THE HAMILTON PROJECT

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Will Competition Be Another COVID-19 Casualty?

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This policy essay is an essay from the author(s). As emphasized in The Hamilton Project's original strategy paper, the Project was designed in part to provide a forum for leading thinkers across the nation to put forward innovative and potentially important economic policy ideas that share the Project's broad goals of promoting economic growth, broad-based participation in growth, and economic security. The author(s) are invited to express their own ideas in policy papers, whether or not the Project's staff or advisory council agrees with the specific proposals. This policy paper is offered in that spirit. The author(s) did not receive financial support from any firm or person with a financial or political interest in this article. They are currently not an officer, director, or board member of any organization with an interest in this article.

BROOKINGS

Introduction

The immediate risks that COVID-19 poses to health and economic activity are clear. But similar to the way health-care professionals and scientists now recognize potential long-lasting health impacts in some individuals even after they appear to have recovered from an active infection, economists and policymakers should be considering economic impacts that could persist long after businesses have reopened and shelter-in-place orders have been lifted. This essay addresses one such concern: the state of competition in the economy.

The economic crisis arising from the pandemic is changing the business landscape and exacerbating prior concerns about the state of competition in the U.S. economy. Many firms are struggling financially, have filed for bankruptcy, or have shut down. But some large, well-positioned firms appear to have increased their market share, accelerating trends seen prior to the pandemic. Other firms are increasing cash reserves, ready to acquire competitors who are being damaged by revenue declines, excess leverage, and financial distress. With COVID-19 disruptions likely to reinforce the dominance of the largest firms in the economy, increase bankruptcies, and reduce new business entry today, tomorrow's product and labor markets may be less competitive and less productive than they were before the crisis. This outcome is even more likely if antitrust enforcers succumb to pressures to approve acquisitions of weaker competitors and immunize overly broad cooperative solutions to market challenges, particularly because cooperative behavior learned under antitrust exemptions can facilitate collusive behavior long after those exemptions are removed (e.g., Kamita 2010).

Preserving the benefits of competitive markets in the wake of the pandemic and economic crisis will require renewed commitment by policymakers to assertive antitrust enforcement. This means that enforcement agencies will need to focus on blocking anticompetitive mergers, even mergers of nascent competitors; combatting exclusionary behavior that disadvantages rivals; and, aggressively monitoring for and prosecuting collusion by industry rivals. Congress can facilitate this by substantially increasing funding for the Federal Trade Commission (FTC) and the Department of Justice (DOJ) Antitrust Division to offset years of decline in enforcement resources and providing more effective congressional oversight of enforcement activity to ensure its vigor. Rebalancing the scales of justice in favor of competitive markets for the longer term is likely to require additional legislation, a subject beyond this short essay.[1]

Preexisting Conditions: The State of Competition Going into This Crisis

The state of competition in the U.S. economy as well as in other major economies has attracted a deluge of media reports, policy briefs, scholarly research, and political attention in the years since the Great Recession. Reports of rising national concentration levels across most industries, increasing mark-ups, declining business dynamism, and falling labor share triggered concerns over declining competition and its possible role in widening income inequality well before the COVID-19 pandemic began. The increasing dominance of a small handful of digital platforms and other tech firms—particularly Google, Facebook, Amazon, and Apple—has led to calls for their investigation, breakup, or regulation. Several of these firms are currently under investigation by U.S. state and federal antitrust authorities as well as by competition policy enforcers globally. Congress is holding hearings on the tech sector, and Margarethe Vestager, the European Commission's commissioner for competition policy and executive vice president for the European Commission for a Europe Fit for the Digital Age, recently presaged far-ranging new regulations of the tech sector. Mergers have led to fewer, larger competitors across many industries, as diverse as airlines (with United–Continental, Delta–Northwest, Southwest–AirTran, and American–USAir mergers concentrating domestic travel among the four largest airlines), beer (Miller–Coors and a number of AB InBev acquisitions), meat and poultry processing (with large numbers of roll-up acquisitions of smaller competitors before more recent larger mergers such as Tyson–IBP, Tyson–Hillshire, and JBS–Cargill), and mobile telecommunications (with the recently approved Sprint–T-Mobile merger resulting in just three national carriers), to name just a few high profile examples. Calls for the invigoration, reform, or overhaul of antitrust enforcement have attracted increased attention (see, e.g., American Antitrust Institute [AAI] 2020; Baker 2019; Khan 2017; Kwoka 2015; Philippon 2019; Shapiro 2019; Wu 2018). Many of these trends have been discussed in analyses by The Hamilton Project (e.g., Shambaugh et al. 2018).

