

Reinvigorating Competition Policy: What Can IO Contribute?

Nancy L. Rose, MIT

Heinz-Tepper IO Conference

Carnegie-Mellon

September 27, 2019

Concerns about competition on the rise

The New York Times

Lawmakers Urge Aggressive Action From Regulators on Big Tech

What's behind Warren's plan to break up Facebook, Amazon and Google



Melissa Rossi Contributor, Yahoo News • April 10, 2019

Regulators across the West are in need of a shake-up



Trustbusters are too cosy with their industries and lack bite

BUSINESS NEWS SEPTEMBER 18, 2019 / 2:42 PM / 7 DAYS AGO

Pennsylvania joins states opposed to merger of T-Mobile, Sprint

UP FRONT
Today's economic puzzles: A tale of weakening competition
Zia Qureshi - Thursday, April 5, 2018

The New York Times

The Monopolization of America

In one industry after another, big companies have become more dominant over the past 15 years, new data show. Nov. 25, 2018

THE WALL STREET JOURNAL.
Wave of Megadeals Tests Antitrust Limits in U.S.

Analysis shows that in many industries, most firms are competing in highly concentrated markets

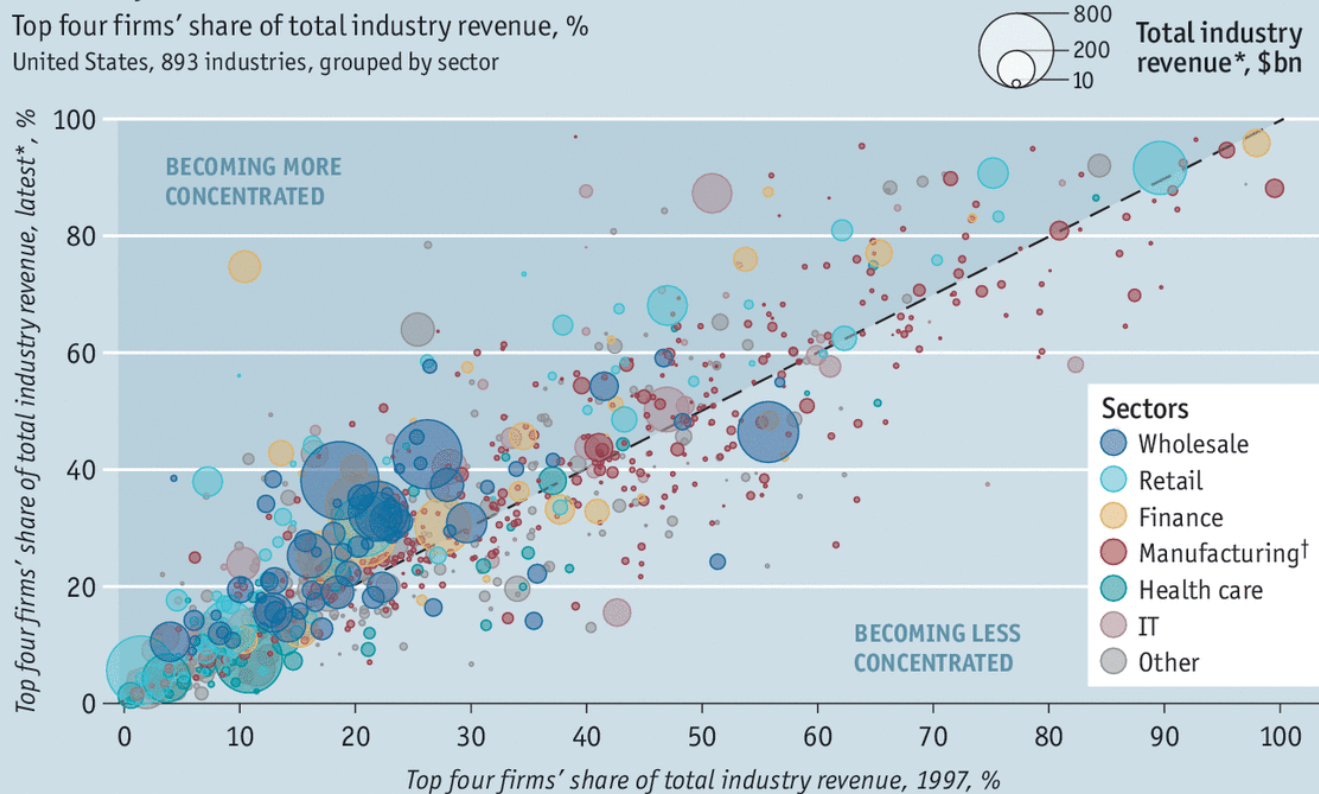
October 18, 2015

Amid evidence of growing “concentration” ...in the press

A widespread effect

Top four firms’ share of total industry revenue, %
United States, 893 industries, grouped by sector

3



Sources: US Census Bureau; *The Economist*

*Latest available, 2007 or 2012 †By valued-added

Economist.com

The
Economist,
2016

from think tanks....

America's Concentration Crisis: An Open Markets Institute Report

Monopoly power is all around us: as consumers, business owners, employees, entrepreneurs. When we purchase everything from washing machines to groceries, website domain names, even when we select a coffin for a recently deceased loved one, we are constrained by increasingly control America's commerce.

November 26, 2018 | by Open Markets

“The Monopolization of America”

