

APRIL 2020

## Early Papers Advancing the Common Ownership Hypothesis or Offering Policy Measures Based on This Hypothesis

- » Miguel Antón, Florian Ederer, Mireia Giné, and Martin C. Schmalz, *Common Ownership, Competition, and Top Management Incentives*, CESifo Working Paper Series No. 6178 (2018). This paper argues that common ownership deters company managers from competing aggressively with rivals. This, they say, is evidenced by executive compensation practices.
- » José Azar, Martin C. Schmalz, and Isabel Tecu, *Anti-Competitive Effects of Common Ownership*, *Journal of Finance*, 73(4), (2018). This paper (the “Airline Paper”) asserts that increases in common ownership coincided with airline seat ticket prices rising from anywhere between 3 and 7 percent during the 2001 to 2014 period.
- » José Azar, Sahil Raina, and Martin C. Schmalz, *Ultimate Ownership and Bank Competition*, Working Paper (2016). This paper (the “Banking Paper”) claims to find that greater common ownership, as proxied by inclusion of a stock in an index, led to higher fees and lower interest rates for individual deposit accounts between 2004 and 2013.
- » Einer Elhauge, *Horizontal Shareholding*, 129 *Harv. L. Rev.* 1267 (2016). This paper argues that common ownership can help explain fundamental economic puzzles, including why corporate executives are rewarded for industry performance rather than individual corporate performance alone, why corporations have not used recent high profits to expand output and employment, and why economic inequality has risen in recent decades. The paper also argues that common ownership that creates anticompetitive effects is illegal under current antitrust law and recommends antitrust enforcement actions to reduce this type of common ownership.
- » Eric A. Posner, Fiona Scott Morton, and E. Glen Weyl, *A Proposal to Limit the Anti-Competitive Power of Institutional Investors*, *Antitrust Law Journal*, Forthcoming (2017). This paper argues for the following restriction on common ownership: no institutional investor or individual holding shares of more than a single effective firm in an oligopoly may ultimately own more than 1 percent of the market share unless the entity holding shares is a freestanding index fund that commits to being purely passive.

---

## Papers Critiquing the Common Ownership Hypothesis and Associated Policy Proposals

- » Alec J. Burnside and Adam Kidane, [Common Ownership: An EU Perspective](#), *Journal of Antitrust Enforcement* (2020). This paper examines common ownership through a European lens and surveys the available evidence on levels of common ownership in Europe. The paper also reviews the academic debate, both methodological and theoretical, around the common ownership theory to consider if it is sufficiently robust to provide a basis for enforcement and, if so, whether current European Union competition law tools could be used to that end.
- » BlackRock, [Common Ownership Data Is Incorrect](#), Policy Spotlight (January 2019). This paper focuses on index inclusion rules and the use of incorrect data on asset managers' airline holdings in the [Airline Paper](#).
- » Elaine Buckberg, Steven Herscovici, Branko Jovanovic, and James Reitzes, [Proposal to Remedy Horizontal Shareholding Is Flawed](#), Law360 (July 17, 2017). This paper questions the validity of the common ownership hypothesis and argues that the proposed legal remedies are both premature and flawed given the harm that they would do to investors and to the real economy.
- » Committee on Capital Markets Regulation, [Common Ownership and Antitrust Concerns](#), (November 2017). This paper reviews the literature supporting the common ownership hypothesis and finds that the hypothesis is unproven. The paper further argues that no solution is necessary to a problem that is not proven to exist.
- » Patrick Dennis, Kristopher Geradi, and Carola Schenone, [Common Ownership Does Not Have Anti-Competitive Effects in the Airline Industry](#), Working Paper (2018). This paper analyzes the relationship between ticket prices and common ownership in the airline industry and finds no evidence that common ownership has raised airline prices. In the context of certain airline bankruptcies, the paper finds the correlations in the [Airline Paper](#) break down when the control assumption transfers to the bankruptcy court. The paper also questions the applicability of the theory of horizontal mergers and cross-ownership theory in the context of common ownership.
- » Douglas H. Ginsburg and Keith Klovers, [Common Sense About Common Ownership](#), George Mason Law & Economics Research Paper No. 18-09 (2018). This paper describes four shortcomings of research linking common ownership to decreased competition. First, proponents conflate asset management and economic ownership and therefore incorrectly attribute allegedly anticompetitive conduct to asset managers. Second, proponents overstate the validity and strength of the existing empirical work purporting to show common ownership causes anticompetitive effects. Third, proponents overstate their legal case by relying on inapplicable cross-ownership cases and stretching the holdings of those cases. Fourth, at bottom proponents' concerns are with either conscious parallelism, which is not illegal, or anticompetitive conduct that, if proven, could be addressed using established antitrust doctrines.

