Common Ownership

Under the merger statutes, a single investor could not buy every company in a market. But what if overlapping sets of investors buy individually small, but collectively large, stakes of every company in a market? In many sectors, that is the status quo: a few large investment firms—companies like Fidelity, BlackRock, and Vanguard—collectively own large portions of the publicly traded firms that comprise most of an industry. In these industries, the common owners should not rationally want their companies to compete hard against each other. Instead, their interest is for the companies to soften competition, whether through changes in prices, R&D, capacity, entry decisions, or some other dimension of competition.

Recent empirical scholarship suggests that large investors are succeeding in their goal—although it is not clear exactly how. This scholarship suggests that "common ownership" is a pressing modern antitrust issue.

Reading

Required reading

Azar, Schmaltz & Tecu, *The Anticompetitive Effects of Common Ownership* (2018) (Introduction and Section 6, table 1)

Einer Elhauge, *How Horizontal Shareholding Harms Our Economy—and Why Antitrust Law Can Fix It*, 10 Harv. Bus L. Rev. 207, 209–268 (2020) (read Parts III and IV)

Fiona Scott Morton & Herbert Hovenkamp, Horizontal Shareholding and Antitrust Policy, 127 Yale L. J. (2018) (read 2026–2047).

Recommended reading

Eric A. Posner, Fiona M. Scott Morton, & E. Glen Weyl, *A Proposal to Limit the Anti-Competitive Power of Institutional Investors*, Antitrust L.J. (2017).

Backus, Colon, & Sikinson, The Common Ownership Hypothesis: Theory and Evidence, Economic Studies at Brookings (January 2019)

Speech by FTC Commissioner Noah Joshua Phillips, "Taking Stock: Assessing Common Ownership," Concurrences Review and NYU Stern: The Global Antitrust Economics Conference, June 1, 2018

Background reading

"Common Ownership, Competition, and Top Management Incentives" with Miguel Antón, Mireia Giné, and Martin Schmalz,.

"Innovation: The Bright Side of Common Ownership?" with Miguel Antón, Mireia Giné, and Martin Schmalz