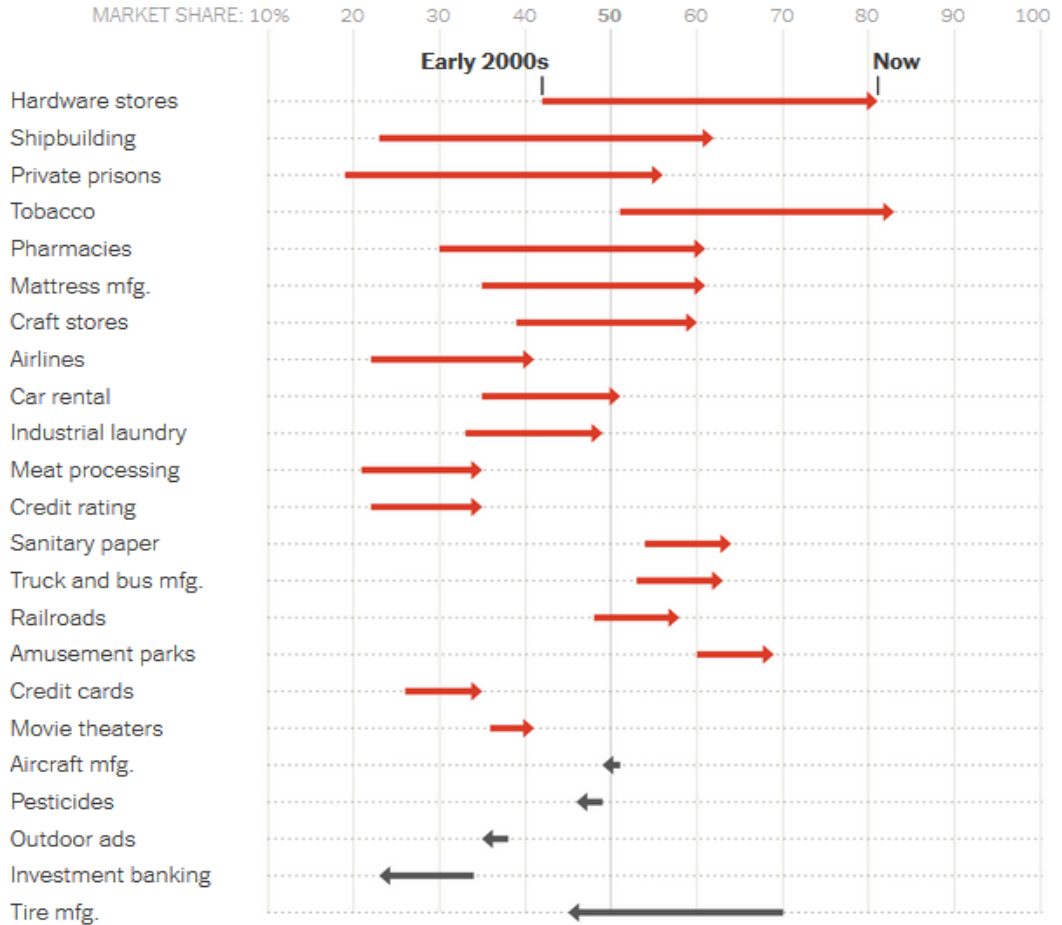
David Leonhardt

New York Times op-ed

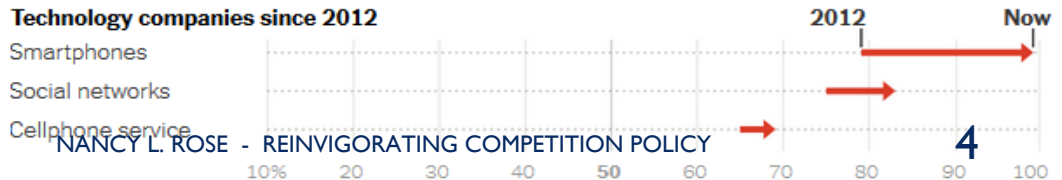
November 25, 2018

Dominance of Corporate Behemoths

The combined market share of the two largest companies in many industries has grown in recent years, often because of mergers.



Technology companies since 2012



In academia...

From Good to Bad Concentration? U.S. Industries over the past 30 years

Matias Covarrubias, Germán Gutiérrez, Thomas Philippon

NBER Working Paper No. 25983
Issued in June 2019, Revised in September 2019

The Fall of the Labor Share and the Rise of Superstar Firms

David Autor, David Dorn, Lawrence F. Katz, Christina Patterson, John Van Reenen

NBER Working Paper No. 23396
Issued in May 2017

Concentration in US Labor Markets: Evidence From Online Vacancy Data

José A. Azar, Ioana Marinescu, Marshall I. Steinbaum, Bledi Taska

NBER Working Paper No. 24395
Issued in March 2018, Revised in February 2019

Even some in IO (!) ...



SYMPOSIUM: MARKUPS

Are Price-Cost Markups Rising in the United States? A Discussion of the Evidence

Susanto Basu

(pp. 3-22)

Macroeconomics and Market Power: Context, Implications, and Open Questions

Chad Syverson

(pp. 23-43)

Do Increasing Markups Matter? Lessons from Empirical Industrial Organization

Steven Berry, Martin Gaynor and Fiona Scott Morton

(pp. 44-68)

SYMPOSIUM: ISSUES IN ANTITRUST

Protecting Competition in the American Economy: Merger Control, Tech Titans, Labor Markets

Carl Shapiro

(pp. 69-93)

The Problem of Bigness: From Standard Oil to Google

Naomi R. Lamoreaux

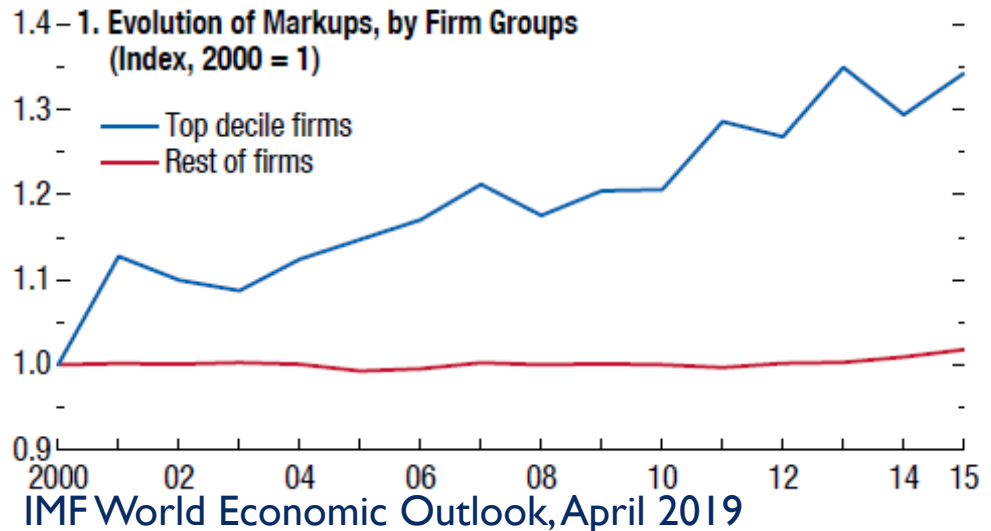
(pp. 94-117)

Many studies show profits/mark-ups are rising

Especially at the top

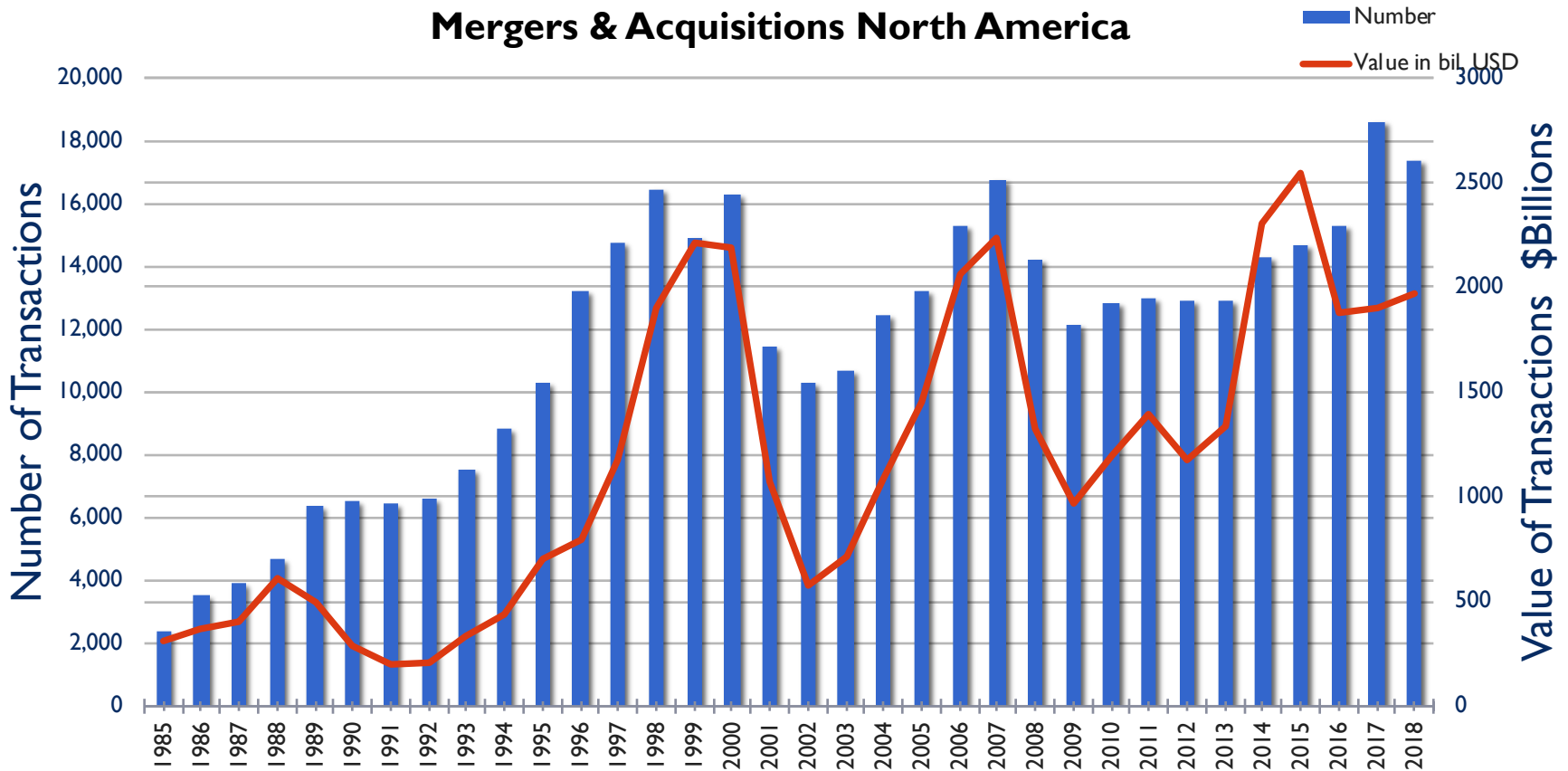
Figure 2.5. Disconnect between Firms in the Top Decile and the Rest

