FTC Hearing #1: Competition and Consumer Protection in the 21st Century
September 13, 2018
Segment 2
Transcript

SPEAKER 1: We'll get started in a minute or so. Let people come in if they're trying to hit the 1:30 mark.

I'm just going to say welcome back, and remind people in the audience who are new people that two of my colleagues, maybe more, are collecting questions that you may write on the question card, and they'll be brought up to the panel near the end of the panel for some audience Q&A. So with that, I'm going to turn this over to Greg Werden from the Antitrust Division, and he's going to discuss with the panel whether the US economy has become more concentrated and less competitive.

GREGORY WERDEN: Thank you. I'm not a fan of introductions, so I will not introduce our speakers. They can introduce themselves if they want to spend their time that way. They have total control over time. The way we're going to organize this is John's going to give a long slide presentation, and then each of our other panelists will give much shorter presentations, and they will go to a series of questions that I pose, and then finally, questions from the audience. So John--

JONATHAN BAKER: Thank you, Greg, and nice to see all my co-panelists, and thank you, Bilal, and the FTC for inviting me. I was involved in the hearings in 1995, and delighted to be back for these today. So the FTC hearings two decades ago, that I just referred to, were spurred by two challenges for antitrust policy. Markets were becoming increasingly global, and innovation competition was becoming increasingly important. And today, we have an additional challenge for antitrust policy. The economic evidence has been accumulating since the 1995 hearings, and much of it from the past five years or so, that shows that market power has been growing for decades. And I think of what we are seeing as today's antitrust paradox. A conjunction of substantial and widening market power with well-established and extensive antitrust institutions. In my presentation, I'll sketch the evidence that market power has been growing over the past quarter century, and has become substantial in the United States. And I'm going to go through nine reasons, none of them is individually decisive. There are ways to question or push back on each, but their weaknesses are different. And so when you take them collectively, they paint a compelling picture of growing market power. And I'm also going to explain why the recent economic trends I point to reflect growing market power, not solely increased scale economies and temporary rents to early adopters of new technologies in competitive markets. To fit my present into the alotted time, I will say less about most of the reasons than will appear on the slides, and the very last slide will reference my forthcoming book. The first chapter of which goes into more detail on this topic, including full cites for the research that's referenced on the slides. And it will also mention criticisms of the research that I don't have time to bring up in my presentation, although I'd be happy to talk about them during our discussion later. Before I get into the nine reasons, I want to make clear what I mean when I use the term market power. Firms exercise market power in their output markets as sellers by raising prices or by altering other terms of trade adversely to buyers, relative to what would prevail in a competitive market. Market power is not just about prices, it can be exercised on other competitive dimensions too. And market power can also be exercised in input markets, exercised by buyers. And that's defined analogously. The first of the nine reasons to think that market power has been growing is that we insufficiently deter anticompetitive coordinated conduct. The Justice Department keeps uncovering cartels year after year. They seem to form at the same rate that we catch them. And that suggest under-deterrence because the penalties are probably too low to deter collusion, and there's no reason to think that the threat of penalties chills procompetitive conduct or leads to excessive compliance expenditures. And under-deterred express cartels are probably the tip of an iceberg, because tacit collusion is probably even harder to deter. We also insufficiently deter anticompetitive mergers, and there are several empirical studies that support this conclusion. The third reason is insufficient deterrence of anticompetitive exclusion. Since the late 1970s, the courts have targeted rules governing exclusionary conduct for extensive relaxation, and in some cases, the new rules confer de facto legality on such conduct. The empirical evidence that exclusion is under-deterred is about the competitive effects of vertical practices. Now, vertical conduct and exclusionary conduct are not the same thing, but they're correlated. And the evidence shows that vertical restraints often support collusion. And there are a number of examples of competitive harm from vertical restraints and vertical integration. That interpretation of the literature on vertical conduct may surprise some of you, so I want to make an important methodological point. Most empirical studies about the effects of vertical restraints are looking in the wrong place, to learn about whether strong or antitrust enforcement would be beneficial. If you want to know whether oligopolists can use vertical restraints to harm competition, you won't learn much by looking in markets with competitive structures, or in markets where the firms could be deterred from anticompetitive conduct with the threat of antitrust enforcement. Looking in those kind of markets lets you learn about potential procompetitive consequences, and about ways that firms can craft their vertical arrangements to limit the inefficiencies and costs that they may impose. Now, you might see some instances in which vertical restraints harm competition, but the markets aren't randomly selected. You'd expect, in general, the studies would not often find harm to competition, even if the conduct could be harmful in other settings that are not being studied where one might want to think about antitrust enforcement. And you're not going to learn much about whether relaxing antitrust constraints has or would lead to greater competitive harm. If you want to identify the effects of antitrust enforcement in the econometric sense, you have to compare outcomes with and without antitrust constraints. And there's a MacKay and Smith study that's in the small print on the slide about resale price maintenance. And that's a rare example of a study of vertical restraints that addresses this identification problem. And it finds that, on the whole, competition was harmed when the antitrust constraints on resale price maintenance were relaxed.

Fourth, market power is durable. Markets are not invariably self-correcting. Cartels and monopolies often last a long time. The eight year lower bound on the length of the average cartel compares favorably with the time it takes to correct erroneous judicial precedents, even Supreme Court decisions, through later court decisions that overrule them or narrow them procedurally or substantively or through lower court decisions that distinguish or limit them or through legislative abrogation.

Fifth, the increased equity ownership of rival firms by the diversified financial investors is another reason to worry about growing market power. Rival airlines or banks or pharmacy chains or other competing firms increasingly have overlapping ownership by financial firms like BlackRock, State Street, Fidelity, and Vanguard. The initial studies have found that common ownership leads to higher prices. And this is an active research area, where we're likely to learn more soon.

Sixth, increased governmental restraints on competition-- over the past few decades, the US has broadened patent scopes substantially and granted too many patents after inadequate review. This trend may have halted. But it's not really been reversed. And other examples of governmental restraints that may be on the rise include occupational licensing and lobbying to limit rivalry.

Seventh is the rise of dominant information technology platforms. Now, the empirical evidence suggests that price cost margins have been growing economy-wide since 1990 in the United States. And the trend seems clear, although the magnitude of the margin increases has not been measured precisely.

Growing price cost margins are probably tied to investments in information technology. Dominant information technology and internet platforms aren't the only firms making those kind of investments or, likely, exercising some market power as a result. But the platforms are an important part of the story because they're likely insulated from competition in some of their major markets.

So eighth, oligopolies are common. And concentration's increasing in many industries. The best evidence that increasing concentration allows firms to exercise more market power comes from studies of particular industries, like airlines, brewing, and hospitals. The economy-wide evidence on concentration suggests only modest increases in concentration. And many industries with rising concentration remain unconcentrated.

But the economy-wide evidence is less reliable than the industry-specific studies. And that's because the economy-wide studies often use broad product markets, when it would be better to look for competitive problems in more narrow markets. And they often use national markets when it would be better to look at regional or local markets.

Now, some of the evidence involving broad national aggregates is consistent with rising overall concentration, but could instead reflect increased multi-market contact. But that could equally raise competitive concerns about coordination. And there are recent studies that also find concentration is high and possibly growing in many labor markets, potentially making it more possible for businesses to exercise monopsony power to depress wages.

