

**International  
Center for  
Law & Economics**

Geoffrey A. Manne  
President, ICLE

Before the California Law Revision  
Commission, Project on Antitrust Law –  
Study B-750

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# *Understanding Concentration and Competition*

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Implications for California's Antitrust  
Policy

# *Agenda*

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**Concentration concerns and misconceptions**

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**Is concentration rising?**

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**Implications for antitrust policy**

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**Labor market considerations**

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**Entertainment industry consolidation**



# *Overview of Concentration Concerns*

- **Common fears**

*Reduced competition*

*Consumer harm*

*Wage suppression*

# Overview of Concentration Concerns

- **Concentration and Competition in California Expert Report**

*“Reduced Competition is on the front pages, as concerns over rising concentration, extraordinary profits accruing to the top slice of corporations, higher prices, lower quality, and less innovation, and widening income and wealth inequality have galvanized attention.”*

*“High concentration reduces competitive intensity as the result of the dominance of a single firm, or just a few firms with weak incentives to compete and strong incentives to coordinate. Most experts agree that competition lowers prices to consumers.”*

# Overview of Concentration Concerns

- **Common fears**

*Reduced competition*

*Consumer harm*

*Wage suppression*

- **But the picture is more complex**

*Concentration  $\neq$  lack of competition*

*Increased concentration may benefit consumers if it results from:*

*Heightened productivity*

*Competitive pressures favoring efficient producers*

*Labor markets are much more complicated & the picture is even less clear*

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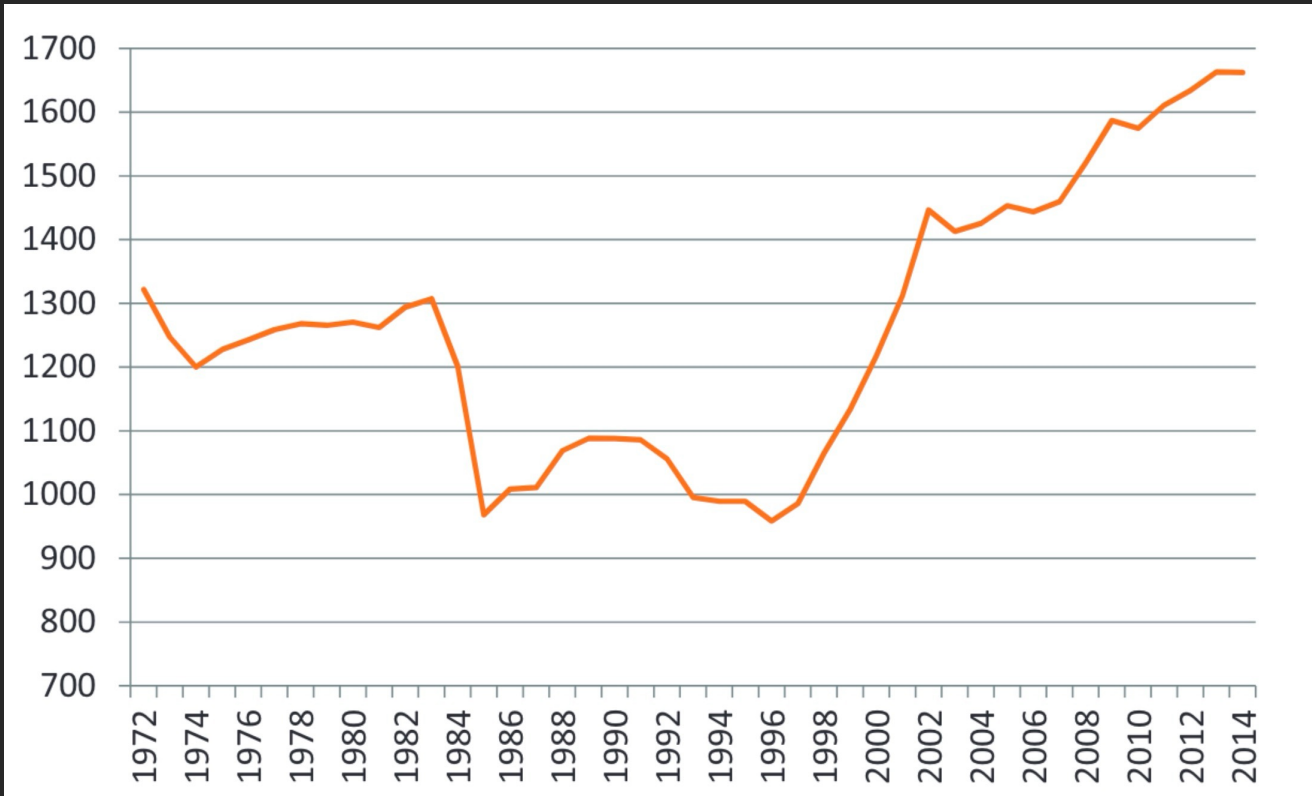
**Entertainment industry consolidation**