RISING CONCENTRATION

Data suggest that over recent decades the largest firms in the economy have been growing larger, in both absolute terms and as a share of their sectors; the labor share of income has been falling; and many measures of mark-ups and accounting profit rates are rising (see, e.g., Shambaugh et al. 2018). These facts have launched a large literature exploring their interpretation, underlying causes, and implications for public policy (see, e.g., Autor et al. 2020; De Loecker, Eeckhout, and Unger 2020; Philippon 2019; and Rossi-Hansberg, Sarte, and Trachter forthcoming; and the Summer 2019 Journal of Economic Perspectives symposia on markups and on antitrust, especially Basu 2019; Berry, Gaynor, and Morgon 2019; and Shapiro 2019).

Whether these trends reflect reduced competition in most markets, let alone a failure of antitrust and regulatory policy to limit oligopoly mergers and restrict exclusionary behavior, remains an open question.[2] Recent establishment-level analysis suggests the rise in concentration is associated with increasing shares of the most productive superstar firms (e.g., Autor et al. 2020, but see Philippon 2019 for an opposing view) and geographic expansion by the largest national and global firms, which increases local competition (Rossi-Hansberg, Sarte, and Trachter forthcoming). Ganapati (forthcoming) finds that rising concentration is, on average, associated with greater productivity and output, and not with higher prices. Evidence on the trends in markups and their interpretation is mixed, and may overstate implied market power.[3] Taken together, this evidence suggests that the expansion of larger, more-efficient firms may reflect greater productivity and value to consumers, at the same time that their expansion appears associated with lower employment intensity and a declining labor share of income.

Even if the initial growth of today's superstar firms were accompanied by possible procompetitive benefits for consumers, there is still reason for concern about the durability of these gains. There is growing distrust of the ability of antitrust enforcement to deter or arrest anticompetitive behavior by large incumbents seeking to maintain or leverage dominant positions by disadvantaging or acquiring potential rivals rather than by competing to offer greater value.[4] When winners are determined by exclusionary behavior, cartelization, or buying up rivals, rather than by competition and innovation, consumers, workers, and suppliers—as well as potential rivals—all stand to lose.

BUSINESS DYNAMISM

The increasing shares of the largest firms in the economy have been accompanied by a decrease in the birth rate of new businesses and even larger decreases in the employment share of new and younger firms (e.g., Shambaugh et al. 2018, 19–24). Declining business formation raises concerns that missing productivity gains associated with young innovative firms replacing older less-efficient businesses may reduce overall economic growth. Recent research highlighting ineffective antitrust enforcement against acquisition of small and nascent competitors by incumbents elevates these fears (e.g., Cunningham, Ederer, and Ma 2020; Wollman 2019, 2020).

ANTITRUST ENFORCEMENT

Antitrust enforcers are tasked with preventing the acquisition of market power by anticompetitive means (including anticompetitive mergers) and enjoining anticompetitive behaviors to create, preserve, or extend market power, including exclusionary behavior and cartels. A growing body of evidence suggests that U.S. enforcers in the DOJ Antitrust Division and the FTC may be hamstrung in this mission, through a combination of inadequate resources, a laissez-faire drift by both agencies (DOJ and FTC) and by the courts, and a body of case law that is increasingly hostile to enforcement actions (see AAI 2020; Baker 2019; Baker et al. 2020; Kades 2019; Khan 2017; Rose 2019; Wu 2018). Thresholds for horizontal merger enforcement (mergers between competitors) have been liberalized and merger investigations and challenge rates have fallen over time. Vertical mergers of firms along a supply chain are almost never successfully blocked and it is increasingly difficult to successfully challenge anticompetitive behaviors other than cartels in court.

