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ABSTRACT

Empirical findings of increased industrial concentration and corporate profit margins have led to some calls for stricter antitrust enforcement. In this paper, we examine the welfare implications of the alleged increase in market power. We find that trends in concentration and margins are mixed and that there is no unambiguous increase in either concentration or margins on both sides of the Atlantic. In addition, concentration and margins are not necessarily a good guide to assess the performance of antitrust policy regarding its effect on consumer welfare. We consider whether moving away from the consumer welfare standard could alternatively justify stricter antitrust enforcement. Finally, we show that an antitrust policy that accepts efficiency-enhancing mergers may both increase market concentration and margins and yet improve consumer welfare.

Les études empiriques montrant une augmentation de la concentration industrielle et des marges bénéficiaires des entreprises ont conduit certains à réclamer une application plus stricte des lois de concurrence. Dans cet article, nous examinons les conséquences sur le bien-être de l'augmentation présumée du pouvoir de marché. Nous constatons une évolution mitigée de la concentration et des marges et qu'elles n'augmentent pas de part et d'autre de l'Atlantique. En outre, la concentration et les marges ne sont pas nécessairement un bon indicateur pour évaluer la performance de la politique de concurrence quant à son effet sur le bien-être des consommateurs. Nous nous demandons si le fait de s'éloigner de la norme de bien-être des consommateurs pourrait justifier une application plus stricte de la législation antitrust. Enfin, nous montrons qu'une politique de concurrence qui accepte les fusions améliorant l'efficacité peut à la fois augmenter la concentration du marché et les marges et améliorer le bien-être des consommateurs.

* We regularly advise merging parties and third-party intervenors in the context of merger control investigations by antitrust authorities. However, the opinions and views stated in this article are our own and do not necessarily reflect those of our employers or our clients. We would like to thank Robert Kulick for helpful comments and suggestions. All remaining errors are our own.

I. Introduction

1. Concerns about rising market power and concentration are frequently raised in the economic literature.[1] While these tendencies may have multiple roots, an insufficiently tough enforcement of antitrust laws has been posited as a major cause of these developments. According to this view, in simple terms, an increase in the level of margins and concentration may reflect a reduction in the intensity of competition and cause a reduction in welfare.[2] One specific culprit for the alleged reduction in competitiveness could be too lax merger control.[3] Accordingly, there are calls for a tougher antitrust enforcement regime,[4] for example through changing the burden of proof so that the merging parties would need to demonstrate that a proposed merger is pro-competitive.[5]

2. In parallel, the adoption by antitrust authorities, regulators and courts of the consumer welfare standard has also been criticised.[6] It is claimed that the consumer welfare standard has led to an excessive focus on short-term changes in prices, thereby neglecting longer-term effects and non-price factors.[7] Doing so, it is claimed, has led authorities to clear mergers that may appear to have had little adverse effects in the short term, but which ended up being detrimental in the long term or when non-price effects are considered.[8] Rather, it has been argued, antitrust should pursue a broader set of objectives that include, among others, environmental goals,[9] a more equitable income distribution,[10] and the protection of small businesses.[11]

1 This applies in particular to the US. *See* Peltzman (2014) (on industrial concentration), Barkai and Benzell (2018) (on corporate profits), and De Loecker et al. (2020) (on margins).

2 *See* Shapiro (2018).

3 *See* Shapiro (2021).

4 Sometimes calls for tougher enforcement of competition law are even coming from the antitrust enforcement agencies themselves. *See* for example the 2021 joint statement on merger control enforcement of the UK's Competition and Markets Authority, the Australian Competition and Consumer Commission, and the German Federal Cartel Office.

5 Motta and Peitz (2019) propose a change in the burden of proof, accompanied with a safe harbour approach, while Scott Morton et al. (2019) make similar propositions in relation to digital platforms. Amongst other reasons, these proposals refer to concerns relating to "*common ownership*" (Azar et al. (2018)), "*killer acquisitions*" (Cunningham et al. (2021)) and some estimates of the effects of mergers (Kwoka (2013)).

6 *See* Vaheesan (2019).

7 *See* Khan (2017).

8 *See* Vaheesan (2020).

9 *See* Holmes (2020).

10 *See* Posner and Sunstein (2022).

11 *See* Glick (2019).

