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Antitrust & Consumer Price Inflation

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tl;dr

Background: Some U.S. lawmakers have pointed the finger at rising concentration and alleged anticompetitive behavior by both suppliers (e.g., meat packers; oil & gas companies) and retailers (e.g., groceries; online retailers) as the cause of recent, sharp increases in consumer prices. They propose vigorous antitrust enforcement as a tool to stop the scourge of rising prices.

But... While consumer prices have increased sharply in the past year, concentration numbers in the relevant markets have been relatively unchanged for years or even decades. The best case that can be mustered is that existing market structures may slightly exacerbate short-term price dislocations whose *ultimate* cause is exogenous supply and demand shocks brought about by the COVID-19 pandemic and government responses to it.

However... The purpose of antitrust law is to protect competition, not to guarantee low prices in and of themselves. High or rising prices are not an antitrust violation, as they may be the result of the undistorted competition that antitrust ultimately protects, and the price system is the most effective means of resource allocation, even when the process itself is painful. There are a host of reasons to expect higher prices in the current environment, but virtually none of the evidence points to anticompetitive conduct as one of them.

KEY TAKEAWAYS

RISING PRICES DON'T NECESSARILY REFLECT A LACK OF COMPETITION

Sen. Elizabeth Warren (among others) has blamed rising grocery prices on market concentration, going so far as to propose breaking up Kroger. But Kroger and its subsidiaries have less than 10% market share, and retail profit margins are generally minuscule and inconsistent with monopoly exploitation. While 2020 saw grocery net margins approach 3.0%, in 2021 the margins moved closer to their long-run average of around 1.25%. Meanwhile, U.S. consumers have enjoyed marked improvements in their grocery shopping experience from larger stores that stock many more items.

Moreover, food prices haven't risen appreciably more than overall consumer prices in recent years: The USDA's Economic Research Service (ERS) finds that all-food CPI rose by 7.8% from 2016 to 2020, the same as the all-items CPI. ERS attributes the recent, sharp price rises to pandemic-related shifts in consumption patterns. In 2020, for example, food-at-home spending accounted for 51.9% of total food expenditures, the first year it has accounted for more than half of food spending since 2008.

Not coincidentally, price increases haven't been homogenous. Rising beef prices, for example, have been driven by beef cuts typically consumed at home, while prices of beef cuts typically consumed in restaurants have actually *fallen*. These changes have closely tracked pandemic-related supply-chain disruptions, further suggesting the pandemic and the ensuing lockdowns, and not excessive concentration, are to blame.

ROBINSON-PATMAN ACT ENFORCEMENT WOULD RAISE CONSUMER PRICES

In a July 2021 executive order, President Biden proposed reinvigorated enforcement of the 1936 Robinson-Patman Act, a competition statute initially passed to protect smaller retailers and counter the perceived market power of then-dominant A&P.

But that law actually sought to *raise* prices by constraining the kinds of efficiency enhancements seen in industries that enjoy economies of scale. The largest retailers are vertically integrated, and many have their own logistics divisions that lead to supply-chain stability and lower prices. Breaking them up or constraining them could reduce their efficiency (and thus raise prices).

Reviving such outdated ideas would not help consumers. Indeed, competition regulators have a history of misguided interventions in competitive retail markets. Consider the DOJ's challenge of the 1960 merger between Von's Grocery and Shopping Bag, in which the combined firm would have had less than 9% of the market. Ignoring the economic environment of the time, in which greater use of cars led to the creation of supermarkets drawing from a larger geographic area, the Supreme Court upheld the DOJ's challenge to "prevent economic concentration" and "keep a large number of small competitors in business."

THE WRONG TOOL TO FIGHT INFLATION

There are many possible causes of recent retail price inflation: increased demand driven by fiscal stimulus; unprecedented supply and demand shocks; incentive effects of government responses to the pandemic; and an increasing money supply, among others.

There may also be policy concerns related to the supply chain that merit legislative or regulatory attention, including, e.g., protection of farmers or the environment. But whatever their merit, such interventions would *raise* consumer prices (often intentionally).

The observed responses to disruptions from the pandemic are consistent with competitive markets, however, and antitrust is an entirely inappropriate tool to address economy-wide inflation or to enact policy goals unrelated to competition.

For more on this issue, see Geoffrey A. Manne's testimony to the U.S. House Judiciary Committee's Antitrust Subcommittee hearing on "Addressing the Effects of Economic Concentration on America's Food Supply."

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