## *Is Concentration Rising?*

- **Conventional wisdom says yes**

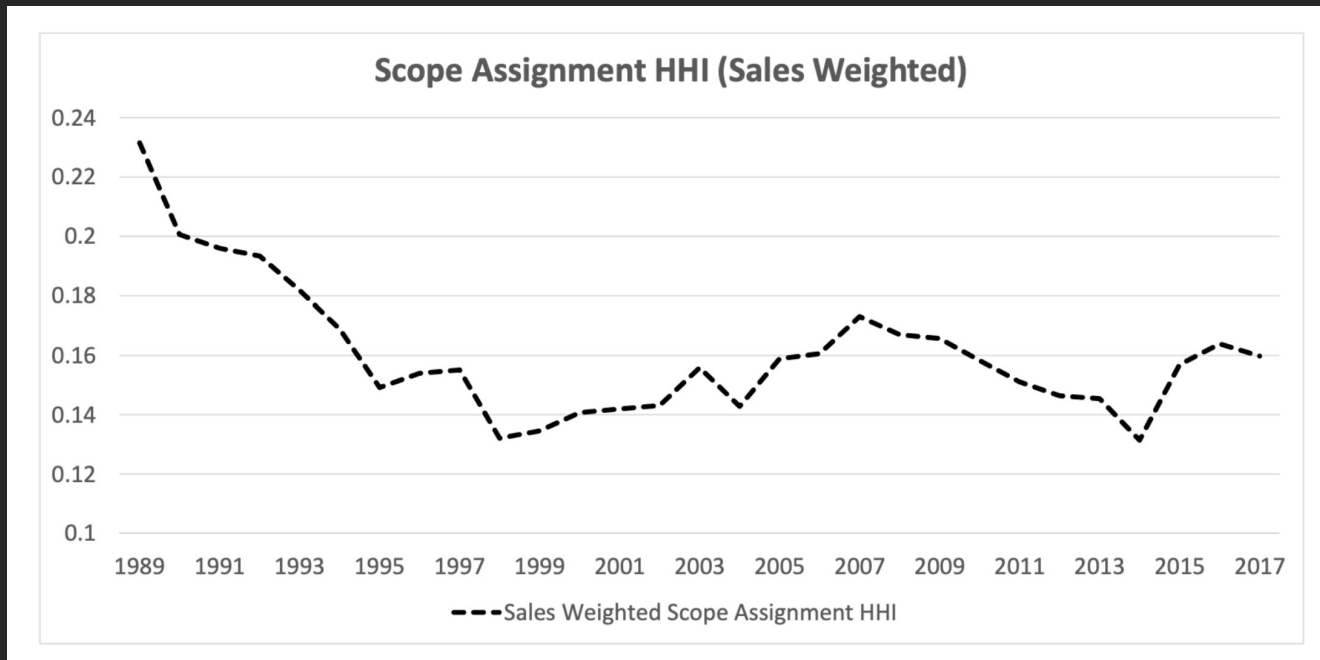
*Grullon, Larkin, and Michaely (2019): Average HHI at the 3-digit NAICS level for publicly-traded firms has increased*



