



CHALLENGES TO ANTITRUST IN A CHANGING ECONOMY

Harvard Law School
November 9, 2018

8:30 - 9:00 am

Registration & Breakfast

9:00 - 9:05 am

Welcome Remarks

Einer R. ELHAUGE, Professor of Law, Harvard Law School

9:05 - 9:30 am

Introductory Remarks

Edward J. BLACK, President & CEO, CCIA, Washington DC

9:30 - 10:45 am

Panel 1: Measuring Market Concentration

Bruce H. KOBAYASHI, Director, Bureau of Economics, US FTC

Henri PIFFAUT, Adviser to the Deputy Director General for Mergers, European Commission

Nancy ROSE, Professor of Applied Economics, MIT

Lawrence WHITE, Professor, NYU Stern Business School

Moderator: Martin GAYNOR, Professor, Economics and Public Policy, Carnegie Mellon University's H. John Heinz III College, Pittsburgh

10:45 - 11:00 am

Coffee Break

11:00 am - 12:15 pm

Panel 2: The Consumer Welfare Standard

Rob ATKINSON, President, Information Technology and Innovation Foundation, Washington DC

Jonathan B. BAKER, Research Professor of Law, American University Washington College of Law

Harry FIRST, Professor of Law, NYU School of Law

Diana MOSS, President, American Antitrust Institute, Washington DC

Moderator: Einer R. ELHAUGE, Professor of Law, Harvard Law School

12:15- 1:30 pm

Lunch Keynote Speech

Richard L. SCHMALENSEE, Emeritus Professor of Management, MIT Sloan School of Management

1:30 - 2:45 pm

Panel 3: Competition on/via the Internet

Andrei HAGIU, Associate Professor of Information Systems, Questrom School of Business, Boston University

Eliana GARCÉS, Principal, The Brattle Group, Washington DC

Michael MANDEL, Chief Economic Strategist, Progressive Policy Institute, Washington DC

Nikhil SHANBHAG, Director, Competition and Telecommunications Law, Facebook, San Francisco

Moderator: Greg IP, Chief Economics Commentator, The Wall Street Journal

2:45 - 3:00 pm

Coffee Break

3:00 - 4:15 pm

Panel 4: Is monopoly power rising?

James BESSEN, Executive Director, Technology & Policy Research Initiative, Boston University School of Law

Esteban ROSSI-HANSBERG, Professor of Economics, Department of Economics and Woodrow Wilson School Princeton University

Marc RYSMAN, Professor of Economics, Department of Economics Boston University

Hal VARIAN, Emeritus Professor of Business, Economics, and Information Management, University of California, Berkeley; Chief Economist, Google

Moderator: David S. EVANS, Chairman, Global Economics Group

4:15 - 5:30 pm

Panel 5: Enforcers Roundtable: What's under the radar?

Joaquín ALMUNIA, Chairman, Centre for European Policy Studies (CEPS); Former Commissioner for Competition, European Commission

Bill BAER, Partner, Arnold & Porter; Former AGG, US DOJ

William E. KOVACIC, Director, The GWU Competition Law Center, Washington DC; Former Chairman, US FTC

Jon LEIBOWITZ, Partner, Davis Polk; Former Chairman, US FTC

Moderator: Susan A. CREIGHTON, Partner, Wilson Sonsini Goodrich & Rosati; Former Director, Bureau of Competition, US FTC

5:30 - 5:45 pm

Wrap-Up & Closing Remarks

David S. EVANS, Chairman, Global Economics Group, Boston

5:45 - 6:30

Cocktail Reception



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EDITOR'S INTRODUCTION

Elisa Ramundo
CPI

The inaugural edition of this conference focusing on "Challenges to Antitrust in a Changing Economy," organized by Competition Policy International (CPI) in partnership with the Computer and Communication Industry Association (CCIA), was attended by more than 200 people on November 9, 2018 at Harvard Law School. Participants included enforcers, academics, economists, attorneys, and students from 18 countries worldwide that engaged in a cutting-edge debate on competition law and economics in the tech industry.

The last decade has seen a growing thirst for innovation in many industries worldwide. Innovation certainly makes economies more dynamic and competitive, but it can pose challenges for legislative and regulatory bodies trying to keep pace with rapidly evolving businesses.

CPI, since its inception, has always focused its efforts on being the most valuable platform for high-level debates and offering the antitrust community advanced opportunities to discuss the most current issues influencing our economies on a global scale.

This conference, in line with CPI's goals, addressed key issues affecting the tech industry in this climate of con-

stant changes. 24 leading antitrust experts delved into in-depth analysis of topics such as measuring market concentration, the consumer welfare standard, competition on/via the internet, the concept of monopoly in the current era, challenges of antitrust enforcement in the digital era, etc.

We are honored by, and grateful to, Harvard Law School and CCIA for coming together with us to put on this timely conference that allowed for the discussion of the relevant topics affecting the antitrust and competition world today. CPI looks forward to continued work with them and to many future editions of this conference.

We thank all of the great minds that came together to make this happen and all of our speakers for sharing their experience and knowledge. Their participation, together with that of our numerous attendees and well-known antitrust experts, made these discussions extremely valuable and insightful.

We look forward to seeing you again in 2019 for the second edition of this event.



Edward J. Black CCIA

CCIA has a history of fostering sound and healthy debates about antitrust policy, as we believe that competition is a key step to ensuring policies are equipped to support innovation. This past year antitrust policy has been at the center of much intellectual debate and many think that antitrust policy as we know it is currently may be at a crossroad. There is a strong push to alter US policy in ways that would make it more susceptible to investigations triggered by disgruntled competitors rather than by fact-based anti-competitive market conditions.

This why CCIA has partnered with CPI to put together one of a kind conference at Harvard Law School and bring together first tier antitrust experts from a variety of viewpoints to discuss the current competition systems. This debate inevitable touches upon the tech industry. The tech industry has been in the headlines with various parties, including many with limited understanding of antitrust law or the digital economy, calling for more regulation.

As antitrust experts gathered at Harvard this fall for a CPI and CCIA conference, public officials, academics and antitrust attorneys discussed "Challenges to Antitrust in a Changing Economy." Former FTC Chair **Bill Kovacic** said regulators around the world tend to be judged by activity and fines—particularly big fines against big companies. Former EU Commissioner for Competition **Joaquín Almunia** underlined that the EU is not engaging in protectionism in its recent investigations of US tech companies, and that the EU needs to avoid protectionism. **Bruce Kobayashi**, Director of the FTC's Bureau of Economics and **Henri Pifaut**, Adviser to the Deputy Director General for Mergers, European Commission, spoke about *Measuring Market Concentration*. Former antitrust regulator **Bill Baer** said he would be reluctant to remove the consumer welfare framework without providing a better one for increas-

ingly conservative courts, and other panelists noted that changing the threshold for regulators to step in risks investigations based on politics rather than consumer harm.

The US tech industry and innovation culture is the envy of the world and this is, in part, a tribute to the US's approach to competition policy. Decisions beginning in the 1970s on how to deal with dominant companies engaging in abusive practices like IBM and AT&T fostered the growth of the software industry, Silicon Valley, the the mobile phone industry and the internet, functioning as a free, open platform for communications and business opportunities.

The technology industry has been a bright spot in the United States economy for the past two decades with this sector leading in R&D in hopes of improving products and services and maintaining this lead. According to the Commerce Department, the digital economy grew 3.7 percent in 2016 compared to the overall economy's growth of 1.7 percent and the tech industry supports millions of higher paying jobs. In addition, online platforms are used by smaller companies and traditional businesses to expand their markets. But it is also true that tech innovations and new online startups are disrupting legacy industries from entertainment to transportation. The US has traditionally supported this Darwinian system of innovation, and it has given us an economic advantage over countries whose systems are geared toward supporting and protecting particular legacy or favored companies instead of the competitive process.

We appreciate and thank those who spoke and attended this conference and support further discussion on these critical issues. Antitrust policy is too important a tool to risk losing its credibility by misusing it for political reasons—separate from protecting consumers and promoting economic growth.

THE CONSUMER WELFARE STANDARD

Robert Atkinson

Information Technology and Innovation Foundation

For roughly 40 years there has been a consensus that its ultimate goal should be the welfare of consumers, broadly defined to usually mean maximizing overall economic growth. A small but growing group of activists and scholars is now arguing that we should abandon the consumer welfare standard, adding in a host of new factors for antitrust policy to address, while also attacking “bigness” per se. They overstate the increase in market concentration and overlook the reasons why in many industries, particularly innovation-based industries, increased concentration can support innovation and consumer welfare. Moreover, they believe focusing on consumers overlooks other values, including vibrant small businesses, innovation, privacy, worker interests, and healthy democratic processes. For them, large companies by their very nature pose a unique danger to the economy and help form a kind of society they reject. The consumer welfare standard stands in the way of using antitrust policy as a kind

“A careful review shows the consumer welfare standard is able to handle some of their concerns, including those related to as long-term price increases, monopsony, innovation, and addressing companies with free business models.”

of social engineering to limit the size of large firms and return to an economy of decades, if not a century past. A careful review, however, shows the consumer welfare standard is able to handle some of their concerns, including those related to as long-term price increases, monopsony, innovation, and addressing companies with free business models. In the areas where it cannot, other policy tools (e.g., privacy policy, campaign finance reform, etc.) are more appropriate means of addressing their concerns. But in other areas, pursuing their goals—including protecting businesses, especially small firms, against legitimate competition, and avoiding layoffs—would reduce consumer welfare and economic growth. In short, there is no legitimate case for abandoning the consumer welfare standard in favor of a vague and hard-to-enforce alternative that represents an amalgam of conflicting goals, some of which would work against progress and the national interest.



TWO-SIDED RED HERRINGS

Richard L. Schmalensee
MIT, Sloan School of Management



A surprising amount of debate leading up to the Supreme Court's decision in *American Express*, and the commentary following this landmark ruling, attempt to trivialize and marginalize the modern economic learning on multisided platforms, even though the underlying literature has grown without major debates.

