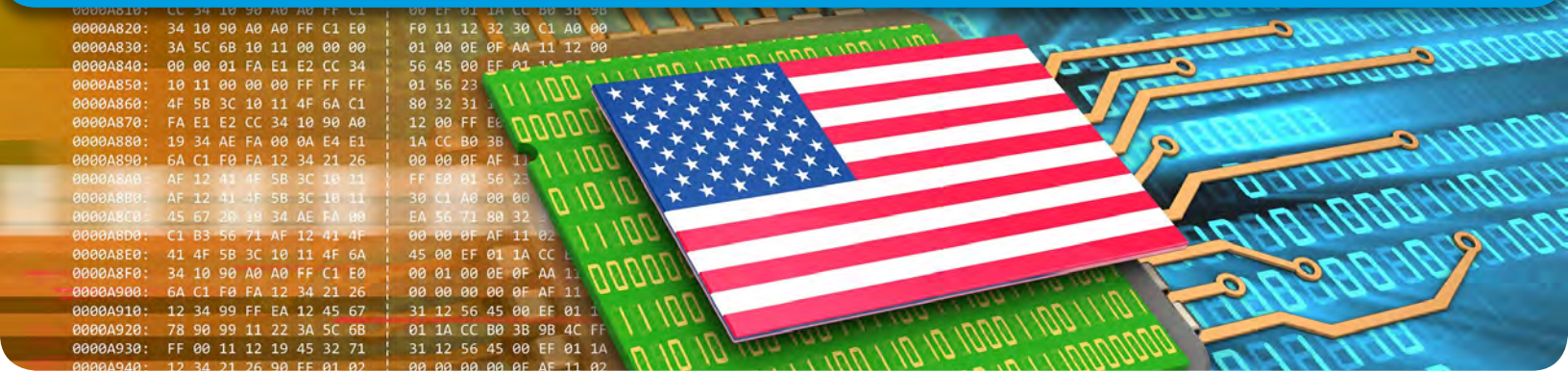


# WHEN ANTITRUST BECOMES PRO-TRUST: THE DIGITAL DEFORMATION OF U.S. COMPETITION POLICY



BY FRANK PASQUALE<sup>1</sup>



## I. INTRODUCTION

There is a delicate balance between consolidation and competition in any industry. In theory, mergers and acquisitions can allow firms to achieve economies of scale and scope.<sup>2</sup> However, when concentration reaches a certain level, two distinct anti-competitive effects can emerge. First, within an industry, firms may feel pressure to grow simply to keep up with rivals. (When, for instance, the top two firms in an industry merge, the third largest one may quickly search out possible acquisition targets to keep up.) Second, the largest firm or firms in a very concentrated sector may use their pricing power to earn profits that allow them to expand outside the sector and take over firms in adjacent sectors.

In digital industries in particular — such as search engines and social networks — U.S. merger review has been lax. Authorities wave through acquisition after acquisition, assuming that the organization of online life by a small group of behemoth firms is part of the natural order of the digital economy. The less serious among them continue to insist that, at any moment, a few kids in a garage could whip up an innovation capable of toppling firms with hundreds of thousands of servers, tens of thousands of employees, gargantuan patent portfolios and self-reinforcing advantages in data collection based on years of intimate profiling of persons and IP addresses. Others soberly acknowledge that the centripetal accumulation of data, money and power at massive technology firms is likely to be indefinite, but say that precedent keeps them from doing more to address unilateral action.<sup>3</sup>

Years ago, U.S. authorities were at least trying to think through what a constructive response to powerful technology platforms might look like. The Department of Justice (“DoJ”) required Google to license ITA’s software on non-discriminatory terms, and the Federal Trade Commission (“FTC”) forced Google’s CEO off Apple’s Board, and eventually investigated its core business. However, the FTC suddenly closed its investigation at the beginning of 2013.<sup>4</sup> Since then it has taken a curious turn toward trying to help Google and other

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<sup>1</sup> Professor of Law, Francis King Carey School of Law, University of Maryland.

<sup>2</sup> This theory of mergers has been largely debunked empirically. John Kwoka, *Mergers, Merger Control, and Remedies: A Retrospective Analysis of U.S. Policy* (MIT Press, 2014).