New Dangers to Competition Posed by the Pandemic

The pandemic and its effects combine both the conventional risks to competition associated with a severe downturn in economic activity as well as more-novel impacts associated with responses to the pandemic. The earliest firm closings and bankruptcies associated with pandemic-related shutdowns and dramatic changes in consumer demand have already been announced, and are likely to grow over the coming months or years (Brunnermeier and Krishnamurthy 2020).[5] This anticipated growth in firm closings and bankruptcies is especially likely for firms without access to capital market liquidity facilitated by the Federal Reserve's huge injections of cash and its corporate bond-buying program. The lack of access to liquidity is likely to hit small and midsize firms particularly hard. While the CARES (Coronavirus Aid, Relief, and Economic Security) Act's Main Street Lending program should, in theory, increase funding availability to those that are liquidity constrained but solvent, there has been little take-up to date and considerable skepticism about the CARES Act's likely contribution (e.g., Kiernan 2020). Firms in sectors such as brick-and-mortar retail or travel and hospitality, where the pandemic exacerbated prior weaknesses or created new ones, are also particularly vulnerable. Many of the smallest enterprises may liquidate and exit their markets entirely. Troubled mid-sized and larger firms may reorganize or, perhaps more commonly, be acquired. Changes in buying patterns may reallocate revenues across firms within a sector, perhaps in unexpected ways. And the collapse of demand or challenges in supply chains in many sectors may increase calls for cooperative behavior to impose order and rationalize weakened markets. What do these imply for competition?

THE BIG GET BIGGER

In the tech sector, responses to COVID-19 produced strong positive demand shocks for many firms engaged with the digital economy, as work, school, shopping, entertainment, and other traditionally in-person interactions all moved online (Koeze and Popper 2020). Social media sites saw increases in usage, and online video and streaming services reported record growth in demand, likely reflecting a combination of new users and more-intensive engagement by preexisting users. This has tended to reinforce the preexisting advantages of the largest firms, which often had the systems, logistics, and capacity to better accommodate the surge in demand associated with the shift online. This impact is likely to reinforce their dominant position not only during COVID-19 shutdowns, but also extending into the future. As many households tried online grocery shopping for the first time, for example, their experiences may keep them as regular online grocery shoppers even when the economy reopens, exacerbating the shift from brick-and-mortar retail to online shopping, and to the largest online grocers, including Amazon's subsidiary, Whole Foods. If this reinforces the network advantages of these large platforms, it may become even more difficult for competitors to gain a toehold. As competition diminishes, consumers, workers, and suppliers all stand to lose.

The Urge to Merge

Mergers and acquisitions (M&A) activity has dropped dramatically since the beginning of 2020, likely reflecting a combination of factors that include decreased valuations of acquisition targets, weakened cash positions of acquirers, reactions to the economic downturn, and ongoing uncertainty. A near-term decline would be consistent with activity in prior recessions, which saw a sharp drop in overall M&A activity, followed by a more gradual resumption. But there are many reasons to expect M&As to put additional pressure on competition as some firms take advantage of stronger balance sheets to acquire rivals or opportunistically bid for distressed assets in bankruptcies. The recently announced Uber acquisition of Postmates, a rival in the food delivery business, is an example of the resulting consolidation.

Firms in a position to shore up cash reserves are doing so. Equity offerings this quarter are the highest of any on record, and an exceptional number of firms have been unwinding large minority positions in other companies or divesting businesses outside their core to raise cash through the secondary market (Driebusch 2020). While cash balances are useful to preserve flexibility in a variable and uncertain environment, many firms acknowledge that they are building war chests to take advantage of potential acquisition opportunities that may arise. And the most attractive opportunities are often likely to involve the firms' closest rivals. The closer the competition ex ante, the greater the value to an incumbent of controlling those assets, reducing price competition, and raising combined profits. This makes close competitors likely to often be the highest bidder for firms put up for sale.

