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Article 5.2

A BRIEF HISTORY OF MERGERS AND ANTITRUST POLICY

BY EDWARD HERMAN
May/June 1998

Government efforts to prevent or break up monopolies are called antitrust policy. They assume that when a few companies dominate an industry, this weakens competition and hurts the public by reducing production, raising prices, and slowing technical advance. Antitrust has gone through cycles during this century. In some years, strongly pro-business presidencies (usually Republican) have allowed businesses to merge at will. These have often been followed by "reform" administrations, which tend to restrain, but not to reverse, concentrations of corporate power.

The federal government first took on a strong antitrust role with the Sherman Act of 1890, which outlawed monopoly and efforts to obtain it. In 1914 the Clayton Act also put restrictions on stock purchases and interlocking directorates that would reduce competition. This legislation responded to public anger and fears about "trusts," which brought separate firms under common control. Most notorious were Rockefeller's Standard Oil Trust and James Duke's American Tobacco Company, which employed ruthless tactics to drive their competitors out of business.

Early on the antitrust laws also treated organized labor as a "monopoly," and were used in breaking the Pullman strike in 1892. In 1908, the Supreme Court awarded damages to an employer against whom unions had organized a secondary boycott. This led to the Clayton Act exempting unions from its restrictions.

Otherwise, the federal government only minimally enforced the Sherman Act until President Theodore Roosevelt was elected in 1900. Then in 1911 the Supreme Court decided that both the Standard Oil and American Tobacco trusts were "bad trusts," and ordered their dismantling. But in 1920 the Court refused to condemn the U.S. Steel consolidation, because it was a "good trust" that didn't attack its smaller rivals. This began a long period when the Antitrust Division and the courts approved mergers that produced industries with a few dominant firms, but which were "well-behaved." And in the 1920s, Republicans virtually ended anti-

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The Golden Age

President Franklin D. Roosevelt revived antitrust during 1938 to 1941, and antitrust law had its golden age from 1945 to 1974, fueled by a liberal Supreme Court, anti-merger legislation passed in 1950, and mildly progressive enforcement (though less so in the Republican years). During this period Alcoa's monopoly over aluminum production was broken (1945), and the Court found the tobacco industry guilty of "group monopoly" (1946), although the companies were only assessed a modest fine.

During the 1960s, when antitrust law blocked mergers among companies in the same industry, businesses adapted by acquiring firms in unrelated industries. Many

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such "conglomerate" mergers took place during 1964-68, when Lyndon Johnson was president. Companies like International Telephone and Telegraph, Ling-Temco-Vought, Gulf & Western, Tenneco, and Litton Industries grew rapidly.

The Reagan-Bush Collapse

Antitrust policy went into recession around 1974, then plunged during the presidencies of Ronald Reagan and George H. W. Bush. They aggressively dismantled antitrust, imposing drastic cuts in budgets and manpower, installing officials hostile to the antitrust mission, and failing to enforce the laws. During 1981-89, the Antitrust Division of the Justice Department challenged only 16 of over 16,000 pre-merger notices filed with them.

Despite his high-profile contest with Microsoft, President Bill Clinton largely accepted the conservative view that most mergers are harmless. During his two terms, federal authorities approved or ignored many giant mergers. These included Westinghouse's buyout of CBS, the joining of "Baby Bells" Bell Atlantic and Nynex,

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Clinton's failure to attack giant mergers rests nominally on the alleged efficiency of large firms and the belief that globalized markets make for competition. Federal Trade Commission head Robert Pitofsky said, "this is an astonishing merger wave," but not to worry because these deals "should be judged on a global market scale, not just on national and local markets."

But the efficiency of large size—as opposed to the profit-making advantages that corporations gain from market power and cross-selling (pushing products through other divisions of the same company)—is eminently debatable. And many markets are not global—hospitals, for example, operate in local markets, yet only some 20 of 3,000 hospital mergers have been subjected to antitrust challenge. Even in global markets a few firms are often dominant, and a vast array of linkages such as joint ventures and licensing agreements increasingly mute global competition.