<sup>3</sup> Scholars have contested this inertial quiescence. See, e.g. Sandeep Vaheesan, *A Comprehensive Charter of Economic Liberty*, 19 U. Pa. J. Bus. L. 445, 451 (2017), draft available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2830702](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2830702) (demonstrating that the FTC has latitude to interpret the relevant statutes to enable a more realistic approach to digital firms’ market power).

<sup>4</sup> Frank Pasquale, *Paradoxes of Digital Antitrust: Why the FTC Failed to Explain Its Inaction on Search Bias* (Harvard Journal of Law & Technology Occasional Paper Series, July 2013), [http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2437&context=fac\\_pubs](http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2437&context=fac_pubs).

massive digital platforms to consolidate market power, rather than policing them. For example, the agency has deployed extraordinary resources in the *1-800-Contacts* litigation, casting Google as a heroic promoter of consumers' interests as it drops the hammer on a firm that tried to avoid bidding wars on search terms.<sup>5</sup> The FTC has had far less interest in complaints that Google itself was harming consumers with its selection and arrangement of content.<sup>6</sup> It has also vigorously policed municipalities which try to regulate Uber, while devoting little effort to stopping Uber's own anti-competitive, privacy-violating practices.<sup>7</sup>

Nor has the DoJ's intervention in the Apple e-books case stood the test of time, given how studiously the DoJ has ignored evidence of Amazon's own anti-competitive acts.<sup>8</sup> Rather than shaping antitrust law to accommodate the publishers' efforts to mollify the effects of Amazon's increasingly monopolistic power over book sales, the DoJ stuck with a formalistic approach, smothering an alternative in the cradle as a *per se* violation of competition law.<sup>9</sup> This speedy action was also an odd fit with the usual caution among antitrust enforcers in technology fields, where lethargy is their *métier*.

Massive digital platforms have thus exacerbated an old problem in American antitrust law — the tension between the efficiencies that mergers achieve in theory, and the pressure they inevitably create for firms in, or adjacent to, the industry of the merged firms, to themselves combine in order to better compete. But U.S. antitrust authorities have, by and large, refused to address this dynamic. They have instead clung to three myths to rationalize market power online:

- 1) **The Myth of Easy Platform Switching:** Consumers can and will easily shift from Google to Yahoo, or from Amazon to Barnes & Noble, or from Uber to Lyft.
- 2) **The Myth of the Heroic Consumer:** Consumers will be constantly vigilant against exploitative practices by digital platforms. They compare prices and quality constantly, multihoming to maximize their chances of finding the best deals.
- 3) **The Myth of Platforms Perfecting Markets:** Platforms must be given free rein to sell goods and services with as little resistance from sellers or laborers as possible. A two-sided or multi-sided market will continually drive down the prices that sellers are willing to accept, and the prices consumers must pay, while maintaining or improving quality.

5 Eric Goldman, *FTC Explains Why It Thinks 1-800 Contacts' Keyword Ad Settlements Were Anti-Competitive*—FTC v. 1-800 Contacts, Tech. & Marketing L. Blog (Apr. 18, 2017), <http://blog.ericgoldman.org/archives/2017/04/ftc-explains-why-it-thinks-1-800-contacts-keyword-ad-settlements-were-anti-competitive-ftc-v-1-800-contacts.html>. Perhaps the FTC would be happier if 1-800-Contacts bought its competitors — then no collusion would be occurring. Or, if it blocked that merger and left the firm to be preyed on by online intermediaries, perhaps the FTC sees the logical and appropriate conclusion of search dominance to be gradual purchase of firms like 1-800 Contacts by firms like Google, which has the resources to conglomeratize Alphabet further by adding, say, a contact lens division. See, e.g. Brian Otis and Babak Parviz, *Introducing our smart contact lens project*, Google Blog, Jan. 16, 2014, at <https://googleblog.blogspot.com/2014/01/introducing-our-smart-contact-lens.html>. Note, too, that I am not taking a position here on the FTC's legal position in *1-800 Contacts* — I just want to observe that the decision to devote limited enforcement resources here, rather than to policing dominant technology firms, speaks volumes about the FTC's crabbed and formalistic vision of its role in consumer protection and competition promotion.