Despite these efforts the 2nd Circuit Court of Appeals and the Supreme Court ultimately embraced the economic literature on these business models. This talk debunks five red herrings that have been floated in the debate. (1) The two sides are just complements, nothing new there, even though the economics of the two situations are obviously

*“The Supreme Court's *American Express* decision has raised a host of interesting issues, and, as in any Supreme Court decision, not every word was chosen as carefully as it might have been. Clarifications will be needed going forward.”*

different. (2) Everything is two-sided, or who's to know what's two-sided, so we can continue to use the one-sided models that have worked well, even though there is a fairly clear consensus on what makes a business two-sided. (3) As industries mature two-sidedness goes away, an unsupported assertion that may be plausible at the industry level but not at all at the firm level. (4) Because the services provided to the two sides by a two-sided platform are not interchangeable, the two sides cannot be in the same market, even though nobody balks at a market for new cars composed of many parts that are not interchangeable. This red herring, if accepted would require willfully ignoring markets' two sided features in all cases. (5) Because it can be difficult, the need to do two-sided analysis would “devastate” antitrust law, even though doing one-sided analysis of two-sided markets can produce both false positive and false negatives.

The Supreme Court's *American Express* decision has raised a host of interesting issues, and, as in any Supreme Court decision, not every word was chosen as carefully as it might have been. Clarifications will be needed going forward. The large and evolving literature on two-sided platforms will prove helpful to develop them, and I expect the courts increasingly to rely on that literature.

COMPETITION AND CONCENTRATION:

How the Tech/Telcom/E-commerce Sector is Outperforming the Rest of the Private Sector

Michael Mandel
Progressive Policy Institute

Recent economic studies show that concentration in many sectors of the US economy has increased over the past 20-30 years. These increases in concentration have been linked to increased markups, weak productivity growth, stagnant real wages, slower job growth, and falling labor share.

Indeed, there is little doubt that strong and consistent competition policy plays an important role in a market economy. Long-standing incumbents in a wide range of industries can exercise market power to choke off innovation and growth, protecting the status quo and driving up prices rather than benefiting workers and consumers.

Taking these arguments seriously, a forthcoming report from the Progressive Policy Institute uses new data from the Bureau of Economic Analysis to assess the economic performance of the tech/telecom/ecommerce sector—also called ‘the digital economy’—relative to the rest of the US non-health private sector. The report finds that productivity rose by almost 60 percent in the tech/telecom/ecommerce sector between 2007 and 2017, compared to only 5 percent in the rest of the non-health private sector. Because of these gains, the tech/telecom/ecommerce sector accounted for almost half of non-health private sector growth between 2007 and 2017. Over the same period, prices in the tech/telecom/ecommerce sector fell by 15%, compared to a 21% increase in the rest of the non-health private sector.

On the labor side, real annual pay per worker rose by 15.4 percent in the tech/telecom/ecommerce sector between 2007 and 2017, compared to a 7.0 percent gain in the rest of the non-health private sector. Employment also grew faster in the tech/telecom/ecommerce sector, 14.0 percent versus 3.3 percent, as companies such as Amazon and Apple hired at a rapid pace. As a result, the labor share in the tech/telecom/ecommerce sector has stayed flat since 2007. By contrast, the labor share in the rest of the non-health private sector has fallen by 1.3 percentage points.



Thus, it appears that the tech/telecom/ecommerce has consistently outperformed the rest of the non-health private sector across a wide range of economic indicators, generating strong productivity growth and sharing those gains with workers and customers. Conversely, the rest of the non-health private sector has produced extraordinarily weak productivity gains, rising prices, and a falling labor share.

Our analysis suggests that apparently high concentration indicators in individual tech/telecom/ecommerce industries may be misleading guides to competition policy. Of course, industry-wide performance is not the final or even the main indicator of potential antitrust problems, and regulators must always be alert for anticompetitive practices. Nevertheless, to the degree that regulators are concerned with achieving macro-level goals, industry-wide performance on a range of productivity, consumer and labor measures should be an important consideration.

“Our analysis suggests that apparently high concentration indicators in individual tech/telecom/ecommerce industries may be misleading guides to competition policy.”

THE ECONOMICS OF PLATFORMS

Eliana Garcés
The Brattle Group

“The effectiveness of data, network effects, and bundling as barriers to entry are empirical questions that cannot be assumed. The factors do not have the same relevance across services.”

The economics of platforms are interesting because some types of dynamics that are not very relevant in the offline world become very relevant and even determinant online.

These are network effects, economies of scale and economies of scope. These characteristics, combined with the lack of friction in accessing different providers, contribute to large and rapid expansion of successful platform businesses. This has generated some discomfort among regulators. Large platforms opening up to competing third party business to become their main distribution channel has added to the concerns of excessive leverage. What are the important issues to keep in mind?

- Successful platforms are successful because they provide real value. Merit is at the origin of all large platforms. Value is a decrease in transaction costs or an efficient delivery of information.
- Economies of scope are real and this creates an inevitable push towards integration of services. Forced unbundling of services may come at a cost to users. Whether the efficiencies at stake require integration becomes a relevant question.
- The effectiveness of data, network effects, and bundling as barriers to entry are empirical questions that cannot be assumed. The factors do not have the same relevance across services. Successful entry relying on

further transaction efficiencies or effective interface may be sufficient to overcome these barriers.

- Entry is likely to be by differentiated players, including players outside of the market diversifying into a new service.

Many reasons complicate the analysis of the effect of platforms and platform conduct on markets. Economies of scopes and externalities among users and services lead to a coordinated management and design of platform services. Platforms will examine the impact of every price or platform rule not only on the users of that particular service but also on other types of users that will be impacted because of these interrelations. For example if I decrease the data I collect on one platform activity, I may not be able to improve other platform services impacting these other type of users. Traffic generating practices may be associated with lower prices or lower content quality but may increase the quality and revenue on the advertising side.

Antitrust evaluation cannot be done without looking at the platform business model: what value is being created and how is that value creation being monetized. This will involve a web of different activities that cannot be disentangled. Although we have the tools for such analysis we don't have the practice or precedents for their application.



AN ANTITRUST ANALYSIS OF MULTI-SIDED PLATFORMS

Andrei Hagiu

Boston University Questrom School of Business

Today the most prominent internet platforms are multi-sided platforms (MSPs) which facilitate interactions between two or more distinct sets of participants. Their business models vary and include transaction fees (e.g., Alibaba, Amazon, eBay), subscription services (e.g., Amazon), hardware platforms (e.g., Apple's iPhone), advertising (e.g., Bing and Google, Facebook), or a combination of all of the above, like in Amazon's case where subscription, transaction fee, advertising, and hardware all come together.

When comparing MSPs, we should also realize that they compete on factors other than pricing, such as the nature of their governance rules, i.e., the set of rules and restrictions set by the MSP owner for its participants. For example, Apple's iOS enforces a much stricter set of rules on its app developers than Android which is significantly looser. Likewise, Facebook enforces much stricter policies on content and behavior than Twitter, Reddit, and 4chan—the latter of which follows the "anything goes" policy.

The governance rules chosen by any given MSP determine in large part the quality perceived by its participants. Consequently, governance rules determine and are determined by the type of users that the MSP appeals (and wants to appeal) to. For instance, going back to our previous example, iOS provides a curated set of quality apps, whereas Android allows pretty much anything that doesn't break the phone. Similarly with the audience drawn to more family-friendly Facebook vs. Reddit and 4chan, which naturally attract free speech absolutists. Particularly in the case of social MSPs (Facebook, Twitter, Reddit, 4chan), governance rules regarding permissible content are arguably the most important element driving the value derived by users and therefore competition for users' attention, as well as competition for advertisers.

Recently, prominent MSPs' governance rules have started to draw the attention of regulators. On the one hand, there is concern that Apple and Amazon are too restrictive and arbitrary when they decide which apps or sell-

“It's important to realize that MSPs have every incentive to use their governance rules to eliminate all market failures that are contained within their platforms.”

ers to kick out. The concern lies in that they suffer from conflicts of interest with their own products. On the other hand, there is also concern that other MSPs are too loose in their governance rules and thereby allow all kinds of issues: fake products sold via e-commerce MSPs such as Alibaba, Amazon and eBay, hate speech on social MSPs such as Facebook, Twitter, Reddit, 4chan (which led to the German NetzDG law requiring such speech be taken down within 48 hours), racial discrimination on Airbnb and gender discrimination in Facebook's job ads.

Some of these regulatory concerns are more justified than others. Fundamentally, MSPs are good at governing



within-platform externalities, but probably not so good at governing externalities that create off-platform spillovers. It's the latter that should give rise to legitimate regulatory concerns. First, it's important to realize that MSPs have every incentive to use their governance rules to eliminate all market failures that are contained within their platforms. Examples include fraud and abuse among participants (scam products on Alibaba, Amazon and eBay, abusive behavior between Airbnb hosts and travelers or between Uber drivers and riders) and the "lemons problem" (bad products/sellers driving out good ones). MSPs address these issues through their rating systems, insurance policies, escrow payment options, minimum requirements, etc.

However, when it comes to market failures that spill over outside the confines of MSPs, their incentives to address them are much more limited. For example, Alibaba, Amazon and eBay have made only half-hearted attempts to eradicate the sale of counterfeits on their respective MSPs. If a buyer knowingly purchases a cheap and fake Louis Vuitton bag on one of these platforms, strictly speaking there is no market failure from their perspective as both buyer and seller are happy with the transaction. Indeed, the only aggrieved party is the brand owner, who is not a participant on the platform. And since MSPs by definition do not fully control what their participants do, it is unclear why they should feel responsible for such off-platform externalities (other than the possibility of lawsuits, which have low chances of succeeding). Similarly, if some people love reading and sharing crazy conspiracy theories and blatantly fake news stories on Facebook, Twitter or Reddit, the externality is mainly off platform (e.g., election influence, uninformed public opinion). In this case, it is unclear to what extent social MSPs should feel responsible, unless of course such content drives advertisers away. Given the potentially large social costs of these externalities, regulatory concern might be justified here.