The final reason to think that market power has been increasing is a decline in economic dynamism. And Jason Furman highlighted this reason this morning. Growing market power is a leading explanation or a plausible contributing explanation for a range of economic trends-- a secular slowdown in business investment, rising profits as a share of US GDP, a slowed rate at which firms expand when they become more productive, a declining rate of start-ups, a shift in growth in productivity gains from entrants to incumbents, and a growing gap in accounting profitability between the most and the least profitable firms.

So I've interpreted the evidence in these nine categories that I highlighted as indicating growing market power. And I want to explain now why I think that's a better interpretation than the most plausible alternative-- namely, increased scale economies and temporary returns to the first firms to adopt new information technologies in competitive markets.

Now, the benign alternative has an initial plausibility because the efficient size of firms has likely grown over time in many industries as a result of the high fixed costs of investments in information technology, network effects, and an increased scope of geographic markets. That means that firms could grow larger and concentration could rise and price cost margins could increase, even if markets are competitive. And in addition, the first firms to invest in new information technologies might earn substantial rents, which should be temporary if those investments don't confer market power and their rivals follow suit with investments of their own.

But the first six reasons I gave for thinking market power is substantial and widening in the US cannot be reconciled with the benign alternative. Anti-competitive coordination, mergers, and exclusion are under-deterred. Market power is durable. And increased equity ownership of rivals by financial investors will soften competition. And governmental restraints on competition have grown.

Also, market power's a better interpretation than the benign alternative for the other three reasons. The growth of dominant platforms probably does owe a lot to scale economies and first-mover advantages. But those platforms may still have the ability to exercise market power by excluding rivals.

Scale economies and rents to early adopters of new technologies probably did contribute to rising concentration in various industries. But there's often independent evidence that the firms in those concentrated markets exercise market power, which is not surprising because the same fixed expenditures that makes scale economies and rents the first movers possible can deter entry and soften competition.

Now, some of the evidence for the loss of economic dynamism could be consistent with the benign alternative of growing-scale economies and returns to early adoption of new technologies in competitive markets as well as consistent with increasing market power. And that might include the rising profit share of GDP and the growing gap in accounting profitability between the most and the least profitable firms.

But other aspects of declining dynamism cannot be reconciled with the benign alternative. The benign interpretation assumes that profits rise because markets are increasingly dynamic, with higher rates of entry investment and business failure. In competitive markets, growing-scale economies yield higher profits because entrants have a greater risk of failure when fewer firms can succeed. Early adopters of new technologies would earn profits. But they'd be temporary, competed away by new or expanding rivals making their own investments.

But the benign interpretation is inconsistent with the evidence showing the reverse-- a slowing rate of new energy, a declining rate of expansion when firms and plants grow more productive in a secular slowdown in business investment. And in addition, the financial markets appear to view corporate profit streams as less risky than in the past. And yet markets are increasingly dynamic. As the benign alternative supposes, those streams to be viewed as riskier.

The bottom line is that growing market power is a better explanation for declining dynamism and for all nine reasons taken as a whole than the alternative of increasing scale economies and early adopter rents in competitive markets. The benign alternative might-- may well be a partial explanation. But increasing market power is likely an important part of the story, too.

Now, I don't need to spend much time with this audience explaining what's wrong with market power. The harms within markets are described on the slide from a partial equilibrium perspective within an industry, within a market. The harms-- they can arise regardless of whether market power is exercised by sellers or buyers. Market power can also harm the economy as a whole by slowing economic growth and increasing inequality. And the adverse economic consequences of the exercise of market power could be reinforced if firms and industries can use their market power to secure political power and use their political power to protect or extend their economic advantages.

So just to summarize, the evidence I presented shows that market power has been growing in the US economy for decades. From an error cost point of view, we've learned that we are deterring anti-competitive conduct less than we thought we were in 1995, when the FTC last held hearings. And that means we should take steps now to strengthen our antitrust rules, institutions, and enforcement. And Greg, I think I'm going to reserve my remainder time for the rebuttal.

GREGORY WERDEN: [LAUGHING]

Sorry. You have to check in with the clerk before you start talking.

[LAUGHING]

JONATHAN B. BAKER: It's a tough court here.

GREGORY WERDEN: If you've ever argued the court of appeals, that's the rule.

[LAUGHTER]

Good. Steve?

STEVEN BERRY: We got two more slides here. Yep. Good. I want to give a talk that-- only about six minutes-- that I think is complementary to what Jonathan is talking about. And I want to talk about what kind of evidence we should weigh more or less as we're looking at this debate. And in particular, I think that Jonathan's mix of evidence was quite different than the evidence you often see in presentations in the press by macroeconomists and by other non-specialists. And

I wanted to indicate what some of those distinctions are so that we can think about what evidence is the most convincing, and also what kind of things we'd like to look forward to in the future.

So I'm going to divide things a little bit starkly into good and bad. And to talk about the relative bad, I want to go all the way back to the year 1989. And in the year 1989, there were two, I think, magisterial chapters that were published in the Handbook of IO, one by Dick Schmalensee and one by Tim Bresnahan.

And Dick Schmalensee was a participant and a sympathetic observer of decades worth of work that did something like what people are doing today, which is try to look at the correlation of various outcomes, like prices and markups, with measures of concentration, like the Herfindahl index. And his chapter laid out a whole host of problems with that. But I want to emphasize particularly one. The Herfindahl index in particular is probably better thought of as the cause of market competition, an interesting summary statistic of what is going on, rather than as an effect that causes outcomes. The Herfindahl index itself is a function of market shares, which are a function of outputs, which are co-determined simultaneously with price.

The most famous example that people used in those days is that differences in firm heterogeneity, cost heterogeneity, where you had some firms with very low prices-- that those low marginal costs would feed into their market shares. Their market shares feed into the Herfindahl index. But their low marginal costs also flow into markups. And you see a positive correlation between markups and concentration that has to do with efficiency rather than with competition. That's the problem of simultaneity, the problem that, in this case, correlation is not causation. And we should be very skeptical, I think, of these studies that, in some ways, naively regress an outcome on a Herfindahl index.

Now, some people in this literature, I think, are actually quite aware of this. And they think of this as a problem that the Herfindahl index itself is correlated with other things, is endogenous. They look for purely statistical ways of dealing with that endogeneity. They look for what's called an instrumental variable or just a more plausible exogenous variation in market structure.

And that brings me to the second of those great handbook chapters, written by Tim Bresnahan. And what he pointed out is that even if we grant that you have discovered the true causal effect, say, of the number of firms on price, you haven't established anything about the role of markups either on the output side or on the input side. And let me just give you one example of that.

I teach freshmen micro. And on the third day, we teach them that supply slopes up and that there are a bunch of shifters. Among them are the number of firms that shift supply back and forth. And that's because of the upward-sloping marginal cost curves of the individual firms.

Demand slopes down. As you move the number of firms, the supply curve moves against that demand curve. And it shows that as the number of firms goes up, supply shifts out. Prices fall. In the perfectly competitive output market, decrease in concentration drops prices. But there are no markups. You haven't found evidence of markups. You may have found evidence of increasing marginal cost.

The same thing happens on the input side. It is an implication of the perfectly competitive model of wage determination that an increase in the number of firms will drive wages up. That's not evidence of monopsony power.

What Bresnahan said is that we actually have to separately consider demand and cost and competition. And we can't do that in one equation or one correlation. I think that kind of evidence, with-- by the way, did not feature greatly in Jonathan's discussion, should be down-weighted a lot. We thought it died with the publication of these two chapters 25 years ago. And some of us woke up and were a little startled to see it suddenly outside of our window, looking in. And that's trouble.