While antitrust merger review is intended to focus on detecting and preventing mergers of the closest competitors in already concentrated markets, economic crises increase the likelihood of acquirers invoking the failing firm defense—which is essentially a claim that there is no other buyer, and the target firm assets will leave the market without the acquisition, so there is no diminution of "but for the merger" competition and it should be allowed to proceed. Enforcers or courts may be tempted to accept those arguments. While it is difficult to invoke this defense successfully in normal times, it may become more common during crises, and too readily morph into justifications for acquisitions of flailing firms. Shapiro (2009) noted these pressures, and argued strongly against this and other crisis-related arguments for loosening enforcement standards during the Great Recession.

A Silver Lining?

The reinforcement of dominance by larger superstar firms that are well positioned with cash and technological know-how to not only survive the crisis, but also take share from less-advantaged rivals, is not inevitable. For example, even behemoths like Amazon struggled to keep up with the surge in demand resulting from shutdowns in March and April, often forcing longer or closed delivery windows or reduced product availability. This created opportunities for some frustrated consumers to turn to competitors, which could create relationships that will persist after Amazon's and other large firms' increased capacity to reinstate previous product availability and delivery standards (Weise 2020). A similar dynamic could mitigate the advantages of some of the largest firms in the business-to-business sector if customers who were unable to access products from their usual suppliers decide that more multisourcing, shortening supply chains, or bringing some purchases closer to home or even in-house are in their long-term interest, thus creating new sales opportunities for smaller firms or alternative supply sources.

It will be particularly interesting to observe the online meeting space. A largely unknown firm, Zoom, exploded into popular consciousness as the go-to provider for online meetings and classes, outstripping existing competitors like Cisco WebEx, Google Hangouts Meet, and Microsoft Teams. Whether Zoom is able to sustain the advantage this crisis has created in the face of public growing pains over privacy and security gaps, and whether it remains a platform primarily for online meetings or leverages this to grow in adjacent markets remains to be seen.

LOSING THE NEXT GENERATION

A wave of exits and expected bankruptcies is likely to follow the economic crisis induced by the pandemic. Some firms will exit through liquidation, particularly in sectors that were under pressure prior to COVID-19, like brick-and-mortar nongrocery retail, or with long-lasting impacts from the pandemic, such as travel, hospitality, in-person entertainment, and some higher-education institutions. Others will be sold, potentially favoring cash-rich acquirers who are competitors, risking rising concentration. This could be a particular threat in markets where COVID-19 impacts may have temporarily weakened revenue flows for many firms, including health-care markets, such as hospitals. More-subtle threats to competition may be longer term. Bankruptcies and liquidations of substantial numbers of younger, generally smaller, firms in the economy can have little immediate impact on apparent competition within a market, particularly as measured by the concentration of revenue share. Firms that are small, by definition, do not move concentration measures by much. Similarly, fewer new entrants during the pandemic and its near-term aftermath may not change conventional measures of an industry's competitiveness. Instead, their impact may become apparent over time as the economy loses firms that could have developed into the next generation of mid-size or even large innovative competitors. Given the historical importance of young firms for productivity growth, this missing generation may have consequential impacts on competitiveness, particularly following on the heels of a previous purge of many young firms during the Great Recession just a decade earlier.

COLLUSION: A TEMPTING WAY TO RESTORE PROFITS

Upheavals in markets resulting from crises such as the Great Depression, the Great Recession, or the present pandemic are unsettling to market participants and policymakers. These upheavals often give rise to the temptation to "rationalize production" in the wake of sharply reduced demand, to more efficiently coordinate a response, or to take action against "ruinous competition." These temptations can readily slide into tacit or explicit acceptance of industry collusion, particularly where the chaos of competitive markets seems to drive prices down and to throw workers onto the unemployment rolls. Succumbing to this was a mistake during the Great Depression, when the government blessed industry cartelization until the National Recovery Act was struck down by the Supreme Court, and it would be a mistake now (see, e.g., Shapiro 2009; Shelanski 2010; Schinkel and d'Ailly 2020). Competition policy enforcers largely understand this, but may be pressured to accommodate extraordinary measures.

