

Critical Issues in Regulation – From the Journals

Growing Oligopolies, Prices, Output and Productivity, Sharat Ganapati, *American Economic Journal: Microeconomics*, 13, 3, August 2021, pp. 309-327.

This paper presents another piece of evidence in the ongoing debate over increases in market power. Industry concentration could theoretically lead to higher prices and lower output in the absence of true productivity innovation or reallocation to 'superstar firms'. However, as argued in this paper, increased concentration does not correlate to price increases and corresponds to increased output. This implies that oligopolies are likely to be related to an offsetting and positive force – technical innovation and scale economies.

The author's data analysis suggests that increases in market concentration are strongly correlated with innovations in productivity. There are caveats. The price and quantity regressions are purely within-industry results and they lack causality. They may suffer from omitted-variable biases. Results are from five-year difference-in-difference estimates and assume away general-equilibrium effects. However, they show clear patterns among prices, quantities, productivity, and market concentration. Many, if not most, industries could be developing new and novel economies of scale. While market power may increase, consumers benefit in the short-to-medium run through price reductions and real choice increases. On the other hand, these effective firms do not expand their workforces, producing more while holding payroll constant. This is a trend that is consistently noted, especially from 1987 to 2012, the period coinciding with the availability of high-quality price data. But there is substantial heterogeneity among industries. For example, the health-care sector exhibits classic symptoms where increases in market concentration are correlated to price increases. However, notably, market concentration in the health-care sector is not correlated with a declining labour share – the benefits of monopoly may accrue to workers. This modelling framework also highlights directions for possible future work.

The author sees a need for better data on effective market shares. National and highly local market shares are both problematic. Markets are not

mutually exclusive, as there is overlap between regions and industries (for example, traditional and online retail). Market definitions may be changing over time due to changes in both consumer preferences and producer technologies. Additionally, while regional consumption and price data exist for some markets, such as consumer packaged retail goods, the author suggests that further work needs to be done to integrate such data across all markets with appropriate market-share data. Welfare in many situations can be quickly summarised by both price and output levels; market power alone is rarely a sufficient statistic. Finally, taking the 'superstar firm' hypothesis seriously does not imply that antitrust authorities should be powerless. Dominant firms may entrench themselves and use their newly dominant market positions to engage in anticompetitive behaviour. Natural monopolies can give way to anticompetitive monopolies that act to raise prices and 'squelch innovation'. Monopolies may be taking a bigger share of productivity innovations for themselves and only passing on a small share of the gains to consumers. It is suggested that effective regulators may want to force monopolies to share a higher proportion of their surplus with the public

There is an untitled Introduction and five numbered sections in the paper: Data; Market Concentration and Outcomes; Productivity; Simple Framework; and Discussion.

There are 63 items in the reference list with year of publication ranging from 1977 to 2021. Economists cited include Daron Acemoglu, Daniel Akerberg, Philippe Aghion, Mark Armstrong, David Autor, Joe Bain, Jessie Handbury, Thomas Holmes, Lawrence Katz, Christina Patterson, Sam Peltzman, Richard Schmalensee, Barbara Spencer and David Weinstein.

A classic reference is: Sam Peltzman, 'The Gains and Losses from Industrial Concentration', *Journal of Law and Economics*, 20, 2, 1977, pp. 229-263.

The article can be accessed by subscription to the *American Economic Journal: Microeconomics*.

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Trends in Market Concentration of Australian Industries, Sasan Bakhtiari, *Australian Economic Review*, 54, 1, 2021, pp. 57-65.

This paper is about increasing market concentration that the author observes in many advanced economies. These economies include Australia where an increasing 'average market concentration' has been observed since 2005. The author observes that, while the average market concentration has increased, at the industry level there is much variation in how concentration is changing. There are a few industries where concentration has increased and others where concentration has decreased. In several of those cases where concentration has increased, productivity growth has also been strong.

The simultaneity of increases in both concentration and productivity alongside a shift to more capital-intensive operation and expanding trade suggests to the author that the trends are technology driven, rather than symptomatic of weakening competition. Either way, the author argues that increasing concentration is something that needs to be treated with caution. While there are concerns that when businesses become large beyond a certain scale, whether or not they are productive, they will unequivocally use their size advantage to 'bend the rules and gain advantage through influencing the political process'. As lobbying can be a less costly and more effective option than innovation, influencing the political process is increasingly becoming the preferred strategy.

The author concludes with some guidance on how to address these issues. First, he suggests recognising that the increasing market concentration might not necessarily be a result of anticompetitive actions, and that an industry-by-industry approach might be better suited. Second, he recommends an awareness that there is a critical size for businesses, beyond which they become 'too powerful to tolerate competition'. In this case, the author suggests that an antitrust approach might be required.

There are seven sections in the paper: Introduction; Data; Measuring Concentration; State of Competition; Time-line Changes; Modelling the Change; and Conclusion.