3. In this article, we briefly recap the relevant economic literature on the alleged increase in market power and what, if any, conclusions can be drawn from it on the success or failure of antitrust law. To do so, we highlight, using a simple economic model, that greater margins and market concentration may also be indicative of a greater competitive intensity, ultimately benefitting consumers. We then discuss whether changing the perspective to go beyond a consideration of consumer welfare, to also consider other potential objectives of competition law such as the protection of small businesses, diversity, or sustainability, changes this assessment. Finally, we show that an antitrust policy that accepts efficiency-enhancing mergers may both substantially increase market concentration and margins and nevertheless improve consumer welfare.

4. Overall, we conclude that the recent concerns over an alleged increase in market concentration due to antitrust policy are not necessarily well justified. To start with, it is uncertain whether concentration really has been increasing, at least in general.[12] While it may be possible to find fault with individual antitrust decisions, establishing a causal link of antitrust policy on economy-wide market concentration is difficult. Most of the relevant literature focuses on concentration at the industry level rather than at the level of relevant markets. There are also several alternative explanations for trends in concentration, such as the increasing importance of superstar phenomena[13] and the effects of greater exposure to international trade.[14] Another factor explaining the rise of industrial concentration at a national level may be the increasing importance of retail chains in local markets.[15] This, however, does not imply that regulators face a simple choice between "tougher" or "laxer" standards. Rather, the choice is between more or less accurate assessments of the effects of firm behaviour.

12 For example, Kulick and Card (2022) find that industrial concentration has been declining since 2007 both in the manufacturing sector and in the broader US economy.

13 *See* Autor et al. (2020). For a specific case study concerning the music industry, *see* Krueger (2005).

14 *See* Melitz and Ottaviano (2008).

15 Kulick and Card (2022) find that in the US retail sector, concentration has been increasing since 2007. This increase has only led to the retail sector having a comparable level of concentration as the rest of the economy. Before the increase, the retail sector at a national level was more fragmented.

II. A global rise in concentration, margins, and market power?

5. The level of market power in a given market can often not be directly observed, and estimating it is certainly not an easy task. In recent years, a significant portion of academic research appears to have identified a more general macroeconomic trend towards increasing industrial concentration and margins, which in turn are interpreted as reflections of changes in market power and lax antitrust enforcement. For the US, Peltzman (2014) finds that concentration in the manufacturing sector, which he found to have been unchanged on average for the 20th century, has increased more recently. He attributes this to a change in the application of the antitrust rules in the US following the publication of Robert Bork's *The Antitrust Paradox*. Similarly, De Loecker, Eeckhout and Unger (2020) find that aggregate markups and profits have increased substantially from 1980. They note that technological change and changes in market structure, possibly due to a decline in antitrust enforcement, are prominent explanations.[16]

6. While the increase in industrial concentration this literature appears to find is stronger in the US than in the EU, European regulators nevertheless are also increasingly concerned.[17] However, more recent work relying on datasets with a larger coverage finds that even in the US, concentration has not (in general) increased since 2007.[18]

7. One common weakness of countrywide analysis of industrial concentration is that it takes place in a cluster that is often much wider, both from a product and geographic perspective, than the relevant antitrust markets.[19] Usually, even disaggregated industry classifications contain several different antitrust product markets. For example, heavy-duty trucks, buses, garbage disposal trucks, tractors, and fire trucks are typically contained in the same cluster.[20] Similarly, if revenues are computed on a national basis, increasing concentration may simply result from nationally active firms outcompeting less efficient local rivals in a greater number

16 *See also* Barkai and Benzell (2018) (on corporate profits) and Grullon et al. (2019) (on margins and concentration). De Loecker et al. (2021) note, however, that a simple attribution of rising market power to a weaker antitrust policy is not supported by their finding of a higher efficiency of dominant firms.

17 According to Covarrubias et al. (2019), the level of industry concentration in Europe has remained stable, whereas according to Bajgar et al. (2023) it is moderately increasing. For example, for Germany, the Monopolkommission (2022) finds a flat trend of concentration across industries, rec. 83.

18 *See* Kulick and Card (2022).

19 On this, *see also* Shapiro (2018) as well as Klovers and Kulick (2022).

20 *See* Benkard et al. (2021). In addition, it is possible that a relevant product market may contain several clusters.

of local markets. So, while the national concentration may increase in such a case, competition at the local level may well have intensified.[21] In this sense, a finding of increasing concentration would not be tantamount to showing a worsening outcome for consumers, let alone a reason to call for tougher enforcement of antitrust law.