I want to talk for just two minutes about possible alternatives. One is just to look directly at the effects of policies that have changed and what effect did they have. We can learn about policy that way. Let me skip a couple slides, though.

Another thing, though, is to back away for one minute, to back away for one minute from causation and just think about measurement. What has happened to markups? And we heard about these papers just a minute ago. I think they do show that, regardless of cause, our best evidence is that markups are going up. It's sensitive to measurement, like whether you include certain intangible and fixed costs in that or not. But that kind of simple, descriptive, cross-industry management is very valuable for telling us what has happened, but not why, not why.

So I think ultimately, we're going to have to do what Jonathan suggested. We're going to have to do studies of individual important industries and ask, what is going on? So here's an example a grad student of mine did as part of his thesis. He looked at the wholesale sector. That's pretty important. That's a pretty important sector. And what does he find? Concentration is up. Aha, concentration is up.

On the other hand, output is up. That doesn't sound like monopolization, does it? Output is up. The product itself has changed. Multi-warehouse wholesalers are locating closer to their customers. They're investing in IT for logistics. They're dual-sourcing goods you can shop between China and the United States with one stop at a wholesaler.

The nature of the good is changing. And when you put this through a Bresnahan-like series of models, you see that markups are going up in the industry, just like in the cross-industry analysis. But for a mix of all of the reasons that Jonathan mentioned, not for one or the other, but for all of them, product quality is going up.

That's pushing price up. That pushes margins up. The marginal cost is going down as firms get better logistics and locate closer to their customers. Marginal cost is falling. That's efficiency. But markups go up. Competition is really going down. And that also contributes to the markup effect.

Why don't we see the entry that Jonathan talked about? Implicitly, there must be fixed costs or some costs that are preventing new entrants from somehow competing away these profits. It's costly to build all of those plants near your rivals. And that's a sunk cost. And it's very hard for that to be competed away. This is a complicated story.

And what I want to finish with is a substantive hypothesis. What if this is true in broader sections of the economy? What if it's happening in broader sections, not just wholesale-- maybe IT, maybe other parts of retail, maybe broad sectors of the economy-- that firms, for endogenous reasons, are changing their production methods and the quality of their products so that marginal cost is falling and fixed cost is rising? Markup are going up. Concentration is going up.

If that's happening in a broad-scale way, it doesn't seem just that big is bad. But we're way, also-- we're way far from the theory of perfect competition as well. We're in this very complex setting, where there's some good and bad things happening. Like Jonathan, it's not just economies of scale. There are other things, too. There are competitive effects as well. We can't just wave our hands and say it's all fine.

I also don't think we can just simply say, big is bad. And I think it's these better kinds of evidence, these descriptive studies at the broad level and causal studies at the within-industry level, that we ought to emphasize. And I think they're the ones that are going to eventually tell us what the correct policy path for it is. And these guys are better policy experts than I am. So I'm also going to listen for the rest of the time.

GREGORY WERDEN: Thanks very much, Steve.

[APPLAUSE]

JONATHAN B. BAKER: Good job.

GREGORY WERDEN: I'm not sure who's going next. But why don't-- Fiona, why don't you do it?

JOSHUA D. WRIGHT: There are a few of my students in the audience who are laughing at the idea that I'm going to do anything in six minutes. But let's give it a shot, nonetheless.

I think, extending the discussion from John and Steve, to move on, I'll probably start in the same place as Steve, which is-- I went to grad school in economics and studied IO in the early 2000s. And those handbook chapters were sort of taken as the starting point for learning empirical IO. We didn't read studies that attempted to infer causation between changes to HHI on the effect on price. We read Steve's stuff.

I think the fundamental challenge in this area, and then I'll dive into the data, is that while it is probably true that zombie IO economics has died in economics departments a long time ago, I think the fundamental challenge, in part, is making sure we don't get antitrust policy that adopts zombie IO. And I think that's a challenge for the agencies. I think it's a challenge for IO economists because the punchline for some of this is going to be on the real questions that matter for designing policy. My interpretation of the evidence is that we know a lot less and probably need to know a lot more before we start playing much with policy. So I'll spend the rest of my time talking about that.

For starters, I think it's important to separate-- we're going to talk about testable hypotheses and testing with empirical data. I think it's really important for these discussions, especially if we're going to attach any policy relevance to them, to separate claims. One of the claims around is that we've got a rise in concentration at the aggregate non-market level, really aggregated industry sectors, stuff made with metal, not necessarily just capturing firms that are competing against each other.

There's a second set of claims that try to do the relationship between what's happening in market, changes in concentration in markets, and relate those to a price or output or markets. Are we getting more or less competition?

And I think there's a third set of claims that is, is any of this caused by lax antitrust enforcement? I'll spend most of my time talking about why it is so important for discussion of antitrust policy that we focus on markets and not broad, aggregated sectors. That doesn't mean that the sector-based research isn't incredibly useful. It is. We learned things like, at a rough level, what's happening to markup over time. That is interesting as a descriptive matter. And often, these studies are used to glom on causation and make claims about whether antitrust is doing too much or too little.

The reason that we care, fundamentally, about markets and not sectors in antitrust is because the fundamental lesson of those IO handbook chapters, and I think most of modern IO in this area, is that competition and concentration are different things. Concentration can be caused by more competition. It can be caused by less competition. I think Steve had this as the Chicago critique on his slides. I'm a UCLA guy. I'm going to call it the Demsetz critique, or else I'll lose my Bruin lunch card.

But the fundamental idea that we grapple with and what makes antitrust hard is that changes in concentration can be the outcome of more or less competition. That makes identification difficult. It makes broad claims about whether we have too much or too little or Goldilocks, just right, levels of concentration really difficult to do, and probably outside the scope of the ability of modern IO. And that really was the lesson of the big empirical revolution of IO in the '70s and '80s.

So punchline for me is I think a lot of the evidence that we see are attempts to do this broad industry sector stuff, where we do exactly what we learned not to do in the '70s. We regress markups or price or profit on really broad, aggregated industry data. And then the policy world sort of jumps on and makes causal claims. And we're off and running. And I think that's a dangerous place to be.

And there are attempts to do better work. There are attempts to do more sophisticated merger retrospectives and trade off the broad, general insights we're learning about one case. And maybe, I think, in discussion, we'll talk a little bit more about that.

But my read of the evidence is that the aggregated relationship between aggregated concentration and competition outputs-- we don't know much that's relevant to formation of antitrust policy. I think there are interesting questions. I think it is important for modern IO economists and for the agencies, for the FTC and the DOJ, who have great collections of IO economists inside those buildings, to engage in answering those questions. And I'd say it's great that we all get to come up here and engage in those questions. But I'm hopeful that the economists inside the agency who are experts and have access to data, things like agency predictions in individual cases that they can test against data-- that they're also an active participant in that discussion.

So I think the real challenge moving forward is if you've got data that isn't what you need to have the type of discussion that you want to have about whether it is desirable to move policy one way or another, whether it's mergers or something else, the challenge, I think, both for the Academy and for the agencies, is to invest in producing those data-producing tools, producing studies to move the ball forward in that literature, because I certainly agree there are interesting questions here that require investment and are worth the time. Stop there.