There are 17 items in the reference list with year of publication ranging from 1984 to 2019. Economists cited include David Autor, Eric Bartelsman, Mark Doms, David Dorn, David Hansell, Lawrence Katz, Jan de Loecker, Christina Patterson, Jay Shambaugh, Joseph Stiglitz, John van Reenen, Frederic Warzynski and Luigi Zingales.

A classic reference is: Eric Bartelsman and Mark Doms, 'Understanding Productivity: Lessons from

Longitudinal Microdata', *Journal of Economic Literature*, 38, 3, 2002, pp. 569-594.

The article can be accessed by subscription to the *Australian Economic Review*.

Vertical Merger Policy: Special Consideration in Regulated Industries, David Sappington and Dennis Weisman, *Review of Industrial Organization*, 59, 2, September 2021, pp. 393-407.

This purpose of this paper is to analyse special considerations that can arise when vertical mergers take place in industries that are subject to economic regulation. The *Vertical Merger Guidelines* (VMGs) outline the principal analytical techniques, practices and enforcement policy of the antitrust agencies in the United States with respect to vertical mergers and acquisitions. By design, the VMGs provide generic guidance and describe central considerations that are relevant across a broad range of settings.

The authors, David Sappington and Dennis Weisman, focus on four distinct types of special consideration. First, economic regulation can affect the distribution of the benefits of a vertical merger, and thereby affect the merits of the merger. Second, economic regulation can affect the type of vertical mergers that arise. In particular, it can discourage welfare-enhancing mergers or encourage mergers that reduce welfare. Third, economic regulation can affect the nature and extent of post-merger industry oversight. Depending upon the prevailing circumstances, regulation can enhance, diminish, or bias post-merger oversight. Fourth, economic regulation can affect the post-merger incentives of the merged entities. Regulation can either encourage or discourage undesirable post-merger incentives, and thereby affect the merits of a proposed vertical merger.

The authors contend that these special considerations imply that, when an antitrust agency assesses the merits of a proposed vertical merger in a regulated industry, it must carefully consider the resources and incentives of regulators. When regulators have substantial ability and incentive to deter post-merger anticompetitive behaviour, vertical mergers that typically would be judged to reduce welfare in unregulated settings might conceivably enhance welfare in regulated settings. Conversely, when regulators have limited ability or incentive to preclude anticompetitive behaviour, vertical mergers that normally would be expected to enhance welfare in unregulated industries might reduce welfare in regulated industries.

The authors' analysis suggests that 'no simple, ubiquitous conclusions' are available regarding the effects of economic regulation on the merits of vertical mergers. A vertical merger can reduce (increase) welfare in a regulated industry even though the merger would increase (reduce) welfare in an unregulated industry. The manner in which the presence of regulation affects the merits of a vertical merger varies with the details of the regulatory policy and the corresponding objectives, resources, and powers of both regulators and antitrust agencies.

Finally, the authors observe that, while their discussion has treated prevailing regulations as exogenous; in practice, regulatory policy typically is endogenous (changeable over time). Consequently, even though a proposed vertical merger might reduce welfare if pre-merger regulations persist after the merger is consummated, the same merger might increase welfare if pre-merger regulations were modified to limit their undesirable consequences.

There are six sections in the paper: Introduction; Regulation can Affect the Distribution of Merger-Induced Benefits; Regulation can Affect the Type of Vertical Mergers that Arise (five subsections); Regulation can Affect Post-Merger Industry Oversight (four subsections); Regulation can Affect the Supplier's Post-Merger Incentives (four subsections); and Conclusions.

There are 45 items in the reference list with year of publication ranging from 1838 to 2021. Economists cited include Harvey Averch, Tim Brennan, Augustin Cournot, Robert Crandall, Alfred Kahn, Leland Johnson, David Kaserman, John Mayo, Janusz Ordovery, John Panzar, Richard Posner, George Priest, David Salant, Steven Salop, Carl Shapiro, Joseph Spengler, George Stigler, Michael Whinston and Oliver Williamson.

Literature Note: This paper is one of fourteen papers about the US Vertical Merger Guidelines published in a special issue (59, 2, September 2021) of the *Review of Industrial Organization*.

The article can be accessed by subscription to *Review of Industrial Organization*.

Financing Power: Impacts of Energy Policies in Changing Regulatory Environments, Nils May and Karsten Neuhoff, *The Energy Journal*, 42, 4, 2021, pp. 131-151.