8. Some recent research attempts to assess concentration based on relevant product and geographic markets. For the US, a reduction of the level of market concentration can be found for the period between 1994 and 2019 using this approach.[22] For the EU, analysing concentration levels in relevant markets delineated by the European Commission in its merger control decisions shows an increasing level of concentration between 1995 and 2014, though with a high degree of heterogeneity across markets.[23]

9. Against this background, company-specific margins—i.e., prices in relation to (marginal) costs—are conceptually advantageous as a market power indicator because they do not depend on a concrete market definition but link directly to the pricing behaviour of companies.[24] The difficulty here is to use a cost measure that corresponds to the relevant marginal costs in economic models of competition.[25]

10. The evidence on increases in margins in Europe is mixed.[26] Some studies suggest that the gap between price and estimated marginal cost in the US has grown significantly in recent decades: the average estimated price markup was found to have remained relatively constant between 1955 and 1980, but it then rose sharply from 21% above marginal cost in 1980 to 61% above marginal cost in 2016, an increase of 40 percentage points. Even markups in relation to total costs (e.g. fixed costs for capital, expenditure on research and development) were found to have risen by 30 percentage points over the same period. However, this is to a considerable extent due to the development of a few firms. For most firms, no increase in the markup is recorded.[27]

11. More recent research finds that modelling markups more flexibly across establishments within the same industry over time suggests that the measured increase in markups is substantially damped or eliminated.[28] Markup estimates also depend strongly on the assumptions used to derive them in a way that affects the overall conclusions.[29] Much of the recent literature also finds that changes in technology appear to drive changes in estimated markups.

12. To summarise, the empirical literature on market concentration and the level of margins offers mixed findings. Despite some academic literature suggesting that concentration and margins have been increasing in the US and the EU, more recent analysis based on updated data suggests that neither concentration nor markups have increased substantially in general.

13. Even if it were found that the level of concentration and margins has increased, this leaves open the question whether these findings have any implications for antitrust and competition policy, a question to which we turn now.

III. Welfare implications of greater market power

14. To provide some context to the above-presented literature, it seems useful to analyse its concentration measures and margins more closely with regard to their fundamental effects on competition economics. To this end, some reflection of economic history is in order. Developed in the middle of the last century, the structure-conduct-performance (SCP) paradigm postulates a causal effect of the market structure on the behaviour of firms, in turn informing the market outcome. According to this paradigm, markets with, for example, higher concentration (market structure) are, due to product differentiation, marketing, collusion, or other strategic behaviour (conduct), expected to lead to higher margins (performance).[30]

15. The SCP paradigm is backed, at least ostensibly, by the analysis of game theory, the type of which is commonly used in economic research and real-world applications. In a game-theoretic model of quantity competition (Cournot competition), for example, market concentration measured by the Herfindahl-Hirschman Index (HHI) is closely connected to the firms' market power in the market. Specifically, we have, in the simplest case, the following relationship:

16. In other words, the more concentrated a market (measured by HHI) and the lower the price elasticity of demand (PED), the higher the percentage margin (Lerner Index). In line with this, an increase in the number of firms in a market, i.e., a less concentrated market, leads to a lower market price and average profit margin. This is illustrated in Figure 1.

21 Rossi-Hansberg et al. (2021) find decreasing concentration based on local markets.

22 *See* Benkard et al. (2021). The data used in this study may, however, not be representative. *See* Crane and Decker (2019).

23 *See* Affeldt et al. (2021).

24 *See* Monopolkommission (2020), rec. 279.

25 Where there are substantial fixed costs, gross margins can be relatively high because firms will need a higher margin to earn a competitive return on their investments. Therefore, increases in markups can also be driven by higher fixed costs.

26 *See* Weche and Wambach (2021). De Loecker and Eeckhout (2021) find a significant increase in margins, while Cavalleri et al. (2019) observe a slight downward trend.