Markup increases have been largely concentrated in the top 10 percent of the markup distribution; most of these firms are small, but the larger ones account for most of the group's revenue; firms in the top decile tend to be more profitable, more productive, and make relatively more intensive use of intangibles than other firms.



This is happening amid an ongoing wave of mergers

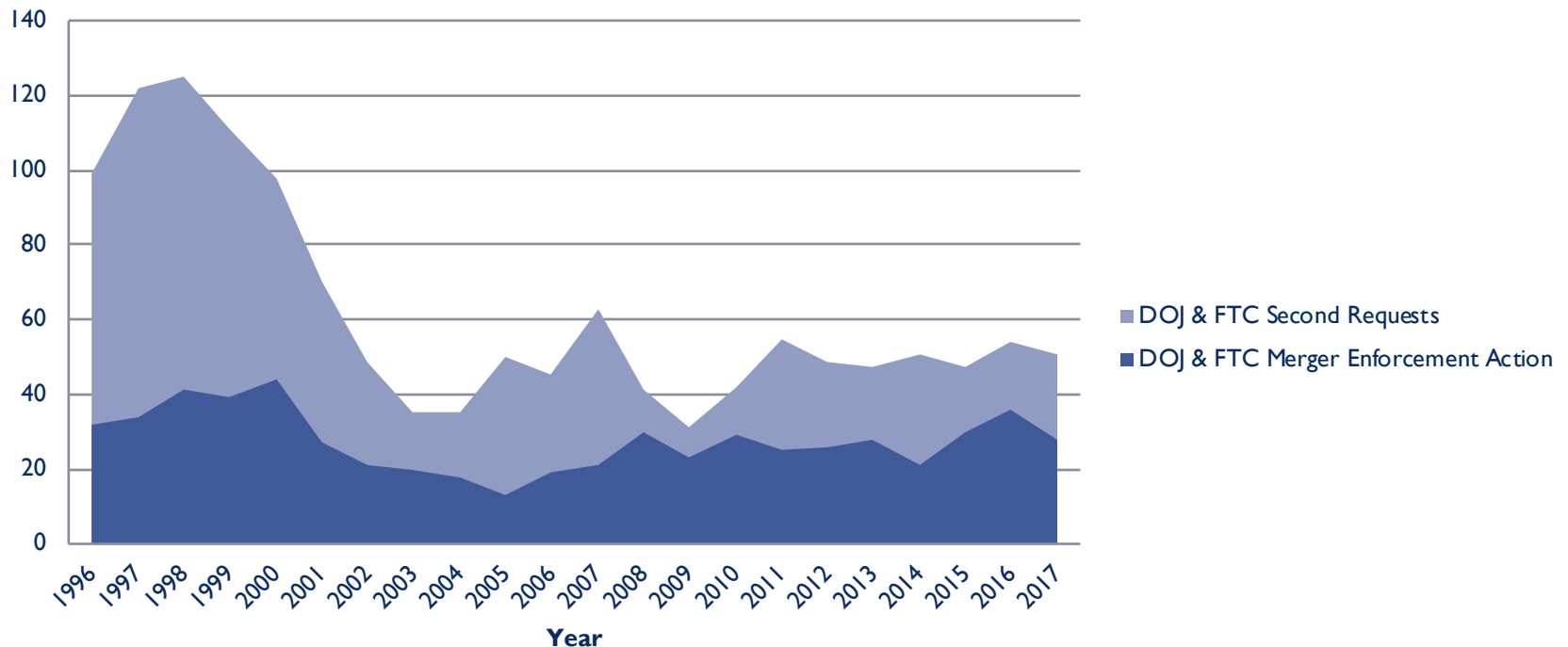
Mergers & Acquisitions North America



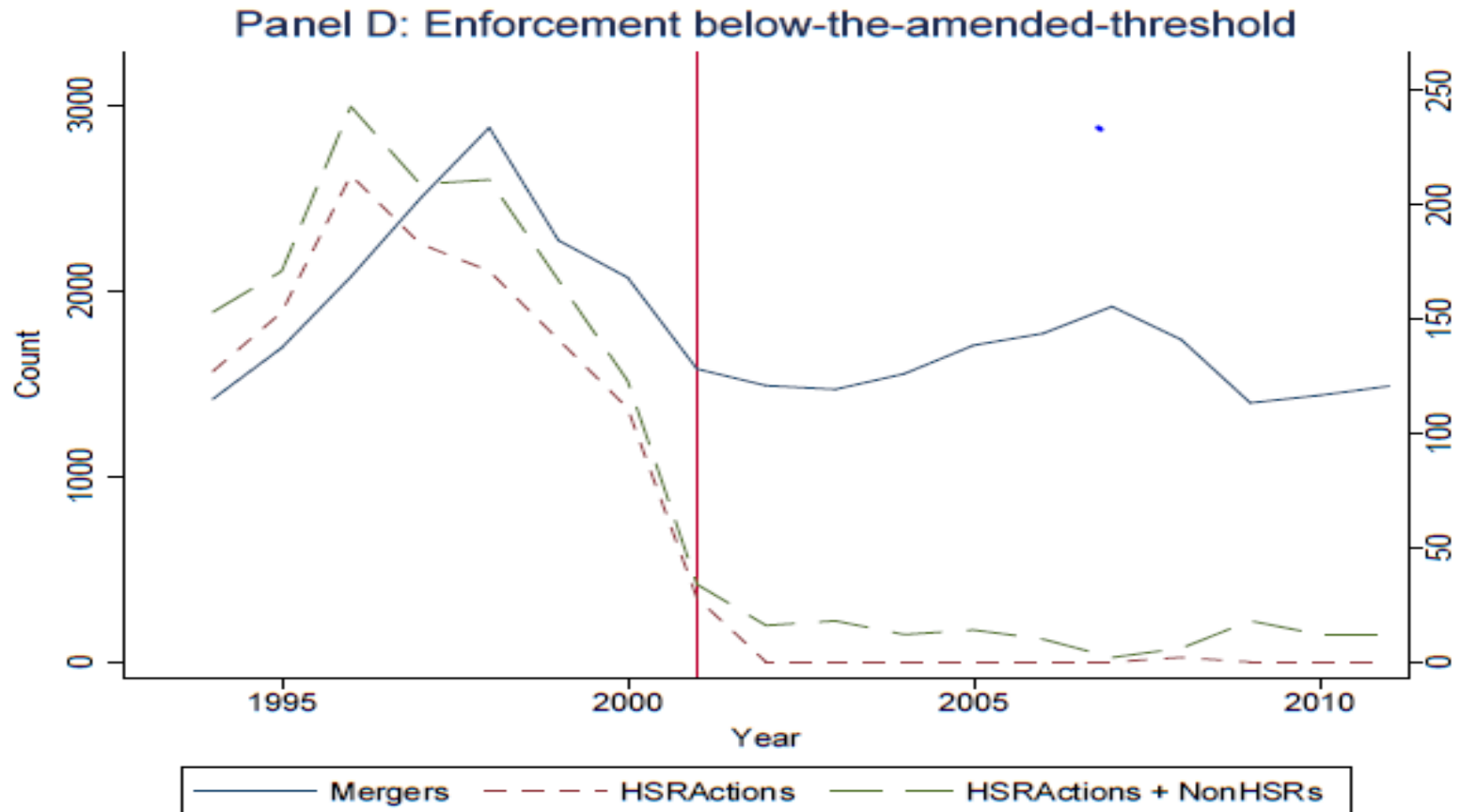
Global Total M&A is about Double NA Volume in Recent Years