This paper is about the importance of financing costs for total system cost of electricity systems with increasing shares of wind and solar power generation. These systems have higher capital costs and lower operational costs than power systems based on fossil fuels. The authors quantify how

renewable energy support policies can affect the financing costs by addressing regulatory risk and facilitating hedging. The authors use interview data on wind-power financing costs from the European Union (EU) and model how long-term contracts signed between project developers and energy suppliers impact financing costs. Multiple-regression analysis of investors' financing costs and an analytical model of off-takers' financing costs reveal that, between the support policies, the costs of renewable energy deployment differ by around 30 per cent, but can be significantly lower or higher, depending on the financial situation of energy suppliers.

The authors estimate how different risk factors affect, on the one hand, renewable energy investors' financing costs, and, on the other hand, the costs of off-takers of long-term contracts. First, based on a survey on wind power financing cost estimates from 23 EU countries, they find that sliding premia do not increase financing costs in comparison with fixed feed-in tariffs. However, with evolving power-market designs, investors are exposed to additional risks under sliding premia, for example, in relation to balancing costs, such that risk premia might increase in the future. Tradable green certificates can be associated with increases in the wind power risk premium by about 1.2 percentage points. Capital providers require higher risk premia because of the higher revenue variability. These results hold both under ordinary least square specifications and with interval regressions. However, the authors caution that small sample sizes mean that there is a scope for future research that collects and uses larger datasets, allowing for more detailed analyses.

Second, the authors model the implicit long-term hedge that renewable support mechanisms can offer to market participants. In principle, both renewable project developers and final consumers would like to hedge against price uncertainty. In practice, market-design rules and counter-party risks inhibit such long-term contracts between project developers and final consumers. In the absence of such long-term contracts, project developers commonly sign long-term contracts with electricity retail businesses to secure revenue streams for financing purposes. However, signing such long-term contracts constitutes imputed debt on the balance sheets of the retailers.

The authors estimate by how much such contracts increase retailers' re-financing costs which ultimately are passed on to consumers. The magnitude of additional costs depends on the financial position of the long-term contracts' off-takers. The authors estimate these costs based on 2015 financial data of

a small sample of the largest EU utilities. Their lower-bound estimate is that renewable energy deployment increases costs by around 22 per cent. The combined increases in financing costs for the investor and for the private off-takers of long-term contracts render renewable energy deployment about 30 per cent more expensive under green-certificate schemes compared to feed-in tariffs. This increases the costs of an illustrative wind-power plant from about €50 per MWh to €65 per MWh. With increasing shares of renewable energy and higher contracted volumes, this cost premium increases. However, because of the small sample size in the estimation of project developers' financing cost premia, the specific value of the cost premium is uncertain. This would ideally be resolved with more systematic collection of data on the financing conditions underlying renewable energy projects.

There are six sections in the paper: Introduction; Investments into Renewable Energy; Estimating Investors' Financing Costs (four subsections); Long-Term Contracts (three subsections); Illustrative Additional Costs under Green Certificate Schemes; and Discussion.

There are 60 items in the reference list with year of publication ranging from 1952 to 2019. Economists cited include Deepak Agrawal, Aswath Damodaran, Edwin Elton, Martin Gruber, Paul Joskow, Christopher Mann, Harry Markowitz, David Newbery and Bjarne Steffen.

A classic reference is: Harry Markowitz, 'Portfolio Selection', *The Journal of Finance*, 7, 1, 1952, pp. 77-91.

The article can be accessed by subscription to *The Energy Journal*.

Design and Regulation of Balancing Power Auctions: An Integrated Market Model Approach, Karl-Martin Ehrhart and Fabian Ocker, *Journal of Regulatory Economics*, 60, 2021, pp. 55-73.

In this paper the authors present an integrated market model which helps them explore the dependencies between the wholesale and Balancing Power (BP) markets. The authors apply their model to: prove the existence of a market equilibrium; analyse its outcome; and contrast this with German market data. The authors demonstrate in their model that the mixed-price rule (the mixed-price score is determined by a combination of the capacity bid and the energy bid) does not have an impact on the market equilibrium, but may incentivise suppliers to change their bidding behaviour in an undesirable way. In their model, free energy bids do not foster competition, and a switch to Uniform Pricing does not

lead to truthful bidding in general. They contend that lowering BP prequalification criteria is a promising means of reducing costs.

The authors illustrate in section 6.3 of their paper that, if the imbalance price is too low, there are insufficient incentives to close open positions. In reaction to this, German transmission system operators changed the imbalance scheme such that the imbalance price is now linked to the intraday market price. This is in accordance with the European target design. In the event of an electricity undersupply (oversupply) and the necessity for positive (negative) BP, the imbalance price will be at least as high (low) as a certain intraday index. The authors argue that this sets the right incentives: BP activation is more costly than self-balancing in the intraday market.

The authors also explore those of their assumptions that they consider may be relaxed in an extended model. These are the assumptions of: linear supply; the same share of BP production units in the supply; and homogeneous must-run capacities for all units. Another possible extension to the model would be to include suppliers with multiple plants. Finally, the authors suggest that experimental studies may help to test and foster their theoretical findings.