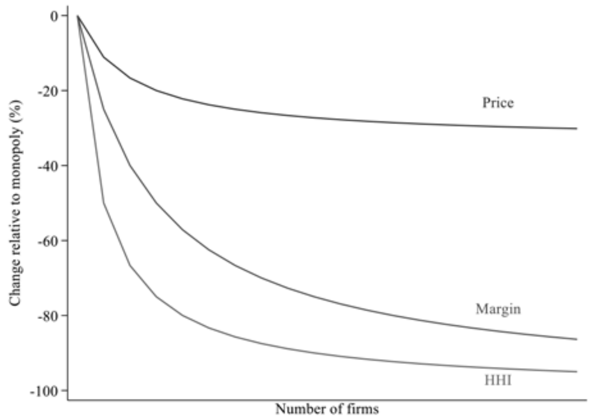
27 *See* De Loecker et al. (2020). Corporate profits have also been found to have increased.

28 *See* Foster et al. (2022).

29 *See* Raval (2023, forthcoming).

30 The development of the SCP paradigm can be traced back to Mason (1939) and Bain (1951). The literature is summarised in Lipczynski et al. (2013).

Figure 1. Concentration, margin, and market price as the number of firms changes

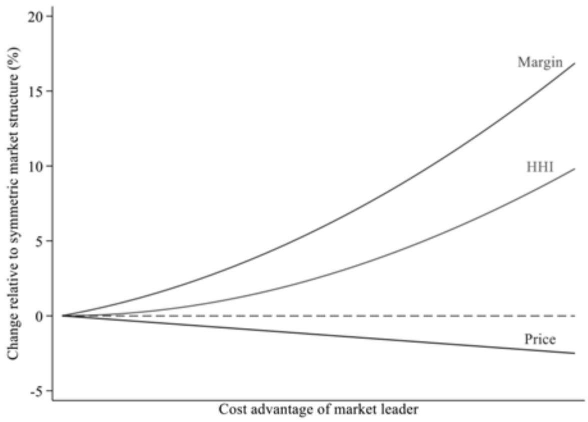


Source: Authors' illustration.
Notes: The illustration is based on a theoretic model of quantity competition.

17. With its notion of a simple causal chain between market structure, behaviour and outcome, the SCP paradigm attracted strong criticism in the economic debate.[31] Indeed, the relationship between these three building blocks is not a one-way street. Rather, feedback effects are to be expected here, for example from market behaviour to market structure or from market outcomes to market behaviour. Concentration measures such as market shares and HHI are themselves endogenous variables which, like market prices, are the result of a complex interplay between the (potentially) active companies in the market, their production technologies and strategies, as well as the preferences of consumers. From such a view, it follows that the market structure, if measured based on ad hoc concentration ratios (such as the HHI), can in principle have no causal effect on any market outcome.

18. Not least because of a rather vague theoretical foundation and mostly crudely measured empirical relationships, the SCP paradigm has become outdated by now.[32] By contrast, modern industrial economics and in particular game theory, through its focus on strategic interactions, has shown that market structure should not generally be regarded as exogenous, but that it can, in fact, be shaped by firms' conducts. For instance, a firm that can increase its efficiency (in a manner that is consistent with competition on the merits) may gain market share at the expense of its competitors. The result: market concentration (measured by the HHI) and market power (measured by the margin) increase, but they are not a solid indicator for consumer welfare. This is shown in Figure 2 below, which illustrates the relationship between market concentration, margin, and market price when the cost advantage of the largest firm changes.

Figure 2. Market concentration, margin, and market price



Source: Authors' illustration.
Notes: The illustration is based on a theoretic model of quantity competition. In our model, there are four firms active in the market, initially all with the same constant production cost. One of the firms then obtains a cost advantage. The margin is weighted by the firms' sales volumes, and the price is identical for all firms (market price).

19. Considering these basic insights, how are the findings on (market) concentration and margins from the previous section to be interpreted? First, an increase in concentration or margins need not necessarily inflict disadvantages on consumers (and this is not claimed in this sweeping manner in the literature either). Indeed, the observed margins may be consistent with the "superstar" hypothesis, whereby market- and technology-driven developments such as the increasing significance of network and scale effects due to digitalisation, globalisation, and the rise of the platform economy, form a "winner takes most" environment in which particularly productive firms thrive the most. As a result, these particularly efficient and innovative firms may increase their share of the market and their margins rise.[33]

20. In that case, consumer welfare will rise. To the extent that an increase in concentration is driven by superstar firms characterised by innovative products and services and/or particularly efficient production processes, a comparably worse market outcome would be expected had those developments not taken place. Increasing concentration could be explained, for example, by the reduction or removal of barriers that had previously constrained the growth of more efficient firms. If the gain in productivity is not sufficiently accountable for the observed margin growth, consumer welfare may be dampened. The empirical research on these opposing effects has not yet reached common ground.[34]