With relatively few antitrust investigations and challenges

**Merger Enforcement:
Combined DOJ & FTC 2R Investigations
& Enforcement Actions, 1996-2017**



Especially of small transactions

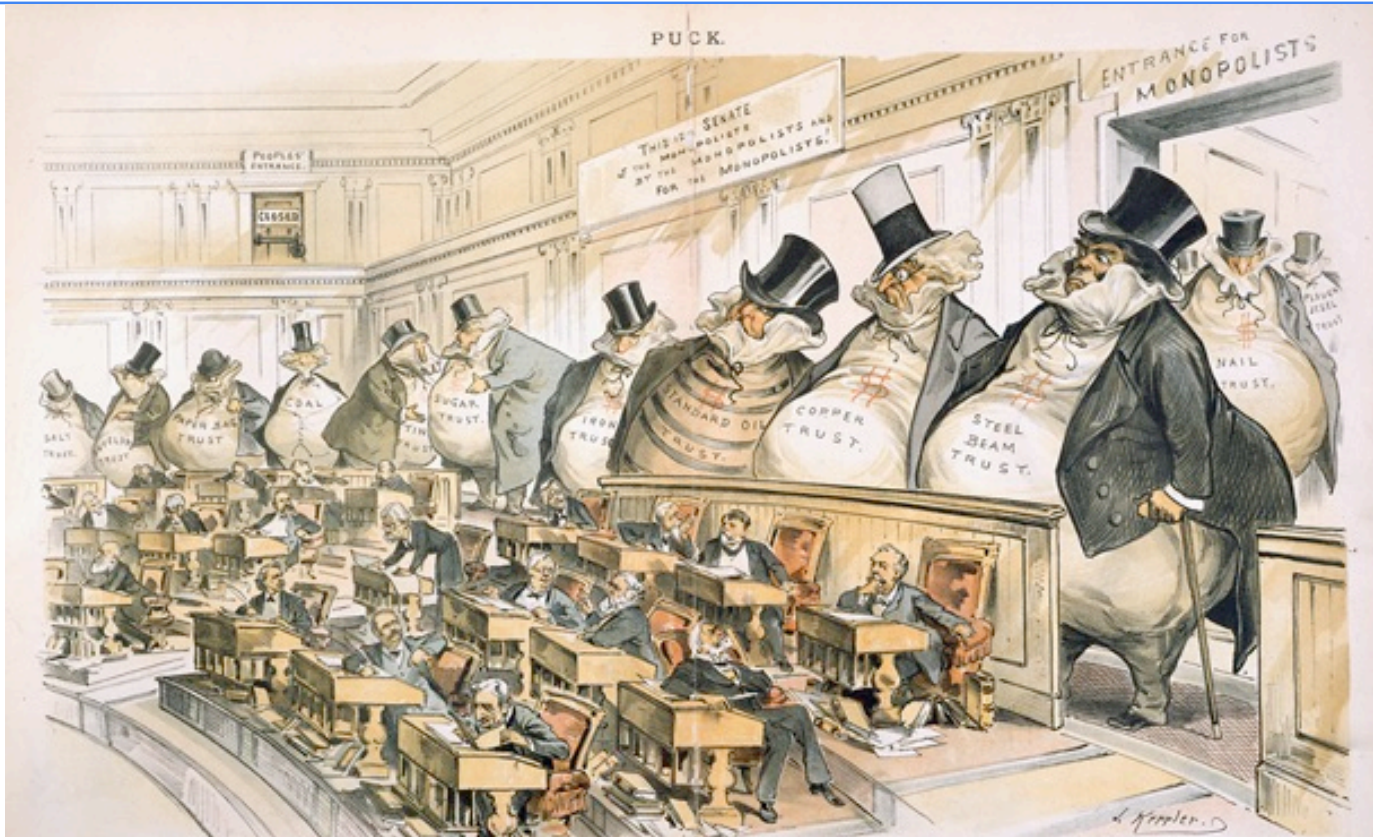


Number of mergers below HSR filing threshold (left scale) v. DOJ Investigations
Wollmann, 2018

What should we make of this?

And how can IO economists contribute?

Is competition policy to blame?



The Bosses of the Senate. Puck, 1899

“Evidence” is less informative than we would like:

- National “industry concentration” measures may not reflect competition relevant to any consumers
 - “Industries” \neq Product markets
 - Geography matters
- Levels of measures (C4 or HHI) are often at odds with degree of alarm
- And markup measurement is fraught

Measurement aside, what does it all mean?

- It matters what drives these trends:
 - Investment in efficiencies/economies of scale?
 - “Winners” that are more compelling for consumers?
 - Mergers / anticompetitive behavior?
- Are successful incumbent outcompeting
 - Buying complementary assets to improve offerings?
- Or buying up and driving out rivals?
- Less competition? Or the rise of “superstar” firms?

Can we answer key questions?

Has concentration in most markets increased?

- ...hard to say

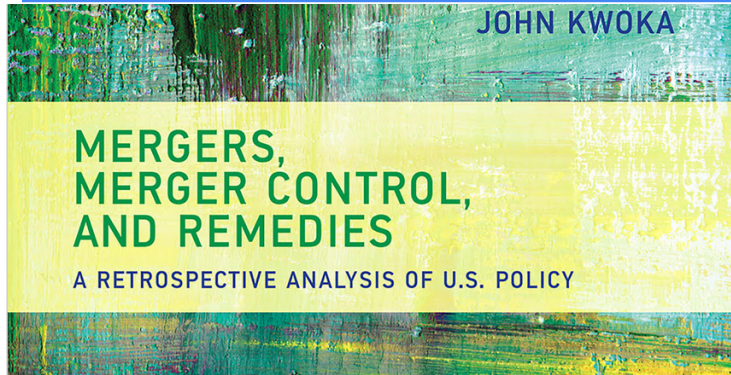
Are markets less competitive?

- You can't quite tell from these numbers

Is antitrust either the problem or the solution?

- Could lax enforcement be to blame? Do mergers make things worse or better?
- Wait! We have looked at that... sort of

Merger retrospectives and policy analysis



Kwoka finds, first and foremost, that most of the studied mergers resulted in some competitive harm, usually in the form of higher product prices but also with respect to various non-price outcomes.