The Clinton administration's failure to contest many giant mergers did not rest only on intellectual arguments. It also reflected political weakness and an unwillingness to oppose powerful people who fund elections and own or dominate the media. This was conspicuously true of the great media combinations—Disney and Cap-Cities/ABC, and TimeWarner and Turner—and the merger of Boeing and McDonnell-Douglas, which involved institutions of enormous power, whose mergers the stock market greeted enthusiastically.

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The Economists Sell Out

Since the early 1970s, powerful people and corporations have funded not only elections but conservative economists, who are frequently housed in think tanks such as the American Enterprise, Hoover, and Cato Institutes, and serve as corporate consultants in regulatory and antitrust cases. Most notable in hiring economic consultants have been AT&T and IBM, which together spent hundreds of millions of

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dollars on their antitrust defenses. AT&T hired some 30 economists from five leading economics departments during the 1970s and early 1980s.

Out of these investments came models and theories downgrading the “populist” idea that numerous sellers and decentralization were important for effective competition (and essential to a democratic society). They claimed instead that the market can do it all, and that regulation and antitrust actions are misconceived. First, theorists showed that efficiency gains from mergers might reduce prices even more than monopoly power would cause them to rise. Economists also stressed “entry,” claiming that if mergers did not improve efficiency any price increases would be wiped out eventually by new companies entering the industry. Entry is also the heart of the theory of “contestable markets,” developed by economic consultants to AT&T, who argued that the ease of entry in cases where resources (trucks, aircraft) can be shifted quickly at low cost, makes for effective competition.

Then there is the theory of a “market for corporate control,” in which mergers allow better managers to displace the less efficient. In this view, poorly-managed firms have low stock prices, making them easy to buy. Finally, many economists justified conglomerate mergers on three grounds: that they function as “mini capital markets,” with top managers allocating capital between divisions of a single firm so as to maximize efficiency; that they reduce transaction costs; and that they are a means of diversifying risk.

These theories, many coming out of the “Chicago School” (the economics depart

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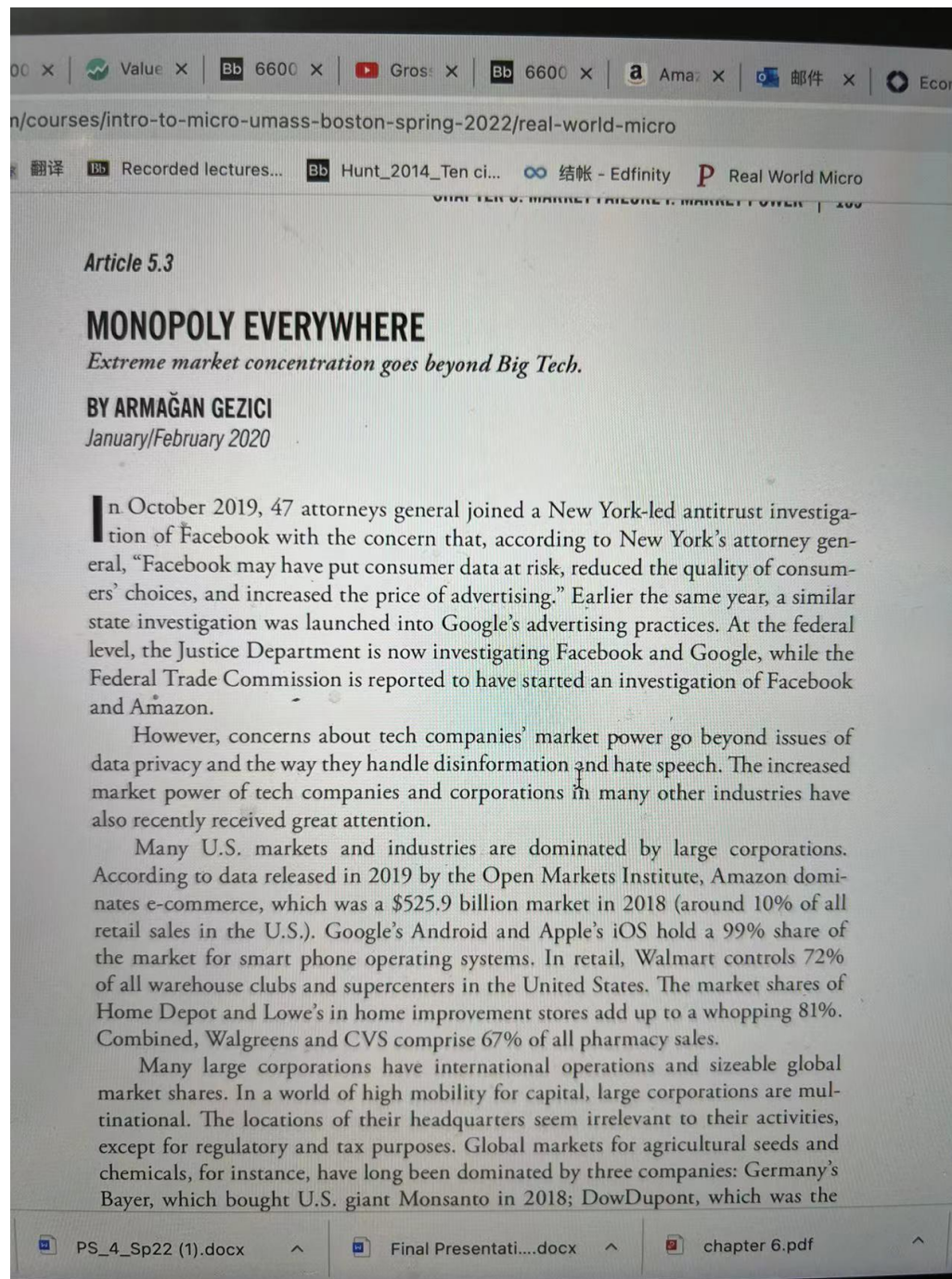
These theories, many coming out of the “Chicago School” (the economics department at the University of Chicago), suffer from over-simplification, a strong infusion of ideology, and lack of empirical support. Mergers often are motivated by factors other than enhancing efficiency—such as the desire for monopoly power, empire building, cutting taxes, improving stock values, and even as a cover for poor management (such as when the badly-run U.S. Steel bought control of Marathon Oil).