21. Overall, there is much to suggest that existing cross-sectoral trends in corporate concentration and margins result from a shift in economic activity towards more productive firms. The possibility of inadequate antitrust enforcement existing in parallel to this pro-competitive

31 Lipczynski et al. (2013) summarise the critique.

32 Lipczynski et al. (2013) and Schmalensee (1989) offer an overview of the empirical literature of the SCP paradigm.

33 *See* Autor et al. (2017) and Autor et al. (2020).

34 In the empirical analysis by Ganapati (2021), consumer welfare rises.

process can nevertheless not be ruled out, and neither so the possibility of (even) higher consumer welfare through regulation.

IV. Market concentration beyond the consumer welfare standard?

22. From the perspective of consumer welfare, increases in market concentration and margin may thus, in themselves, not necessarily be cause for concern. The consumer welfare standard[35] as a guiding principle for antitrust policy has, however, recently been criticised. First, it is claimed that the focus on consumer welfare has narrowed antitrust authorities' focus on short-term price effects,[36] in particular of mergers.[37] Second, it is claimed that by focusing only on consumer welfare, other important policy objectives are ignored, these being the protection of small businesses,[38] sustainability,[39] political economy concerns,[40] income inequality,[41] and other social concerns.[42]

23. The consumer welfare standard itself does not imply that only short-term price effects need to be considered. Indeed, the term consumer welfare is general enough to allow an authority to include in its assessment changes to product quality, variety and other features of competition that affect consumers' welfare. Hence, adopting a consumer welfare standard does not by itself imply a neglect of the medium- to long-term.

24. If indeed there is a focus of antitrust authorities on short-term price effects, then this is likely to be the result not of an excessively rigid consumer welfare standard, but rather the difficulty of making reliable predictions about non-price effects and longer-term effects. While courts and antitrust authorities have experience in assessing the price effects of collusion and mergers, evaluating the effects of potentially anticompetitive behaviour on other outcomes of the competitive process is more difficult. Consumers may, for example, disagree about the relative quality rankings of different products. Even if some product features are inherently preferred by all consumers, if higher quality is accompanied by higher prices, finding the net effect requires trading off these two effects. In contrast, higher prices (holding quality equal) unambiguously harm consumers.

25. Making predictions is hard, especially when they are about the future. The longer the forecast horizon, the more likely it is that new entry and exit will occur, new technologies will be introduced, and consumer preferences will change. Therefore, the competitive effects, beneficial or harmful, will become less and less certain. For example, the acquisition by Facebook of Instagram is sometimes posited as an example of a merger that perhaps should have been prohibited at the time.[43] Despite the supposedly high barriers to entry due to network effects in social media, it is not clear, however, that any harm to competition this merger may have caused in the short run persists until the present. In fact, Meta, the renamed parent company of Facebook and Instagram, is now facing heavy competitive pressure from newer social media platforms, such as TikTok and Snapchat.[44] In addition, there is also some evidence that both Facebook and Instagram are complementary products, implying the merger created some efficiency benefits.[45]

26. As another example, the market position of Google in general search may now be facing a new competitive threat from the recently released artificial intelligence engine ChatGPT.[46] If the competitive process can thus overcome barriers to entry, there may simply be fewer long-run effects to be considered.

27. As regards the pursuit of objectives beyond consumer welfare through antitrust policy, the natural question to ask is whether there are alternative policy instruments available to address these other concerns. It is not clear, for example, why environmental protection should be pursued through remedies in a merger case or as unilateral anticompetitive behaviour. Instead, basic economic theory suggests that taxing polluting activities or setting up a cap-and-trade system for pollutants are likely to be more effective in dealing with externalities arising from economic activities. Even worse, if regulators and courts were to place high emphasis on environmental issues, their decision-making could exacerbate the alleged problem of market power if this invites, for example, cartel "greenwashing": providing minimal sustainability benefits in exchange for more relaxed competition rules.[47]

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35 We follow the economic literature in interpreting the consumer welfare standard to refer to consumer surplus, rather than total welfare, which is the sum of consumer and producer surplus. *See* Salop (2010).

36 *See* Khan (2017).