FIONA M. SCOTT MORTON: Great. Hello, everybody. And thanks to the FTC very much for being invited to contribute to this panel. I agree with both John and Steve on the IO research here. It seems very easy to run the wrong regression. To someone without a PhD, it looks tempting. We need to resist that temptation because it is, in fact, just wrong.

But we need to find another way to answer the question. That's not an excuse for not answering the question. And, as Josh said, concentration and competition are not the same thing. It's not actually, I think, very informative to learn about aggregate concentration in the United States. I'd like to know about competition in the United States. And I think, as Steve said, the markups are a good way to get there.

I think the real reason that we're-- that there is consensus among a large fraction of the people who do this work for a living and people who read the newspaper that we have a competition problem in the United States comes not from papers published in academic journals, but from two main sources. One is, for people who work in this area, the actual experience of litigating. So it took 23 years from the time the FTC first found a pay-for-delay agreement in the record to getting the Supreme Court to say, yes, under certain conditions, those could be anti-competitive, 23 years. And a pay-for-delay is when a branded monopolist pays the generic to stay out of its market.

That is pretty straightforward. It's exclusionary conduct. It harms consumers. It keeps prices very high. Why did we have to wait a quarter of a century to get that practice banned or-- never mind banned, actually-- to get that practice scrutinized properly?

The American Express opinion by the Supreme Court completely misses the locus of competition between American Express and Discover. It's all about American Express' consumers versus the retailers, and so on, and gives a complete miss to the issue of competition, which is what the antitrust laws are supposed to protect.

So when you look at litigation and you look at what the agencies are trying to prove in the courts, it's a really heavy lift. And as Bill Baer said when he was at DOJ, why are some of the mergers we're reviewing even getting out of the boardroom? They're just, obviously, anti-competitive. And yet we have to litigate them, anyway. So I think that's one big area that we look to for evidence as to why there are anti-competitive effects.

A second one is our experience as consumers. Look around at hospitals, airlines, beer, media, big tech. I think people in the economy walk around buying things. And the experience they have is of less competition.

And I think also, consumers can get easily confused between what is regulated and what's not. So for instance, pharmaceutical prices and cable prices are not fundamentally something that antitrust can do a lot about. And yet those things are exhibiting less competition, also for the reason that Jonathan covered in his talk about lobbying to get government protection.

So what's my response to this emerging consensus? We need to revisit the economics. And I will say this slowly because it's worth saying 25 times. And I don't have that long. So I'll just say it once slowly. Economic analysis is not the same thing as less enforcement.

Chairman Simons said it exactly right this morning. Economics is a tool. If you feed a set of facts into the economic analysis box, you can come out this merger is competitive or this merger is anti-competitive. It works beautifully.

But what happened in 1975 is we applied economics to antitrust. And we got the pendulum swinging down. Arguably, we had too much disorganized enforcement. The pendulum swung down. And now we have these things as sacred texts. And the answer is always, if you believe in the sacred text of Chicago, to enforce less.

Obviously, if you enforce less for 30 or 40 years in a row, you're eventually going to pass the optimum. And that's what we've done, I think. And we need to recognize-- I, luckily, was too young to be part of that project. And so it's perhaps easier for me to see that we've well overshot the optimum and that we need to go back and look at the economics fresh and try to get the right answer.

And let me remind you all that there's a big drumbeat of dollars in favor of keeping those sacred texts because the parties that have monopoly profit would like to keep the monopoly profit. And they will spend their monopoly profit to fund people who say that less enforcement is always better.

So it's a-- it's going to be difficult to achieve progress in this area because the parties that have financially gained from less competition are going to work hard to keep their status. So I just want to alert all of you in the media and the enforcement community to be battling courageously for the consumer.

But I think that the bottom line is that we have the tools and we have the ability to get the right answer. And we should use them. And we should not be trapped in paradigms from 30 years ago because those are really outdated to the extent that they were even correct 30 years ago, which I would not stipulate to. That's all.

GREGORY WERDEN: Thank you. We're going to turn now to a series of questions that I will pose to our panelists. They've gotten the questions in advance and actually done some negotiating. And there's a designated first answerer on each of the questions. But after that, it's up to them to work it out.

So the first question, which is directed initially to Josh-- it goes like this. John's basic point is that we have more market power than we used to, and that's bad. Assuming that we do have more market power than we used to and that it's a significant increase in market power, my question is, do you agree that it's necessarily bad? And do you think something ought to be done about it?

JOSHUA D. WRIGHT: First, no one ever told me there was negotiating. I always get left out. So let me spent 10 seconds fighting the premise. And then I'll give up an answer.

The question is assuming [INAUDIBLE] the increase in market power, then is that a bad thing? I think my 10 seconds is almost up. But I will say I'm not sure that that premise has been established. But assuming, per the question, that it is, again, I think we get back to the fundamental point. And some of these old Chicago texts are pretty good, including Demsetz, on the point about identification, which I still think is very relevant to our discussions about concentration in price. I have a feeling you meant a different one.

But I think here, we don't know ex ante, and this is the fundamental problem, whether-- we, in antitrust, want to care about changes in market power that are attributable to reductions in competition. That is not all of the ways in which market power can be increased. If we want to do antitrust that is consistent with IO, if we want to get the economics right, we need to have a set of tools that enables us to distinguish between those propositions.

So what do I think can or should be done? There are simple answers floated around. We could have-- we could go back-- I don't think anyone here wants to do that-- we could go back to really simple structural rules that equate competition and concentration. We could pull, dust off the 1968 merger guidelines, do antitrust with our fingers, count the firms, and pretend as if we can make causal inferences from changes from concentration to competition. We could have bright-line rules that have presumptions of liability if mergers are above X share or above $X. We have one of those in the Supreme Court. I count that as one of the bad cases we ought to get rid of. But there's pending legislation that does something like this. None of that, I think, is based in sound economics.

So I think what we're left doing, if we properly reject those ideas, is making a serious investment, both in the Academy and in the agencies, to improving our tools and being able to answer better some of the questions that we struggle with now with the identification. I think we're starting that with merger retrospectives. I think if you look at the evolution of the way, inside the agency, empirical analysis of mergers happens now versus 10 years ago, much less 20 years ago, the improvement is remarkable.

But I think it is a burden on the agencies and on the Academy in these areas. We like to publish journal papers and whatnot, but engage on these questions, both the fight against oversimplified fixes that will probably do more harm than good, but also to subsidize investment in more knowledge to do a better job designing and calibrating policy with these questions.

GREGORY WERDEN: Anybody else?

FIONA M. SCOTT MORTON: Yeah. I would disagree. I think we have the tools. I don't think we need to spend 10 years developing new tools. I think we could start now. There isn't anything wrong with our existing standards or economic analysis. I think the problem comes when you try to apply it.

So if you're in court and it's-- and the judge is taking the view of recent cases that we have seen, which is either ignoring the facts or ignoring the economic principles or not applying the horizontal merger guidelines, for example, in terms of our efficiencies-- merger-specific, are they verifiable, are they cognizable-- I think that's where the problem comes. And of course, if an agency is confronted with-- at the end of the day, they disagree with the firms and they have to go to court, that's the outside option. And if you have a very weak hand when you go to court, then there's not much you can get as a settlement. So I don't actually think we have a problem with the economics. I think we're ready to go there.

JOSHUA D. WRIGHT: Greg, I don't know the rules on random intervention. So I'm going to make one in the absence of a rule. So the thing that I have in mind in terms of getting the-- and I think we're all for getting the economics right. But for example, some of these areas go the other way.