Still, one should ask: isn't there a market mechanism to punish MSPs when their governance rules leave such externalities uninternalized? There are two possible such mechanisms. The first is user backlash once the nature of these externalities is publicized in the press: e.g., campaigns to delete Facebook in the aftermath of the Cambridge Analytica and 2016 election influence scandals, accompanied by a sharp decrease in stock price. The problem is that this market response can be slow or insufficient due to lack of information. The second mechanism is competing platforms taking advantage with more comprehensive governance rules that address those market failures. However, this is probably unrealistic given the strength of the network effects protecting these MSPs.

Coming back to the potential sources of market failure mentioned above. In the case of Apple and Amazon arbitrarily kicking out apps or sellers—I don't believe there is a justified regulatory concern here. Apple and Amazon clearly understand they will disincentivize future third-parties to sell their products on their MSPs if their rules are arbitrarily enforced against current third-parties, so they have every incentive to be fair and get them right. There is evidence that Amazon will promote a third-party seller over its own products if the third-party is cheaper or more efficient.

Regarding hate/violent speech on social MSPs: I don't think regulatory interventions to tell social MSPs how to deal with hate/violent speech are justified. Social MSPs have every incentive to get their speech governance rules right in order to keep both their users and advertisers. Some MSPs looking to appeal to a broad audience, such as Facebook, will be more restrictive. Others target a more niche audience with libertarian preferences (e.g. Reddit, 4chan), so they will be loose in their governance. Those differences should be allowed. An important problem to emphasize here is that in formulating their governance rules for speech, social MSPs must strike a very difficult balance between too little specificity (they need granular descriptions of what constitutes violating conduct in order to reduce uncertainty and make enforcement by internal reviewers possible and consistent) and too much specificity (which can result in a never-ending chain of things to define and control for). Placing regulatory constraints can only make this problem even less tractable—and it is very difficult to begin with.

On the other hand, some regulatory intervention may be justified in addressing the issues of fake products on e-commerce platforms (e.g., Alibaba, Amazon, eBay) and fake news on social platforms (e.g., Facebook, Twitter, Reddit, 4chan). By now it is increasingly clear that these MSPs do not have sufficient incentives to address these problems, because their most negative consequences spill outside of their domains.



LOCAL CONCENTRATION VS. NATIONAL CONCENTRATION

Esteban Rossi-Hansberg
Princeton University

The dominance of top firms in specific industries is uncontroversial. Many studies have shown that standard measures of national concentration have increased substantially in the US in the last few decades. A narrative has emerged which describes this increasing national market concentration as responsible for declines in product market competition, as evidenced by higher profits and markups.

The problem with this argument is that, in most industries, markets are not national; they are local. The opening of a coffee shop in San Francisco does little to reduce the price of my morning cup in Chicago. The presence of transport costs and the imperfect substitutability between goods imply that markets are (at least to some extent) local and specific to particular products. Hence, if we hope to get clues about the evolution of competition over time, in most industries we need to measure product-market concentration locally, instead of nationally, as is typically done.

Our results turn the conventional narrative on its head. We find that, in contrast to the increasing national trend, local concentration has decreased on average, for all major sectors, and for the large majority of narrowly-defined industries (industries accounting for roughly 70% of US employment and sales). The findings hold for a variety of geographic definitions (CBSA, county, or ZIP code) and industrial aggregations (from 2 to 8-digits). The results also hold for a variety of measures of concentration including the Herfindahl-Hirschman Index, the adjusted Herfindahl Index, and the share of the top firm(s) in a market.

Between 1990 and 2014, industries with decreasing local concentration can be found in all major sectors. Perhaps more surprising, 8-digit industries with diverging trends (increasing national and decreasing local concentration) can be found in virtually all 2-digit industry aggregations too.



To shed light on the forces behind our finding, we study the role that top firms have played in generating these diverging trends. The results are striking: among industries with diverging trends, top firms have, of course, contributed to the increase in national concentration, but they have also contributed significantly to the declining trend in local concentration. That is, top firms have made the decline in local concentration more pronounced!

What is going on? The answer is simple. Top firms are expanding by adding more establishments in new locations. When they do, they increase their national share of sales while also decreasing concentration in the markets where they enter. We find that, in industries with diverging trends, when a top firm opens an establishment, concentration falls and remains down for at least 7 years. Top-firm establishments do not eliminate local competition; they simply become another producer in a less concentrated local market.

“In contrast to the increasing national trend, local concentration has decreased on average, for all major sectors, and for the large majority of narrowly-defined industries.”

INDUSTRY CONCENTRATION AND COMPETITION

James Bessen
Boston University

“Rising industry concentration does not necessarily imply declining competition. ... The policy implications from rising industry concentration depend very much on what is causing the increase.”

At the national level, US industrial concentration has been rising across sectors since the 1980s. At the same time, evidence shows a rise in profit margins and mark-ups. What is driving this change and what is its significance?

Some commentators attribute the rise in industry concentration to lax antitrust enforcement of mergers and acquisitions. In this case, rising concentration would be a sign of decreasing competition that might lead to higher prices, less innovation, and greater wage inequality. If this view is right, then perhaps antitrust enforcement needs to be strengthened or other policy changes made to increase competition.

However, rising industry concentration does not necessarily imply declining competition. Concentration can also rise when some firms—but not all—grow faster because they are more efficient. In this case, rising concentration would reflect greater innovation and social benefit. The policy implications from rising industry concentration depend very much on what is causing the increase.

My research shows, in fact, that the main factor driving the increase in industry concentration at the national level is firm investments in information technology (IT). US firms spend about \$250 billion a year on proprietary software. This spending provides firms—especially large



firms—with substantial advantages that allow them to grow faster. These investments are not in commodity off-the-shelf IT products, but rather in proprietary systems such as Walmart’s logistics systems, which propelled it to industry dominance from a 3% market share in 1982.

Because technology is the main cause, rising industry concentration does not, by itself, imply a need for reinvigorated antitrust enforcement. However, it does raise a major policy challenge. While it is good news that some firms become more productive, most firms are not able to utilize the new technologies. A productivity gap is opening up between the large, leading firms and the rest. It appears that new information technology is diffusing much more slowly than past technologies, and the result may be slower average productivity growth, anemic wage growth, and growing economic disparities. Rising concentration is thus a sign of barriers to the spread of new technology and this poses an important policy challenge. Policy can help overcome these barriers: antitrust authorities have tools to compel licensing in appropriate circumstances; intellectual property policy can foster faster diffusion; employee mobility, which has declined sharply, can be promoted by laws that restrict employee non-compete agreements and other barriers to mobility. Unfortunately, policy often seems to work against technology diffusion today, rather than toward it.

IS MONOPOLY POWER RISING?

Marc Rysman
Boston University

“Understanding the extent to which monopoly power is rising and its sources is very important.”

The question of whether monopoly power is rising appears critical in understanding current major economic trends. Factors that might lead to this change are increased globalization and international trade, which allows star firms to expand to a greater degree, increased importance of information technology, which expands scale economies, relatively permissive antitrust enforcement, and the broader geographic scope of advertising and other markets. Even if increased concentration results only from technological market factors, such as the role of information technology, the societal implications might be significant, with some observers pointing to decreased economic dynamism and innovation, increased barriers for entrepreneurialism, and even decreased opportunities for income mobility and increased skewness in wealth distribution. Further concerns might even be the implications for monopoly power on democratic institutions. Indeed, political interest in competition policy appears to be on the rise.

Thus, understanding the extent to which monopoly power is rising and its sources is very important. In my comments, I offer the perspective as someone without specific research in this area, who is a long-time member of Industrial Organization community in Economics. So far, the methods used to establish that market power is rising fall outside of the methods typically employed in modern IO. What are the concerns? IO economists tend to be skeptical of organizing industry by SIC codes, as these government classifications rarely correspond to markets that firms actually compete in. Furthermore, empirical work that relies on industries as the level of



observations are viewed with skepticism. Most IO economists subscribe to the view that industries are very heterogeneous, and that it can often be misleading to draw conclusions that look to paint with a broad brush across many industries. For instance, one industry may have a superstar firm because of a technological innovation, one may have a terrific manager, one may be engaging in anticompetitive behavior, and one may have a new foreign entrant. Does saying that all four have increasing concentration provide meaningful information? In addition, a hallmark of modern industrial organization is a skepticism of the value of accounting data, which can often diverge from a meaningful economic description of the state of a firm.

In general, IO economists prefer to see studies focused on a single industry, where the researcher can describe important market institutions and collect "real" data on prices and quantities drawn from a well-specified relevant market. To be clear, cross-industry studies that we see are valuable, and I read them with great interest. The "IO approved" kind of study is not conducive to finding results that characterize changing market power across the entire country and all industries, and I worry that my field will be left behind as the most important contributions on market power come from macroeconomists. However, there have been previous examples in which micro-level studies contradicted findings in aggregate studies, and resolving these differences has been fruitful. I do not believe that the single-industry study approach on this topic is developed yet, and I look forward to this next step in the research process.

ANTITRUST ENFORCEMENT IN THE DIGITAL ECONOMY

Joaquín Almunia

Former EU Commissioner for Competition

“The policy challenges raised by the emergence of big digital players go well beyond competition enforcement.”

Nowadays, antitrust enforcement is challenged by some of the characteristics of the main players in the digital economy. The big champions in this area—Google, Facebook, Apple, Amazon, etc.—have acquired in the last decade a dominant position in many of the markets where they are developing their activities.

When the increases in market derive from mergers and acquisitions, the conventional instruments in the hands of the EU Commission to ensure adequate control of the risks to impede or seriously reduce effective competition are working rather well. Nevertheless, a debate is open regarding alternative methods to estimate the impact of M&A's given the experience of previous decisions focused mainly in the size of the companies measured by their

turnover. The huge value of databases owned by those companies should be better taken into account.

When it comes to the interpretation of the rules and criteria to investigate potential abuses of a dominant position in the market, the difficulties are more important. We know that some of the features that define the activities of the big players in the digital economy are challenging the conventional way to enforce competition policy. The extremely fast technological developments and its transmission to the provision of new services, the existence of “snowball effects,” the relevance of Big data to increase the market power in two-sided and multi-sided markets, etc. require the use of new techniques for the investigation of cases and for the interpretation of the conclusions of such investigations.

