POWERLESS:

How Lax Antitrust and Concentrated Market Power Rig the Economy Against American Workers, Consumers, and Communities

As workers, as consumers, and as citizens, Americans are increasingly powerless in today's society. Suffering from stagnant wages, higher prices, and an administration more concerned with heeding Wall Street lobbyists than supporting Main Street's small businesses and families, Americans believe the economy is "rigged" against the many for the benefit of the few. And they're correct. Aided by federal policies written in their favor, incumbent firms wield unopposed power in the market and use it to profit off of consumers, workers, and communities across the country.

UNDERSTANDING MARKET POWER

Market economies rest on the theory that private self-interest can be aligned with the public good; market interactions require the willing participation of workers, consumers, and businesses, and each party will only participate in an interaction if it makes them better off. This simplistic model of markets assumes the existence of some natural state in which all parties participate on a level playing field. In reality, power dynamics often shape markets to benefit the powerful at the expense of all others.

We define market power as the ability to skew market outcomes in one's own interest, without creating value or serving the public good.

When the rules favor one group over others, as they do in America today, then the powerful are able to profit, not by creating value, but by extracting it. As powerful companies raise prices, lower wages, or cut jobs to maximize profits, everyday Americans endure the consequences. More broadly, when companies aim to profit by taking from others, rather than by developing new sources of value, society suffers from fewer choices and less innovation.

THE EFFECTS OF MARKET POWER IN OUR ECONOMY AND OUR DAILY LIVES

Together with labor and consumer protections, antitrust laws are one of three policy prongs intended to ensure an equitable balance of power between market actors. Through a 40-year attack on antitrust policy and labor unions, alongside a shareholder-oriented corporate governance system, the balance of economic power in the U.S. has become skewed—at the expense of workers, consumers, the economy, and our democracy.

How Did We Get Here?

Recognizing the threat of outsized firm power over workers, consumers, and our democracy, the government took an active role in ensuring an equitable balance of power between market actors through three policy prongs: labor laws, consumer protections, and antitrust or competition policy. In particular, antitrust laws and regulations were established to ensure that companies competed on a level playing field, and that none became so powerful as to dominate workers, consumers, or smaller firms. These policies go back to the late-19th century, when the monopoly power of trusts like Standard Oil and the Pennsylvania Railroad sparked public outrage over high prices and poor service. Congress passed the Sherman and Clayton Antitrust acts, and states passed similar laws, providing the legal means by which to regulate firms so that their size and power—and their use of predatory behavior—would not upend markets.

In combination with consumer protections, a commitment to public goods, and powerful labor unions, antitrust protections fostered robust competition such that companies could succeed only by hiring skilled workers at a fair wage and offering valuable products at reasonable prices. With this equitable balance, workers and small businesses thrived as investment boomed.

However, as wealthy firms and conservative political interests sought a bigger piece of the economic pie for themselves, they espoused a new economic theory—sometimes referred to as the "Chicago School"—claiming that private firms were naturally inclined to innovate, that profits signified efficiency rather than power, and that regulations would impede growth and innovation. Premised on a nonexistent state of natural market efficiency and ignoring power dynamics, the Chicago School's championing of "free markets" resulted in deregulation of all but the most blatant forms of anti-competitive behavior. Relaxed merger guidelines, inadequate scrutiny of vertical integration, and elevated burdens of proof enacted under the Chicago School have privileged wealthy executives and shareholders over everyone else, spelling disaster for the American workforce, the middle class, and the economy overall.

Powerful firms exercise market power by engaging in anti-competitive behaviors, such as corporate consolidation. Decades of lax antitrust policy have permitted this practice, the results of which can be seen in the dramatic increase of mergers and acquisitions annually—up from less than 2,000 in 1980 to roughly 14,000 per year since 2000.[1] Additionally, between 1997 and 2012, more than 75 percent of U.S. industries became more concentrated, meaning a smaller number of larger firms account for most of the revenue.[2]

As companies gained more power by engaging in anti-competitive behaviors, they used their increasing market power to leverage more: by blocking new entrants in the field, diminishing the bargaining power of employees, gaining control of information and media sources, and manipulating politics. The effects of this concentration of market power in the hands of few companies has hurt American workers, consumers, and communities in myriad ways, from lowering their wages to complicating the search for reliable information.

Lower Wages and Fewer Jobs

Despite increases in productivity, American workers have seen their wages stagnate. Between 1973 and 2016, productivity climbed nearly 75 percent, but workers did not receive the benefit of their labor, as wages climbed only 12 percent during that same period.[3] As firms accrue market power, employment and wages decrease through two mechanisms. First, firms in consolidated industries tend to lower production and raise prices, reducing the demand for labor. In 2009, pharmaceutical giant Pfizer acquired Wyeth and announced it would cut 20,000 jobs worldwide.[4] After combining in 2015, Kraft-Heinz announced plans to cut 5 percent of its workforce.[5] Second, because fewer firms mean less competition between firms for employees, workers have less power to bargain for fair wages and less economic mobility to find better jobs. In fact, the labor share of income has decreased most in consolidated industries, and firm consolidation is a major factor contributing to the suppression of workers' wages.[6]

Fewer Rights for Workers

In addition to merger-related job loss and wage suppression, firms use their market power to further marginalize workers with "no-poaching" agreements, non-compete contracts, and mandatory arbitration requirements.

- **No-poaching agreements.** Colluding across industry, firms agree not to hire a current or former employee of a competitor, thus locking workers into low wages. A lawsuit pending against McDonald's argues that its practice of requiring no-poaching agreements among its franchisees restricts mobility, suppresses wages, and diminishes employees' bargaining power.[7]
- **Non-compete clauses.** Prohibiting workers, even those who do not possess trade secrets, from seeking employment with competitors also works to diminish employee bargaining power, suppress wages, and restrict economic mobility. After the New York attorney general's office found its contract "unlawful," the sandwich chain Jimmy John's stopped its practice of requiring a two-year, non-compete agreement to work at its chain.[8] But noncompete clauses still affect at least 20% of the workforce.