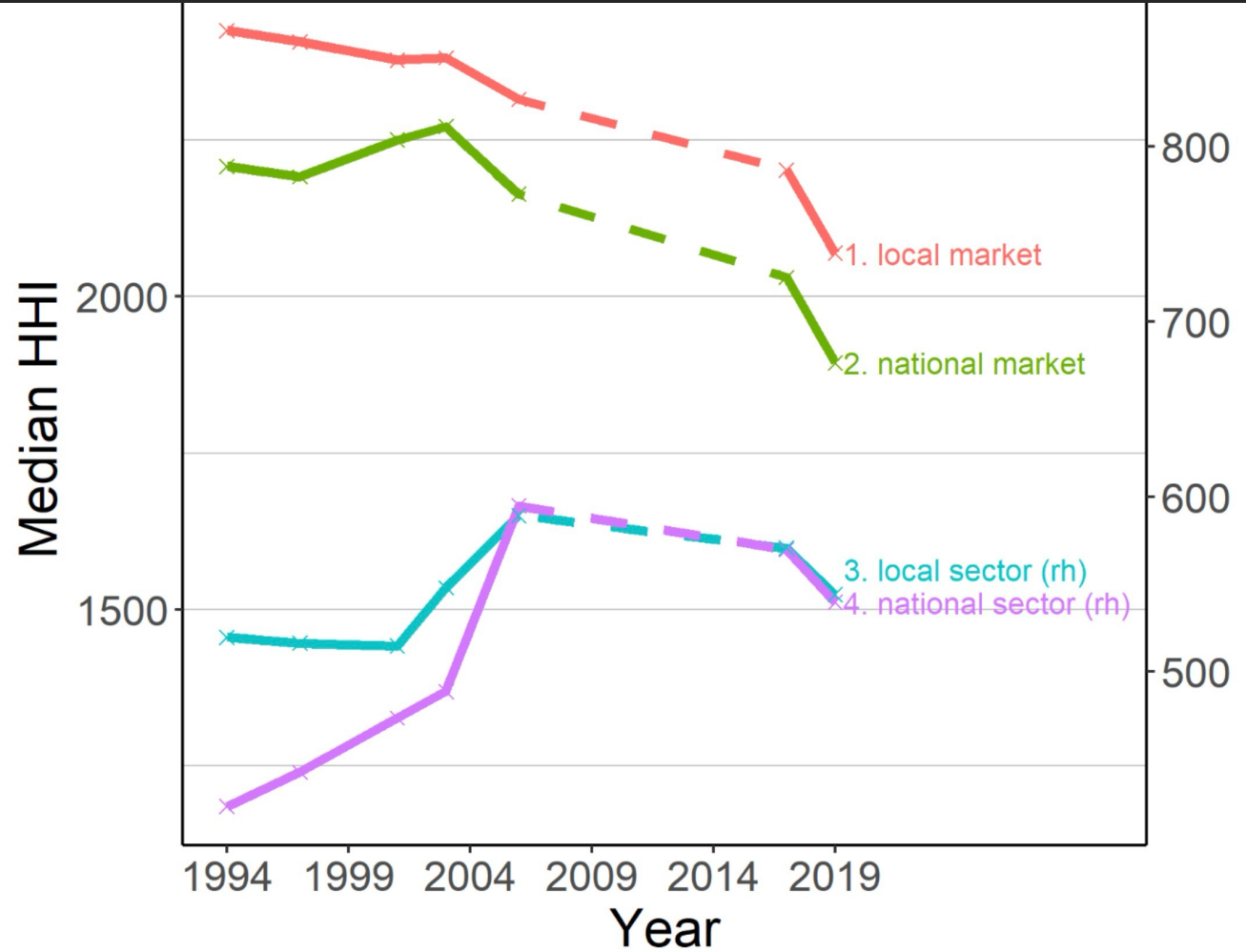
# Is Concentration Rising?

- **But maybe not**

*Hoberg and Phillips (2022) account for increasing “scope” of businesses (firms not limited to single NAICS code). They find a falling average HHI.*