It is important for antitrust enforcers to send clear messages on the primacy of competition. Procompetitive cooperative agreements are not banned under U.S. antitrust law, and companies can ask the DOJ or FTC to review proposed agreements ex ante to determine whether they would meet those standards. At the DOJ this takes the form of business review letters. The DOJ and FTC issued a joint statement in March meant to lay out the boundary between acceptable and unacceptable cooperative behavior, and encouraged firms contemplating cooperative responses to pandemic-related challenges—say, to help manage critical shortages in health-care supplies—to avail themselves of this review process (DOJ and FTC 2020a). DOJ has since issued positive business review letters for cooperative efforts for the manufacturing, supply, and distribution of personal protective equipment; the distribution of medication and health-care supplies; and the orderly euthanizing of hogs that cannot be processed by packing plants due to closures or slowdowns caused by COVID-19. Similar actions have been taken by competition authorities in a number of other jurisdictions (see, e.g., Motti 2020; Schinkel and d'Ailly 2020). One might be concerned that the statement's focus on permissible coordination, while likely meant to signal openness to pro-market cooperation to solve immediate critical problems, could be interpreted as less concern about collusion (Alexander 2020). This might have contributed to a subsequent joint statement by the DOJ and FTC just a few weeks later, laying out clear intolerance for collusion against workers (DOJ and FTC 2020b). Whether that will be sufficient to avoid an increase in collusive activity remains to be seen.

TODAY'S COOPERATIVE VENTURES POTENTIALLY TOMORROW'S CARTELS

While limited government-sponsored or sanctioned cooperation among firms could be an efficient way to coordinate responses in a crisis, its short-term necessity and long-run costs are both unclear. Unless carefully proscribed, sanctioning broad information exchange and cooperation among competitors can create the possibility of cooperation extending beyond the initial parameters or time period envisioned. The AAI highlights the potential threat to competition: "For every company or group of companies that legitimately seeks to aid the pandemic response through collaboration, experience tells us there will be another that attempts to use this crisis as an excuse to engage in anticompetitive conduct unrelated or tangentially related to the pandemic response. This concern is particularly acute given the track record of anticompetitive behavior in many of the markets implicated by the pandemic response, [including in the health care sector, agriculture, and tech]" (Alexander 2020).

The richer the cooperation and information exchange during the crisis, the more likely firms are to develop understandings that may allow them to enforce more-collusive outcomes even after the antitrust exemption and explicit communication have been discontinued. Kamita (2010) provides a compelling illustration of this behavior. She analyzes the U.S. Department of Transportation (DOT) grant of temporary antitrust immunity for capacity rationalization of the intra-Hawaiian airline market following the collapse of air travel demand after 9/11. Average prices not only increased during the 10-month period of immunity, but also persisted two years after its expiration, until entry by a new airline disrupted the market.[6] When firms learn to cooperate during emergency exemption from antitrust laws, those lessons are not readily forgotten when the exception is no longer warranted.

Where Should Policy Focus?

Ensuring that the pandemic does not lead to lasting harm to competition is an important policy objective, and should be a focus of antitrust enforcers and policymakers. As Schinkel and d'Ailly (2020, 13) observed, "We should expect fewer competitors everywhere, resulting in more favorable conditions for collusive cooperation, more opportunities for dominance that are waiting to be exploited, and more anticompetitive acquisitions and mergers." Strong actions to avoid these consequences are necessary, and there are several that can be pursued without additional legislation to strengthen antitrust laws.

First, Congress would do well to beef up budgets and enforcement resources at both the FTC and the DOJ Antitrust Division now, before a postcrisis merger deluge. Budgets have failed to keep pace with enforcement costs or with merger volume, reducing the ability of the agencies to pursue enforcement missions even in normal times (Kades 2019). While merger filings have increased 80 percent from 2010 to 2018, real antitrust appropriations have fallen 47 percent over that same time period (author's calculations based on Gaynor 2020). And the DOJ reportedly has lost an enormous number of career staff since 2016.[7] With declining resources, the share of merger filings resulting in enforcement action fell from a high of roughly 4.5 percent in 2009 to 1.9 percent in 2018 (Kades 2019; Gaynor 2020). Giving the agencies the resources for vigorous enforcement, and making it clear that congressional oversight committees will look for evidence that they are adhering to that vigor, would be an excellent place to start. At the same time, real progress in antitrust enforcement is likely to require additional legislation to shift the enforcement pendulum back toward the center, given the development of four decades of case law setting ever-higher burdens for enforcement.[8]