Several researchers have questioned the supposed benefits of mergers. In theory, a merger that improves efficiency should increase profits. But one study by Dennis Mueller, and another by F. W. Scherer and David Ravenscraft, showed that mergers more often than not have reduced returns to stockholders. A study by Michael Porter of Harvard University demonstrated that a staggering 74% of the conglomerate acquisitions of the 1960s were eventually sold off (divested)—a good indication that they were never based on improving efficiency. William Shepherd of the University of Massachusetts investigated the “contestable markets” model, finding that it is a hypothetical case with minimal applicability to the real world.

Despite their inadequacies, the new apologetic theories have profoundly affected policy, because they provide an intellectual rationale for the agenda of the powerful. □

Sources: “Competition Policy in America: The Anti-Antitrust Paradox,” James Brock, *Antitrust Bulletin*, Summer 1997; “The Promotional-Financial Dynamic of Merger Movements: A Historical Perspective,” Richard DuBoff and Edward Herman, *Journal of Economic Issues*, March 1989; “Antimerger Policy in the United States: History and Lessons,” Dennis C. Mueller, *Empirica*, 1996; “Dim Prospects: effective competition in telecommunications, railroads and electricity,” William Shepherd, *Antitrust Bulletin*, 1997.

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Article 5.3

MONOPOLY EVERYWHERE

Extreme market concentration goes beyond Big Tech.