So it's not a Chicago text. But in 1968, Oliver Williamson wrote a pretty well-known paper on efficiencies and mergers. 50 years later, there's not a single federal court decision-- no merging parties have prevailed on an efficiencies defense. 50 years is a heck of a good winning streak. I agree, parties sometimes do a bad job presenting efficiencies. I've been inside an agency. But I think there are places where we could do better. That's one that comes to mind that cuts the other direction.

JONATHAN B. BAKER: Just on that last point, I just want to observe that if the overall overriding problem is we're worrying about growing market power, sure, there's a good-- there might be good government reasons to think about ways in which we could do reforms that avoid chilling less beneficial conduct. But the real problem is to strengthen the antitrust enforcement. And that should be the overriding focus at the moment.

GREGORY WERDEN: Let's move to the second question. You've heard from a number of our speakers today about the evidence of-- or related to increased corporate profits. This evidence seems fairly clear. The trend is worldwide. But it is more pronounced in the United States than elsewhere. And here, the profits are highly concentrated and relatively few, usually successful companies. My question for the panel is, and John's going to go first on this one, does the presence of a relatively small number of hugely successful technology companies in any way suggest a failure of antitrust?

JONATHAN B. BAKER: So the answer is not, per se. A large and profitable firm's size and success alone doesn't mean antitrust had failed. Firms can and do grow large and become successful by providing customers with valuable products and services. And that includes large technology companies. We want to encourage firms to grow successful and profitable by offering better and cheaper products and services. But we should also be concerned if firms, including large and successful ones, exercise market power and some other major markets are threatened to do that through exclusionary conduct or collusive conduct or merger.

Now, I pointed to the growth of dominant information technology platforms as a reason for concern about increasing market power because I think their high margins probably reflect market power in part, not because of their success, per se.

STEVEN BERRY: Yeah. So I think I would combine my answer a little bit to these last two questions, which is that-- and the IT example is good. I think they have high markups. They have high profits. For many good reasons, they have high markups. I just say it slightly opposite from John. It's not just market power. It's a combination of market power and doing things that people want and gaining efficiencies.

And so it's not-- as I said before, it's not bad, per se. But I do think it has implications for antitrust, even if it's not bad, per se. Take two of these firms. Take two of my big wholesaling firms that have an overlapping set of locations. If the markups are already very high, the stakes for a merger become that much more severe because they're already operating on inelastic parts of their demand curve.

So I think in many cases, we can litigate whether it was bad-- whether we got here or not. And I personally think we're going to figure out it's a mix of things. And we're going to say some bad and some good. I think what I'm more interested in is the forward-looking discussion of what are the implications.

Now that we're here, is there something different that we should be doing? Is there a scrutiny that we should be offering that we haven't offered before? And I'd really like to hear from my closer to practitioner or colleagues what those things might be.

GREGORY WERDEN: [INAUDIBLE]

FIONA M. SCOTT MORTON: I'll answer it as an answer to the next question you're about to ask me. How about that?

GREGORY WERDEN: OK. That's fine. Next question-- Steve sketched a scenario in which technology is changing in a way that increases the sunk costs and decreases the marginal costs of companies. That scenario rings true, even if lots of other forces are at work. I would like to hear from the panelists on what they think likely accounts for the empirical observation of increased markups over the past four decades.

FIONA M. SCOTT MORTON: So I'm going to take the first half of that question and then Steve's question on what do you do enforcement-wise. I think what we need to do is adjust our enforcement analytics to fit the market structure, as Steve suggested. So let's take, for example, the presence of network effects. Network effects are when the value of the product rises in the number of users. So a social media platform is more valuable to me the more other people are on it.

What do we get when we have network effects? We get concentrated market structures. Everybody wants to be on the same network because all their friends are there. So we get market shares that go 99% and 1%, or a few little epsilons. We don't see market structures of 70-30 or 50-50 in a world with network effects. So we necessarily are going to see concentrated markets.

Is that a problem? No. As we've said already, that, per se, just that fact-- that's not a problem. But we need to recognize that the locus of competition has shifted. Competition in that market does not display itself in the market. The 30% is not competing with the 70%. No. It's competition for the market. Who is going to be the winner take all? Who is going to get to be the 99%? There are some firms that start out together. And one of them gets ahead. And the market tips. And that winner gets 99%.

So now that we know that the locus of competition is for the market, not in the market, how would we do antitrust? We would care an awful lot about entry. We would care an awful lot about potential competition. We would care an awful lot about acquisitions by the 99% of a teeny little epsilon percent. Why? Because that epsilon percent doesn't have a lot of share. But that's where the competition's coming from. That 99% guy is are afraid the epsilon is going to become 1% and attract all the teenagers and there's going to be a flip.

So we care a lot about that little epsilon. And that's where the competition's coming from. And we need to dust off our theories of harm when it comes to potential competition. We need to stop investing so much importance in market share. The market share of the little guy is not big. And when you calculate the Herfindahls, nothing's going to happen when you do this-- when you analyze this merger.

Does that mean there was no competitive significance to the little player? Quite the contrary. All those little players are the only ones that are making the 99% pedal faster and work harder to keep consumers because they're all potentially able to overthrow the incumbent. So that's a way in which we have standards lessening competition and so on that work perfectly well in an internet platform or a network effects market.

But we need to think about focusing our enforcement efforts at the place where the competition is, which is a little bit different in some of these markets than it would be historically in, say, automobiles. So I think there are big implications for antitrust enforcement. And I would point people in that direction.

GREGORY WERDEN: Do you want to weigh in, Josh?

JOSHUA D. WRIGHT: I think I agree with probably everything in that in terms of the description of that and other contexts being appropriate to worry less about the shares and worry more about the competitive constraint imposed by the rival. I think that's a common theme, focusing on the competitive constraint directly rather than using shares as a proxy that probably holds across a bunch of areas.

I will make the observation that it is, with respect to Steve's explanation with increasing sunk costs and reduced marginal cost-- that one of the implications, and I think this is a hearing for another day, but one of the implications is that a lot of those industries are industries that are intellectual property-intensive. And one of the potential tensions that arises, and I think the agencies have to engage with and be thinking about, as do academics who are thinking about these things, is the idea that we are chasing markups leading us into those industries invites a risk of having antitrust and IP go back to the '60s and '70s eras, where they ran directly into each other.

I think a lot of work has been done to try to get antitrust and IP to serve as complements in the direction of competition innovation rather than substitutes. And there needs to be, in those areas, if that indeed is the right story-- I think there needs to be significant thinking about how to make sure that complementary relationship stays intact.

GREGORY WERDEN: Let's move on to the next question, which concerns dynamism. You've heard quite a lot about that today as well. And John refers to some evidence on dynamism as one of the major reasons for rejecting a benign explanation for some of the trends that have been observed.

But I will point out to our panelists and our audience that the databases on which economists rely may be missing a lot. The broadest database that I'm familiar with is the Census Bureau's Business Dynamics Statistics, which is a very high-quality longitudinal database that includes every business in the United States with at least one employee. But it doesn't include any of the businesses with zero employees.

And you say, well, how big a deal can that be? Well, the answer is a presentation done by census economists a few years ago revealed that between 1997 and 2010, 75 million start-ups in the United States had zero employees, while only 7.6 million had one or more employees. So over 90% of the start-ups in the United States are being missed in the data that shows entry rates going down. So my question is, well, what data, if any, is telling on dynamism? And Steve is going first on this one.