# Is Concentration Rising?

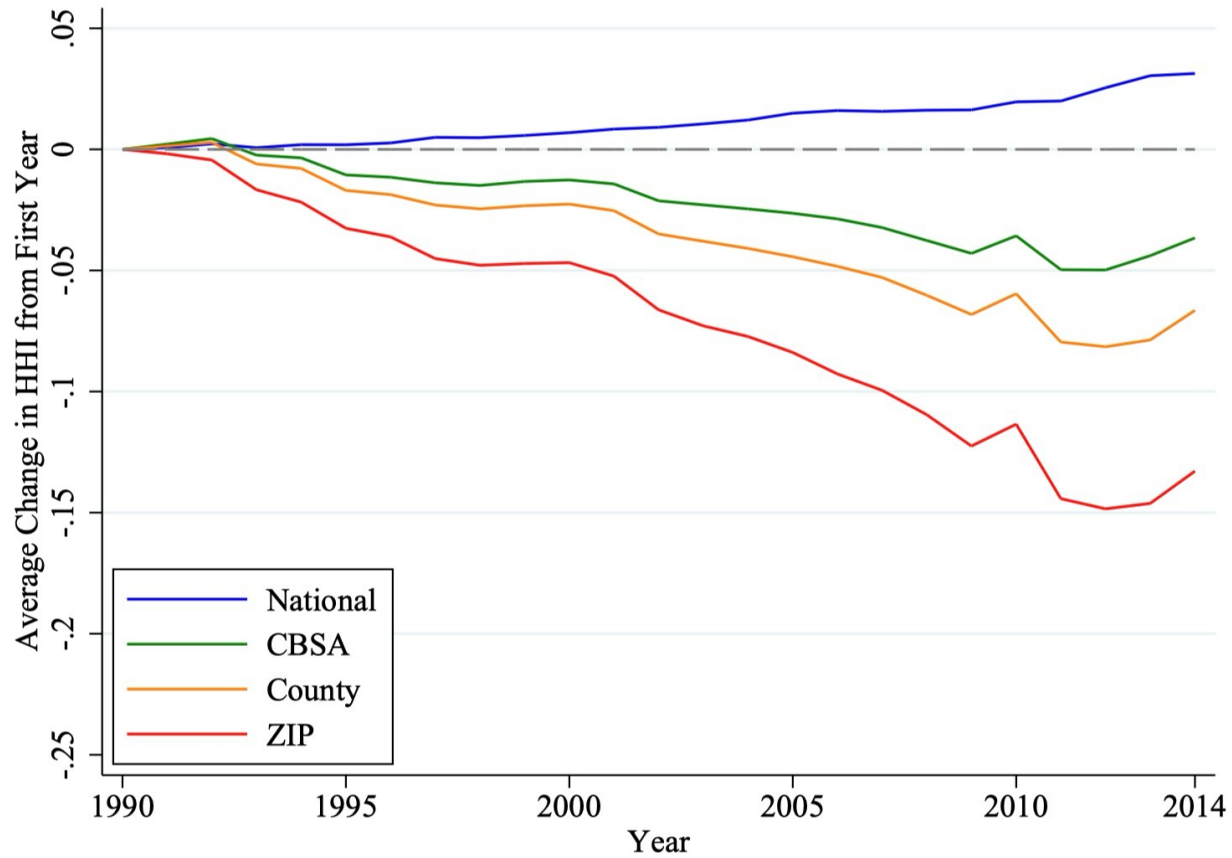


- **But maybe not**

*Benkard, Yurukoglu, and Zhang (2021): Consumption-based product markets. Broken into 457 product-market categories and 29 locations. Product "markets" are then aggregated into "sectors."*

*"We find no evidence that [concentration] has been getting worse over time in any broad-based way."*