BY ARMAGAN GEZICI

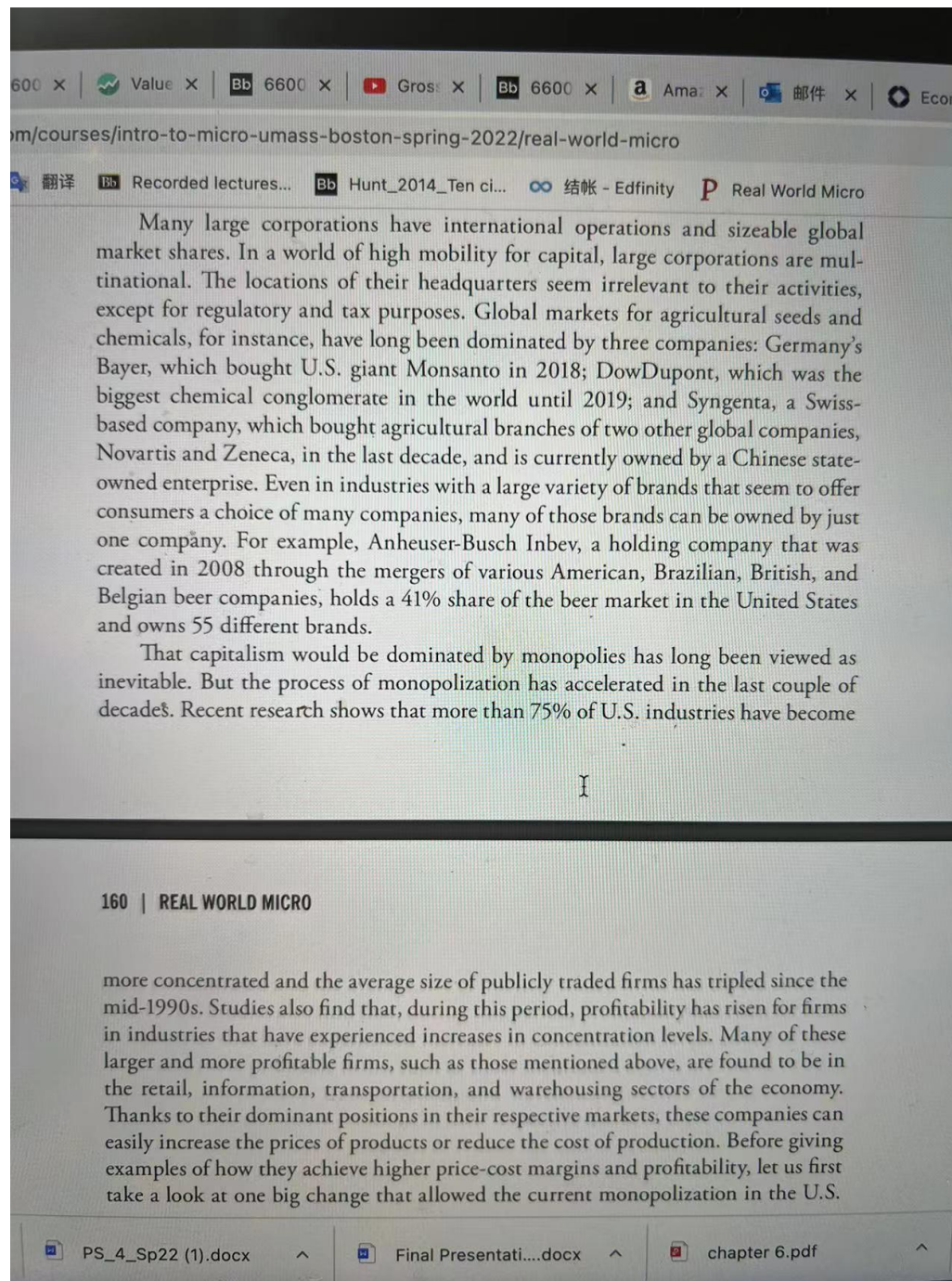
January/February 2020

In October 2019, 47 attorneys general joined a New York-led antitrust investigation of Facebook with the concern that, according to New York's attorney general, "Facebook may have put consumer data at risk, reduced the quality of consumers' choices, and increased the price of advertising." Earlier the same year, a similar state investigation was launched into Google's advertising practices. At the federal level, the Justice Department is now investigating Facebook and Google, while the Federal Trade Commission is reported to have started an investigation of Facebook and Amazon.

However, concerns about tech companies' market power go beyond issues of data privacy and the way they handle disinformation and hate speech. The increased market power of tech companies and corporations in many other industries have also recently received great attention.

Many U.S. markets and industries are dominated by large corporations. According to data released in 2019 by the Open Markets Institute, Amazon dominates e-commerce, which was a \$525.9 billion market in 2018 (around 10% of all retail sales in the U.S.). Google's Android and Apple's iOS hold a 99% share of the market for smart phone operating systems. In retail, Walmart controls 72% of all warehouse clubs and supercenters in the United States. The market shares of Home Depot and Lowe's in home improvement stores add up to a whopping 81%. Combined, Walgreens and CVS comprise 67% of all pharmacy sales.