37 *See* Vaheesan (2020).

38 *See* Glick (2019).

39 For an overview of this debate, *see* OECD (2021).

40 *See* Khan (2017).

41 *See* Posner and Sunstein (2022).

42 *See* Waked (2020).

43 The US FTC is currently bringing a case against Meta related to this, *see* https://www.ftc.gov/news-events/news/press-releases/2020/12/ftc-sues-facebook-illegal-monopolization and https://www.ftc.gov/news-events/news/press-releases/2021/08/ftc-alleges-facebook-resorted-illegal-buy-or-bury-scheme-crush-competition-after-string-failed. At the time, the initial assessment of the FTC did not raise concerns.

44 *See* A. Brown, Facebook Knows It's Losing The Battle Against TikTok, *Forbes*, 4 February 2022, https://www.forbes.com/sites/abrambrown/2022/02/04/facebook-meta-growth-zuckerberg-reels-tiktok-videos-creators-pay.

45 *See* Li and Agarwal (2017).

46 *See* N. Grant, Google Calls In Help From Larry Page and Sergey Brin for A.I. Fight, *New York Times*, 20 January 2023, https://www.nytimes.com/2023/01/20/technology/google-chatgpt-artificial-intelligence.html.

47 *See* Schinkel and Treuren (2021).

28. Similarly, the tax and transfer system is usually the instrument of choice to address inequality. In contrast, it is not clear whether a stricter merger policy will even meaningfully reduce inequality. While it might lead to some price-increasing mergers to be blocked, if the firms primarily cater to richer customers (e.g. luxury watch manufacturers), then the merger might in fact reduce inequality (e.g. rich luxury watch buyers pay more, while the merged entity may use some of the increased profits to increase pay for its workers).[48] Similarly, if a stricter merger policy led to the prohibition of a supermarket merger that would have reduced retail prices, inequality would have been worsened.

29. Likewise, if there is concern about large firms using money to lobby for policies benefitting them at the expense of overall welfare, then reforms to campaign finance and transparency in politics would appear to be more appropriate than a tougher enforcement of antitrust policy.

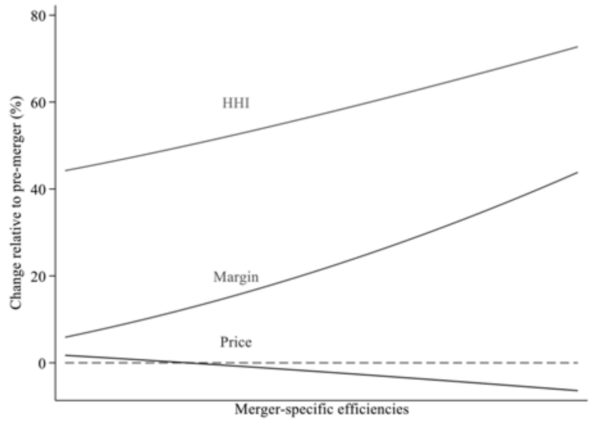
30. Furthermore, competitive markets often have beneficial effects in line with other objectives. If an authority approves an efficiency-enhancing merger that leads to lower prices, for example, this will benefit customers buying the products, which may alleviate inequality concerns.

V. Implications for merger control

31. In evaluating proposed (horizontal) mergers and acquisitions, measures of market concentration such as market shares and HHI commonly play a fundamental role. The relevant guidelines of the European Commission and the US Department of Justice (DoJ) and the Federal Trade Commission (FTC) regard the change in HHI (the "delta" value) and the post-merger HHI as useful indicators of the expected effects of a given merger. As a rule of thumb, the higher the delta value and post-merger concentration, the more likely are competitive concerns (and, accordingly, an in-depth review process or a challenge in front of the courts).[49]

32. In practice, the delta value is calculated from the recent market shares of the merging parties. This may lead to an underestimation of the (true) delta value since it ignores the effect of merger-specific efficiencies on market concentration. If a merger leads to lower production costs so that the merged firm can further increase production levels, market concentration may increase even more than a purely static assessment of market shares would suggest. Efficiency-enhancing mergers that benefit consumers through lower prices could thus lead to greater increases in concentration than a comparable merger without efficiencies. This is also illustrated in the following Figure 3 using a simple competition model, where the vertical axis measures the post-merger change vis-à-vis pre-merger prices, margins, and HHI, and the horizontal axis measures the change in merger-specific efficiencies.