Figure 1: Diverging economy-wide national and local concentration trends

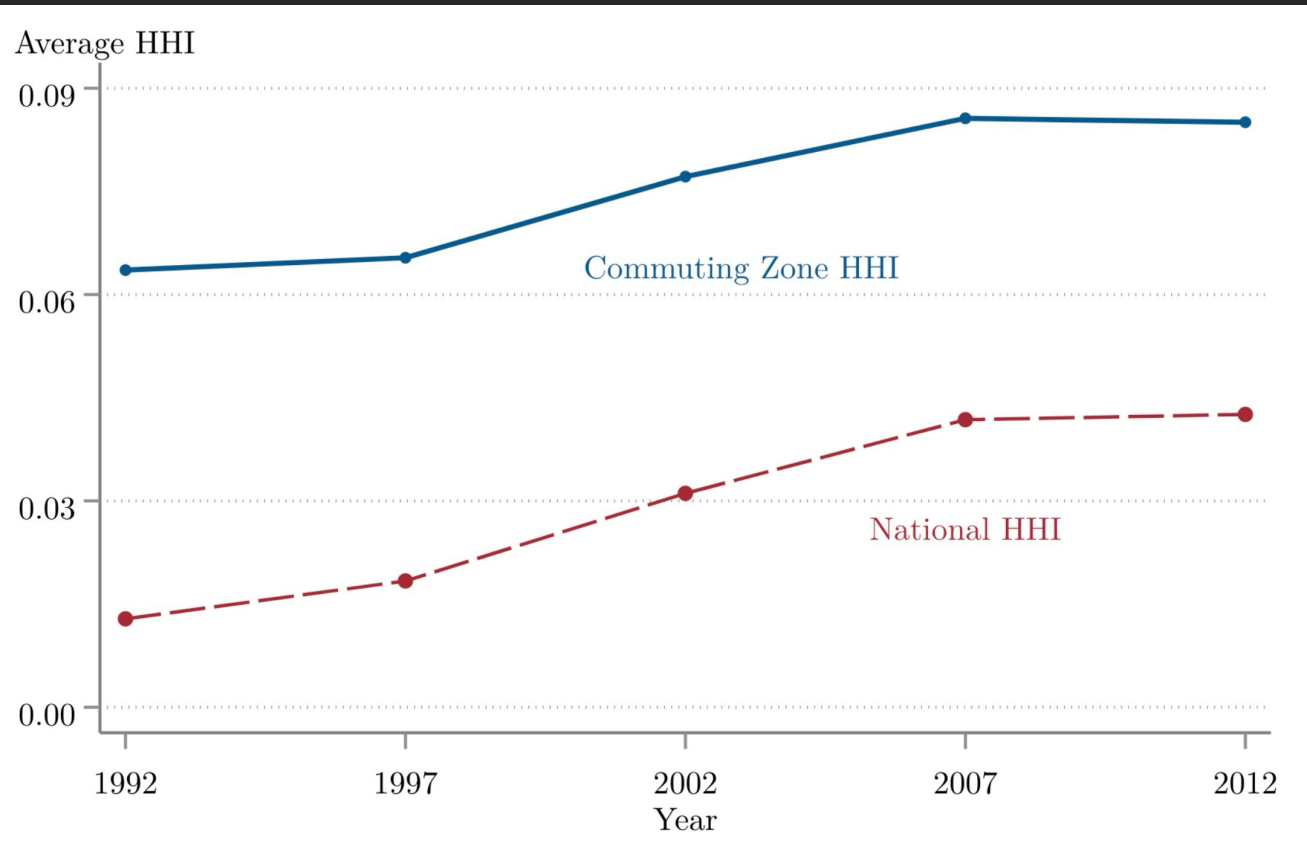


## *Is Concentration Rising?*

- **Not if we look at *local* markets**

*Rossi-Hansberg, Sarte, and Trachter (2021): Diverging trends in national and local concentration. As we move to smaller geographic regions, concentration goes from rising over time to falling over time.*

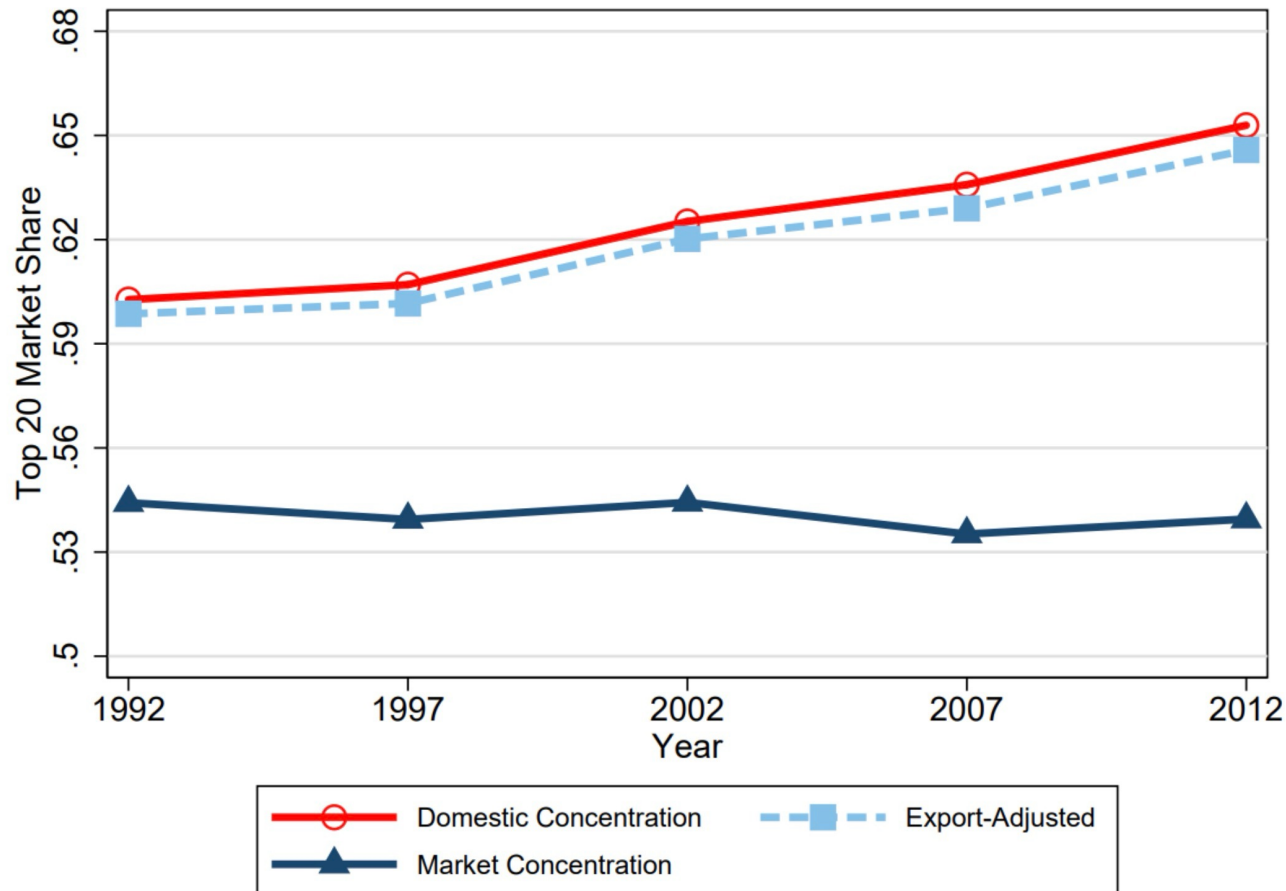
# Is Concentration Rising?