Many large corporations have international operations and sizeable global market shares. In a world of high mobility for capital, large corporations are multinational. The locations of their headquarters seem irrelevant to their activities, except for regulatory and tax purposes. Global markets for agricultural seeds and chemicals, for instance, have long been dominated by three companies: Germany's Bayer, which bought U.S. giant Monsanto in 2018; DowDupont, which was the



more concentrated and the average size of publicly traded firms has tripled since the mid-1990s. Studies also find that, during this period, profitability has risen for firms in industries that have experienced increases in concentration levels. Many of these larger and more profitable firms, such as those mentioned above, are found to be in the retail, information, transportation, and warehousing sectors of the economy. Thanks to their dominant positions in their respective markets, these companies can easily increase the prices of products or reduce the cost of production. Before giving examples of how they achieve higher price-cost margins and profitability, let us first take a look at one big change that allowed the current monopolization in the U.S. economy to occur.

Drivers Behind the Recent Wave of Monopolization

An increased number of mergers and acquisitions are visible in almost all industries. The lax enforcement of antitrust laws has much to do with the uptick in mergers and acquisitions. The Sherman Antitrust Act of 1890 and other legislation in the decades that followed outlawed any “restraints of trade” that reduce competition and any concentrations of market power that restrict interstate commerce. The Clayton Antitrust Act of 1914, for instance, explicitly blocked mergers that would result in more consolidated industries, and it also forbade interlocking directorates (membership on the board of directors of two or more firms by the same individual). Until the 1980s, these two acts and other industry-specific regulatory laws continued to keep the monopolization of U.S. industries in relative control.

However, after the 1980s, the Department of Justice adopted an entirely new framework for evaluating mergers and acquisitions: instead of considering the effects

Monopolies, Monopsonies, Oligopolies, Oligopsonies: A Note on Terminology

In a **perfectly competitive** marketplace, no single participant can influence prices because there are so many buyers and sellers, each of which represents only a very small portion of the total marketplace.

By contrast, a **monopoly** is a type of uncompetitive market in which there is only one seller. The classic textbook example is the post-WWII diamond monopoly held by the DeBeers company.

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A **monopsony** is a type of uncompetitive market in which there is only one buyer. The classic example is a labor market in a one-factory town; the relationship Walmart has with many of its suppliers is another good example.

An **oligopoly** is an uncompetitive market with only a few sellers (like the U.S. markets for airline tickets), while an **oligopsony** is an uncompetitive market with only a few buyers (like the U.S. market for published books which is dominated by Amazon and Barnes & Noble, or the global market for unroasted coffee beans).

As a shorthand, I refer to all of types of uncompetitive markets as "monopolies," and those companies that enjoy market power as "monopolists." Some economics textbooks technically define an "oligopoly" as a market in which the 50% of the market is controlled by four or fewer firms, while others employ the looser definition noted above.

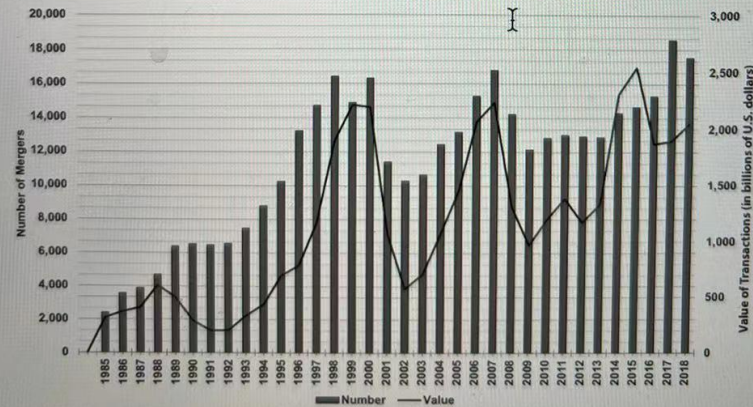
Note: This sidebar is excerpted from Sasha Breger Bush's "No Friendship in Trade," from the March/April 2015 issue of *Dollars & Sense*, which also appears in the 18th edition of *Real World Globalization*.