Second, agencies should communicate the rigorous standards they will apply to merger reviews, well before post-pandemic mergers start to heat up. Helpful messaging would include reiteration of their long-standing and deep skepticism of failing/flailing firm defenses, particularly when used to enable shareholders to sell out to rivals who would otherwise have been ruled out as acceptable buyers. Bankruptcy does not itself mean the firm is nonviable going forward. And if the seller is truly nonviable, it is essential to insist on a robust search for a buyer that does not end in a close competitor. Merger reviews should worry about elimination of small or nascent competitors, as well as about creating greater concentration by combining larger incumbents—e.g., consolidations from four to three dominant firms, or from three to two dominant firms—that can facilitate tacit collusion or enhance exclusionary behavior to block the rise of smaller competitors. The disruptions in many supply chains during the pandemic suggest that some efficiency arguments firms make might in fact be upside down. The crisis has exposed an additional competitive cost of concentrating plants or activities: what may appear as lower conventional operating costs during normal times—for example by consolidating production in fewer, larger plants—may manifest as less resiliency and much higher prices and shortages outside of normal periods. This appears to be exemplified by the reliance on a very few enormous meat- and poultry-processing plants that not only created market power problems and possibly collusion prior to the crisis, but also have imposed huge additional costs on both farmers and consumers when one plant or more was shut due to COVID-19 infections (Moss and Alexander 2020).

Third, agencies should commit to reinvigorate enforcement against anticompetitive conduct. There should be a laser focus on detecting collusion, particularly in sectors where cooperation was permitted. As the agencies properly note, collusion may take place against suppliers and workers upstream, or purchasers and consumers downstream. This is especially challenging given the slide in criminal enforcement actions under the current administration, and the loss of personnel and resources needed for enforcement. It is exacerbated by ongoing hostility of the courts to antitrust conduct enforcement, particularly through private suits. This all acts to reduce the power of deterrence, which has historically been a bedrock of the antitrust enforcement system.

We would do well to remember the lessons learned in other crises, and reinforced by the Great Recession: "The history of antitrust forbearance during periods of economic failure shows that such sacrifice has generally been neither necessary nor beneficial. … During crises in which enforcement might be perceived as an impediment to tangible responses to economic failure, the political economy tilts too easily toward antitrust retreat. In light of the long-run welfare effects of market consolidation, that retreat should be resisted and antitrust preserved to the greatest extent possible during difficult economic times" (Shelanski 2010, 245).

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Endnotes

1. But see discussions in Baker (2019), Baker et al. (2020), Khan (2017), and Wu (2018), among many others. A number of Democratic presidential candidates called for antitrust reforms, and Congress has introduced a number of reform bills.
2. Compare, for example, Philippon (2019) to Autor et al. (2020) and Basu (2019). Rose (2019) discusses evidence on concentration and its limitations, and assesses antitrust enforcement challenges.
3. For example, Basu's (2019) discussion of the broad evidence on markups suggests caution in inferring increased market power from measured margins. Demirer (2020) finds traditional structural econometric methods of estimating markups that ignore firm heterogeneity may tend to overstate their magnitude.
4. See supra endnote 1 and AAI 2020; Baker 2019; Khan 2017; Kwoka 2015; Philippon 2019; Shapiro 2019; and Wu 2018
5. Edward Altman, professor emeritus at New York University Stern School of Business and creator of a model to score corporate failure risk, "expects at least 66 cases with more than $1 billion in debt this year, eclipsing 2009's mark of 49. He also predicted 192 bankruptcies involving at least $100 million in debt, which would trail only 2009's record of 242" (in Walsh 2020).
6. This immunity was granted by the DOT over the objections of DOJ, which argued that it would facilitate tacit collusion even after its expiration. It allowed for coordination through October 2003 on capacity and seats sold, but not explicitly on price. Fares rose throughout the immunity period and after its expiration: "Although price announcements ceased after the agreement ended, fares continued to rise, and Hawaii airports consistently made the DOT's list of top five fare increases throughout 2004" (Kamita, 2010, 247).
7. DOJ does not publicly report staffing statistics. But Nylen (2020) reported in February that Antitrust Division staffing had fallen during the Trump administration due in part to the hiring freeze, and was then around 600, roughly 100 below authorized headcount. There have been numerous additional departures.
8. See Hovenkamp and Scott Morton (forthcoming) on the erosion of enforcement and the references in supra endnotes 1 and 4 for discussion of broader reforms that may be required to reverse decades of case law that has weakened enforcement.