There are seven sections in the paper: Introduction; Related Literature; Electricity Markets (three subsections); Stylised Market Model (four subsections); Market Equilibrium and Empirical Results (two subsections); Market Design Changes (four subsections); and Conclusion.

There are 46 items in the reference list with year of publication ranging from 1994 to 2021. Economists cited include Severin Borenstein, James Bushnell, Ulrich Doraszelski, Justus Haucap, Dragan Jovanovic, Gregory Lewis and Ariel Pakes.

The article can be accessed by subscription to the *Journal of Regulatory Economics*.

The Electric Vehicle Transition and the Economics of Banning Gasoline Vehicles, Stephen Holland, Erin Mansur and Andrew Yates, *American Economic Journal: Economic Policy*, 13, 3, August 2021, pp. 316-344.

This paper is about the transition from gasoline vehicles to electric vehicles and the economics of a ban on gasoline vehicles. The authors believe that electric vehicles have a unique potential to transform personal transportation. The authors analyse the transition using a dynamic model that captures decreasing costs of electric vehicles; decreasing pollution from electricity; and increasing vehicle substitutability. The calibration of the authors' model

to the United States (US) market suggests that a transition from gasoline vehicles is not optimal at the current degree of substitutability. Further, their model suggests that a ban on the production of gasoline vehicles would have a large deadweight loss. However, at higher substitutability, a ban can reduce the deadweight loss from vehicle mix and adoption timing inefficiencies. A cumulative gasoline vehicle production quota has a smaller deadweight loss, and an electric vehicle purchase subsidy is more robust to regulator misperceptions about substitutability.

The authors of this paper construct, analyse, and simulate a dynamic model of the electric vehicle transition. The model allows the authors to analyse questions about: whether it would ever be optimal to stop producing gasoline vehicles; the timing of electric vehicle adoption; and how the timing is affected by policies such as a ban on production of gasoline vehicles. Calibrating the model to the US market allows the authors to make a comprehensive welfare assessment of a ban. It also allows them to compare a ban with alternative policies such as a subsidy on the purchase of electric vehicles or a quota on cumulative gasoline vehicle production.

A production ban on gasoline vehicles can reduce deadweight loss relative to 'business as usual'. It does this by changing both the timing of adoption and the long-run vehicle mix. A ban performs well if electric vehicles are good substitutes for gasoline vehicles, but a ban cannot improve welfare if electric vehicles and gasoline vehicles are poor substitutes. In addition, in the authors' model, bans lead to an inefficient spike in the production of gasoline vehicles in anticipation of the ban.

An alternative policy is a subsidy on the purchase of electric vehicles. The authors observe that purchase subsidies are used in many jurisdictions to encourage electric vehicle adoption. The authors find that the optimal electric vehicle purchase subsidy is comparable in effect to a ban at high levels of substitutability. However, unlike a ban, the subsidy can also reduce deadweight loss at lower levels of substitutability. The authors also consider what they describe as a 'novel policy' – a cumulative quota on the production of gasoline vehicles.

There are six numbered sections in the paper following an untitled Introduction: Model (four subsections); Model Calibration; the Electric Vehicle Transition (two subsections); Endogenous Substitutability and Production Costs; and Conclusion.

There are 35 items in the reference list with year of publication ranging from 1983 to 2021. Economists cited include Steven Barry, Anna Creti, Lucas Davis,

Susanna Estaban, Laurence Meyer, Matthew Shum and Yiyi Zhou.

The article can be accessed by subscription to the *American Economic Journal: Economic Policy*.

Markets, Mis-Direction and Motives: A Factual Analysis of Hoarding and Speculation in Southern Murray-Darling Water Markets, Adam Loch, Christopher Auricht, David Adamson and Luis Mateo, *Australian Journal of Agricultural and Resource Economics*, 69, 2021, pp. 291-317.

This paper is about hoarding and speculation in water markets and the potential adverse impacts on agricultural water users. The factual analysis is based on Australia's largest water market, the southern Murray-Darling Basin (sMDB). The authors observe that applications of traditional analysis into drivers of price increases in water markets are challenging due to data limitations. To address this, the authors use speculation theory, most notably Hirshleifer's four fundamentals for speculative trade, to examine whether speculation or hoarding price-increase drivers are evident in the water market.

To test their hypotheses, the authors identified three analytical methods. First, requirements for individuals to adjust to price and quantity risk – and hoard resources to increase prices – can be evaluated using analyses of aggregate water market data trends via demand and supply characteristics sourced from publicly available data. Second, costs of, and gains from, speculative trade can be evaluated via a cost-benefit analysis of market entry and trade investment options, which are different for internal (for example, landholding) and external (for example, superannuation fund) participants. Adopting state-contingent analysis of changes to water supply (that is, uncertainty) over time also enables some consideration of how these costs shift, intensifying future market price increases. Finally, calculations of annual water supply and demand elasticities in the sMDB can be used to identify changes to market equilibria over time, which may identify stakeholder groups more likely to hoard water and/or speculate in sMDB water markets.