STEVEN BERRY: So I'll start off confessing my confusion a little bit. So when we talk about market power, I know what we're talking about. We're talking about the ability to hold price above marginal cost. When we talk about dynamism, a few things come to mind. And they seem different.

One is a simply descriptive question, which we might want an answer to, which is, has turnover, in some sense, changed? Are the rates of entry and exit from various industries fundamentally changed? I think one of the things Greg is asking is, how good is the data on that? I don't actually have a great independent opinion on how good is the data on that.

But there's another thing that I think Jonathan suggested, which is it's not a descriptive matter of entry and exit. It's a question of whether the economy is delivering important innovations to consumers in the form of lower costs that are actually passed through to lower prices and/or better products. And it's possible, as with our last question, that you have a set of really big, great innovative firms who protect their position by being very innovative. In that sense, we have a lot of innovation and not much turnover. And I don't know if that's dynamism or not.

It does make me think hard, though, about Fiona's point about potential competition. And I think maybe this is what Jonathan is getting at. If there are firms who got where they are by being innovative, how do we ensure that the innovation continues? Surely not by seizing their intellectual property, for example. That seems bad. But do we take more seriously potential competition? Is the data that Jonathan's referring evidence of a lack of potential competition? I'm a little confused by that. It's more actual entry and exit.

But these are always first-order questions. These questions about innovation are always first-order questions. And I think if we accept that we have these very large, very profitable, certainly firms that got where they were by innovating, again, I would say, well, let's start from where we are and ask how we move forward. And I don't know that we have this positive evidence. But it seems like important question.

FIONA M. SCOTT MORTON: Yeah. I would agree with everything Steve just said. And I think then the purpose of antitrust enforcement is to ensure that the large firm that got where it initially got on the-- by innovating and serving consumers continues to do that. If there isn't effective antitrust enforcement, then you have the possibility of entrenchment and monopoly profits and a decline in the innovation and price competition that we would like to see.

So it's very important that we have effective antitrust enforcement in this sector so the-- and if we do and we continue to have high concentration, then they're competing hard. And we're getting what we want as a society. But if we don't enforce here, then I think we can't be sure that we will.

JONATHAN B. BAKER: And I'd like to just respond by reminding you that I talked about six different indicators of declining dynamism. And really, only one or two depend on the data set that Greg is worried about. I was talking about a secular slowdown in business investment and rising profits, the share of GDP, at a slowed rate at which firms expand when they become more productive and shifting growth and productivity gains from entrance to incumbents and the growing gap in accounting profitability between the most and least profitable firms, and then also a declining rate of start-ups, which is more about the deficit Greg is emphasizing.

JOSHUA D. WRIGHT: One small point on the relationship between business dynamism, I think, for this purpose, however we defined it in antitrust, is that, of course, there are issues to explore here on potential competition. But a point of agreement with John is public restrained scenario, where the FTC has been very active. State or locally imposed barriers to entry that reduce the ability for entry are a big deal here and an area I don't think the FTC needs to be convinced that it is worth spending time on. It is done for a really long time. It is done in a bipartisan and consensus-oriented way for a really long time.

My own view is that areas probably, if we're looking for an area to agree on for more cases to bring-- I think those cases have legal issues with state action defense and whatnot. But if you want to target the resources of the agency, that stuff you know is anti-competitive, state barriers to entry, including occupational licensing, is pretty good stuff and stuff that I think the agency would be well served. We do lots of competition advocacy-- but used to be an area where we brought a few more cases.

GREGORY WERDEN: Should we go after the lawyer monopoly first? I think we can get an agreement right here. That's the one that's really problematic.

JOSHUA D. WRIGHT: I'm in, Greg.

JONATHAN B. BAKER: You're asking economists that question.

GREGORY WERDEN: Yeah.

[LAUGHTER]

They know. Anybody want to say more about dynamism or are we done? OK. Good. So my final prepared question for the panelists is a broad policy question. If the plan is to somehow ramp up antitrust and the solution is not just to spend more money at the agencies, which, of course, is always welcome, what should be done and by whom-- Congress, the courts, the agencies? And in particular, I ask, what one change in substance or procedure do you recommend? And what one change would you most strongly caution against? And I'm going to start with Jonathan.

JONATHAN B. BAKER: So in the book that I mentioned that's coming out next spring, I talk about a number of substantive presumptions for ramping up antitrust that I'd like courts to adopt. But I don't want to do the equivalent of picking a favorite child. And I can't really describe them all here. So instead, I'm going to give you two cautions rather than one of each.

So on substance, I would caution against presuming that vertical conduct is pro-competitive, and I think I talked about why in my presentation. And on process, I would caution against introducing direct political influence into antitrust enforcement.

GREGORY WERDEN: So why don't we just go down? Steve-- next.

STEVEN BERRY: So I really wanted to hear the practitioners talk to this more than I wanted to hear myself talk about it.

GREGORY WERDEN: You can pass if you want.

STEVEN BERRY: But let me just say one quick thing, which is-- and it follows up on this last point. I think, in general, the state of the evidence, and I think this is even consistent with Josh's concerns about the state of the evidence, is that I think we could use with some flattening of priors and some less presumptions in general that I think there's-- it's a time when things are changing, when there's a lot of interesting data. And we're not quite sure what it means. And the idea that we have very strong presumptions, say, about whether it's vertical or potential competition, big being bad-- I think a lot of those presumptions should be at question and that we should be acting as though before we do the analysis, before we get the data of the specific situation, we should be more modest and our Bayesian priors should be flatter, I think, just in general.

FIONA M. SCOTT MORTON: And since current practice is to be extremely worried about over-enforcement and not at all worried about under-enforcement, that would flatten. I agree.

I don't have any caution. So I'm going to do three recommendations to make up for Steve's one so we're symmetric. I think it would be-- I'm not going to identify who should do this because I'm not enough of an expert in that area. But I think it would be helpful if courts were to actually follow the definition of consumer welfare that is correct and the horizontal merger guidelines-- in particular, that efficiencies have to be cognizable and merger-specific and benefit consumers. That would be a big help.

A second big help would be if we were explicit about our concern for potential competition and instructing courts to consider that as an important element in the markets where it is proven to be an important element.

And third, I would say that there is, as Josh mentioned, I think, an increasing use by firms of government processes to protect themselves from competition and to exclude. And I think it would be helpful if someone could figure out a way to adjust Noerr-Pennington and similar kinds of laws to make it less possible for incumbents to keep out potential competitors and entrants. So those would be my three.

JOSHUA D. WRIGHT: Steven, Fiona stole my thunder. But let me say, I would, one, cosign Steve's proposal that priors be flattened here and we take hard looks at presumptions that are driving enforcement, whether they are structural presumptions in favor of more enforcement, whether they are presumptions that go the other way. I think flattening priors and reevaluating those is-- no time like the present to take out zombie presumptions while we're reevaluating the economics.

I would say for the agencies, that certainly includes-- Congress has such bright-line proposals in front of it. And I'm sure we'd like to hear from the agencies about what they think about those bright-line presumptions.

But I would also say, in addition to quickly cosigning the reallocation-- I guess I'm not allowed to increase the budgets-- the reallocation toward public restraints, where I think a disproportionate amount of the harm-- your line up 100 economists. And 99 are going to agree that that stuff is harmful. We're not going to have big, reasonable fights over which way that the welfare effects cut. So I say reallocation in that direction.