This is the reason why some experts and enforcers are in favor of introducing some changes in the legal framework of competition policy, that in the case of the EU are basically the same that were adopted at the beginning of our integration process. Other prefer to look at the way new regulations can provide solutions to the problems found by the enforcers, changing the present division of labor between competition agencies and sectoral regulators. The jury is still out.

The policy challenges raised by the emergence of big digital players go well beyond competition enforcement. The protection of personal data from the privacy perspective, the risks of manipulation of the political debate and its incidence on the opinion of voters, the potential use of mass social networks by criminals, etc. cannot be tackled without a better coordination between competition agencies and the public authorities in charge of the other important issues at stake due to the impressive developments taking place in the digital world.



MEANING AND APPLICATION OF ANTITRUST LAWS IN THE DIGITAL ERA

Jon Leibowitz
Davis Polk & Wardwell

In the United States, for the first time in a long time, there is a lot of discussion about what the antitrust laws mean, and what they should be about. Much of this is attributable to a new populist antitrust movement, which is a response to increased corporate concentration and wealth inequality, as well as the perception of underenforcement since the 1980s rise of the “Chicago School” approach to antitrust law. That school endorsed the “consumer welfare” standard, which balances an activity’s potential harm to consumers against procompetitive benefits such as lower prices, greater choice, or increased innovation. In contrast, the populist proposals would include the consideration of a broader range of factors in antitrust analysis, such as loss of employment, economic inequality, and increased political influence. The Federal Trade Commission recently opened its Hearings on Competition and Consumer Protection in the 21st Century, designed to shed light on a wide range of issues and viewpoints bearing on the mission of the antitrust agencies, and those discussions have already yielded numerous calls for antitrust enforcement with a wider lens.

The dominant view among economists, academics, businesspeople, and other stakeholders is that the consumer welfare standard is not only the correct standard, providing predictability to businesses and solid theoretical foundations, but that it also offers a sufficiently flexible toolbox to address the new challenges of today’s economy, specifically those raised by developments in technology and the start-up ecosystem. These challenges include, for instance, the treatment of acquisitions by large tech firms of nascent or potential competitors (smaller companies seen as possible future challengers to the market share of larger companies that acquire them). Although there is debate among practitioners about whether focusing on nascent competition is appropriate, there is agreement that the consumer welfare standard can address competition issues in this area. The flexibility of the standard is underscored by the Supreme Court’s recent decision in *Ohio v. American Express Co.*, which has sparked rich but unsettled discussion about the application of the consumer welfare standard in cases involving



two or more sets of market participants who influence each other through network effects when interacting via a platform.

It is too soon to know whether there will be any significant change in the way antitrust reviews or the antitrust laws themselves will change in the coming years. The consensus in favor of economically rigorous analysis and the consumer welfare standard is shared by practitioners in the European Union. As for the US, thus far, the DOJ Antitrust Division’s approach in the AT&T/Time Warner deal shows that one major agency is willing to take risks and go after big mergers. Because the FTC has five new commissioners, it’s too early to say how it will approach its role in antitrust enforcement and other consumer protection matters. The results of the midterm elections may also have implications for antitrust enforcement, considering multiple existing Democratic legislative proposals that would dramatically change the way deals are reviewed.

“The dominant view ... is that the consumer welfare standard is not only the correct standard, but that it also offers a sufficiently flexible toolbox to address the new challenges of today’s economy...”

The following video interviews were filmed by CCIA during the November 9, 2018 conference. They were conducted outside of the panel discussions and focused on key topics covered during the conference.

Bill Baer Arnold & Porter

The EU-US competition transatlantic relationship has gone through different cycles. Is the digital economy bringing these jurisdictions closer together or pushing them further apart?

First, I agree that the EU and the US, over the last two decades, have grown increasingly close. They work together not just at a senior management level, but the staff communicate with each other day to day on various matters and that's a good thing - and I think it's going to continue. I think it's actually too early to tell whether the internet economy is going to produce different enforcement results. This is early on and I think good coordination and continued cooperation will minimize any potential differences.

How do you see the future of competition from a transatlantic perspective?

The EU and the US have a history of cooperating and it's only gotten better over time. There have been occasional bumps in the road where one agency did something the other didn't like, but most of those disagreements have been aired privately. Occasionally they get aired publicly, which I think adds to the gap between the two agencies. But I think that both agencies, over time, have come to see the benefit of coordinated law enforcement. The business community benefits from that and consumers do too. If we get to, wherever possible, consistent outcomes, predictable outcomes, everybody's better off.

Do you think the US and the EU are using competition policy as a protectionist measure?

I don't think so. However, if we move from an environment which we've had since the end of World War II where we're promoting free trade to a more protectionist environment, and I think there's some signals that the US Administration is very much inclined to move in that direction, there's a risk that they'll be pressures on competition authorities to take trade measures into account. It'd be a bad thing. I think both agencies, both the US and Europe will resist those pressures. But we're in waters that we haven't sailed on for a long time and so I can't confidently predict what's going to happen.

Should leaders of competition agencies foster dialogue amongst them in politically challenging context?

It's important to stay in touch, to spend time one-on-one, whether it be email communications, telephonic or in-person meetings. There are plenty of opportunities for Margrethe Vestager and Joe Simons and Makan Delrahim to get together at the same conference; I know they take time to spend time with each other. Personal relationships help advance the cause of effective antitrust and competition enforcement. If you know each other and are comfortable talking about areas where you agree, as well as areas where you disagree, you make both enforcement regimes more effective.

“The EU and the US ... have grown increasingly close. They work together not just at a senior management level, but the staff communicate with each other day to day on various matters and that's a good thing - and I think it's going to continue.”



David Evans
Global Economics Group

Why do you think most of the big internet players and unicorns are founded in the US or China?

In the case of the US firms, it just happens to be that there's this culture in Silicon Valley, and a handful of other pockets in the US, where there's been an agglomeration of innovators, of venture capital, a support system for fostering all that. So that once you have that agglomeration in those kind of places, if you're a clever French entrepreneur you might want to think about 'well, do I want to stay in Paris to do this? Or do I want to go where everyone else happens to be?' Where the VCs are, where you have really great people to develop my product because there's great engineering talent that has agglomerated there. That's one reason.

The other reason I think we see it in the US and China and not in the European Union is that - we have to be clear that the European Union has a bunch of problems that are deficits in terms of having an innovative economy, just because of regulations and a variety of other aspects of Europe. From the standpoint of where do you want to start an innovative company: Do you want to start it in China, where you have billions of people who will speak Chinese all basically in one place? Do you want to start it in the US where you have 335 million consumers all located in the same place, all speaking English? Or do you want to start in the European Union, where you basically have 28 countries, multiple languages and despite the common project, which has been very successful in many ways, it's still the case that if you're starting a new company in the European Union, it's not like to go on national TV and say, 'I'm here.' You're starting in France, and then you need to do it in Germany, and you need to do it in Poland, and you know that's a long haul.

“ We have a bunch of internet players that are obviously creating really great products that consumers like. That's probably true for every one of the large internet players. ”



Should we worry about prominent internet players from a competition perspective, even if they maximize consumers' welfare?

We have a bunch of internet players that are obviously creating really great products that consumers like. That's probably true for every one of the large internet players. They are big and successful because consumers like their products. That doesn't mean that those firms may not engage in anti-competitive behavior in particular areas or at particular points in time. It's not inconsistent for firms to be really great for consumers, but for whatever reason, to make a decision that is determined to violate the antitrust laws. So just because firms are great for consumers and may be a great company you love, doesn't mean that they can't do bad things.

Are big internet companies buying startups not to compete? Or do the mere existence of big internet companies play as an incentive to create an ecosystem where startups are created?

I think it's generally the case that large internet players are buying startups primarily because those startups have done one of two things. In some cases, large internet players are buying startups simply because the startup has assembled a lot of really great talent... A lot of other cases, internet players have opportunities on their platforms to insert and develop things in different ways and often times buying a successful start-up is a good way of doing that, as opposed to trying to do it on your own. And that's not different really than mergers in any other part of the economy. There are an awful lot of mergers that we don't think about, but that go on all the time, where it's just a natural way of filling out your business and operating more efficiently. So an awful lot of that is going on as well. And it is certainly the case from the standpoint of a startup, that having the possibility of an exit when one of the large internet players is going to buy you up is a very attractive option for these players. And even if that turns out not to be the case, that you're being bought up by one of the large internet players, the fact that when you make the investment you know that not only do you have the opportunity of doing an IPO, but that you also have the opportunity of possibly being bought up by one of the internet players, that gives you more of an incentive to get in and compete.

Now, are the situations where large internet players look at firms and think about them as competitors and think that maybe they should buy them up just because they're worried about the future? I'm sure that happens sometimes, but I don't think that's the main thing that's going on. I think it's talent acquisition, and it's filling in gaps efficiently on the platform and those are generally pro-competitive things to do.

William Kovacic

The George Washington University School of Law

The EU-US competition transatlantic relationship has gone through different cycles. Is the digital economy bringing these jurisdictions closer together or pushing them further apart?

This is an area in which the European Union has had a more active enforcement program than the United States. The European Union has brought a large number of cases involving dominant firms in the high technology sector, including very high-profile matters involving firms such as Google. The US agencies, by contrast, have been less active. They don't have a major signature accomplishment of the kind that the European Union has and I think it is the view of the European Union, in many respects, that the US agencies are not doing the job they should be doing and that it is the European Union that is picking up the slack. So that has been a source of tension with respect to what the appropriate standards are and what the appropriate focus of competition law is, with the result that the European Union has become the world's preeminent standard-setting body and enforcement agency in the area of single firm conduct in the digital economy.

How do you see the future of competition enforcement from a transatlantic perspective?

For a considerable period of time, the European Union is likely to lead the development of doctrine and policy regarding single firm behavior. It's likely to be pre-eminent in that field. The United States still has an edge in the way in which it enforces prohibitions against cartels, especially its determined commitment to put wrongdoer individuals in prison. The two agencies, in many ways, share a common framework for merger enforcement, although the European Union's application of merger enforcement tools has been somewhat more intervention minded. A key question is how much these jurisdictions work together to develop a common understanding of the approaches they've taken and to press in the direction of common standards. That's an area in which the US agencies and the Europeans could stand to work much harder.