While the authors see good reason for speculation to be observed given the gains that are possible, their empirical analysis provides no evidence of hoarding behaviour in market price or volume trends. It is more plausible to the authors that agricultural producers – notably horticultural users – have driven price increases given their requirements to access water during periods of low supply. The authors further contend that these findings conform to theoretical expectations and help to inform 'badly

needed insights' into water-market fundamentals required for future analysis.

Overall, calls for stricter market controls on non-agricultural water users are not supported by the authors' findings. However, greater transparency in water-market activity and broker activity, arising from substantial improvements in the underlying data and trade regulations associated with water markets, would be an 'ideal outcome' from any public policy extension.

There are six sections in the paper: Introduction; Hirshleifer's Theory of Speculation; Data and Methods (three subsections); Results (three subsections); Discussion; and Conclusion.

There are 67 items in the reference list with year of publication ranging from 1937 to 2021. Economists cited include Kenneth Arrow, Robert Flood, Ronald Griffin, W Michael Hanemann, John Maynard Keynes, David Kreps, John Quiggin, Jean Tirole and Alec Zuo.

A classic reference is: Jack Hirshleifer, 'The Theory of Speculation under Alternative Regimes of Markets', *The Journal of Finance*, 32, 1977, pp. 975-999.

The article can be accessed by subscription to the *Australian Journal of Agricultural and Resource Economics*.

Capping Bundle Discounts: Two Regulatory Rationales, Martin C Byford and Stephen P King, *The Journal of Industrial Economics*, 69, 2, June 2021, pp. 270-304.

This paper is about mixed bundling of groceries and gasoline which, while common, can raise 'predatory' concerns. The authors' model of multi-market oligopoly competition extends the standard Hotelling approach to analyse the impact of bundle discounting by conglomerate retailers in the presence of an independent retailer. They observe that competition authorities in a variety of countries have expressed concerns about these discounts, particularly asking whether they are predatory and should be limited. In particular, the Australian Competition and Consumer Commission (ACCC) has intervened by directly capping these discounts across the retail grocery and fuel markets.

The authors' analysis suggests that concerns about bundle discounts are valid. However, the nature of the concerns and any regulatory intervention will strongly depend on the regulator's objectives. A regulator maximising total welfare will have little concern about 'predation' as the exit of an independent retailer may increase total welfare. By contrast, while bundle discounts benefit consumers

overall as savings due to lower (bundled) prices more than offset increased travel costs, exit by the independent retailer harms consumers. Therefore, if uncapped discounts lead to exit of the independent retailer, the regulator will want to cap the discounts at the maximum level that allows the independent retailer to recover its fixed costs, thereby preventing exit.

The authors argue that a relatively tight cap has the added advantage of ensuring that all consumers strictly gain from mixed bundling, even if their circumstance prevent them from using the coupons themselves. Regulating to ensure that all consumers are better off is seen by the authors as 'politically attractive'. However, in their opinion, this is most likely to be 'icing on the cake' from the ACCC's perspective.

In the authors' view, the ACCC's approach reflects concerns about exit and the negotiated nature of the cap on discounts. In the absence of exit, the conglomerates benefit by using regulation to commit to reduce or eliminate bundle discounts. Hence, in the authors' view, the claim that the ACCC's intervention has facilitated collusion is incomplete. The ACCC was concerned that allowing unregulated bundle discounts would lead to exit by independent fuel retailers. If the ACCC wanted to maximise total consumer surplus then it would seek the maximum cap that ensured exit would not occur. By contrast, the conglomerates prefer the minimum cap on bundle discounts that ensures exit will occur. Such a cap maximises their joint profits by ensuring just enough competition to eliminate a rival. Thus, an agreed cap is likely to trade off these diametrically opposed objectives, reducing the likelihood of exit while not excessively reducing conglomerate competition. By proposing such a cap and having the conglomerates formally agree to impose the cap, the ACCC was able to gain an outcome that would be likely to reduce exit and raise consumer surplus without costly and uncertain court proceedings.

The authors believe that their analysis raises issues for regulators in other jurisdictions. They ask: Why haven't more regulators followed the lead of the ACCC in seeking voluntary, but enforceable, caps on bundle discounts? They suggest three potential explanations. First, different regulators in different jurisdictions may have different objectives from those of the ACCC. Second, in some jurisdictions, exit may be unlikely. Third, regulators in different countries have different powers – specifically, it may be legally difficult for some regulators to gain an enforceable commitment from conglomerates to cap bundle discounts.