And the last one I would say, which is more procedural and resource allocation inside the agency-- I do think there are a lot of really tough questions facing the agencies and facing IO economics and helping guide through what I think is a really interesting time in how we calibrate antitrust policy. There are 100-some PhD economists between the agencies. And I guess I'm not allowed to raise the number to 200 without firing some lawyers, which will not be popular here. But I think there are ways to more deeply involve economists inside the agency in these discussions. I think the more of that, whether it is through 6(b)s at the FTC, whether it is-- there are a lot of ways to do that. And I think the more of that, the better.

JONATHAN B. BAKER: I'd like to comment on something that Josh and Fiona were talking about, about the-- I really don't think-- sure, there are public restraints that are harmful and appropriate to be concerned with if you want to enhance competition. But I don't think the idea of reallocating the FTC and DOJ budgets towards public restraints is necessarily a good idea.

What I'm worried about is that a lot of the public restraints-- there are other mechanisms that are outside of the antitrust laws-- legislative and-- for example, for addressing them, and probably more effectively, or advocacy in front of other regulatory agencies and the like. But it's the antitrust agencies, and private plaintiffs, too, and the states-- but the antitrust agencies are really the most important actors in stopping private anti-competitive conduct, at least along with other actors. And I'm worried that taking enforcement resources away from those important efforts by the antitrust agencies the way that Josh's proposal would suggest--

STEVEN BERRY: So it's not clear. We think the budgets should go up.

[LAUGHTER]

GREGORY WERDEN: Getting no argument from me on that-- and you can start with my pay. We have a bunch of questions from the audience. And two of them are almost identical. So obviously, there is a consensus that this is the most important issue, because we have two agree on one-- on this.

JOSHUA D. WRIGHT: They were sitting next to each other.

GREGORY WERDEN: The handwriting is almost identical.

[LAUGHTER]

I think this is not two independent [INAUDIBLE]. But what the heck? So I will rephrase. What, if anything, should the antitrust agencies be doing about Amazon?

FIONA M. SCOTT MORTON: About what?

GREGORY WERDEN: Amazon.

JOSHUA D. WRIGHT: Doing the same thing they do in all of [INAUDIBLE] analyzing-- the-- I think the point of the conversation and the reason for the silence is that I think we are all believers in the idea that you get the toolkit right and you fight over how to get the toolkit right and you work out how to get the toolkit right and you apply it evenly across the economy. And you could take account of differences. But you don't have different [INAUDIBLE]

FIONA M. SCOTT MORTON: You don't pick out a firm and say, how do we-- yeah.

GREGORY WERDEN: So if I rephrase the question, are you aware of any antitrust case that the government should have brought against Amazon, but didn't? Would you say no?

FIONA M. SCOTT MORTON: Well, if they should have brought it, then they should have brought it.

STEVEN BERRY: Are you aware of one?

FIONA M. SCOTT MORTON: Oh, am I aware of one? No.

GREGORY WERDEN: No? OK. OK. That's enough for Amazon.

[LAUGHTER]

We have the question about static versus dynamic view of market power. And this came up quite a few times in the conversation. But since I've got the question, I'll put it again. Because profit is the necessary incentive for innovation and investment, how should we think about many of the things we are observing today, like high margins and network effects, in terms of a dynamic view of how competition works? And Fiona, you addressed this quite a bit already. But is there anything you would like to add?

FIONA M. SCOTT MORTON: This is why, Steven, I've been saying, let's look forward. And let's try to keep firms honest. You have a good idea to do something really well. You innovate. You get enormous amounts of revenue. People are very happy. That's excellent.

But then it's very easy, if we look at the historical record, for such a firm to find it easier to exclude rivals rather than compete. Competing's hard. It's hard work. And so we need to have a toolkit that's up to date and used to make sure that, as we move forward, a firm that has significant market power is getting it honestly, by competing on the merits and delivering innovation and low prices. And if that's what we're getting, that's excellent. But it would be not efficient and not good for consumers to stop enforcing against these firms.

STEVEN BERRY: Yeah. Fiona mentioned earlier the idea of rivals buying competitors just to remove the potential competition. We talked about that a bit. And I don't think you're blaming the innovative firm or punishing the innovative firm by trying to see if we can stop that from happening.

And Mike, I have a question. I'm not quite sure of whether we should be looking at acquisitions by these firms differently than we would. And I don't think that's blaming them or depriving them of the benefits of their innovation.

GREGORY WERDEN: Let me slow things down a little. After I ask the question, you can go next. Somebody who's worked in an agency realizes, and I'm sure our panelists do, too, that none of these questions are as simple as they might appear in a panel discussion. So if you get some, let's say, dominant technology platform and it's proposing to buy some nascent competitor that might come up with the next greatest idea or might have it already, but hasn't got it to market, how do you know whether to think this is bad because this threat to the incumbent monopoly is being squelched or this is good because this is the way that this new idea will come to market?

FIONA M. SCOTT MORTON: So here, I think, we rely on John and his error cost framework to think about this. If you don't know whether the acquisition's going to be pro-competitive or anti-competitive, you have to think of the harms you're creating by getting it wrong. And if under-enforcement creates tremendous harm because the dominant technology platform has lots of market power and that's going to be a huge problem, then we have to make sure we're weighting that risk appropriately. And it may be that we don't have very much information about, or as much as we would about, the potential competitor as we do in markets where we're assessing whether a 15% share should be allowed to buy a 20% share.

But there's a lot more information about the products, about the way competition arises, about the prices, and so forth when you have competitors already in the marketplace. When it's potential, the problem is much more difficult. Does that mean there's less welfare at stake? Not at all. So just because there's less information doesn't mean we get a free pass to do nothing about it.

JONATHAN B. BAKER: And I wanted to add, going back to the original question about-- where they were talking-- which was asking about static and dynamic competition-- some people have the idea that competition is somehow bad for innovation and that when we are acting as antitrust enforcers, and that's who we are. To increase competition, we're just going to benefit the buyers at lower prices. But somehow, we'll impede innovation-- and that there's some-- a trade-off. And that's not necessarily right. And it probably isn't right on average.

There's lots of evidence that competition spurs productivity, lots of economic studies. And on innovation particularly, I read the literature saying the motive that firms had to innovate by escaping competition is probably stronger on average in the data than the motive to innovate that comes from appropriating more returns on the margin. And it's not surprising because firms that are making major R&D investments always-- usually have a lot of reasons other than preexisting market power to appropriate sufficient returns to-- even if there's some imitation. And successful incumbents may be discouraged from developing new products because they're-- that would cannibalize their existing rents and because, as Steve and a few other been emphasizing, firms with market power can discourage new competition with exclusionary conduct. And so there's every reason to think that more competition is good for society, for dynamic, innovation-oriented productivity reasons, not just for static price and quality reasons.

JOSHUA D. WRIGHT: So long as we are including the-- maybe the caveat or the definition that-- in John's claim that more competition is good, that we're not equating competition to the number of firms, I get nervous about these discussions when they convert to policy because the temptation is, when I've got a really, really hard policy problem to figure out-- is that acquisition of the nation or a small competitor a good or bad thing on net, on welfare? The trade-offs are really difficult to figure out. And it is sometimes tempting.

