The past three decades have witnessed a shift from the low-common-ownership equilibrium to the high-common-ownership equilibrium, with diversified institutions increasingly crowding out concentrated owners as firms’ most powerful shareholders. One should thus expect a decrease in the extent of competition, even when diversified owners do nothing to actively reduce the competitiveness of their portfolio firms’ product markets. This may be one reason why antitrust law explicitly recognizes that a “passive” change of incentives is sufficient to implement anticompetitive outcomes (Elhauge (2015)).

In sum, large diversified mutual fund families doing nothing, that is, not pushing portfolio firms to compete aggressively against each other, can implement the outcomes we document. Active engagement in corporate governance on behalf of common owners merely exacerbates the problem.