References

Alexander, Laura. 2020. "Designing an Effective Pandemic Response that Minimizes Lasting Harm to Competition." American Antitrust Institute, Washington, DC.

American Antitrust Institute (AAI). 2020. *The State of Antitrust Enforcement and Competition Policy in the U.S.* Washington, DC: American Antitrust Institute.

Autor, David, David Dorn, Lawrence F. Katz, Christina Patterson, and John Van Reenen. 2020. "The Fall of the Labor Share and the Rise of Superstar Firms." *Quarterly Journal of Economics* 135 (2): 645–709.

Baker, Jonathan B. 2019. *The Antitrust Paradigm.* Cambridge, MA: Harvard University Press.

Baker, Jonathan B., Joseph Farrell, Andrew I. Gavil, Martin Gaynor, Michael Kades, Michael L. Katz, Gene Kimmelman, A. Douglas Melamed, Nancy L. Rose, Steven C. Salop, et al. 2020. "Joint Response to the House Judiciary Committee on the State of Antitrust Law and Implications for Protecting Competition in Digital Markets." Available at SSRN: https://ssrn.com/abstract=3632532.

Basu, Susanto. 2019. "Are Price-Cost Markups Rising in the United States? A Discussion of the Evidence." *Journal of Economic Perspectives* 33 (3): 3–22.

Berry, Steven, Martin Gaynor, and Fiona Scott Morton. 2019. "Do Increasing Markups Matter? Lessons from Empirical Industrial Organization." *Journal of Economic Perspectives* 33 (3): 44–68.

Brunnermeier, Markus, and Arvind Krishnamurthy. 2020. "Corporate Debt Overhang and Credit Policy." Conference draft, Brookings Papers on Economic Activity.

CARES Act (Coronavirus Aid, Relief, and Economic Security Act), Pub.L. 116–136 (2020).

Cunningham, Colleen, Florian Ederer, and Song Ma. 2020. "Killer Acquisitions." Unpublished paper. Available at SSRN: https://ssrn.com/abstract=3241707.

De Loecker, Jan, Jan Eeckhout, and Gabriel Unger. 2020. "The Rise of Market Power and the Macroeconomic Implications." *Quarterly Journal of Economics* 135 (2): 561–644.

Demirer, Mert. 2020. "Production Function Estimation with Factor-Augmenting Technology: An Application to Markups." Job Market Paper, Massachusetts Institute of Technology, Cambridge, MA.

Driebusch, Corrie. 2020. "Coronavirus Cash Needs Prompt Companies to Rethink Investments." *Wall Street Journal,* June 22, 2020.

Ganapati, Sharat. Forthcoming. "Growing Oligopolies, Prices, Output, and Productivity." *American Economic Journal: Microeconomics.*

Hovenkamp, Herbert, and Fiona Scott Morten. Forthcoming. "Framing the Chicago School of Antitrust Analysis." *University of Pennsylvania Law Review.*

Kades, Michael. 2019. *The State of U.S. Federal Antitrust Enforcement.* Washington, DC: Washington Center for Equitable Growth.

Kamita, Rene Y. 2010. "Analyzing the Effects of Temporary Antitrust Immunity: The Aloha-Hawaiian Immunity Agreement." *Journal of Law and Economics* 53 (2): 239–61.

Kiernan, Paul. 2020. "Fed's $600 Billion Main Street Lending Program Sees Lukewarm Interest." *Wall Street Journal,* July 1, 2020.

Koeze, Ella, and Nathaniel Popper. 2020. "The Virus Changed the Way We Internet." *New York Times,* April 7, 2020.

Khan, Lina. 2017. "Amazon's Antitrust Paradox." *Yale Law Journal* 126 (3): 710–805.