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on smaller businesses and entrepreneurship, the focus solely shifted to whether a deal would promote "efficiency" and "consumer welfare," with a promise of lower prices. Yet, as seen in the figure below, it was not until the "new economy" boom" of the mid-1990s that the current spate of mergers and acquisitions took off. Over the last two decades, the number of mergers and acquisitions nearly tripled, surpassing the merger wave of the late 1960s and early 1970s. Rising pressures from shareholders in a rapidly financializing economy, coupled with low interest rates and high stock market valuations for mergers and acquisitions, were also responsible for creat-

on smaller businesses and entrepreneurship, the focus solely shifted to whether a deal would promote “efficiency” and “consumer welfare,” with a promise of lower prices. Yet, as seen in the figure below, it was not until the “new economy” boom of the mid-1990s that the current spate of mergers and acquisitions took off. Over the last two decades, the number of mergers and acquisitions nearly tripled, surpassing the merger wave of the late 1960s and early 1970s. Rising pressures from shareholders in a rapidly financializing economy, coupled with low interest rates and high stock market valuations for mergers and acquisitions, were also responsible for creating the conditions for this expansion. Over the same period, the lack of intervention from regulatory agencies created incentives for firms to engage in mergers and acquisitions, which further reduced competition. A Supreme Court case in 2004 on Verizon’s refusal to share its telephone network with its competitor, AT&T, was the perfect example of this paradigm shift. The court unanimously ruled in favor of Verizon, holding that the telecommunications company’s “monopoly power” was “an important element of the free-market system,” a display of “business acumen,” and resulted in “the incentive to innovate.”

NUMBER AND VALUE OF MERGERS AND ACQUISITIONS IN NORTH AMERICA, 1985 TO 2018



Dire Consequences of Monopsony and Monopoly Power

Dire Consequences of Monopsony and Monopoly Power

As antitrust legislation became more focused on pricing and consumer welfare, the regulatory control over monopolies has become further irrelevant for certain industries due to globalization. For the last two decades, the availability of cheap imports and the opportunity to produce globally in low-cost locations has allowed large companies to keep consumer prices relatively low. In particular, retail giants like Walmart have been able to dictate their own terms and prices with suppliers, acting as monopsonies (as one of few buyers) as well as monopolies (one of few sellers).

The dire consequences of monopsony power (see sidebar for a definition of "monopsony") have been particularly noticeable in labor markets. Since Walmart stores and Amazon warehouses are typically the largest employers in local labor