- **But it's not perfectly clear**

*Smith and Ocampo (2022): Product-level revenue for U.S. retail stores (1992- 2012). They find rising concentration at both the local and national levels (in retail).*

Figure 1: Top 20 Concentration over Time



## Is Concentration Rising?

- **Then again...**

*Amiti and Heise (2021): Census of Manufacturers data plus transaction-level import data. They measure concentration for all firms selling in the U.S., regardless of where the firm is located. That line is completely flat from 1992-2012.*

# Profits, wages, and concentration

- **Markups are increasing...**

*De Loecker, Eeckhout and Unger (2020): Commonly accepted results find large markups and increased market power.*

- **...But not by as much as many suggest**

*Traina (2018): The claimed markups are mismeasured and for public firms only. Adjusted data show modest firm-level markups and declining aggregate markups.*

- **And profits are lower than historically**

*Karabarbounis and Neiman (2018): Profits have increased recently because of low interest rates, but they are lower today than in the '60s and '70s.*

- **And lower wages aren't caused by increased concentration**

*Rinz (2018); Lipsius (2019): Wages decrease in concentrated markets, but local concentration has been decreasing.*

*Carl Shapiro  
on recent  
trends  
(Shapiro and  
Yurukoglu  
(2024))*

- **Concentration trends**

*Modest increases in (national) concentration*

*NAICS-based measures are too broad to be informative about market power*

*Falling concentration in narrower product markets*

- **Price effects from merger retrospectives**

*Evidence is mixed across industries*

*Consumer packaged goods: 1.5% average price increase*

*Some industries (e.g., cement): stable prices despite consolidation*

*Exception: hospital mergers often lead to significant price increases*

- **Industry-specific findings**

*Cement: 50% reduction in plants but stable prices due to efficiency gains*

*Auto industry: falling markups despite quality improvements*

*Wholesaling: rising markups but falling prices due to scale economies*

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# *Summarizing the Implications of the Concentration Literature*

- **Diversity of findings in concentration literature**

*Varied results across different studies*

- **Challenges in measuring concentration**

*Market definition issues*

*Data source variability*

*Some studies show rising concentration even at local level using different data*

*Public vs private firms*

- **Limitations of national concentration data**

*Inadequate for local market analysis*

- **Methodological debates**

*Different approaches to measuring market concentration*

# *Interpreting Concentration Data in the Antitrust Context*

- **Limitations of concentration as an indicator of competition**

*Concentration says nothing about the amount of competition, so it has no direct normative implication*

*Concentration data may not fully capture competitive dynamics*

*Other factors influence competition levels*

- **Importance of market definition**

*Accurate market definition is crucial for interpreting antitrust implications of concentration data*

*Mismatch between empirical data and antitrust-relevant markets*

- **Locus of competition**

*Competition often occurs at the local level*

- **Dynamic competition considerations**

*Competition is not static and evolves over time*

*Need to consider potential future competition*

- **Efficiency considerations**

*High concentration can lead to efficiencies (and vice versa)*

# Concentration from beneficial sources

- **Technical innovation or scale economies**

Ganapati (2021):

*“[C]oncentration increases do not correlate to price hikes and correspond to increased output. This implies that oligopolies are related to an offsetting and positive force—these oligopolies are likely due to technical innovation or scale economies. My data suggest that increases in market concentration are strongly correlated with innovations in productivity.”*

*“Productive industries (with growing oligopolists) expand real output and hold down prices, raising consumer welfare, while maintaining or reducing their workforces, lowering labor’s share of output.”*

# Concentration from beneficial sources

- **Technology adoption by the most productive firms**

Hsieh and Rossi-Hansberg (2023):

*“US firms in service industries increasingly operate in more local markets. Employment, sales, and spending on fixed costs have increased rapidly in these industries. These changes have favored top firms, leading to increasing national concentration. Top firms in service industries have grown by expanding into new local markets, predominantly small and mid-sized US cities. Market concentration at the local level has decreased in all US cities, particularly in cities that were initially small. These facts are consistent with the availability of new fixed-cost-intensive technologies that yield lower marginal costs in service sectors. The entry of top service firms into new local markets has led to substantial unmeasured productivity growth, particularly in small markets.”*

# Concentration from beneficial sources

- **Expansion of more efficient firms**

Rossi-Hansberg, Sarte, and Trachter (2021):

“Put another way, large firms have materially contributed to the observed decline in local concentration. Among industries with diverging trends, large firms have become bigger but the associated geographic expansion of these firms, through the opening of more plants in new local markets, has lowered local concentration thus suggesting increased local competition.”