- 
- » Jacob Gramlich and Serafin Grundl, *The Effect of Common Ownership on Profits: Evidence from the U.S. Banking Industry*, Finance and Economics Discussion Series 2018-069, Washington: Board of Governors of the Federal Reserve System (2018). This paper, by Federal Reserve staffers, uses accounting data from the banking industry to examine empirically whether common ownership affects profits. The paper finds little evidence for economically important effects of common ownership on profits in the banking industry.
  - » Jacob Gramlich and Serafin Grundl, *Testing for Competitive Effects of Common Ownership*, Finance and Economics Discussion Series 2017-029, Washington: Board of Governors of the Federal Reserve System (2017). This paper, by Federal Reserve staffers, uses a distinct methodology to measure the effect of common ownership. Preliminarily, the authors conclude that the results found in the [Banking Paper](#) are not robust and that statistical evidence of common ownership impacting competition is mixed. The authors also note that more research is needed before any conclusions about the effect of common ownership on competition in any industry may be drawn.
  - » Scott C. Hemphill and Marcel Kahan, *The Strategies of Anticompetitive Common Ownership*, NYU Law and Economics Research Paper No. 18-29 (2018). This paper examines the proposed mechanisms that have been raised as potential ways that institutional investors could reduce competition and finds that “for most proposed mechanisms, there is no strong theoretical basis for believing that institutional [common concentrated owners] would want to employ them, no significant evidence suggesting that they do employ them, or both.”
  - » Pauline Kennedy, Daniel. P. O’Brien, Minjae Song, and Keith Waehrer, *The Competitive Effects of Common Ownership: Economic Foundations and Empirical Evidence*, Working Paper (2017). This paper analyzes data from the airline industry using two different empirical approaches to estimate the effects of common ownership on airline prices. The two approaches serve as checks on each other and past research on this subject. Both analyses find no evidence that common ownership has raised airline prices.
  - » Andrew Koch, Marios Panayides, and Shawn Thomas, *Common Ownership and Competition in Product Markets* (2019). This paper finds that common ownership is neither robustly positively related with industry profitability or output prices nor robustly negatively related with measures of non-price competition, as would be expected if greater common ownership encouraged product market rivals to compete less aggressively. This conclusion holds regardless of industry classification, common ownership measure, profitability measure, non-price competition proxy, or model specification. Based on this data, the paper concludes that antitrust restrictions seeking to limit common ownership are not currently warranted.
  - » Thomas A. Lambert and Michael E. Sykuta, *The Case for Doing Nothing About Institutional Investors’ Common Ownership of Small Stakes in Competing Firms*, University of Missouri School of Law Legal Studies Research Paper No. 2018-21 (2018). This paper explains why purported antitrust concerns about common ownership are overblown and why interventions to limit common ownership are unwarranted presently. The article notes that proposed policy solutions would create welfare losses that would overwhelm any social benefits associated with reducing common ownership.