Do you think the US and the EU are using competition policy as a protectionist measure?

I think the competition policy professionals in both agencies, both the senior appointees to leadership positions and those who work in the career staff positions, do not use competition law as a protectionist device. They do suffer from one influence in the larger environment and that is in both United States and the European Union, elected officials have a habit of talking loudly about their preferences for enforcement. The difficulty that poses for senior leadership and for case handlers is that it lends the appearance that your judgment is being guided by the wishes of elected officials or political appointees. The consequence is that you have to work harder and harder to show that your work is



based on thoughtful neutral principles and not simply the demands of a powerful political official. So I think, in practice, the US and European competition agencies do not give effect to protectionist impulses. But when you listen to what elected officials in both jurisdictions have to say, it is easy to get the impression that these professionals in the field are at times being pushed and guided by the preferences of elected officials. That makes it very hard for a competition agency to do its job and to say, "we're relying on basic technical principles, a sound conception of policy, and we are not the puppets of elected officials."

Should leaders of competition agencies foster dialogue amongst them in politically challenging context?

I think it's important, especially for matters that have high political visibility, for the competition agencies to speak with each other on a regular basis. Politically-charged matters attract enormous scrutiny. Every single move that the agency makes will be examined and discussed in a variety of different settings... It's not only important to be autonomous in taking decisions with respect to who to prosecute and how to resolve cases, but it's also important to be legitimate and accountable. You can't operate in isolation on an island, wholly set apart from the political process. The key approach is to discuss openly and publicly what your priorities are, what the logic for your decisions is, and to engage with regular appearances before legislative committees, and in other forums, to explain your program, so that the elected officials are not determining who you prosecute and what you do on individual cases, but that you are willing to stand before the public and before elected officials and explain the rationale for the policy choices you've made. That is the compromise and balance that an agency seeks to achieve.

“The European Union is likely to lead the development of doctrine and policy regarding single firm behavior... The United States still has an edge in the way in which it enforces prohibitions against cartels, especially its determined commitment to put wrongdoer individuals in prison.”

Is the consumer welfare standard still valid? If not, why?

Absolutely. Consumer welfare is still alive and well. As I mentioned in my remarks on the panel, the standard has not been applied in its most forceful way in terms of considering all manner of competitive effects and all manner of potential efficiencies. So we've had some asymmetry in how the standard has been applied and I think that has been a contributing factor to more lax enforcement over the years. Very much in support of continuing the standard but applying it in a symmetric and dynamic way anywhere in the supply chain - markets can be defined all along the supply chain. But also sort of shoring it up with some presumptions where, I think, there's more work to be done.

Do you think the consumer welfare standard has become too narrow and why?

As it has been applied, yes. It's not only too narrow, but as I mentioned, it's been applied in an asymmetric or unbalanced way. A good example of that is the tendency for enforcers and courts only to look at short-term static price effects on the competitive effects side. But then on the efficiency side, allow or consider all manner of efficiencies—more static cost efficiencies, but also claims of wide-ranging consumer benefits. So that's an imbalance, to look at just static effects, price effects on one side of the ledger, but then to consider lots of expansive effects on the other side. We need to rebalance that equation. Looking at price and non-price affects one side, but also looking at efficiencies that are of course cognizable, if you're talking about merger policy, merger related, and that are actually going to come to fruition. So we need absolutely a rebalancing of how the consumer welfare standard is applied, and if we do that we get to a place where we are actually using the standard to defend our markets in antitrust enforcement.

Why do you think there is so much debate around the consumer welfare standard?

I think the debate over declining competition has triggered this groundswell of concern and has led us into what I call a "Blue Sky Thinking Zone" - where we're tossing around concerns and ideas and unpacking the issue. In our view, of course, as progressive advocates of vigorous enforcement, is this narrow construction of consumer welfare has led enforcers and courts to allow behavior/conduct and allow mergers that have been detrimental to competition and consumers. I think the word of caution in that is why we need to understand why that's happened. We need to go back to first principles with consumer welfare and understand what it's capable of doing and to encourage enforcers and courts to interpret it in its broadest possible context. We may need guidance from the agencies on it, we may need legislation on that possibly—sort of supplemented and shored up by some stronger presumptions. But I don't think it recommends that we throw out consumer welfare and we start new. That really risks turning the antitrust enterprise on its head.

“ We need a re-balancing of how the consumer welfare standard is applied...”



Henri Piffaut

European Commission, DG Comp

Is there a correlation between market concentration and competition?

Is there a correlation between market concentration and competition? Not always, no. Quite often actually, one would be the outcome of the other. Or it could be a dynamic relationship between the two. In some industries, you may have very few market players because you have very large fixed costs and very low marginal costs. So you need to do some margins and some profits in order to reinvest and to be able to compete and to innovate. In some other industries, you have very low fixed costs and very low barriers to entry, and there you would expect to find plenty of players. So it very much depends on the characteristics of industry and these characteristics actually may also evolve with time.

How should we measure market concentration in the technology market?

In technology markets one of the key characteristics is that they evolve very dynamically. Market concentration based on the usual measurements like turnover or volume of activity may actually look at the past but not necessarily be able to predict what may happen in the future in these dynamically evolving industries. So there you need to be making an assessment on a case by case basis and understand how these industries are likely to evolve on the basis of what parameter of competition. For instance, if you take big data, how in the future are we going to be developing in order to accumulate even more data sets, even bigger data sets that we used to have? How much are we spending on what kind of projects in terms of innovation and research and development? And what competitors are doing in the same space.

Should market concentration measurements be used to guide antitrust enforcement priorities?

In terms of enforcement priorities we don't speak about mergers, we speak about conduct. And in conduct, what you would be looking at is not only concentration, you would be looking at outcomes in the markets. Whether you can see that they are increasing barriers to entry or complaints of consumers who are unhappy or who are not getting the service they would like to get. So you would need a much broader set of parameters to look at in order to decide if that's an area on which competition policy should focus.

“Market concentration based on the usual measurements like turnover or volume of activity may actually look at the past but not necessarily be able to predict what may happen in the future in these dynamically evolving industries.”



Lawrence White NYU Stern School of Business

Why do antitrust enforcers care about market concentration?

Market concentration can be an indicator of the exercise of market power and the exercise of market power can distort the efficiency of markets. I say "can" because it's not necessarily a connection. The easiest case to see where there is a connection is where we have a monopoly. A monopoly is an extreme form of concentration where there's only a single seller in a market and if other conditions are present, like if entry into that market is not easy, then that monopoly is going to maintain prices that are above competitive levels. There will be buyers who are shut out of the market, there's less buyer satisfaction. There may also be less innovation because there's less competitive pressure to innovate or to come up with lower-cost ways of producing the item or to come up with substitutes for the item or modifications to the item. So monopoly is the extreme, but to the extent that we get markets where we have only a handful of firms, they may in a sense 'pull their punches.' They may behave less competitively and more like a monopoly and then we have the bad things that come along with that.

Is there a correlation between market concentration and competition?

A lot of the concentration data we see nowadays are at way too aggregated a level and don't really reflect a relevant market. So at that level, there need not be any connection between the concentration numbers and true competition. If we were able to focus the concentration measure on a relevant market then there's a presumption that there would be a impairment to competition at higher levels of concentration. But we have to still be careful and qualify because if entry is easy then we don't have to worry about concentration. Or if you've got large buyers—power buyers who can shop around, who can extract discounts out of even a handful of firms—then there may be less of a problem. But if in a relevant market we see higher levels of concentration, above some threshold, we ought to be more concerned.



How should we measure concentration in technology markets?

That's a hard one because the issue of a potential competition—because of the proverbial handful of people in a garage who are going to come up with some new, innovative product or app or piece of software. As a proposition, we ought to be trying to define relevant markets for merger purposes—the way we've always been doing it. For monopolization purposes, it's a problem we don't have a good paradigm for measuring markets. In either case, we need to be really sensitive to the issues of entry, but it can't just be some abstract idea—there might be somebody in a garage somewhere who might come up with a new product. We need more rigorous and better defined ways of thinking about entry.

“A lot of the concentration data we see nowadays are at way too aggregated a level and don't really reflect a relevant market.”

Hal Varian

University of California, Berkeley
Google



“I think you can’t put the “technology genie” back in the bottle. There are a lot of services, capabilities, and so on which were once quite difficult and now become very easy to do.”

November 5, 2018

Sadden: CPI is really pleased to have the opportunity to speak with UC Berkeley Professor Emeritus of Business, Economics, and Information Management and Chief Economist at Google, Hal Varian. We look forward to the CPI and CCIA Conference at Harvard Law School on November 9th entitled “Challenges to Antitrust in a Changing Economy.” Professor Varian, thanks for taking the time to sit down and talk with CPI today, so let’s jump right in. The panel that you will be a part of asked the question “In Monopoly Power Rising?” So, how do you define monopoly or is it defined generally, and how should it be defined today?

Varian: Well, I went back and looked at my undergraduate textbook to see how I defined monopoly when I did that, and I said it was a situation where a market is dominated by a single seller of a product. Now, the issue about that is everything hinges on what you consider a market. Coca-Cola is the only firm that can sell Coca-Cola, but there’s lots of firms that can sell cola drinks, and there’s lots of firms that can sell beverages, in general, so this market definition is the key issue particularly when there are new products on the market and the market is evolving in ways that are not necessarily anticipated by the protagonist.

Sadden: When a possible monopolist moves into new lines of business, what are some ways it improves product quality, and what are some clear examples of the contrary, i.e., a reduction in product quality?

Varian: Well, when a company's moving into a new market, they have to think that they have some competitive edge. Maybe they can produce existing products more inexpensively or maybe they can produce products that are of higher quality. In general, if they move into a market and quality goes down, they've made a mistake, right? You only go to those places where you think you have a chance of beating the incumbent, and that would require the expectation that you would be able to compete effectively with the existing players.