# Concentration Is a Flawed Measure of Competition

Syverson (2019):

*“Perhaps the deepest conceptual problem with concentration as a measure of market power is that it is an outcome, not an immutable core determinant of how competitive an industry or market is. The nature and intensity of industry competition combine with other supply and demand primitives to determine equilibrium concentration. However, the conditions of competition drive concentration, not vice versa.*

*“As a result, concentration is worse than just a noisy barometer of market power. Instead, we cannot even generally know which way the barometer is oriented. Even if researchers agree on a definition of the market, concentration can be associated with either less or more competition.”*

# Concentration Is a Flawed Measure of Competition

Syverson (2019):

“While I would not call for a blanket ban on the practice of using concentration to measure market power, caution about the practice is well warranted. There were good reasons for industrial organization to choose to forgo it (particularly, again, for cross-industry comparisons). Simply put, the relationship between concentration and markups, prices, or profits is a relationship between market outcomes. These can be uninformative or, worse, misleading about the causal effect of competition.”

# *Weak antitrust enforcement isn't the cause of increased concentration*

Autor, Dorn, Katz, Patterson, and Van Reenen (2020):

*"An alternative perspective on the rise of [large firms and increased concentration] is that they reflect a diminution of competition, due to weaker U.S. antitrust enforcement. Our findings on the similarity of [concentration] trends in the United States and Europe, where antitrust authorities have acted more aggressively on large firms, combined with the fact that the concentrating sectors appear to be growing more productive and innovative, suggests that this is unlikely to be the primary explanation, although it may be important in some industries."*

# Error Costs

- **The CWS Expert Report's view:**

*"Today, there is a widely shared view among antitrust scholars and practitioners that... the excessive concern about the risk of false positives ought to be corrected."*

- **The SFC Expert Report's view:**

*"[T]he risk of under-enforcement of the antitrust laws is greater than the risk of over-enforcement."*

- **But there's no rigorous basis for this**

*Anticompetitive conduct erroneously excused may be subsequently corrected, either by another enforcer, a private litigant, another jurisdiction, or, sometimes, competition.*

*Procompetitive conduct that doesn't occur because it's prohibited or deterred by legal action has no constituency and no visible evidence on which to base a case for revision.*

- **Especially not in California**

*Particularly in California—where so much of the state's economic success is built on industries characterized by large companies with substantial procompetitive economies of scale and network effects, novel business models, and immense technological innovation—the risk of erroneous condemnation is substantial, and the potential costs significant.*

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# *Labor Market Considerations*

- **Monopoly vs Monopsony**

*Mirror image?*

- **Monopsony in labor markets**

*Single buyer of labor*

*Market power over wages*

- **Challenges in analysis**

*Complex market dynamics*

*Disconnect between labor economics and antitrust*

*Data limitations*

- **Recent actions by regulators**

*Previous actions*

*Current policy changes*

# Labor Market Considerations

- **The literature**

*Widely disparate estimates of labor monopsony power based on direct evidence*

- **Labor market models don't match antitrust reality**

*"Search model," e.g., has assumptions that don't align with antitrust*

- **Results may not reflect monopsony power**

*Wage markdowns may reflect monopsony power or it may reflect non-labor factors like investment*

*Lower wages may reflect rapid productivity growth rather than slower wage growth (Kirov & Traina (2022))*

- **Data limitations**

*Most comprehensive data shows declining concentration in labor markets—but industry codes don't align with antitrust markets*

*Online vacancy data misses employment & jobs not posted online (or at all)*

*Governmental data finds an average HHI roughly 1/10 as large as vacancy data*

- **Labor market dynamics**

*Worker mobility—what's the geographic market?*

*Worker heterogeneity and wage/benefits/other attributes of pay*

# *Conceptual problems of addressing labor market power under antitrust law*

- **Conceptual challenges warrant careful consideration by enforcers, scholars, and the courts**

*Different places in the supply chain—how aggregate or offset effects upstream and downstream?*

*Must look at output markets (but reverse isn't true):*

*A merger that creates monopsony power will necessarily reduce the prices and quantity purchased of inputs like labor and materials. But this same effect (reduced prices and quantities for inputs) would also be observed if the merger is efficiency enhancing.*

*Decisionmakers can't simply look at the quantity of inputs purchased in the monopsony case as the flip side of the quantity sold in the monopoly case.*

*Monopsony "harms" or merger "efficiencies"?*

*Relevant market for labor is much more difficult to identify, as are substitute employers*

*Labor markets aren't spot markets and employment contracts are more complicated than most purchase agreements*