6 Where Google fails to comply with the law, the FTC appears to favor weak and vague guidances, rather than litigation. See, e.g. Danny Sullivan, *FTC Updates Search Engine Ad Disclosure Guidelines After "Decline In Compliance,"* Search Engine Land, June 25, 2013, at <http://searchengineland.com/ftc-search-engine-disclosure-164722> (reporting that the associate director for advertising practices at the FTC "stressed that none of the FTC's guidance is meant to be absolutely specific. The guidance is offered as general recommendations.").

7 Compare Paul Merion, *FTC Warns Chicago: Don't Let Ride-Sharing Regs Hurt Competition*, Crain's (Apr. 21, 2014), <http://www.chicagobusiness.com/article/20140421/NEWS02/140429966/ftc-warns-chicago-dont-let-ride-sharing-regs-hurt-competition>, with Mike Isaac, *Uber's CEO Plays with Fire*, N.Y. Times (Apr. 23, 2017), <https://www.nytimes.com/2017/04/23/technology/travis-kalanick-pushes-uber-and-himself-to-the-precipice.html?mtrref=t.co&gwh=8425469DD3CEBE3A71807E8266DD5B0A&gwt=pay>. Note that the FTC's settlement with Uber (for misleading advertising to potential drivers) was so small in comparison with the company's resources that it is unlikely to have much of a deterrent effect. Press Release, FTC, *Uber Agrees to Pay \$20 Million to Settle FTC Charges that It Recruited Prospective Drivers with Exaggerated Earnings Claims* (Jan. 19, 2017), <https://www.ftc.gov/news-events/press-releases/2017/01/uber-agrees-pay-20-million-settle-ftc-charges-it-recruited>.

8 Maurice E. Stucke & Ariel Ezrachi, *The E-Scraper and E-Monopsony*, OXFORD BUS. L. BLOG (APR. 10, 2017), <https://www.law.ox.ac.uk/business-law-blog/blog/2017/04/e-scraper-and-e-monopsony>; LINA KHAN, *AMAZON'S ANTITRUST PARADOX*, 126 YALE L.J. 710 (2017); *MODERN MONOPOLISTS ARE REDEFINING COMPETITION*, FINANCIAL TIMES (APR. 21, 2017), <https://www.ft.com/content/b7214b26-2660-11e7-a34a-538b4cb30025> (noting how rational it is for platform monopolists to pursue predatory pricing).

9 They also ignored scholarly work demonstrating that a credible threat of predation from Amazon is likely to deter funding for online retail ventures. See Sandeep Vaheesan, *Reconsidering Brooke Group: Predatory Pricing in Light of the Empirical Learning*, 12 BERKELEY BUS. L.J. 81 (2015).

It is critical to debunk these three myths now, before they deform competition law beyond recognition.

## II. THE MYTH OF EASY PLATFORM SWITCHING

To many antitrust enforcers, search engines like Yahoo, Google and Bing all look roughly similar. If users or advertisers do not like something Google does, they can simply switch to another search engine. Social networking appears to be a highly unstable market, where Facebook's dominance could be lost in an instant once Snapchat or Instagram (at least until it was bought by Facebook) attract a critical mass of users. Amazon, too, is just one click away from being "disrupted" by a sufficiently tech-savvy WalMart.com, or some disruptive e-commerce site coded by a college drop-out in a garage. But each of these examples belies the complexity of online innovation.<sup>10</sup>

Consider, first, the example of Google search. The search engine is increasingly integrated into a wide array of services, ranging from YouTube to maps to calendaring. Signed-in users may accumulate a years-long history of thousands of searches. Their behavior in response to each search engine results page helps train machine learning algorithms to further personalize and improve results.<sup>11</sup> Even for those who are not signed in, a history of searches from an IP address may also advance personalization. Transferring such histories to train other search engines to personalize results is not an easy process — indeed, it is well-nigh impossible for typical users. So the switch from Google to another search engine is by no means costless.<sup>12</sup>