Sadden: Yeah, that makes sense. How should we think about the application of antitrust to platform technologies, and should we expect to see ... I know you don't have a crystal ball, but should we expect to see greater convergence on both sides of the Atlantic in the near future or more of a sense of divergence on approaches to regulation and enforcement?

Varian: The term platform seems to mean different things to different people. The original definition of platform was it was something where you could build on top of, so an operating system would be the clearest example. If you think of Windows or you think of Android, that would be a platform because lots of other people could create applications on top of that particular platform.

Nowadays, the meaning of the term seems to have broadened to refer to almost any kind of online business, but particularly those businesses where there's some two-sided matching going on. People are seeking information. People are providing information. People are seeking news, and people are providing news. People are seeking products, and someone's providing products, and so on. That's what I would normally call a two-sided market or a K-sided market more generally. When you're talking to somebody about platforms, the first thing you have to do is agree on what terms you're going to use.

Oh, and I didn't answer the final question do I think the gap is narrowing in the understanding of platforms? I don't see any signs of that. In fact, I see more confusion because of this proliferation of these different definitions of what a platform is. Right now, it seems there's a lot of different views on that particular question.

Sadden: It may be useful to come to, at some point, as much of a general consensus internationally on the definitions of platforms and the markets, two-sided markets, what those are and what they are not, something along those lines.

Varian: Absolutely. Same thing with network effects, and economies of scale, and so on. People seem to have different ideas of these concepts, so when you start a conversation, agree on your terms to begin with.

Sadden: Right. Lastly, discussions on suppression of innovation are in the air and gaining traction. Where do you think things stand today, and what's likely to, or may, happen moving forward?

Varian: Well, let me give you my personal view on this. I think you can't put the "technology genie" back in the bottle. There are a lot of services, capabilities, and so on which were once quite difficult and now become very easy to do. My favorite example is facial recognition. There's lots of talk about regulation facial recognition, but anybody with a little bit of expertise and access to some computing power can create their own facial recognition system now without a great deal of difficulty, so it's going to be very, very hard to regulate something that could be created in anybody's bedroom.

Sadden: Well, thank you very much, Professor Varian. I really appreciate you sitting down to take time and answer some of these questions. We look forward to seeing you at Harvard Law School on November 9th at the conference "Challenges to Antitrust in a Changing Economy." We hope to see many of our listeners there as well. Thank you once again. I really appreciate it.



Bruce H. Kobayashi*

US FTC

Interviewed by **Martin Gaynor**

Carnegie Mellon University



“Irrespective of the recent trends in concentration, the question of whether competition is in decline, and the related question regarding the efficacy of recent antitrust enforcement is in my view an interesting and unresolved question.”

October 30, 2018

Gaynor: It's been widely reported that concentration is rising in the US economy. Do you think this is indeed the case? If so, do you think it is a cause for concern?

Kobayashi: It certainly has been widely reported that measures of aggregate nationwide concentration based on census NAICS data have increased. However, it is difficult to make strong inferences about antitrust policy from this data. In my opinion, basing concentration numbers on relevant antitrust markets would be a necessary condition for drawing inferences from trends in concentration. The NAICS based concentration measures are not based on relevant antitrust markets. Concentration measures based on the narrowest NAICS 6 digit classifications are likely to be much broader than antitrust relevant markets, both in terms of the products and firms included and in terms of geographic scope. See e.g., Market Concentration, Note by the United States, OECD Hearing on Market Concentration, June 7, 2018, available at https://www.ftc.gov/system/files/attachments/us-submissions-oecd-other-international-competition-fora/market_concentration_united_states.pdf

Gaynor: A number of recent research papers have looked at the relationship between aggregate concentration and

economic outcomes (including some looking at labor market outcomes), and infer that there's declining competition. Do you think these papers provide evidence that competition is in decline? What do you think we've learned from these studies, if anything? What sorts of research do you think should be done to learn more about what's happening to competition?

Kobayashi: As an alternative approach, the Bureau of Economics has continued to evaluate the efficacy of merger enforcement by conducting retrospective studies of consummated mergers. It is a priority of mine to conduct such studies whenever the conditions required to produce a credible study are present (the existence of a credible control group, and the availability of data). Such studies allow us to evaluate agencies' and courts' decisions by observing the price and or output effects of a consummated merger. In addition, such studies can be used to assess the validity of the tools used by the enforcement agencies, including concentration measures such as the HHI, as well as a market definition and first order upward price pressure tools, and merger simulation.

Gaynor: What do you think are useful ways that concentration measures can be employed in antitrust? What are some ways that you think concentration measures should not be employed?

Kobayashi: Irrespective of the recent trends in concentration, the question of whether competition is in decline, and the related question regarding the efficacy of recent antitrust enforcement is in my view an interesting and unresolved question. Many have pointed out the limitations and reasons to be cautious about making strong causal inferences from the studies linking aggregate concentration and economic outcomes, and the significant methodological challenges faced in addressing these limitations going forward. An excellent and detailed summary of these issues are contained in Steve Berry's keynote address from last year's FTC microeconomics conference, Market Structure and Competition, Redux, presentation at the FTC Micro Conference, November 2017.

Gaynor: You were at the FTC a number of years ago. How has the use of concentration measures changed at the agency? How, if at all, would you like to see the FTC use measures of concentration differently than it does now?

Kobayashi: Concentration numbers seem to have less influence in the post-2010 guidelines period, especially when there is a credible way to measure or predict effects. I think that this has been a positive change. Concentration measures based on well-defined antitrust markets still provide useful predictive information, especially when data necessary to estimate effects is costly or otherwise unavailable.

***Disclaimer:** Please note that the views expressed are mine and are not necessarily those of the Federal Trade Commission or any of its individual Commissioners.

Richard L. Schmalensee

MIT Sloan School of Management



“Two-sided platforms deal with different customers. It’s not one customer who cares about prices of two different things. It’s two different customer groups that care about price and who’s on the other side of the business.”

October 24, 2018

In this audio interview, MIT Professor Schmalensee anticipates some key points that he plans to cover during his speech. Specifically, the five red herrings that have been floated in the debate leading up to and following the recent Supreme Court’s decision in American Express.

Interview Transcript

Sadden: Ahead of the upcoming Competition Policy International Conference at Harvard University on November 9th, Challenges to Antitrust in a Changing Economy, we wanted to take the opportunity to talk with one of our keynote speakers about the topics he plans to cover. Today, we have the great pleasure to speak with MIT Professor Dick Schmalensee.

Professor Schmalensee, thank you very much for taking time to sit down with us today at CPI. You recently co-authored an article, along with David Evans, in the CPI Antitrust Chronicle, entitled [Two-Sided Red Herrings](#)¹. You refer to the debate leading up to and following the Supreme Court’s recent decision in American Express, and you raised and then attempt to debunk some red herrings that have been floated around in these debates.

First off, could you please add a little context to our non-US residents? What’s so important about the Amex case and, more generally, two-sided and multi-sided platforms?

Schmalensee: Well, two-side and multi-sided platforms are an old business model. Think newspapers. Newspapers exist to connect advertisers to readers. Credit cards, of course, are pretty old. They act to connect merchants to customers, the shoppers. Generally, what a two-sided or multi-sided platform does is it facilitates interactions between members of two distinct groups, two or more distinct groups. Those groups value each other, and as a result, their demands for the services of the platform are interdependent. Merchants care about how many consumers use a particular card. Consumers care about how many merchants accept it.

This isn’t the first time that US courts have dealt with multi-sided platforms. There are newspaper cases going back decades, but it’s the first time that the Supreme Court talked about multi-sided platforms. People from outside the US will recognize that multi-sided platforms, online travel agents, travel recommendations services, have attracted a lot of attention outside the US, and these are, of course, multi-sided platforms that connect hotels or airlines to travelers, and at least one of their business practices, the so-called Most Favored Consumer clause, has attracted a lot of attention outside the US, a little less attention here.

Sadden: All right. Moving on to a couple of the red herrings that you bring up in your recent paper and that you will be covering in your keynote speech at the upcoming conference, CPI Conference on November 9th, the first red herring that you discuss is the idea that the two sides are simply complements, and so to the idea of the case of tennis balls and tennis rackets, what did Justice Breyer put it in his Amex dissent? Was it gasoline and tires?

Schmalensee: Gasoline and tires. He talked about screws and nuts in the oral argument and then went to gasoline and tires in the dissent.

¹ Available at <https://www.competitionpolicyinternational.com/wp-content/uploads/2018/10/CPI-Evans-Schmalensee.pdf>

The interview can be listened to at: <https://soundcloud.com/user-698490989/cpi-talks-with-richard-l-schmalensee-on-two-sided-red-herrings>

Sadden: Why are these questions even being raised, and what are people missing here on the idea of complements?

Schmalensee: Well, this is strange. I have to say, when I first read it, the literature on multi-sided platforms is not 100 years old, but it's not that young. It's been around among economists since the turn of the century, and it's been in leading journals since about 2003, so 15 years.

David Evans and I, in a paper some time ago, managed to find several hundred papers in the literature that dealt with this basic business model, and nowhere in all of that writing, in any major journal, does anybody say, "Oh, no, this is nothing new. This is just complements." When Jean Tirole received his Nobel Prize and the citation mentioned his work on two-sided platforms, his seminal work on two-sided platforms, nobody said, "Oh, but those are just complements," so hearing it in an antitrust context is just very strange.

Look, products which are complements are typically sold to the same consumers, gasoline and tires, tennis rackets and tennis balls, the demand, coffee and cream to go way back, the demands are interdependent in the sense that the price of one will affect the demand for the other, but it's the same customer. The reason is a customer cares about both coffee and cream or tennis rackets and tennis balls, and so the price of one affects that customer's demand for the other.

Two-sided platforms deal with different customers. It's not one customer who cares about prices of two different things. It's two different customer groups that care about price and who's on the other side of the business. If you just think about the two-sided platforms, they're just completely different from tennis rackets and tennis balls.

The other absolutely clear difference is that a lot of people sell gasoline and don't sell tires, but for American Express just to come to the case, it must deal with both merchants and shoppers. If it doesn't have both groups connected, it doesn't have a business. It doesn't have the option that people selling gasoline and tires or tennis rackets and tennis balls have of just selling one. Multi-sided platforms need both or all, if more than two, all groups to engage, or they don't have a business.