Figure 3. Merger-specific impact on market concentration, margin, and market price



Source: Authors' illustration.
Notes: The illustration is based on a theoretic model of price competition (Bertrand competition). Before the merger, there are four firms active in the market, each with the same constant production cost. After the merger, three firms remain active in the market (4-to-3 merger), and the merged entity benefits from cost efficiencies.

33. Figure 3 shows the effects of a standard merger simulation. Absent efficiencies, HHI, margin, and price all rise. At some point, efficiencies are sufficiently strong to counterbalance the effect on price. In addition, even if mergers did lead to price increases, these may reflect improvements in the quality of products. Mergers might increase product quality by increasing innovation.[50]

34. The cross-sectoral empirical evidence on market concentration and profit margins summarised at the outset may to some extent provide signs of increasing competitive risks in the economy. This stream of empirical literature provides valuable insights for a variety of topics. But to derive concrete implications for merger control from this evidence may seem quite ambitious in view of ambivalent economic effects—and due to the not always clear empirical factual situation.

35. Instead of investigating broad trends in the level of margins and market concentration across industries, retrospective evaluations of mergers are more likely to be conducive to understanding whether merger control policies were too lax or too stringent. All else equal, a greater increase in market concentration resulting from a merger typically should lead to a greater post-merger

48 For example, Kulick and Card (2022) find that higher concentration is correlated with higher wages.

49 *See* Eur. Comm., Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004, p. 5, paras. 16, 19–21, and DoJ & FTC, Horizontal Merger Guidelines, 19 August 2010, section 5.3. Other relevant parameters of competition are also to be considered.

50 For example, Kulick and Card (2023) find that merger activity is positively and statistically significantly related to R&D expenditure.

price increase.[51] In practice, however, all else is often not equal. If mergers differ in the efficiency gains that they generate, it may well be that mergers leading to a greater increase in concentration may lead to lower prices, as shown in Figure 3.

36. For the EU, it has been found that while higher concentration was more likely to lead to higher post-merger prices, this only applied in cases where the authorities did not impose remedies. When EU authorities imposed remedies, higher concentration did not lead to higher prices post-merger on average.[52] In the US, some *ex post* evaluations appear to find that prices increased post-merger and that remedies were not sufficient.[53] Concluding from this that US merger policy overall has been too lax may, however, place too great a burden on this evidence.[54]

37. What the evidence shows, if anything, is that overly general statements about merger policy being too tough (in the sense of blocking too many mergers) or being too lax (in the sense of allowing too many mergers) are unhelpful when it comes to evaluating its success or failure. Instead, the main focus should be on evaluating whether, for a particular case, the antitrust authority has made a decision that contributed to greater consumer welfare. This question cannot be answered by looking at simplistic measures of market concentration or margins, but instead requires a careful and rigorous analysis of the effect of the merger on the outcomes that matter to consumers.

VI. Conclusion

38. Evidence on the rise of market concentration and margins is rather mixed on both sides of the Atlantic. Even if we accept that there has been a rise, understanding its cause is crucial. A common explanation is the increasing significance of network and scale effects due to digitalisation, globalisation, and the rise of the platform economy. If so, this development may well be consistent with overall higher consumer welfare—not necessarily lax enforcement of antitrust policy. Calls for a departure from the consumer welfare standard notably fail to explain why antitrust policy, rather than other instruments, is best served to pursue goals other than the protection of the competitive process. They also neglect the reason for the use of the consumer welfare standard, namely, that it gives a precise meaning, potentially amenable to measurement (albeit using advanced economic methods) of the otherwise vague and nebulous concept of "competition." Ultimately, a departure from the consumer welfare standard could give rise to conflicting objectives, legal and commercial uncertainty, and worse outcomes for consumers and society as a whole. Incorporating additional policy goals may also inadvertently reduce the pressure to improve policies pursuing these other goals. A greater reliance on structural indicators should therefore be avoided because these indicators may not relate to the ultimate goal of antitrust and competition policy—increasing consumer welfare. ■

51 *See* Nocke and Whinston (2022).

52 *See* Ormosi et al. (2015) and Havell et al. (2020).

53 *See* Kwoka (2013), Kwoka (2015).

54 *See* Vita and Osinski (2018), who criticise the reliability results obtained by Kwoka (2013), Kwoka (2015).

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