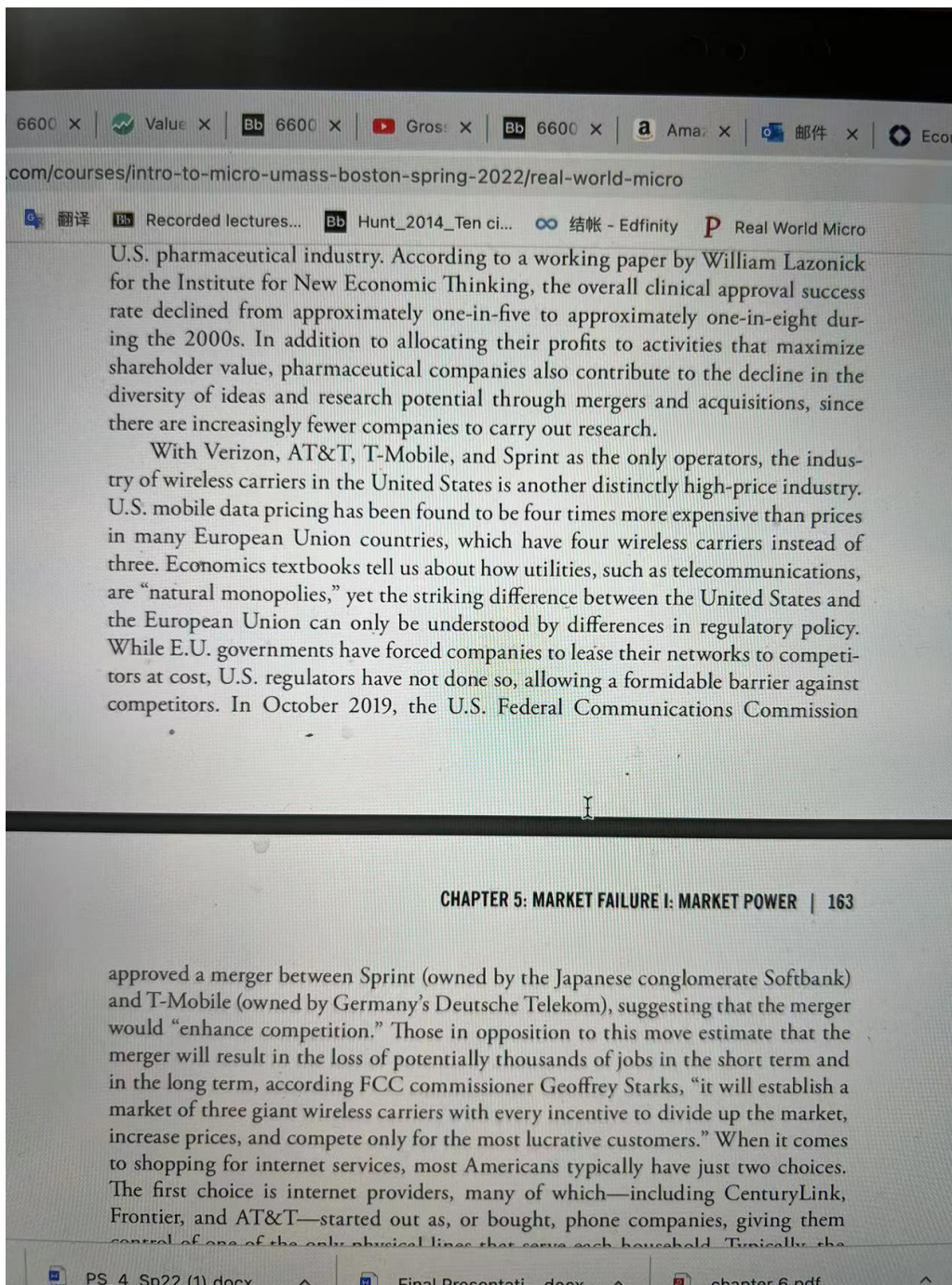
markets for low-skilled labor, employees in these areas can be forced into low-paying jobs or precarious working conditions because they don't have any alternatives. In high-tech industries that rely on relatively high-skilled labor, non-compete agreements, where employers contractually constrain employees from joining competing companies for some period of time after they leave, are an important component of the U.S. labor market. It is true that monopsony cannot always be equated with monopoly power. Yet, especially in industries with low consumer prices, the monopsony power of these large companies in the labor market is as important as the use of cheap foreign inputs in keeping their prices low. While specific monopsonistic practices in the labor market vary greatly across industries, recent studies find that industries with a growing concentration of large firms are also those that pay a lower share of industry incomes to their employees.

A stronger case can be made for antitrust regulation in industries with monopolies that can charge extraordinarily high prices. The U.S. pharmaceutical industry

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A stronger case can be made for antitrust regulation in industries with monopolies that can charge extraordinarily high prices. The U.S. pharmaceutical industry is a case in point. Americans spend more on prescription drugs—average costs are about \$1,200 per person per year—than anyone else in the world. What really sets the United States apart from most other countries is high prices. Unlike other nations, the United States doesn't directly regulate medicine prices. In Europe, the second-largest pharmaceutical market after the United States, governments negotiate directly with drug manufacturers to limit what their state-funded health systems pay. The U.S. pharmaceutical industry's response to demands for price regulation has been that it will kill innovation. U.S. drug companies claim that they need higher prices than those that prevail elsewhere so that the extra profits can be used to augment research and development (R&D) spending to continue to innovate and patent new drugs. This is far from the reality. A recent academic study shows 18 big pharmaceutical companies listed in the S&P 500 spent more on share buybacks and dividends (\$516 billion) in a recent 10-year period than they did on R&D (\$465 billion). As these companies spend their profits on boosting their stock performance, there has been a prominent productivity decline in drug discovery in the U.S. pharmaceutical industry. According to a working paper by William Lazonick for the Institute for New Economic Thinking, the overall clinical approval success rate declined from approximately one-in-five to approximately one-in-eight during the 2000s. In addition to allocating their profits to activities that maximize