Sadden: I think in the same sort of vein as that is another red herring that you bring up in the paper, is the argument that markets must be one-sided since the services to the two sides aren't interchangeable. What is the overriding issue with this interchangeability argument?

Schmalensee: Well, as the people who made it in the Amex case point out, this isn't where you normally approach thinking about market boundaries. You say, "Well, what's reasonably interchangeable with a tennis racket? Is a squash racket reasonably interchangeable?" No. Then

you look at the supply side, and you say, "Well, people who make squash rackets, maybe they can switch into making tennis rackets," and you have this question, but it doesn't make any sense in the case of two-sided platforms. It is true that what credit cards do for merchants is different than for what credit cards do for customers, but, look, it's also true that automobile tires and automobile engines are not reasonably interchangeable, but nobody says, "It makes no sense to think about a market for new cars."

When objects or services or, for that matter, goods are consumed in fixed proportions, inevitably, then it makes sense to consider the aggregate, and, here, what David Evans and I argued, and a number of other people have argued, is in the case of credit cards, the market is linking merchants and customers. It is processing the transactions. That's how people in the business track market share. That's how all the services that deal with this industry track activity. They don't look at one side or look at the other side. They look at the activity of linking, and if you want to do market share, you can look at transactions volume, which is what is typically done.

It is really strange. As I say, there's nothing, nothing in the economic literature that says, "You can't have a market that is linking two different groups," just like there's nobody in the economics literature that says, "You can't have a market for your new automobiles because the parts in the new automobile aren't reasonably interchangeable."

Competition in credit cards, competition in person-to-person payment systems, occur at the system level, and so that's the market. It's competing systems. The fact that they do different things is no more relevant than the fact that automobile engines and tires are not reasonably interchangeable.

Again, what's strange about this is, after all these years in the literature and after hundreds of papers, this argument comes out of left field, and, again, in the context of automobiles, you say, "Well, this is ... There's nothing new here." Automobiles consist of tires and engines and fixed proportions, and so you buy a car. You don't say, "Oh, no, we can only think about tires because ..." Sometimes, it makes sense to think about tires, but, sometimes, it makes sense to think about the whole thing.

Sadden: I think what's interesting here is we can also then tie this into things that are happening now. With keeping these red herrings that you brought up in mind, what does this mean for potentially for Europe and some of the new antitrust probes that are going on there related to Google, potentially Amazon, and the like?

Schmalensee: Well, one of the things that's interesting, I find, is that you don't see these red herrings much outside the United States. There seems to be a much, maybe

because Jean Tirole is French, but there seems to be a much greater acceptance that the economics literature is not crazy outside the US. In a sense, there's nothing revolutionary here in the Amex case in terms of the majority's focus on a market that really has to do with the system, has to do with both sides, but an awful lot of these platforms originated in the US, so it's funny that the economic analysis of them is being sort of trashed in the antitrust context.

I don't know that the Amex case has much by way of analytical implications for Europe. What I think it means in the US, perhaps because it's not as clear as many people would like it to be, (a) we can't ignore ... Courts and lawyers can't ignore two-sidedness when it is present and important; but, (b) it will be a controversial subject until some of the issues related to it get sorted out.

Sadden: Nor can they probably try and create the image of their being two-sidedness when it's not there, either.

Schmalensee: I think the majority's definition in the Amex case was sort of over-broad. It suggested that, well, if you serve two different groups, then maybe you're two-sided, but any business has to deal with its suppliers and has to deal with its customers, so the notion that every business is really two-sided, and so we've mostly ignored this fact for hundreds of years, let's just continue to ignore it, that's another red herring. It suggests that whole literature was about nothing. It suggests that there's no difference between American Express and the merchants it serves, that the fact that it basically sets prices to two very distinct groups and it's in the business of linking them, is just like the supermarket down the street that buys groceries from its wholesaler, posts the price and sells them to me.

Well, if you look at those businesses, they don't feel the same. The grocery store down the street can get supplies by calling up its wholesaler, and the wholesaler may give it a better deal if it's bigger, so you can sing a song about how well that's two-sided because the wholesaler cares about how many people shop at this store. Yeah, maybe, but what doesn't happen is the grocery store doesn't facilitate an interaction, a transaction, between the wholesaler and the customer, and it doesn't usually have to attract the wholesaler. It places an order, and assuming its credit is good, it gets the goods it needs to resell.

There's no business of attracting customers and wholesalers, whereas Amex, any payment system, really does have to attract merchants and does have to attract people to carry and use the card.

I think we may see attempts made at that. I don't think it's happened in Europe or outside the US, that people have tried to claim two-sidedness for some purpose when it clearly isn't relevant. I expect it'll happen in the

wake of the Amex decision in the US. I also expect the courts will figure it out in short order and clarify. I'm not too concerned. Some commentators have said, "Well, the Amex case guts antitrust law." It doesn't. It just doesn't. The notion that you should, which the dissent seem to advocate, that you always should only look at one side of the market, the side of the market where the complaint was made. Then, all newspapers are predatory because newspapers are sold below cost, and it's impossible to predate by charging low advertising rates in newspapers even though, by doing that, you can become unprofitable as a paper and maybe drive somebody, some other newspaper, out of business.

It's going to take a while. I hope not too long a while.

Sadden: I think newspapers have enough problems on their hands right now as it is.

Schmalensee: There was a great newspaper predation case in 1953 with the Supreme Court. I guess 1950 may have been the district court, where the district court did just that. It said, "Well, if the newspaper's profitable, you can't be doing predation, even if you're selling the papers below cost. Thank you very much." Well, that's a two-sided analysis done in the early '50s. We can do it again.

Sadden: Definitely. All right. Well, thank you so much, Professor Schmalensee, for taking time to speak with us today. I would love to keep talking, but we'll save it for your keynote speech coming up on November 9th and for the other things down the road, as well. We look forward to seeing you in Cambridge on the 9th at the CPI Conference, Challenges to Antitrust in a Changing Economy, and we also look forward to seeing many of our listeners and subscribers, as well. Thank you, again. We really appreciate it.

Schmalensee: Thank you very much. I look forward to seeing everyone on the 9th.

Sadden: Thanks.





Diana Moss

American Antitrust Institute

Interviewed by **Jon Baker**

American University

“On the competitive effects side, enforcers and courts should consider both price and non-price effects, including the potential harms to competition and consumers from short and longer-term dynamic effects.”

October 15, 2018

Baker: Some progressives say that antitrust rules pay insufficient attention to harms to suppliers, including workers; harms along competitive dimensions other than price and output, such as quality or innovation; and the ways that the exercise of market power may undermine non-economic values, as by creating anti-democratic political pressures or limiting the opportunity of small businesses to compete. To what extent are these concerns justified?

Moss: Today's debate over the role of antitrust has generated a lot of blue sky thinking about the state of US antitrust. I think of this debate as a very different process from that of crafting constructive reform proposals. Actual reform requires knowledge of how the laws and standard have been and can be applied by enforcers and the courts. For example, we know that the consumer welfare standard can address the price and non-price dimensions (e.g., quality and innovation) of competition. The standard also reaches to the harms resulting from the exercise of market power anywhere along the supply chain (e.g., consumers and workers). The control of economic power serves to limit barriers to entry and exclusionary conduct that targets smaller innovative rivals and in stemming the growth of political power.

In sum, if enforcers and courts used the full scope of the law and standard, antitrust would today be more effective in defending and promoting our markets. The reality has been different, namely, a narrow interpretation of the consumer welfare standard under the conservative ide-

ology has held sway for decades. In response to this, some proposals advocate for wholesale reforms that would essentially do away with any standard. This risks reforms that divert the antitrust laws to purposes for which they are not designed and could exacerbate the current state of under-enforcement.

As a progressive (as I will articulate more in my panel remarks), I think of constructive reform as including a more nuanced approach through a package of complementary proposals. These include: (1) legislative clarification of the full scope of the law and increased appropriations for the agencies for enforcement; (2) guidance from the agencies that articulates a "dynamic and symmetric" consumer welfare standard (describes in #2 below) and requirements for implementing it; and (3) efforts to strengthen or introduce presumptions of illegality in mergers and some forms of conduct.

Baker: Some antitrust progressives argue for tough restrictions on vertical integration and vertical restraints. At the same time, some antitrust conservatives argue that vertical conduct should be presumed pro-competitive. Does the economic evidence favor either of these positions, or some third alternative?

Moss: The problem of a misreading of the consumer welfare standard is most evident in the area of vertical merger control. Conservatives have long-promoted the short and longer-term (i.e., dynamic) efficiencies of combining assets in complementary markets. These include eliminating double margins, economies of coordination, and reduced transactions costs. On the other side of the ledger, however, conservatives focus almost exclusively on short-term price effects. This asymmetric approach to implementing the standard almost guarantees deciding a merger in favor of merging companies. Considering the effects of a merger on total welfare, not consumer welfare, further stacks the deck against consumers.

It is important to note that many of the efficiencies claimed in vertical mergers never materialize. Analysis indicates that most of the synergies claimed by merging parties are never realized. Managers struggle with integrating large and diverse organizations so that any economies of coordination can remain unrealized. Other analysis shows that the costs of integrating diverse assets (e.g., airline mergers), often takes years and generate higher integration costs than what were originally projected.

What does this mean for enforcement? As a progressive, for me, it means that un-stacking the deck against consumers should be a high priority. For example, merger control should employ a dynamic and symmetric consumer welfare standard, or assessing the potential effects of a merger on both sides of the ledger in the same way. On the competitive effects side, enforcers and courts should consider both price and non-price effects,

including the potential harms to competition and consumers from short and longer-term dynamic effects. This would realign the current asymmetry I mentioned above. Enforcers and courts should more rigorously assess efficiencies claims, basing their assessment not only on the cognizability and merger-specific nature of such claims, but also on whether previous mergers proved up claimed efficiencies. And enforcers and courts should insist on proof of passing such efficiencies through to consumers.