And it looks like enforcers don't worry much until we are down to 4 or fewer competitors

U.S. antitrust and competition policy amid the new merger wave

July 2017 John E. Kwoka

Antitrust enforcement by the numbers

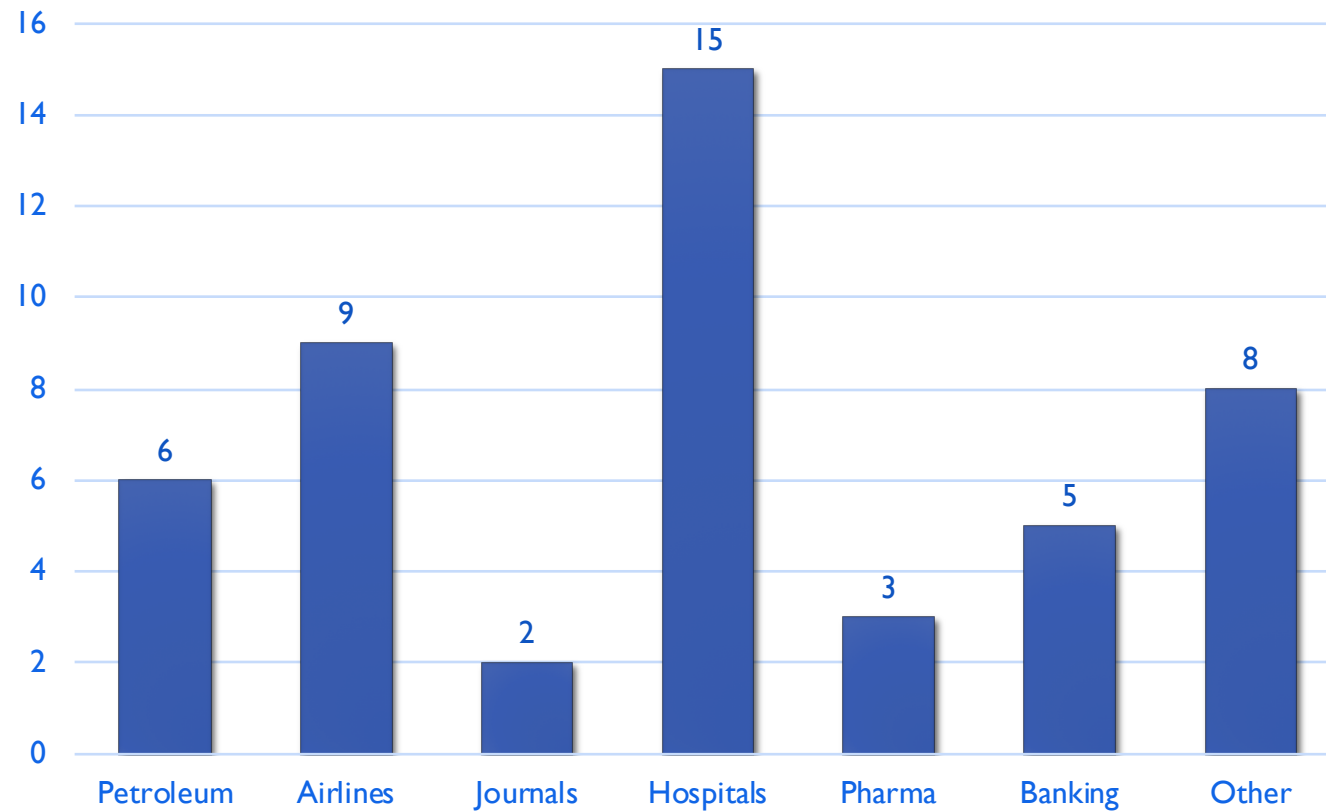
Recent merger investigations resulting in enforcement actions by number of remaining significant competitors (measured by percentage that were enforced), 1996-2011

Number of remaining significant competitors	Percent enforced 1996-2003
1	98.0
2	89.2
3	77.3
4	64.1
5	35.2
6	12.0
7	24.0
8	0

Source: Federal Trade Commission, "Horizontal Merger Investigations Data, Fiscal Years 1996-2011" (2013), available at <https://www.ftc.gov/sites/default/files/documents/reports/horizontal-merger-investigation-data-fiscal-years-1996-2011/130104horizontalmergerreport.pdf>.



But retrospective studies seem like looking for the keys under a penlight spot



Merger Retrospectives: Number of Studies by Industry (Kwoka, 2015)

Perspective on the debate: A view from the antitrust trenches

DOJ and FTC career staff are motivated—

But that may not be enough

- Even when leadership wants to enforce antitrust

What are the challenges to vigorous enforcement?

Where have IO economists advanced the ball?

What more do we need to do?

Focus on merger policy

How does US enforcement work?

- Pre-notification (Hart Scott Rodino)
- Investigation
 - Articulate the theory of competitive harm
 - Grounded in market facts and institutions
 - Collect evidence for and against the theory
 - Data, docs, & testimony from all participants
 - If these suggest harm, attempt to quantify impact
- Sue to block in court
- All on a very tight time clock

Challenges for enforcement

Blocking a merger requires evidence sufficient to convince a court of likely harm to competition

- With non-economist judges
- Who may never have seen an antitrust case before

In adversarial proceedings where the government has the burden of proof

- Analytic complexity and fragility are big disadvantages

And merging firms argue for precise quantification

- Curse of the CSI effect! And economics hubris?

With bad decisions making bad precedent (Amex)

- The Chicago School “theory as fact” reigns in the judiciary

Compare merger enforcement to the way many of us write and teach

Academics' idealized merger enforcement

- Demand estimation & retrospectives in Aetna/Humana

Attorney General's warning:

Most cases are not your advisors' merger sim!