*Human capital development: mutual investment over time*

# *Labor market power hasn't reduced wages*

Berger, Herkenhoff, and Mongey (2022):

*"Labor market power has not contributed to the declining labor share. Despite the backdrop of stable national concentration, we... find that [local labor-market concentration] has declined over the last 35 years. Most local labor markets are more competitive than they were in the 1970s."*

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# *Is Entertainment Industry Consolidation a Pressing Problem?*

- **Rapid changes in the industry**

*Shift from traditional TV/film to streaming*

*More content than ever*

*Monetization of content remains a problem*

- **Consolidation trends**

*Major mergers and acquisitions—and there will doubtless be more*

- **Counterarguments for increased competition**

*Massive investment in the production and licensing of content*

*Indie producers thrive (and are themselves consolidating)*

*Increased diversity of content*

*Very limited pricing power*

*Strong unions*

The Netflix logo is displayed in a bold, red, sans-serif font against a solid black rectangular background. The word "NETFLIX" is centered within the rectangle.

**NETFLIX**

# *Is Entertainment Industry Consolidation a Pressing Problem?*

*What we're witnessing is not the consolidation of power, but rather the natural evolution of a dynamic and innovative industry.*

*As the industry evolves, it will find a new equilibrium where content creation, distribution, and monetization are balanced to reflect consumers' changing preferences and habits.*

*There will inevitably be growing pains along the way.*

*The vast changes in the media marketplace in such a short timeframe should caution against bold predictions about market power.*

*While business challenges exist, they require room for experimentation and innovation, not heavy-handed antitrust intervention based on speculative fears.*

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**NETFLIX**



# *Ticketmaster/Live Nation Case Study*

- **Expert Report:**

*“Live Nation and Ticketmaster—A failure of merger enforcement and remedies”*

*“Live Nation-Ticketmaster is a textbook example of the perils of lax merger enforcement in a highly concentrated market.”*

- **Reality:**

*Ticketmaster issues present regardless of the merger*

*In 14 years, market share hasn't increased & TM hasn't stopped new competition (e.g., StubHub & SeatGeek)*

*Taylor Swift “fiasco” unrelated to market power or merger*

*Live Nation artist investment \$9.6 billion in 2022 (vs. record label annual A&R spending of \$5.8 billion)*

*The primary source of artist revenue has shifted from recorded music to concert tickets*

*Prices are determined by numerous elements of the distribution chain*

*Some levels of the distribution chain—arenas and superstar artists, especially—are less competitive than ticketing*

*Secondary markets suggest the absence of market power*



# *Ticketmaster/Live Nation Case Study*

- Irving Azoff (former Ticketmaster CEO) (2023):

*“The biggest issue is that demand sometimes exceeds supply for many artists. More people want to see Taylor Swift, Beyoncé, Adele, or Garth [Brooks] than there are tickets for sale. There’s not a congressional hearing in the world that fixes the reality that demand exceeds supply. There’s nothing that Ticketmaster, the building, the promoter, or the artists can do to fix that.”*



# *Ticketmaster/Live Nation Case Study*

- Fuller (2023):

*“The facts are simple and inarguable. Taylor Swift is playing 52 shows in venues with approximately 2.5 million seats available. As these shows are already being held in football stadiums, the only way to provide more seats is for Swift to add more shows, something Garth Brooks does routinely.*”

*“Math is both simple and brutal. For Swift’s North American tour there are only 2.5 million seats.... Only one thing brings more seats: adding shows. Only one person can decide to add more shows: Taylor Swift.”*”



## Conclusion: *Avoid the “Europeanization” of California’s Antitrust Law*

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- **Europe’s economic performance is unenviable**

*“In 2010 US GDP per capita was 47 percent larger than the EU while in 2021 this gap increased to 82 percent. If the current trend of GDP per capita carries forward, in 2035, the average GDP per capita in the US will be \$96,000 while the average EU GDP per capita will be \$60,000.” (Erixon (2023))*

- **California’s recent record in the tech sector is already concerning**

*“[California’s] GDP fell 2.1% through 2022, the second-biggest drop of any state over that period, driven by a massive deceleration across the information sector” (Politano 2024)*

*“[T]he Golden State has been bleeding tech jobs over the last year and a half... Since the beginning of COVID, California has added a sum total of only 6k jobs in the tech industry—compared to roughly 570k across the rest of the United States.” (Id.)*

# *Summary*

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**Claims that increased concentration justify expanding antitrust in California are unsupported**

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**Consolidation is often the result of beneficial forces**

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**Labor market problems are often overstated and difficult to address with antitrust**

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**Fears around entertainment industry consolidation are misguided**

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**The "Europeanization" of California's antitrust law will harm its most important sectors**