For social networks, lock-in should be even more obvious. A user fed up with Facebook's privacy violations, balky newsfeed and intrusive tracking may decide that he does not want to use Facebook any longer. But breaking up is hard to do. He may have to download and re-upload his pictures to Path, Line, MySpace or some other social network. Comments and other communications may be lost. If he has used Facebook's OAuth capability on many third-party services, he may have to go through a laborious process of re-authenticating his identity on each of them.<sup>13</sup>

Even if he completes all these tasks, good luck to him if he tries to persuade a critical mass of friends to follow him to his new online home. Coordination problems are nearly insurmountable. Antitrust enforcers miss these dynamics when they permit Facebook to acquire a firm like Instagram on the logic that Photobucket, Flickr or Imageshack are alternative photo sharing sites. Users want to post to their networks — and they are not all that interested in multi-site posting services (assuming such services would even be able to interoperate with dominant platforms). And finally, even if he does manage to break the Facebook habit, that will not stop the company from tracking him across a large number of websites.

Note, too, that most users are unlikely even to be able to detect ways in which search engines or social networks betray their interests. Few have the time or interest to monitor the constant creep of privacy policies toward uncompensated, unconsented data grabs. Very few, if any, users are likely to search again for a desired object on another search engine once they have an acceptable result from Google. And what might happen if a user decided to demand better or different terms of service from Google or Facebook, by, say, sending a counter-offer that detailed the user's willingness to pay for certain privacy protections, or for a certain structure for his or her search results or newsfeed? If such an offer actually reached a person at such a company, it would likely be laughed at and ignored. More likely, it would simply be routed to some computational dead-end, provoking little more than an automated response. Thus our relationships with such firms are not even contractual in nature. Rather, they govern zones of our conduct with a power and absoluteness that many government agencies would envy.

Finally, with respect to Amazon, whatever hopeful vision of competition may be conjured by antitrust scholars, the brutal realities of high-volume, low-margin digital retailing are likely to kneecap would-be competitors for years or decades to come. However brilliant

10 Frank Pasquale, *Internet Nondiscrimination Principles: Commercial Ethics for Carriers and Search Engines*, 2008 U. Chi. Legal F. 263. Moreover, those who favor network neutrality should realize that platforms have the same troubling incentives (including exclusion, rent-seeking and marginalization) toward downstream third-party innovation as ISPs do. Recent arbitrary decisions about eligibility for monetization at YouTube dramatize that concern. JONATHAN TAPLIN, *MOVE FAST AND BREAK THINGS: HOW FACEBOOK, GOOGLE, AND AMAZON CORNERED CULTURE AND UNDERMINED DEMOCRACY* (2017).

11 Frank Pasquale, *Privacy, Antitrust, and Power*, 20 Geo. Mason L. Rev. 1009 (2013); Ian Leslie, *The Scientists who make Apps Addictive*, *Economist* (1843 Magazine), at <https://www.1843magazine.com/features/the-scientists-who-make-apps-addictive> (describing how big data-driven personalization is an increasingly essential part of compelling platforms).

12 See also Frank Pasquale, *Seven Reasons To Doubt Competition In The General Search Engine Market*, Madisonian Blog, at: <http://madisonian.net/2009/03/18/seven-reasons-to-doubt-competition-in-the-general-search-engine-market/> (March 18, 2009).

13 John Koetsier, *Facebook Just Took A Giant Leap To Becoming The Global Password Manager For Web And Apps*, *Forbes*, at <https://www.forbes.com/sites/johnkoetsier/2017/04/18/facebook-just-took-a-giant-leap-to-becoming-the-global-password-manager-for-web-and-apps/#69cb96e71f3c>.



a garage innovator may be, she cannot code tens of thousands of supplier arrangements, or the rich data banks that Amazon has accumulated for millions of customers. And why would customers desert Amazon's platform for another, less comprehensive online retailer? Perhaps venture capitalists will find the perfect rival someday, and invest millions of dollars in trying to get customers to switch. More likely, though, investors will continue to bet on Amazon's massive and growing dominance of this space.

### III. THE MYTH OF THE HEROIC CONSUMER

A few years ago, I discussed the competition law problems raised by Uber with a group of Washington, D.C. policy experts. Almost to a person, they could not see a problem caused by the company — even after I mentioned sharp practices against their smaller rival, Lyft.<sup>14</sup> The cognoscenti insisted that so many taxi apps were available (Lyft, Hailo and more) that whatever dominance Uber might build in a market was likely to be temporary. Charge too high a fare, or pay drivers too little, and another platform would swoop in and compete away the excess profits.