Aetna/Humana: “Textbook” merger enforcement

*Aetna Agrees to Acquire Humana for
\$37 Billion in Cash and Stock*

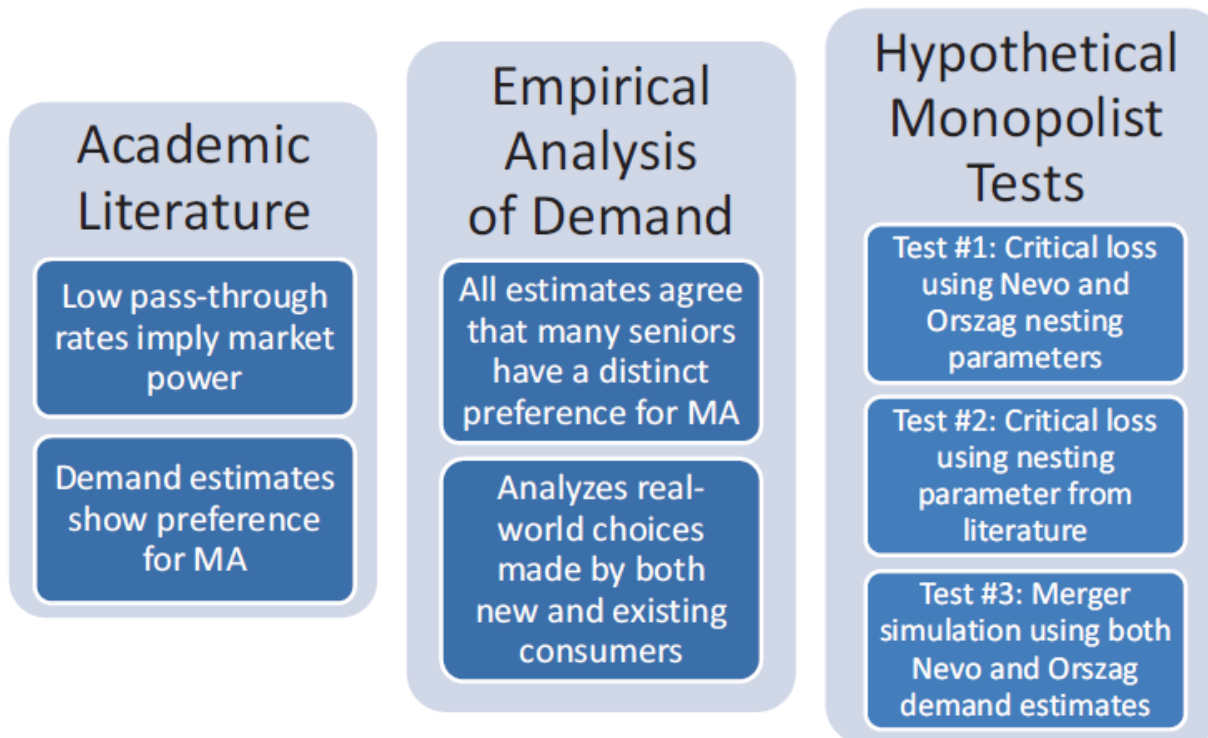


**U.S. Sues to
Block Anthem-
Cigna and Aetna-
Humana Mergers**

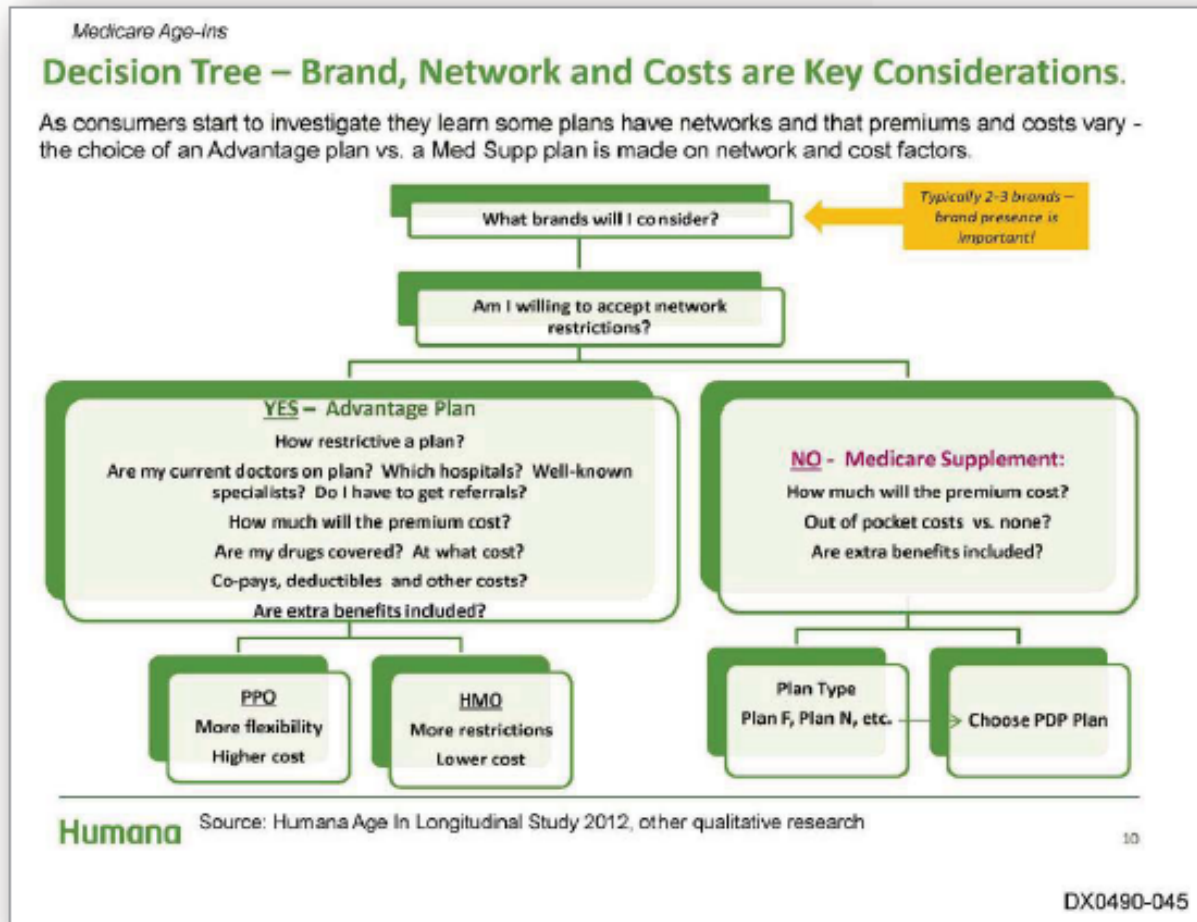
New York Times
JULY 21, 2016

I. Define the market

Economic evidence shows that Medicare Advantage is a relevant product market



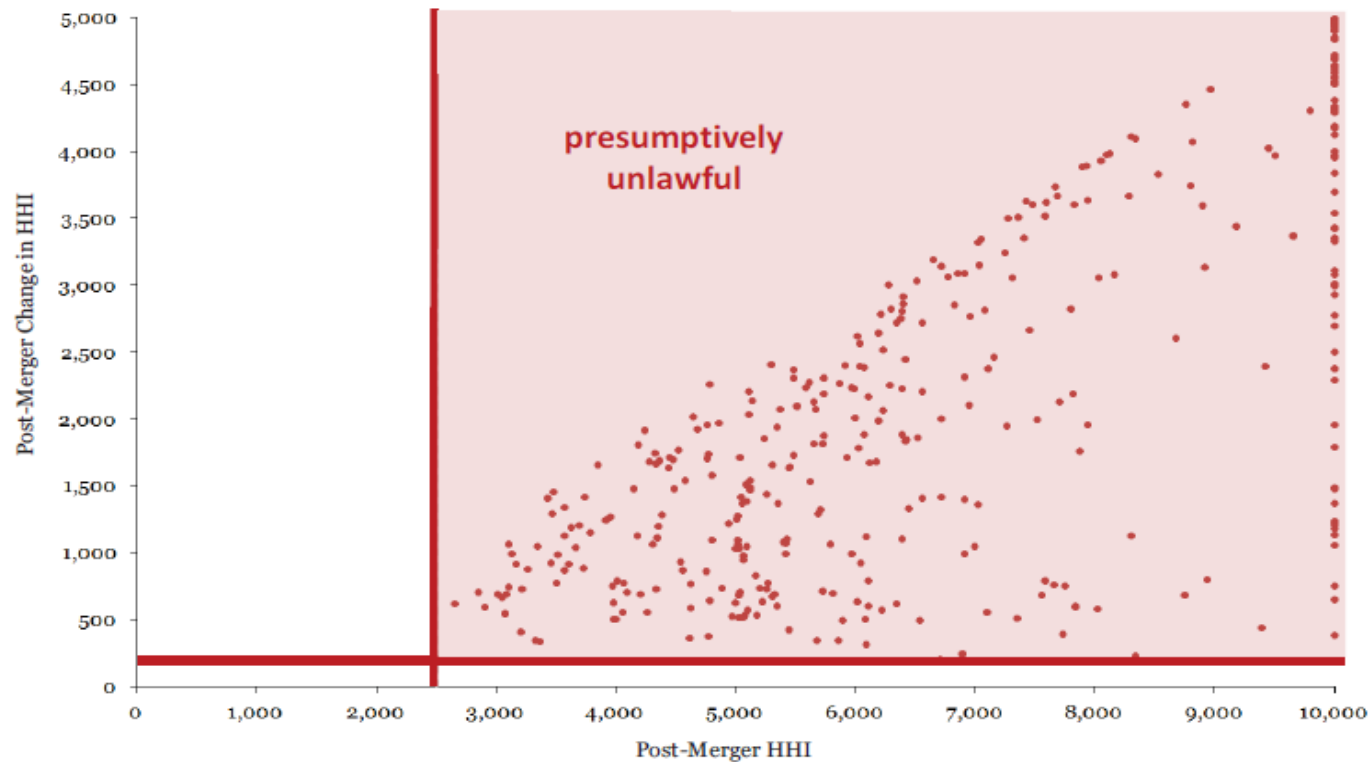
Business docs and academic literature both flash “nested logit”!