- 
- » Barbara Novick, et. al, [Index Investing and Common Ownership Theories](#), BlackRock View Point, (March 2017). This paper supplies an industry perspective on common ownership and argues that placing limits on the ability of asset managers to make investments will essentially put the onus back on asset owners to create diversified portfolios.
  - » Daniel P. O'Brien and Keith Waehrer, [The Competitive Effects of Common Ownership: We Know Less than We Think](#), 81 Antitrust Law Journal 729 (2017). This paper questions the methodology of the [Airline Paper](#) and the [Banking Paper](#) by analyzing the use of the measure of concentration used in studying the airline and banking industries. The paper finds that the key explanatory variable in this research depends on the same underlying factors as those that drive consumer prices, making it likely that the estimates found in the Airline Paper and the Banking Paper are suggesting a relationship between price and common ownership when none may exist.
  - » Menesh S. Patel, [Common Ownership, Institutional Investors, and Antitrust](#), Antitrust Law Journal, Forthcoming (2018). This paper argues that policy proposals to limit common ownership would generate substantial competitive harm and argues that common ownership should continue to be evaluated on a case-by-case basis.
  - » Edward B. Rock and Daniel L. Rubinfeld, [Antitrust for Institutional Investors](#), NYU Law and Economics Research Paper No. 17-23 (2017). This paper casts doubt on the applicability of the methodology used in the papers that have found a statistically significant relationship between common ownership and price.

## Other Related Papers

- » José Azar, Martin C. Schmalz, and Isabel Tecu, [The Competitive Effects of Common Ownership: Economic Foundations and Empirical Evidence: Reply](#), Working Paper (2017). This paper asserts that certain features of the empirical analysis done in Kennedy et al. cast doubt on the reliability of their method and conclusion.
- » José Azar, Martin C. Schmalz, and Isabel Tecu, [Reply to: "Common Ownership Does Not Have Anti-Competitive Effects in the Airline Industry,"](#) Working Paper (2018). This paper argues that the findings in [Dennis et al.](#) are incorrect.
- » Matthew Backus, Christopher Conlon, and Michael Silkinson, [Common Ownership and Competition in the Ready-to-Eat Cereal Industry](#), Working Paper (2018). This paper, released in September 2018, studies correlation between common ownership and price effects in ready-to-eat breakfast cereals. It includes a critique of the [Airline Paper](#), finding that an application of the Airline Paper's methodology in the ready-to-eat cereal industry produces correlations with price *reductions* as well as correlations with price increases, indicating that any correlation is spurious and that the Airline Paper's methodology is thus flawed.

- 
- » Matthew Backus, Christopher Conlon, and Michael Silkinson, *Common Ownership in America: 1980–2017*, NBER Working Paper (2019). This paper examines trends in common ownership from 1980–2017 using implied common ownership profit weights for each pair of stocks in the S&P 500 Index. The paper finds that common ownership incentives have risen substantially over the period and this rise is driven mainly by a broad increase in diversification of investor portfolios. The paper does not test the common ownership hypothesis.
  - » Einer Elhauge, *New Evidence, Proofs, and Legal Theories on Horizontal Shareholding*, Working Paper (2018). This paper argues that common ownership can cause anticompetitive effects even if all common holdings are small. The paper also aims to demonstrate that critiques of earlier empirical studies showing adverse price effects for airlines and banking are generally invalid and advances new antitrust legal theories for addressing common ownership.
  - » Edward B. Rock and Daniel L. Rubinfeld, *Common Ownership and Coordinated Effects*, NYU Law and Economics Research Paper No. 18-40 (2018). This paper focuses on potential “coordinated” effects of common ownership and the appropriate antitrust treatment for such effects. The paper also considers how common ownership—and any potential coordinated effects—might affect merger analysis under US and EU antitrust law. The paper finds that it is entirely unclear how often common ownership has anticompetitive effects.
  - » Alessandro Romano, *Horizontal Shareholding: The End of Markets and the Rise of Networks*, Yale Law School (2018). This paper assumes the validity of the common ownership hypothesis and advocates for a network-based analysis of antitrust issues. Under this analysis, whenever the level of common ownership in a market exceeds a threshold, the FTC would inform common owners that there is a rebuttable presumption that common ownership has anticompetitive effects. The common owners would have the opportunity to rebut this presumption, but if they do not, remedies would apply.