While a lovely just-so story about the nature of digital competition, this projection rests on a faulty foundation: model consumers zealously scanning online marketplaces for cheaper services. If consumers' main activity in life were looking for rides, of course they would spend a great deal of time searching out the best deals and experimenting with alternative apps. But we all have many things to do. Many times, when we are searching for a ride, we are pressed for time. It is simply not worth rolling the dice on an alternative service when such an effort could mean missing an appointment, first date, train, or flight. Moreover, there is a classic collective action problem: the possibility of saving, say, three dollars or so by shopping, is not worth the time for most individuals, even if such diligence would save millions of dollars once aggregated. Contrary to economists' assumptions, consumers in many markets have neither the time nor the interest in engaging in diligent comparison shopping. This mechanism that, in theory, drives inter-firm competition on price and other terms is weak or non-existent in many markets.

In many other industries, consumer groups can help individuals determine whether they are being cheated or not. However, digital platforms are notoriously secretive about their data and algorithms. As Christian Sandvig has observed, even academic research on such platforms may, in certain instances, be deemed a criminal act, given unpredictable interactions between terms of service and the CFAA. This secrecy has led competition law researchers Ariel Ezrachi and Maurice Stucke to suggest that our life online is something of a digital *Truman Show*, where we can have little if any chance of truly understanding how our choices are structured and manipulated by opaque AI methods.<sup>15</sup>

Antitrust authorities should also acknowledge that consumers are often using platforms as a source of information about other services, rather than as finished services themselves. As Mark Patterson observes in his *Antitrust in the New Economy*, such information cannot be treated as an ordinary finished good or service in economic theory.<sup>16</sup> It is part of the basic inputs necessary to make a market work well. We would not allow a school to simply sell grades to the highest bidder. But we have little sense of exactly what commercial relationships are influencing online platforms' selection and arrangement of options in response to our search queries. Without that kind of knowledge, consumers cannot even manage the most basic supervision of megaplatforms, let alone the heroic level of scrutiny, experimentation and activism that would be necessary to make neoliberal theories of platform competition plausible.

### IV. THE MYTH OF PLATFORMS PERFECTING MARKETS

Too many antitrust enforcers presume that digital platforms constitute an optimal structure for markets. They seem to envision a utopic future where every provider of a good or service competes against all others on a digital exchange as fast-paced, standardized and information-packed as algorithmic stock trading platforms.<sup>17</sup> On this Hayekian view, the market is fundamentally an information processor,

<sup>14</sup> At the time, it was: Erica Fink, *Uber's Dirty Tricks Quantified: Rival Counts 5,560 Canceled Rides*, CNN Tech (Aug. 12, 2014), <http://money.cnn.com/2014/08/11/technology/uber-fake-ride-requests-lyft/>. Now, it is: Riley McDermid, *Uber Used "Hell" Software to Track Lyft and Lure Its Drivers*, San Fran. Bus. J. (Apr. 13, 2017), <http://www.bizjournals.com/sanfrancisco/news/2017/04/13/uber-track-lyft-drivers.html>. One has to wonder whether U.S. authorities might even frame such practices as pro-competitive, given their apparently unshakeable belief in platform monopolizers as consumer-welfare-maximizing phenomena.

<sup>15</sup> Ariel Ezrachi & Maurice E. Stucke, *Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy* (2016).

<sup>16</sup> Mark R. Patterson, *Antitrust in the New Economy: Google, Yelp, LIBOR, and the Control of Information* (2017).

<sup>17</sup> For a description of such platforms, see Frank Pasquale, *Law's Acceleration of Finance: Redefining the Problem of High-Frequency Trading*, 36 CARDOZO L. REV. 2085 (2015).

finding optimal matches between buyers and sellers. Platforms create reputations for sellers, and help buyers search for the optimal mix of price and quality.<sup>18</sup>

In fashionable neoliberal economic theory, the frictionless platform is lionized as a universal solvent for insurance and safety regulations and occupational licensure rules. Thus the FTC has aggressively warned cities not to harm “competition” by imposing certain rules on transport platforms like Uber. It has also “advised” states not to impose certain professional responsibility rules on platforms like LegalZoom. Behind these and similar actions lie a vision of universal, standardized, barely regulated competition for precarious work as a way of driving down wages. The agencies appear to be suspicious not merely of exclusionary actions by professional associations of the type at issue in *North Carolina Dental*, but of any self-governance or stability mechanisms in workplaces not explicitly protected pursuant to the NLRA.