Consolidation hurts both workers and consumers. Profits have increased most in the industries that have become more concentrated, and wage growth has been most stagnant in those same concentrated industries.

Higher Prices

Despite claims by those who want to maintain the status quo in antitrust law, consolidation and other anti-competitive practices have actually caused prices to rise for American consumers. A recent study of publicly traded firms found that their markups—the amount a firm charges above its costs—have risen to an average of 67 percent, compared to just 18 percent in 1980.[9] Despite historically high corporate profits and a low cost of borrowing, companies are not investing profits or expanding operations to out-compete one another. Instead, powerful firms, operating with little competition, are profiting by raising prices and cutting wages, exploiting consumers and workers with too few options.

Fewer Job-Creating New Businesses

As job creators, new businesses are vital to a healthy economy. In 2005, new companies created 3.5 million net new jobs, while firms of every other age class, excluding the oldest firms, had a net decline in employment.[10] Today, however, while established large firms are thriving, new businesses are struggling to get a foothold in the market. Facing larger, often predatory incumbents and slack aggregate demand, new businesses face high barriers to entry. Once in the marketplace, the profitability of small firms has plateaued since the 1980s, while profitability has increased for the largest firms.[11]

Less Investment in Innovation, Research, and Development

When firms possess market power, they profit from extracting value from other participants rather than competing to create the best product. This not only hurts those targeted, but also results in less growth and innovation overall; as big firms crowd new businesses out of the marketplace, we lose out on innovation. This is perhaps most stunning in the pharmaceutical industry, where many companies plan their business models around purchasing smaller firms rather than developing new products. After merging, pharmaceutical companies have lower research and development (R&D) spending, fewer new patents, and fewer patents per R&D spending, compared to non-consolidated competitors.[12] Even more startling, the competitors of merged pharmaceutical companies innovate less, as the business model skews toward profits from market power rather than profits from new development.

Destabilization of Communities is Particularly Damaging to Communities of Color

Unbridled market power threatens locally owned businesses, which play an essential role in their communities and which cannot be replaced by externally owned and managed corporations. The detrimental effect of market power on locally owned businesses is especially pernicious in communities of color. For example, black-owned businesses have not only provided jobs and wealth to black workers, they have served as pillars of the community in a time when many larger, white-owned businesses were either indifferent or actively hostile to the priorities of black communities. As a result of the relaxed antitrust regime, there are numerous examples of companies amassing and exerting market power by consuming independent, black-owned businesses.

While antitrust reform is essential to limiting the concentration of power by the wealthiest companies and individuals, it will by no means ensure a just and equitable society on its own. Inequality in America is a result of both market power and racial and gender discrimination, and solutions to curb market power must prioritize targeted interventions for historically marginalized groups.

Restricting the Flow of Information

Market power not only influences access to goods, consumer prices, and wages, it also alters the flow of information. Lax antitrust regulations have permitted our sources of information to become consolidated under openly biased ownership. In 2016, the five largest TV companies owned 37 percent of all stations.[13] The market power of firms has extended even to the content and format of media we consume.

Compromising the Political System

In our current system, wealth begets power begets wealth. Individual companies and industry trade associations leverage their wealth to exert enormous influence over legislators, executives, and other governmental officials at all levels. This influence ensures that policies and regulations will continue to privilege these same firms; the powerful few are literally able to ensure the rules are written in their favor. Market power not only threatens workers, consumers, and our economy—it also jeopardizes our democracy.

A REVITALIZED COMPETITION POLICY FOR THE 21ST CENTURY IS NEEDED TO CREATE A MORE LEVEL PLAYING FIELD

The problem with market power is not only one of high prices and low wages. Instead, the outsized influence of firms affects all aspects of Americans' lived experiences, from what information is accessible to whether we will benefit from advances in medical technologies. Currently, the market power of large firms prioritizes not innovation, investment, and productive growth, but extraction and stagnation. Competition policy aligns private and public interests by changing the structure of markets and governing actions taken within them. To rebalance our economy and society at large, the government must reinvigorate antitrust law and regulation, as well as take additional steps to regulate or provide alternatives in certain types of markets.

- **Regulate market structure** and prevent the aggregation of private power, primarily by blocking mergers and breaking up or restructuring existing overly powerful firms.
- **Curtail anti-competitive behavior** by prohibiting and punishing behaviors that are extractive—such as exclusive dealing contracts, price discrimination and market segmentation, and the blocking or tolling of small business access to the market.
- **Regulate "natural monopolies" as utilities** and intervene when competition fails. Using either more comprehensive regulation or creating public options for natural monopolies like telecommunications and energy, government can ensure both the steady provision of necessary services and equitable distribution.

While competition policy alone will not solve for market power, it is a necessary step in reducing the outsized power of firms and reinvigorating a necessary market balance to ensure shared economic growth. These interventions must also be strengthened with a restoration of labor and consumer protections. Empowering Americans as workers, consumers, and citizens requires robust regulatory policies that curb the market power of firms, enable healthy competition, and protect our society against naturally occurring monopolies.

For additional information on market power, see http://rooseveltinstitute.org/powerless.

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[5] Ibid.

[6] Azar, José, Ioana Elena Marinescu, and Marshall Steinbaum. 2017. "Labor Market Concentration." Retrieved March 15, 2018 Available at SSRN: https://ssrn.com/abstract=3088767 or http://dx.doi.org/10.2139/ssrn.3088767

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