Kwoka, John. 2015. *Mergers, Merger Control, and Remedies: A Retrospective Analysis of U. S. Policy.* Cambridge, MA: MIT Press.

Moss, Diana L., and Laura Alexander. 2020. "When COVID-19 Is the Symptom and Not the Disease: Consolidation, Competition, and Breakdowns in Food Supply Chains." American Antitrust Institute, Washington, DC.

Motti, Monti Giorgio. 2020. "Business Cooperation in Times of Emergency: The Role of Competition Law." Competition Policy International, Cambridge, MA.

Nylen, Leah. 2020. "DOJ Seeks 71 Percent Bump from Congress for Antitrust." *Politico,* February 10, 2020; updated February 14, 2020.

Philippon, Thomas. 2019. *The Great Reversal: How America Gave Up on Free Markets.* Cambridge, MA: Harvard University Press.

Rose, Nancy L. 2019. "Concerns about Competition." In *Maintaining the Strength of American Capitalism,* edited by Melissa S. Kearney and Amy Ganz. Washington, DC: Economic Strategy Group, Aspen Institute.

Rossi-Hansberg, Esteban, Pierre-Daniel Sarte, and Nicholas Trachter. Forthcoming. "Diverging Trends in National and Local Concentration." Macroeconomics Annual. National Bureau of Economic Research, Cambridge, MA.

Shambaugh, Jay, Ryan Nunn, Audrey Breitwieser, and Patrick Liu. 2018. "The State of Competition and Dynamism: Facts about Concentration, Start-Ups, and Related Policies." The Hamilton Project, Brookings Institution, Washington, DC.

Shapiro, Carl. 2009. "Competition Policy in Distressed Industries." Remarks given at the ABA Antitrust Symposium: Competition as Public Policy, May 13.

———. 2019. "Protecting Competition in the American Economy: Merger Control, Tech Titans, Labor Markets." *Journal of Economic Perspectives* 33 (3): 69–93.

Shelanski, Howard A. 2010. "Enforcing Competition During an Economic Crisis." *Antitrust Law Journal* 77 (1): 229–45.

Schinkel, Maarten Pieter, and Abel d'Ailly. 2020. "Corona Crisis Cartels: Sense and Sensibility." Legal Studies Research Paper 2020-31, Amsterdam Law School, Amsterdam, Netherlands. Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3623154.

U.S. Department of Justice (DOJ) and Federal Trade Commission (FTC). 2020a. "Joint Antitrust Statement Regarding COVID-19." March 24, 2020, updated May 1, 2020. U.S. Department of Justice, Washington, DC.

———. 2020b. "Joint Antitrust Statement Regarding COVID-19 and Competition in Labor Markets: Antitrust Enforcers Closely Monitoring Employer Coordination to Disadvantage Workers." U.S. Department of Justice, Washington, DC.

Walsh, Mary. 2020. "A Tidal Wave of Bankruptcies Is Coming." *New York Times,* June 18, 2020.

Weise, Karen. 2020. "Amazon Angles to Grab Back Customers." *New York Times,* May 22, 2020.

Wollman, Thomas G. 2019. "Stealth Consolidation: Evidence from an Amendment to the Hart-Scott-Rodino Act." *American Economic Review: Insights* 1 (1): 77–94.

———. 2020. "How to Get Away with Merger: Stealth Consolidation and Its Real Effects on US Healthcare." Working Paper 27274, National Bureau of Economic Research, Cambridge, MA.

Wu, Tim. 2018. *The Curse of Bigness: Antitrust in the New Gilded Age.* New York, NY: Columbia Global Reports.

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Summary

The economic crisis in the wake of the pandemic is changing the business landscape, exacerbating concerns about the state of competition in the U.S. economy. Nancy Rose documents how some large, well-positioned firms have dramatically increased their market share, accelerating trends seen prior to the pandemic. Rose predicts that with more firm exits and fewer new businesses entrants today, tomorrow's product and labor markets may be less competitive and productive. Antitrust enforcers will be pressured to approve acquisitions of weaker competitors, and not to look too closely at cooperative solutions to market challenges. Rose argues that preserving competitive markets will require renewed commitment by policymakers to assert antitrust enforcement.

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