By largely ignoring the anti-competitive and anti-consumer practices of major platforms, while focusing regulatory attention on the likes of ice skating coaches and church organists, the FTC has reinvented itself as an “Anti-Labor Department.”<sup>19</sup> The DOJ’s decision to police “heir location services” adds an even more plutocratic flair to antitrust enforcers’ repeated decisions to pour resources into scrutinizing workers’ belated and weak efforts to promote stable employment, rather than critically examining technology and finance firms’ massive influence structuring the commanding heights of the economy.<sup>20</sup>

The question raised by such initiatives is: why not impose platform labor conditions on the attorneys and economists at the FTC and DoJ themselves? If they truly believe in frictionless labor markets, they should devise plans to reverse auction their own positions on a yearly (or perhaps even monthly) basis, opening their jobs to competition by other workers, who might be willing to do the same work for less pay. Jared Kushner’s Office of American Innovation, designed to fundamentally redesign bureaucratic processes, would likely be interested in such a proposal. Perhaps he can revive Al Gore’s National Partnership for Reinventing Government to implement it.

Staff and management will surely protest that such disruption would require them to fundamentally change workflows, continually documenting their projects so that new workers could take them up. But under the same logic of platform promotion that the FTC and DoJ have been advocating, that would be a positive, not a negative, change. Fragmenting tasks into small chunks that can be standardized and repeated is a key tenet of Taylorist management practices and efficiency maximization. So if the FTC and DoJ want to continue to scrutinize professional associations and worker-protective legislation, they should first prioritize challenges to their own workers’ and managers’ security of position. Unless they are willing to come out against civil service protections for themselves, they appear little different than the dentists and other professional associations they have been attacking for decades.

## V. TWO BIPARTISANSHIPS IN ANTITRUST LAW

Of course, I make the suggestions in the last two paragraphs in jest — no reasonable person would want to see TaskRabbit take over the Office of Personnel Management and the Merit Systems Protection Board. But I raise the possibility because U.S. antitrust agencies’ continual solicitude to digital megaplatforms, and intense policing of labor cooperation, raise critical questions about the future of American competition policy. Indeed, they raise the question of whether the Antitrust Division and Bureau of Competition do more to help the economy than they do to harm it.

There are, at present, two forms of bipartisanship in U.S. competition policy circles. Neoliberal technocrats portray antitrust as, at bottom, a realm of economic models occasionally informed by econometric analysis. While a pluralistic technocracy would be open to input from many forms of social science and schools within economics, neoliberal technocrats in antitrust primarily rely on Chicago

18 For more on the digital economy as a problem of reputation and search, see FRANK PASQUALE, *THE BLACK BOX SOCIETY: THE SECRET ALGORITHMS THAT CONTROL MONEY AND INFORMATION* (2015).

19 Sandeep Vaheesan & Frank Pasquale, *The Politics of Professionalism*, ANN. REV. L. & SOC. SCI. (forthcoming 2017), draft available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2881732](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2881732).

20 Compare Press Release, U.S. Dep’t of Justice, First Charges Brought in Investigation of Collusion Among Heir Location Services Firms (Dec. 23, 2015), <https://www.justice.gov/opa/pr/first-charges-brought-in-investigation-collusion-among-heir-location-services-firms>, with Einer Elhauge, *Horizontal Shareholding*, 129 HARV. L. REV. 1267 (2016), which appears to have inspired almost no concrete action by the agencies (though Bill Baer did recognize the importance of Elhauge’s work in a March, 2016 meeting of the Senate Judiciary Committee’s Subcommittee on Antitrust, Competition Policy and Consumer Rights). See *Oversight of the Enforcement of the Antitrust Laws: Hearing Before the Subcomm. on Antitrust, Competition Policy and Consumer Rights of the S. Comm. on the Judiciary*, 114th Cong. (Mar. 9, 2016) (testimony of Bill Baer, Ass’t Att’y Gen., Dep’t of Justice Antitrust Div.), <https://www.judiciary.senate.gov/imo/media/doc/03-09-16%20Baer%20Testimony.pdf>.