There are six sections in the paper: Introduction; The Model (three subsections); Equilibrium and the Regulatory Cap (five subsections); Welfare and the Regulatory Cap (three subsections); The Welfare Consequences of Exit; and Conclusion. There is an Appendix of Proofs.

There are 25 items in the reference list with year of publication ranging from 1976 to 2017. Economists cited include William Adams, Mark Armstrong, Joshua Gans, R Preston McAfee, Steven Salop, Jean Tirole, John Vickers, Michael Whinston and Janet Yellen.

A classic reference is: William Adams and Janet Yellen, 'Commodity Bundling and the Burden of Monopoly', *Quarterly Journal of Economics*, 90, 3, 1976, pp. 475-498.

The article can be accessed by subscription to *The Journal of Industrial Economics*.

Policy Implications of the Common Ownership Debate, Eric Posner, *The Antitrust Bulletin*, 66, 1, 2021, pp. 140-149.

This paper is about 'common ownership', which is defined as the simultaneous ownership of non-controlling interests in competing companies, particularly by institutional investors such as index funds, mutual funds, and other asset managers. Empirical findings that common ownership is associated with anticompetitive outcomes (including higher prices) raise questions about possible policy responses. The author of this paper, Eric Posner, a professor at the University of Chicago Law School, evaluates the major proposals that have emerged. These include: antitrust enforcement against common owners; regulation of corporate governance; regulation of compensation of management of portfolio businesses; regulation of capital market structure; and greater antitrust enforcement against portfolio businesses.

One issue relates to whether the current timing for policymakers is right, or whether it is necessary to generate further consensus about the negative consequences of common ownership before responding. Eric Posner suggests that enough evidence supports the belief that common ownership affects the behaviour of portfolio firms. Further, given that common-ownership growth has engendered a highly concentrated financial structure, there is already justification for substantial policy responses.

The author next considers several approaches including: antitrust enforcement under the Clayton Act; regulating corporate governance or executive compensation; regulating market structure, which could occur at either the level of institutional investor

stakes in competing firms or at the level of market concentration in product markets themselves. In the author's view, the last approach, *prima facie*, seems to offer the most 'low-hanging fruit' for current changes in antitrust enforcement.

The third issue addressed is the suggestion that common ownership may allow firms to internalise externalities (positive or negative). This is because of the presence of large and capable owners that may permit many capability-enhancing spillovers to occur, thereby generating efficiencies among portfolio firms, while nevertheless motivating firms to behave in an anticompetitive manner and reducing competition on behalf of such owners.

With respect to capital markets, and the concentration contingencies therein, Eric Posner recalls that, even if increased concentration creates allocative inefficiencies by increasing price, such allocative-efficiency effects might be offset by improved productive efficiencies. However, now the posited efficiencies are not about improving the operational efficiencies of firms but, rather, about internalising externalities between firms through common ownership. The author suggests that this line of thought revives a debate that was once taken to have become *passé*, about the merits of a structural approach versus a behavioural approach in remedy assessment and design. Pursuing this debate requires economic analyses of the efficiency trade-offs that could be necessary and consideration of the role of endogenous efficiencies in motivating behaviour.

The article can be accessed by subscription to *The Antitrust Bulletin*.

Regulatory Decisions in Australia and New Zealand

Australia

Australian Competition and Consumer Commission (ACCC)

Bulk Grain Ports Monitoring Report – Data Update 2020-21 Published

On 15 December 2021 the ACCC published its *Bulk Grain Ports Monitoring Report – Data Update* for 2020-21.

Inquiry into the National Electricity Market – Sixth Report Published

On 13 December 2021 the ACCC published its sixth Report as part of the *Inquiry into the National Electricity Market* for November 2021.

Communications Market Report 2020-21 Published

On 10 December 2021 the ACCC published its *Communications Market Report* for 2020-21.

Sixth Report on Airline Competition in Australia Released

On 7 December 2021 the ACCC released its sixth Report on *Airline Competition in Australia*, reporting on the monitoring of Australia's domestic passenger air transport services.

Measuring Broadband Australia September 2021 Report Released

On 6 December 2021 the ACCC released its *Measuring Broadband Australia* for September 2021, reporting on broadband performance on fixed-line NBN connections.

Eleventh Annual Water Monitoring Report Published

On 3 December 2021 the ACCC published its eleventh annual *Water Monitoring Report*.

First Mobile Infrastructure Report Published

On 2 December 2021 the ACCC published its *first Mobile Infrastructure Report*.

NBN Wholesale Market Indicators Report for September Quarter 2021 Published

On 19 November 2021 the ACCC published its *NBN Wholesale Market Indicators Report* for the September quarter of 2021.

Container Stevedoring Monitoring Report 2020-21 Published

On 4 November 2021 the ACCC published its *Container Stevedoring Monitoring Report 2020-21*.