And I think history teaches us, and certainly in antitrust, that there is a temptation that is often succumbed to by agencies to cling to those bright-line presumptions because you can do them. And that, I think, is something that, in that area, we certainly don't have enough empirical evidence or economic theory to do. It involves-- this may be an area I think Fiona and I disagreed some about whether we've got all the tools we need in. And I think we probably agree we've got most of what we need. But I think there are areas where we could do better. And even if that means, doing better means, learning more about the distribution-- and potential competition's one of those areas.

FIONA M. SCOTT MORTON: But here's the problem, Josh. If you say we don't know enough to draw a line, I'm fine with that. But that's not the same thing as saying, because we don't know anything, we're going to decide all the cases so that it's fine for the big firm to buy the potential competitors.

JOSHUA D. WRIGHT: You certainly didn't hear the latter claim out of me. I voted these cases, and to bring them.

FIONA M. SCOTT MORTON: Yeah. Let's not go there. But yes, I-- then I agree.

[LAUGHTER]

GREGORY WERDEN: Good. So rephrasing this-- these next two questions, economists are really on top of how goodly or badly market concentration tells you that there is competition or not competition in an industry. So we don't want to further that conversation. The question is, what else? What would you look at if you wanted to know how competitive a market sector, the whole economy, is?

STEVEN BERRY: Well, it's easier on the sector. And the fact of the matter is there are a lot of tools of merger analysis-- looking at the closed substitution of products and differentiated products markets, for example, which I think are well-accepted-- has been much better than concentration measures. And in my understanding, concentration is used largely as a screen. I'm not the practitioner. And I think some of us may be even questioning that a little bit.

But in horizontal mergers, really, I think practice has moved very, very far away from concentration measures and toward the closeness of substitution of merging parties. I think there's less consensus in vertical mergers. But there are a new set of tools that look at changes in bargaining that result as a result of vertical competition. And I think those are not as well-accepted outside of economics. And I understand some of the legal fights going on right now are not even over the specifics of whether a particular merger should go forward as much as they are about whether those economic tools have value.

So I think there are, in both horizontal and vertical cases, real tools of economics that focus on, I think, what is actually at issue in these cases, both horizontally and vertically. Only horizontally, they're well-accepted-- maybe less so vertically.

GREGORY WERDEN: When you get to a case, you're going to have information that a researcher wouldn't have, a lot of it. And it can be very useful. And we have tools for analyzing it. I think that where the question was coming from is, as a researcher, as a policymaker, if you're looking at the whole big picture, what is it you should look at?

JONATHAN B. BAKER: So I'm such a micro guy, I find it hard to move past the aggregation as the sum of its components. I think it's very hard to do at the broad aggregate level. Broad evidence on markets, broad evidence on profits are interesting. And they do not particularly get to the whys. I think they're a flag of interest, I would say.

FIONA M. SCOTT MORTON: The field of IO is a micro field. So we're just really bad at answering this question. And if you look at John's list of sites, a lot of those people are in finance or macro or labor that have come into this empty space that we generated, which is how do we describe the economy as a whole, because our field doesn't do that. And so that's partly why we have these conflicting methodologies.

JONATHAN B. BAKER: Don't you wish we had some occupational licensing here?

[LAUGHTER]

STEVEN BERRY: In all honesty-- I said this before-- it's actually excellent that those papers are raising these questions. That's an excellent thing, that these questions are being raised by those papers. And I think people deserve a response. In the meantime, we don't necessarily believe the causal conclusions of those people.

GREGORY WERDEN: I was just handed this emergency question. Are there important competition issues that antitrust can't handle? And I take this to be antitrust enforcement as we know it. So these would be problems that would be addressed in some other way than antitrust cases.

JONATHAN B. BAKER: So sure. Natural monopoly, the-- you can't-- you have to regulate that. You can't use--

GREGORY WERDEN: We did that. We're kind of past that.

JONATHAN B. BAKER: Well, that's important--

GREGORY WERDEN: It's almost all gone.

FIONA M. SCOTT MORTON: Your electricity bill, I'm afraid to say, has some regulation in it.

GREGORY WERDEN: Little bit. But I'm at the mercy of a unregulated water monopolist.

JONATHAN B. BAKER: And then some of the governmental restraints we were talking about probably have to be developed legislatively.

GREGORY WERDEN: Apart from regulating monopolies, which is an old, but still good, idea, is there anything else you would suggest?

STEVEN BERRY: Well, I do think when people talk about the tech companies, they-- and this is a good question for the FTC-- is that people are sometimes talking about data and other forms of social relationships that I think are difficult to handle outside of the existing antitrust framework and may be subject to different kinds of regulation. And I think sometimes, when people talk about old-fashioned antitrust, they're also talking about, for example, political power. And I think that's way outside the realm of traditional antitrust regulation. I think it should stay there. But it doesn't mean that-- it doesn't mean there shouldn't be some response.

JONATHAN B. BAKER: And then also, leader-follow conduct that leads to tacit coordination-- that's very hard to address through antitrust laws.

GREGORY WERDEN: But do you think it should be addressed at all?

JONATHAN B. BAKER: Well-- you mean, do I think someone at some other actor could do a better job than the courts on that?

FIONA M. SCOTT MORTON: So I don't want to--

JONATHAN B. BAKER: They have the same problem with the antitrust agencies.

GREGORY WERDEN: So that would be a no?

JONATHAN B. BAKER: It'd be nice to be able to do that because I'm not sure how.

FIONA M. SCOTT MORTON: So I'd like to follow up on what Steve said. There's political power. There's things like privacy. There's misinformation. It's not clear that vigorous competition fixes the problems that people want to see fixed in those domains. And it might be that you want another agency or some other law to do that, if that's what the community would like to see done.

So I think there are calls-- you read in the paper about people who would like antitrust or perhaps think that antitrust can fix everything. And my view is that that's not going to work, that antitrust is very well-geared. It's a set of economic tools. It's very well-geared to certain kinds of problems and that we should look elsewhere, to other kinds of regulations, if we have different kinds of problems to fix.

STEVEN BERRY: But Greg, let me come back to that. I'm completely baffled that you're subject to an unregulated water monopoly. And I know we're here. And I still am confused by it.

GREGORY WERDEN: It's not my house here.

STEVEN BERRY: I just mean--

GREGORY WERDEN: There are many unregulated monopolies in this country.

STEVEN BERRY: I agree. And why we gave up on so many of them I'm still baffled by.

GREGORY WERDEN: Well, OK-- running out of good questions here. So I'm tempted to say we're done. But I will give the last five minutes to our panelists to say whatever they choose to say to wrap up. Remind them about the book, John.

FIONA M. SCOTT MORTON: Yeah. There we go.

JONATHAN B. BAKER: My publicist insists that every one of you go out and buy it when it's available [INAUDIBLE]

GREGORY WERDEN: Are you offering a discount?

JONATHAN B. BAKER: You'll have to discuss that with my publisher.

GREGORY WERDEN: Have you set the price yet?

JONATHAN B. BAKER: I don't think it's even available.

GREGORY WERDEN: It's too soon to talk about the book.

JONATHAN B. BAKER: Yeah.

GREGORY WERDEN: No?

FIONA M. SCOTT MORTON: I think it's great we're having these hearings.

GREGORY WERDEN: OK. Well, then we're going to take our break now a few minutes early.

[APPLAUSE]

JOSHUA D. WRIGHT: [INAUDIBLE]

FIONA M. SCOTT MORTON: Yes.