School theory, occasionally tweaked to reflect insights from behavioral economics. They repeat that antitrust authorities must “protect competition, not competitors,” like a mantra. This perspective celebrates the growing power of platform monopolists, characterizing it as the natural return to merit. Perhaps hard-pressed to find something for antitrust authorities to do once megafirms’ power is no longer their concern, neoliberal technocrats naturally turn their attention to rearguard actions among laborers to stabilize their conditions of employment. They scrutinize any agreement among workers or professionals to set standards in their field as a potential distortion of market competition. This neoliberal technocrat perspective is so commonly shared among elites in Washington that few commentators expect serious changes in competition policy as Trump’s political appointees replace Obama’s.

However, another, more populist, bipartisanship is now emerging in discussions of corporate power.<sup>21</sup> It is an alliance of libertarian Republicans and Occupy Democrats who find the DoJ and FTC hopelessly out of touch with current economic realities. Populists sincerely wonder how we are to determine whether competition is real when there are no real competitors to provide it. They do not believe that \$1,000-an-hour expert witness economists are guardians of the public interest.<sup>22</sup> And if the FTC and DoJ continue to shirk their duties to police truly dominant firms, populists may well decide to defund them, and let states develop competition policy to fill a vacuum in leadership already apparent at the national level.

Neither of these forms of bipartisanship is appealing to me. But it is time for technocratic antitrust enforcers to realize that their manifest failure to address consolidation in digital industries, finance and beyond, invites a populist backlash. They need to address the work of thinkers like Adam Candeub, Ariel Ezrachi, Allen Grunes, Sally Hubbard, Lina Khan, Barry Lynn, Nathan S. Newman, John M. Newman, Mark Patterson, Matthew Stoller, Zephyr Teachout, Sandeep Vaheesan and Ramsi Woodcock, among others.<sup>23</sup> They need to police concentrations of capital as intensely as they monitor labor cooperation. And they need to do so quickly, lest their current biases congeal into patterns and practices that discredit their field.

21 This populism is a form of the “counternarrative” I describe in a recent piece on platforms. Frank Pasquale, *Two Narratives of Platform Capitalism*, 35 YALE L. & POL’Y REV. 309 (2016).

22 Jesse Eisinger & Justin Elliott, *These Professors Make More Than a Thousand Bucks an Hour Peddling Mega-Mergers*, PROPUBLICA (Nov. 16, 2016), <https://www.propublica.org/article/these-professors-make-more-than-thousand-bucks-hour-peddling-mega-mergers>.

23 See, e.g. BARRY C. LYNN, CORNERED: THE NEW MONOPOLY CAPITALISM AND THE ECONOMICS OF DESTRUCTION (2011); MAURICE STUCKE & ALLEN GRUNES, BIG DATA AND COMPETITION POLICY (2016); Sally Hubbard, *As EU Continues Scrutiny of US Tech Giants, Amazon is Increasingly Vulnerable in US to Antitrust Enforcement for Exclusionary Conduct in Books*, Capitol Forum, at <http://createsend.com/t/j-3B6A398601C6EAE5>; John M. Newman, *Antitrust in Zero-Price Markets: Applications*, 94 WASH. U. L. REV. 49 (2016); Nathan Newman, *Search, Antitrust, and the Economics of the Control of User Data*, 31 YALE J. ON REG. 401 (2014); Zephyr Teachout, *Corporate Rules and Political Rules: Antitrust as Campaign Finance Reform* (Fordham Law Legal Stud. Res. Paper No. 2384182, Jan. 2014), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2384182](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2384182); Ramsi Woodcock, *Inconsistency in Antitrust*, 68 U. MIAMI L. REV. 105 (2013); Adam Candeub, *Behavioral Economics, Internet Search, and Antitrust*, 9 J.L. & POL’Y FOR INFO. SOC’Y 407 (2014).