Developing a Regulatory Asset Base for ARTC's Interstate Network – GDH's Concluding Report Published

On 21 October 2021 the ACCC published *GDH's Concluding Report* on developing a Regulatory Asset Base for Australian Rail Track Corporation's (ARTC's) Interstate Rail Network.

Liquefied Natural Gas Netback Price Series – Continuation and Extension

On 30 September 2021 the ACCC announced that it is continuing and extending its Netback Price Series for Liquefied Natural Gas.

Australian Competition Tribunal (ACT)

No reportable items during this quarter.

Australian Energy Market Commission (AEMC)

Residential Price Trends 2021 Report Published

On 25 November 2021 the AEMC published its twelfth annual report on *Residential Electricity Price Trends 2021*.

Australian Energy Market Operator (AEMO)

2021 Summer Readiness Plan Released

On 3 December 2021 the AEMO released its **2021 Summer Readiness Plan** which forecasts that there will be sufficient electricity supply for summer.

Victorian Annual Planning Report 2021 (Victorian Transmission Network) Published

On 29 October 2021 the AEMO published its *Victorian Annual Planning Report* in relation to the Victorian Transmission Network for 2021.

Quarterly Energy Dynamics Report Published

On 21 October 2021 the AEMO published its *Quarterly Energy Dynamics Report* for the September quarter 2021.

Australian Energy Regulator (AER)

Rate of Return Instrument 2022 – Final Working Paper

On 9 December 2021 the AER released its Final Working Paper titled *Overall Rate of Return, Equity and Debt Omnibus* in its **Rate of Return Instrument 2022** series.

Rate of Return Annual Update Released

On 3 December 2021 the AER published its Annual Update on Rate of Return.

Annual Electricity Benchmarking Reports Released

On 29 November 2021 the AER released its **Annual Electricity Benchmarking Reports** for electricity distribution and transmission networks.

Revised Cost Thresholds for the Regulatory Investment Tests – Final Determination

On 19 November 2021 the AER released its **Final Determination** for the Revised Cost Thresholds for the Regulatory Investment Tests.

APA Victorian Transmission System Gas Transmission Tariffs for 2022 Approved

On 18 November 2021 the AER approved the APA Victorian Transmission System Gas Transmission Tariffs for 2022.

Price Variation Events in Adelaide and Sydney Short Term Trading Markets, July 2021 – Report Published

On 17 November 2021 the AER published its Report on Price Variation Events in the Adelaide (one

occasion) and Sydney (eight occasions) Short Term Trading Markets in July 2021. Tight supply-demand conditions and high coincident demand across southern regions contributed to these price-variation events.

Information Paper on Regulating Gas Pipelines under Uncertainty Published

On 15 November 2021 the AER published an Information Paper titled *Regulating Gas Pipelines under Uncertainty*.

Gas Distribution Tariffs for Victoria and Albury in 2022 Approved

On 15 November 2021 the AER approved Gas Distribution Tariffs for 2022 for AusNet Services, Australian Gas Networks and Multinet for their Victorian and Albury networks.

AusNet Trial of New Reg Process – CEPA's Evaluation Report Released

On 29 October 2021 the AER released a Report on AusNet's Trial of the New Reg process (an alternative of developing an energy network's revenue proposal through consumer engagement) prepared by Cambridge Economic Policy Associates (CEPA).

High Court of Australia

Port of Newcastle Operations Pty Ltd v Glencore Coal Assets Pty Ltd

On 8 December 2021 the **High Court of Australia** published its determination in relation to an appeal of a decision of the Full Court of the Federal Court of Australia on an appeal from a determination of the Australian Competition Tribunal (ACT) concerning the terms of access to a declared service under Part IIIA of the *Competition and Consumer Act 2010* at the Port of Newcastle. The High Court held that the Tribunal had erred in treating the permissible scope of its determination as confined to circumstances where Glencore exercised some measure of control over the physical activity of moving a vessel through a shipping channel. The High Court otherwise held that the Full Court was wrong in finding the Tribunal erred in determining the amount of the navigation service charge. The approach the Tribunal took on this issue – involving the reversal of the downward adjustment of one of the components upon which the charge was calculated to account for historical works undertaken by the State in creating the shipping channels – was open to it.

National Competition Council (NCC)

Amendments Intended to Improve the Timeliness of the National Access Regime

On 10 December 2021 the Australian Government sought stakeholder views on proposed amendments to the *Australian Competition and Consumer Act 2010* that are intended to improve the timeliness of the National Access Regime.

Certification of the South Australian Ports Access Regime – Final Recommendation to Extend Published

On 30 November 2021 the NCC published its **Final Recommendation** to extend the Certification of the South Australian Ports Access Regime.

Australian Capital Territory

Independent Competition and Regulatory Commission (ICRC)

No reportable items during this period.