DX0490, at 45 (June 26, 2015)

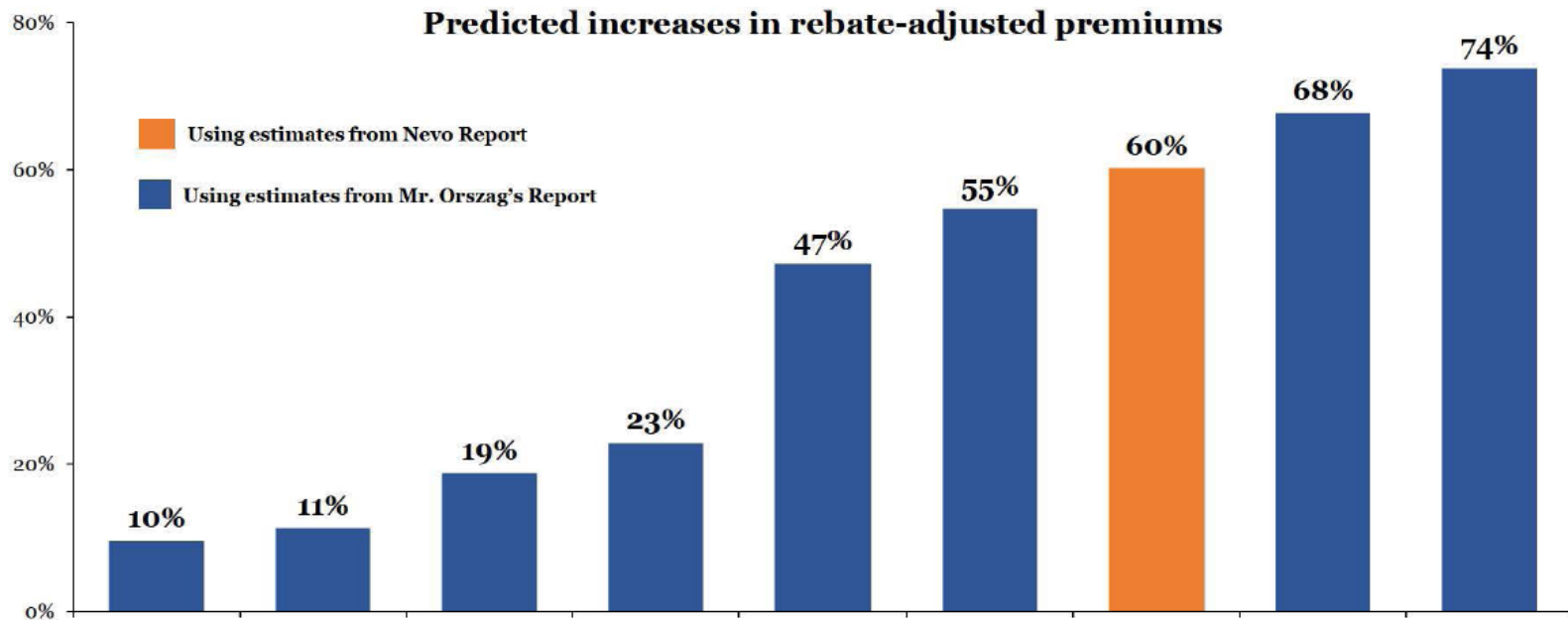
2. Measuring impact: Structural presumptions reign

The merger is presumptively unlawful
in all 364 counties



Medicare data enabled demand estimation, merger simulation

Prices consistently increase under all estimates in this matter



65

Nevo Report, Exhibit 17; and Nevo Reply Report, Exhibit 12

3. Past mergers help answer “mitigating factors” defenses

Are **efficiencies** sufficient to offset P increase?

Will rivals **reposition** products to defeat any price increase?

Are **entry barriers** low?

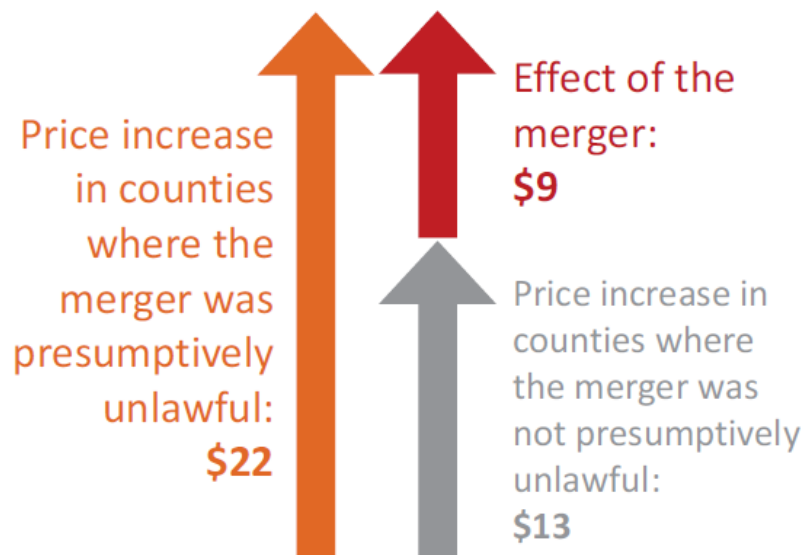
Will sector **regulators** block price increases?

Would a **divestiture** replace lost competition?

Not surprisingly, parties almost always argue these are more than sufficient to eliminate harm— often very hard to evaluate ex ante

Retrospectives (used with caution)

After Humana-Arcadian, prices went up despite the presence of Original Medicare, potential entry, CMS regulation, any efficiencies, “age-ins,” and divestitures



Result?

Federal judge blocks Aetna-Humana health insurance megamerger

A U.S. federal judge blocked Aetna's proposed \$34 billion merger with rival Humana, saying it was illegal under antitrust law. (Reuters)

Washington Post, Jan 23, 2017

That was



Or was it?

- A year-long investigation
- ~5 months of trial preparation
- A month-long trial
- Judge issues block in January 2017
 - 20 months after deal was announced

And they aren't all like that!

Few problematic mergers impact only price in well-defined markets with standardized data where merging parties have significant overlap.

More challenging when:

- Demand estimation infeasible or takes years
- Harms are non-price, such as innovation
- Competition is nascent or potential
- Risk is “coordinated effects” (tacit collusion)

How can IO scholars help?

Research meets enforcement...a start

The interface of policy, industry, and economic research in mergers

Chipty & Snyder; Horn & Wolinsky; Doudchenko & Yurukoglu (2016)

Comcast, Time Warner Cable Abandon \$45 Billion Merger Deal
Apr 24th 2015 8:42AM

Ashenfelter et al., 2014

GE calls off Electrolux appliance deal amid U.S. antitrust fight
12/7/2015

Wednesday, April 6, 2016

United Airlines Abandons Attempt to Enhance its Monopoly at Newark Liberty International Airport

Brueckner, Lee, & Singer, 2013

Dafny et al., 2012.; Ho & Lee, 2017

U.S. appeals court blocks Anthem bid to merge with rival Cigna

4/27/2017 Reuters

Judge Blocks Aetna's \$37 Billion Deal for Humana

1/23/2017 NYT

Curto et al. 2017

Crawford et al., 2017

Justice Department Sues to Block AT&T-Time Warner Merger

11/20/2017 NYT

Miller & Weinberg, 2017

Justice Department Requires Anheuser-Busch InBev to Divest Stake in MillerCoors and Alter Beer Distributor Practices as Part of SABMiller Acquisition

7/20/2016

A former enforcer's wish list

Probe the “priors” on mergers

Displacing “theory as fact” requires new empirical analyses:

Establish facts, especially

- Merger motivations (informs on loss function)
- Ex post merger efficiencies
- Consequences of mergers & market power harms

Divestitures & Conduct Remedies

- Lessons from asymmetric info & behavioral econ
- The persistence of incentives

Change the burdens in court

Rebalance the threshold for proof of anticompetitive mergers

We have gone from Vons Grocery

1966 ban on #3 buying #6, total 7.5% mkt share

To proposed mergers to monopoly

Re-emphasize structural presumptions (Δ HHI/market share) and non-numeric harms

Nocke/Whinston 2019

Tighten the standard for efficiencies

Tackle big challenges in merger enforcement

Potential competition

- Facebook/Instagram/WhatsApp?
- Prevalent in pharma, consumer goods
- The airlines mistake?