U.S. pharmaceutical industry. According to a working paper by William Lazonick for the Institute for New Economic Thinking, the overall clinical approval success rate declined from approximately one-in-five to approximately one-in-eight during the 2000s. In addition to allocating their profits to activities that maximize shareholder value, pharmaceutical companies also contribute to the decline in the diversity of ideas and research potential through mergers and acquisitions, since there are increasingly fewer companies to carry out research.

With Verizon, AT&T, T-Mobile, and Sprint as the only operators, the industry of wireless carriers in the United States is another distinctly high-price industry. U.S. mobile data pricing has been found to be four times more expensive than prices in many European Union countries, which have four wireless carriers instead of three. Economics textbooks tell us about how utilities, such as telecommunications, are “natural monopolies,” yet the striking difference between the United States and the European Union can only be understood by differences in regulatory policy. While E.U. governments have forced companies to lease their networks to competitors at cost, U.S. regulators have not done so, allowing a formidable barrier against competitors. In October 2019, the U.S. Federal Communications Commission

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approved a merger between Sprint (owned by the Japanese conglomerate Softbank) and T-Mobile (owned by Germany’s Deutsche Telekom), suggesting that the merger would “enhance competition.” Those in opposition to this move estimate that the merger will result in the loss of potentially thousands of jobs in the short term and in the long term, according FCC commissioner Geoffrey Starks, “it will establish a market of three giant wireless carriers with every incentive to divide up the market, increase prices, and compete only for the most lucrative customers.” When it comes to shopping for internet services, most Americans typically have just two choices. The first choice is internet providers, many of which—including CenturyLink, Frontier, and AT&T—started out as, or bought, phone companies, giving them control of one of the only physical lines that serve each household. Typically, the

Companies gaining market power through mergers and acquisitions claim they benefit consumers by providing better technologies and higher quality products at lower prices thanks to the synergies expected of mergers and acquisitions. This argument fits perfectly within the paradigm of neoliberal economics, which tends to see rising market power as the inevitable result of top firms gaining market share by adopting new technologies that increase their efficiency. In this view, monopolistic companies are "super-star firms" competing either on the merits of their innovations or superior efficiency; the important driver of the monopolization is technological change, not anticompetitive practices. These claims are hard to reconcile with the aggregate economic trends of the last two decades. Since the beginning of the 2000s, despite relatively high corporate profits, the U.S. economy has been in a period of slower capital accumulation marked by weak investment, declining labor share of income, and lower aggregate productivity growth, signaling a slowing down in technological progress and dynamism. This is the same period where a considerable rise of market concentration has occurred in most U.S. industries.

While the causes of increasing concentration and monopolization might be different across industries, there is good reason to doubt the claims of corporations and their advocates, and to look deeper into the negative consequences of increasing monopoly power for workers, suppliers, and consumers in the United States and across the globe. □

Sources: New York State Office of the Attorney General, "Attorney General James Gives Update On Facebook Antitrust Investigation," Oct. 22, 2019 (ag.ny.gov); Gustavo Grullon, Yelena Larkin, and Roni Michaely, "Are U.S. Industries Becoming More Concentrated?," *Review of Finance*, July 2019; William Lazonick et al., "U.S. Pharma's Financialized Business Model," Institute for New Economic Thinking Working Paper, July 13, 2017; Standish Fleming, "Pharma's Innovation Crisis, Part 2: How to Fix It," *Forbes*, Sept. 11, 2018 (forbes.com); Richard Gonzales, "FCC Clears T-Mobile/Sprint Merger Deal," NPR, Nov. 5, 2019 (npr.org); Chris Zubak-Skees and Allan Holmes, "How Broadband Providers Seem to Avoid Competition," *The Center for Public Integrity*, April 1, 2015 (publicintegrity.org).