New South Wales

Independent Pricing and Regulatory Tribunal (IPART)

New South Wales Water Utilities Performance 2020-21 – Fact Sheets and Database Published

On 15 November 2021 the IPART **published** Fact Sheets and a Database on the performance of New South Wales water utilities in 2020-21.

New South Wales Rail Access Arrangements – Issues Paper Released

On 11 November 2021 the IPART released an **Issues Paper** as part of its Review of the New South Wales Rail Access Arrangements.

Northern Territory

Utilities Commission

Ports Price Monitoring Report 2021 Published

On 8 November 2021 the Utilities Commission **published** its Ports Price Monitoring Report for 2021.

Queensland

Queensland Competition Authority (QCA)

Seqwater Bulk Water Prices 2022-26 – Draft Report Published

On 7 December 2021 the QCA **published** its Draft Report on Seqwater's Bulk Water Prices for 2022-26.

Dalrymple Bay Coal Terminal 8X Expansion – Ruling Notice and Determination

On 18 November 2021 the QCA **published** its Ruling Notice and Determination regarding the 8X Expansion at the Dalrymple Bay Coal Terminal. The QCA found that 'socialising the costs' of the expansion was appropriate.

Rate of Return Review – Final Report Published

On 9 November 2021 the QCA published its **Final Report** for its Rate of Return Review.

Inflation Forecasting Review – Final Position Paper Published

On 25 October 2021 the QCA published its **Final Position Paper** for its Inflation Forecasting Review.

South Australia

Essential Services Commission of South Australia (ESCOSA)

Ports Price Monitoring Report 2021 Published

On 29 October 2021 the **ESCOSA** **published** its 2021 Ports Price Monitoring Report related to prices set by Flinders Ports.

Tasmania

Office of the Tasmanian Economic Regulator (OTTER)

Investigation into TasWater's Pricing – Fact Sheet Published

On 8 December 2021 the OTTER released its **Fact Sheet** in relation to its Investigation into TasWater's Pricing from 1 July 2022.

OTTER Publishes Aurora Energy's Draft Standing Offer Tariff Strategy

On 29 November 2021 the **OTTER** **published** Aurora Energy's Draft Standing Offer Tariff Strategy (2022 Price-Regulated Retail Service Pricing Investigation).

Victoria

Essential Services Commission (ESC)

Draft Proposed Minimum Feed-in Tariffs for 2022-23 Published

On 2 December 2021 the ESC published the **Minimum Feed-in Tariffs** proposed to apply in 2022-23 for power exported to the grid from small renewable energy sources including solar panels.

Victorian Energy Market Report 2020-21 Published

On 30 November 2021 the **ESC** published its *Victorian Energy Market Report 2020-21*.

Victorian Default Offer in H1 2022 Published

On 25 November 2021 the ESC published its **Default Offer** electricity prices for households and small businesses to apply in the first half of 2022.

Western Australia

Economic Regulation Authority (ERA)

Water Supply, Sewerage and Irrigation Performance Data Published

On 2 December 2021 the **ERA** published its Performance Data on Water Supply, Sewerage and Irrigation suppliers with less than 10,000 customers.

Pilbara Networks Rate of Return – Final Decision

On 26 November 2021 the ERA published its **Final Decision** on the Rate of Return for Pilbara Networks.

Dampier to Bunbury Natural Gas Pipeline Annual Reference Tariff Variation Published

On 12 November 2021 the ERA published its **Annual Reference Tariff Variation** for 2022 for the Dampier to Bunbury Natural Gas Pipeline.

Mid-West to South-West Gas Distribution Systems Annual Reference Tariff Variation Published

On 12 November 2021 the **ERA** published its **Annual Reference Tariff Variation** for 2022 for the Mid-West to South-West Gas Distribution Systems.

Goldfields Gas Pipeline Annual Reference Tariff Variation Published

On 10 November 2021 the ERA published its **Annual**

Reference Tariff Variation for 2022 for the Goldfields Gas Pipeline.

New Zealand

New Zealand Commerce Commission (NZCC)

Telecommunications Development Levy (TDL) Contributions 2020-21 – Final Decision

On 14 December 2021 the **NZCC** released the allocation of contributions by providers of telecommunications services to the Government's TDL for 2020-21.

Number Portability to Continue for another Five Years – Spring 2021 Report Published

On 2 December 2021 the **NZCC** announced it will continue to protect the ability of telecommunications consumers to keep their landline and mobile numbers when switching providers.

Measuring Broadband Performance New Zealand – Spring 2021 Report Published

On 1 December 2021 the **NZCC** published its **Report for Spring 2021** on Measuring Broadband Performance in New Zealand.

Information Disclosure Requirements for the Four Main Wholesalers of Fibre Services Published

On 30 November 2021 the **NZCC** published its **Information Disclosure Requirements** for the Four Main Wholesalers of Fibre Services. This is part of the new Regulatory Regime to come into effect on 1 January 2022.