Bargaining leverage

Innovation & other nonprice harms

Tacit collusion/ coordinated effects

Vertical mergers

Horizontal merger buy-side harm (incl labor)

And this addresses only
mergers!

Conduct cases and regulation are even more fraught

Conduct cases face huge headwinds & skeptical judiciary

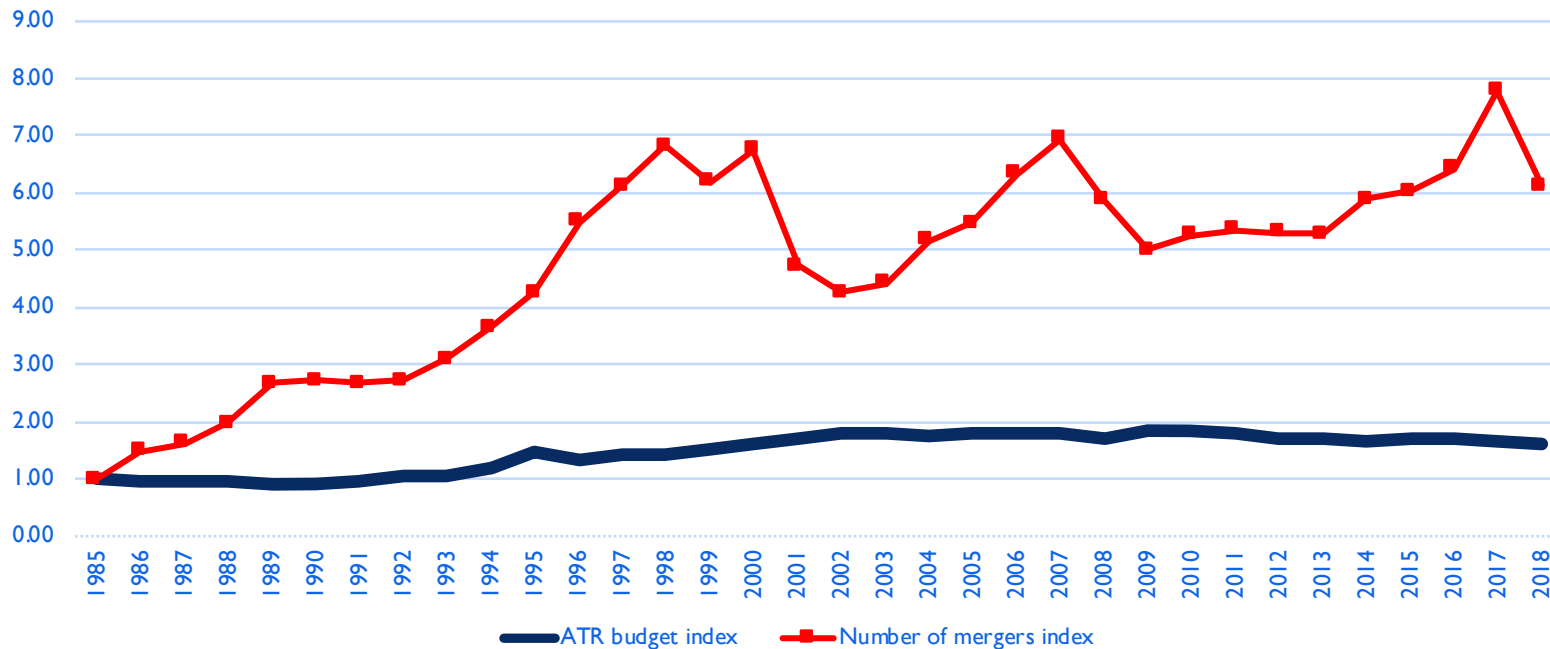
IO today is ill-prepared to engage on regulation proposals

- Few IO economists, especially in US, have any training in regulatory economics, and fewer still study regulation
 - especially outside energy/enviro and health space
- This leaves us poorly positioned to inform a growing debate with huge potential consequences
- What are the risks?
 - Rose (2014 NBER), Joskow & Rose (1989 Handbook of IO)

What to do?

Enforcement agencies need increased resources

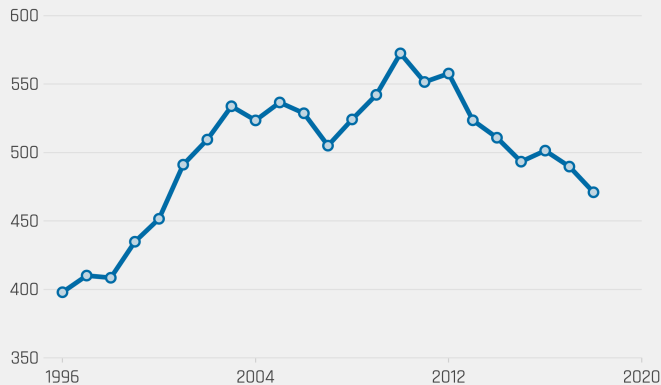
Merger Activity v. Antitrust Division Budget Growth (in 2018 dollars)
(1985 = 1.00)



To keep up with growth of economy & real costs of legal and economic expertise

U.S. antitrust enforcement resources have fallen recently

Appropriations for the two federal antitrust agencies in 2018 dollars*



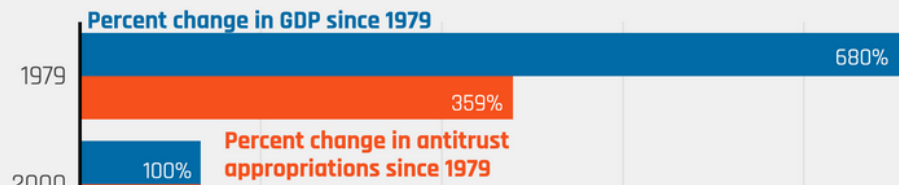
Note: *Appropriations for the U.S. Department of Justice's Antitrust Division and Federal Trade Commission are deflated by Producer Price Index for legal services.

Source: "Department of Justice Antitrust Division Operations," available at <https://www.justice.gov/atr/division-operations> [last accessed July 22, 2019].

 Equitable Growth

GDP growth has outpaced growth in antitrust appropriations

Percent increase in funding for the Federal Trade Commission and Department of Justice's Antitrust Division vs. percent increase in GDP growth over four time periods



https://equitablegrowth.org/research-paper/the-state-of-u-s-federal-antitrust-enforcement/?longform=true#antitrust_resources

Enforcers need new tools and benchmarks

Hearings on Competition and Consumer Protection in the 21st Century

Hearings on
Competition and Consumer Protection
in the 21st Century



The Federal Trade Commission will hold a series of public hearings during the fall and winter 2018 examining

September 22, 2017

Klobuchar Antitrust Legislation Nods to Progressives



And they need your work!

Some inspiration to get us going

- Retrospective reviews: Kwoka, 2015; FTC staff (lots)
- Structural presumption: Nocke & Whinston (2019)
- Stealth Acquisitions: Wollmann
- Killer Acquisitions: Cunningham et al.
- Market power in health care: E.g., Cooper et al.
- Monopsony & mergers: Prager and Schmitt
- Tacit collusion & mergers: Miller/Weinberg, M/Sheu/W
- Vertical: Crawford et al, Ho & Lee

Roll up your sleeves!