Finally, in the case of vertical mergers, recent experience with mergers such as AT&T-Time Warner and CVS-Aetna indicates that highly concentrated markets are strong indicators that the merged firm will have the incentive to foreclose its rivals from access to inputs and distribution. I believe that it is time to craft vertical merger equivalents to the structural presumption we have for horizontal mergers. In other words, vertical mergers in highly concentrated upstream and/or downstream markets can be presumed to enhance the incentive to foreclose rivals. As such, they should be presumptively illegal under the antitrust laws.

Baker: Some antitrust conservatives recommend that antitrust rules be crafted to minimize the harm to aggregate surplus from conduct harming competition, rather than the harm to consumer surplus, and that courts and enforcers should freely allow harms in one market to be justified by benefits in another, contrary to legal precedents that prohibit cross-market tradeoffs. Do you agree?

Moss: I do not agree. Such proposals would codify conservative ideology that has arguably been responsible for under-enforcement of the antitrust laws for decades and that has contributed to the state of declining competition in the US. In the unlikely event such proposals were to gain traction, they would be a definitive "no" vote for consumers and workers, innovation, and the importance of protecting our market-based system. Such a proposal invites defendants to pursue even more expansive and amorphous arguments about potential benefits of anticompetitive mergers and abusive conduct. Moreover, persuading enforcers and courts to accept harms in one market on the promise of benefits in another opens a Pandora's box of economic, legal, and institutional reforms that would further stymie enforcement.





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'Coordinated effects' of mergers often overlooked, EU official says

By Andrew Boyce, November 9, 2018

Eu regulators may have missed competitive harm from mergers in industries such as air travel and retail by paying too little attention to "coordinated effects," a senior European Commission official said today.

...

"Maybe the scope of competition is wider than just the narrowest market in terms of product and geography," Piffaut told a conference in Cambridge, Massachusetts.

...

When reviewing mergers in certain sectors, investigators tend to look at the competitive effect on specific markets rather than in the industry as a whole. For example, in airline mergers, the Commission looks at competition for flights on specific routes.

FTC working on merger retrospective in oil, retail, hospitals, official says

By Leah Nysten, November 9, 2018

Economists at the Federal Trade Commission are working on six retrospectives looking at the longer term impact of mergers in the oil, hospital and retail industries, among others, the agency's top economist said.

...

In each of those industries, economists can easily get access to pricing data, he said. While the FTC has the authority to subpoena companies for information, the agency uses that sparingly, he said.

...

EU regulator can resist protectionism within the bloc and without, Almunia says

By Lewis Crofts and Leah Nysten, November 12, 2018

The Eu merger regulator will be able to stand up to growing protectionist tendencies from inside the trade bloc as well as from outside, former chief Joaquín Almunia said.

Pointing towards recent comments by German Chancellor Angela Merkel on EU merger policy, Almunia stressed the openness and resilience of the European Commission's reviews.

...

Speaking at a conference [at Harvard Law School], Almunia said there was a growing risk to the EU's traditional approach to multilateralism and free trade because of "protectionism trends, voices and initiatives outside the EU."

But he also noted that some countries within the bloc were being protectionist towards others. "We will be polluted. We will be contaminated, he said. "The contamination will not start at EU level. It can start at national level."

...

Almunia also noted the political difficulties that had arisen between the EU and US, which weren't present during his years as EU competition commissioner, and he hoped that the cooperation among antitrust authorities could "overcome the environmental difficulties."

...

REPORT BY PaRR

FTC's Bureau of Economics has fresh eyes on completed mergers – Director Kobayashi

By Nora Tooher, November 9, 2018

One of the priorities for the US Federal Trade Commission's (FTC) Bureau of Economics has been re-examining completed mergers to assess how they have impacted competition, said bureau director Bruce H. Kobayashi today [9 November].

Speaking to this news service on the sidelines of the "Challenges to Antitrust in a Changing Economy" conference at Harvard Law School hosted by Competition Policy International + CCIA, Kobayashi said the bureau is currently conducting about half a dozen retrospective analyses of mergers, adding that he expects his staff of 50 economists to conduct additional retrospective analyses on an ongoing basis.

...

During the 1990s, for example, a series of hospital mergers resulted in price increases caused by consolidation, he noted. Retrospective studies of some of those mergers helped the FTC assess whether antitrust enforcement was appropriate in those cases and to evaluate methods for better delineating geographic markets in which to analyze transactions, he added.

During a panel discussion about measuring market concentration, Kobayashi endorsed a "bottom-up approach" to evaluate what's happened in the wake of consummated mergers and "take those lessons and match them up with what the tools told us and see if the tools make any sense." "Retrospective analysis is data-intensive," he said, "but I think we're very interested in spending resources in doing that."

...

Panel moderator Nancy Rose, a professor of applied economics at Massachusetts Institute of Technology, said there have been concerns about rising market concentrations based on measurements such as US Census Bureau industry data and the Herfindahl-Hirschman Index (HHI).

Henri Piffaut, advisor for the deputy director general for mergers at the European Commission, said market concentration levels are higher in the US than the European Union.

...

Panelist Lawrence White, a professor at New York University's Stern Business School, said he was skeptical, however, whether current measurements of market concentration provide any meaningful insights about the scope of competition in the US.

...

Rose said, however, she is concerned about the government's current emphasis on not blocking mergers that might have pro-competitive benefits, rather than examining macroeconomic issues such as market concentration.

"It's interesting to me that the judiciary and agencies have so internalized this concern that we might block a merger that could have benefit, and aren't as worried about allowing industries to increase their concentration," she said.





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Juan Ignacio Lagos Contardo

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“Really well run and some genuinely informative, enlightening blue sky discussions.”

David Garcia

Sheppard Mullin



“Excellent conference and quality of speakers.”

R. Shyam Khemani

The World Bank Group



“I work on antitrust/competition and policy issues as an academic as well as having worked in the US Department of Justice as an Economist for three years. I found the workshop enlightening. Meeting so many professionals from academia, consulting, and agencies was highly rewarding. I hope CPI organizes the event next year too and I will attend for sure.”

Vivek Ghosal

Rensselaer Polytechnic Institute

BIBLIOGRAPHY OF RELEVANT ARTICLES PUBLISHED BY CPI

Baker, Jonathan B., "Dynamic Competition" Does Not Excuse Monopolization.

November 1, 2008

Available at <https://competitionpolicyinternational.com/assets/Uploads/Bakerwebwcover.pdf>

Bessen, James, The Policy Challenge of Artificial Intelligence.

June 19, 2018

Available at <https://www.competitionpolicyinternational.com/wp-content/uploads/2018/06/CPI-Bessen.pdf>

Cooper, James C., Ginsburg, Douglas H., Kobayashi, Bruce H., Wong-Ervin, Koren W., and Wright, Joshua D., Problems with the European Commission's Platform Survey and Lessons Learned from the Economics of Multi-Sided Platforms and Privacy.

January 21, 2015

Available at <https://www.competitionpolicyinternational.com/wp-content/uploads/2016/01/Europe-Column-January-Full1.pdf>

Elhauge, Einer R., Framing the Antitrust Issues in the Google Books Settlement.

October 29, 2009

Available at https://competitionpolicyinternational.com/assets/0d358061e11f2708ad9d62634c6c40ad/Elauge-OCT09_2_.pdf

Evans, David S. and Schmalensee, Richard, A 2012 progress report on The Antitrust Analysis of Multi-Sided Platforms.

November 13, 2012

Available at <https://competitionpolicyinternational.com/assets/Uploads/MSP12-11-2.pdf>

Evans, David S. and Schmalensee, Richard, Market Definition and Merger Analysis for Multi-Sided Platforms.

November 13, 2012

Available at <https://competitionpolicyinternational.com/assets/Uploads/MSP11-13-3.pdf>

Evans, David S. and Schmalensee, Richard, Two-Sided Red Herrings.

October 16, 2018

Available at <https://www.competitionpolicyinternational.com/wp-content/uploads/2018/12/CPI-Evans-Schmalensee.pdf>

Evans, David S., The Emerging High-Court Jurisprudence on the Antitrust Analysis of Multisided Platforms.

February 15, 2017

Available at <https://www.competitionpolicyinternational.com/wp-content/uploads/2017/02/CPI-Evans.pdf>

Evans, David S. and Hagiu, Andrei and Schmalensee, Richard, Invisible Engines: How Software Platforms Drive Innovation and Transform Industries.

March 13, 2016

Available at <https://www.competitionpolicyinternational.com/invisible-engines-how-software-platforms-drive-innovation-and-transform-industries/>

First, Harry, Woodstock Antitrust.

April 17, 2018

Available at <https://www.competitionpolicyinternational.com/wp-content/uploads/2018/04/CPI-First.pdf>

Garcés, Eliana, The Impact of Behavioral Economics on Consumer and Competition Policies.

April 1, 2010

Available at <https://competitionpolicyinternational.com/assets/0d358061e11f2708ad9d62634c6c40ad/GarceswCover2.pdf>

Garcés, Eliana, The Dynamics Of Platform Business Value Creation.

August 14, 2017

Available at <https://www.competitionpolicyinternational.com/wp-content/uploads/2017/08/CPI-Garces-Tolon.pdf>

Garcés, Eliana, Data Collection In Online Platform Businesses: A Perspective For Antitrust Assessment.

May 15, 2018

Available at <https://www.competitionpolicyinternational.com/wp-content/uploads/2018/05/CPI-Garces.pdf>

Moss, Diana, Transgenic Seed the High Technology Test of Antitrust.

April 29, 2010

Available at <https://competitionpolicyinternational.com/assets/0d358061e11f2708ad9d62634c6c40ad/Moss-APR102.pdf>

Piffaut, Henri, Platforms, a Call for Data-based Regulation.

May 15, 2018

Available at <https://www.competitionpolicyinternational.com/wp-content/uploads/2018/05/CPI-Piffaut.pdf>

Rysman, Marc, The Empirics of Antitrust in Two-Sided Markets.

April 19, 2007

Available at <https://competitionpolicyinternational.com/assets/0d358061e11f2708ad9d62634c6c40ad/Rysman.pdf>



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