Submission of Mark A. Lemley to the House Judiciary Subcommittee on Antitrust, Commercial and Administrative Law Regarding Merger Reform in High-Tech Industries[1]

April 8, 2020

I. The Problem

While in common lore the exit strategy is an initial public offering (IPO), in practice IPOs are increasingly rare. Most companies that succeed instead exit the market by merging with an existing firm. And for a variety of reasons, innovative startups are especially likely to be acquired by the dominant firm in the market, particularly when they are venture funded.

This focus on exit, particularly exit by acquisition, is pathological. It leads to concentration in the tech industry, reinforcing the power of dominant firms. It short-circuits the development of truly disruptive new technologies that have historically displaced incumbents in innovative industries. And because incumbents often buy startups only to shut them down, intentionally or not, it means that the public loses access to many of the most promising new technologies Silicon Valley has developed.

Congress should take various steps to discourage acquisitions of startups by dominant incumbents. A direct approach would be to prohibit or restrict some incumbent mergers altogether. Section 7 of the Clayton Act already gives the antitrust authorities the ability to block anticompetitive mergers.[2] The Antitrust Division of the Department of Justice and the Federal Trade Commission share the authority to review mergers.[3] Mergers above a certain size must be disclosed in

---

[1] This submission is based on Mark A. Lemley & Andrew McCreary, *Exit Strategy*, forthcoming Boston University Law Review 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3506919, which is also submitted as part of the record.

[2] Clayton Antitrust Act of 1914 § 7, 15 U.S.C. § 18 (2012).

[3] 15 U.S.C. § 18a (2012); U.S. FED. TRADE COMM'N PREMERGER NOTIFICATION OFF., WHAT IS THE PREMERGER NOTIFICATION PROGRAM (2009), https://www.ftc.gov/sites/default/files/attachments/premerger-introductory-guides/guide1.pdf.

advance so the government can decide whether to challenge them.[4] And the agencies have developed detailed guidelines for evaluating mergers.[5]

Unfortunately, the existence of antitrust laws regulating mergers has not prevented exit strategies from leading to unprecedented concentration in technology markets.[6] Nor has it prevented killer acquisitions in other innovative fields like biotechnology.[7] Indeed, there is some evidence that acquirers structure their transactions in part to avoid detailed antitrust scrutiny.[8] Even when they don't, antitrust enforcement has grown more lax in recent decades, and the agencies regularly approve mergers they would have challenged in a different era.[9]

---

[4] Proposed acquisitions over $200 million, as well as acquisitions over $50 million where other "size-of-the-person" test conditions are met, cannot be consummated until sufficient time has passed for antitrust agencies to review the merger (or, if reviewed, until approved). *See* 15 U.S.C. § 18a (2012).

[5] *See* U.S. DEP'T JUSTICE & U.S. FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES § 5.3 (2010), https://www.justice.gov/atr/file/810276/download; U.S. DEP'T JUSTICE, NON-HORIZONTAL MERGER GUIDELINES (1984), https://www.justice.gov/atr/page/file/1175141/download.

[6] *See* Tommaso Valletti & Hans Zenger, *Increasing Market Power and Merger Control* (working paper 2019) (noting the "significant body of empirical research" documenting higher prices and profit margins stemming from a lack of competition); G. Gutierrez & Thomas Philippon, *Declining Competition and Investment in the U.S.* (working paper 2017) (same).

[7] *See* Cunningham et al., *supra* note 19, at 1 (showing that a surge of acquisitions occurs just below the thresholds for required merger review reporting).

[8] *See id.* at 30-31 (showing that a surge of acquisitions occurs just below the thresholds for required merger review reporting); *cf.* Wollmann, *supra* note 58, at 78-80 (showing that the recently increased threshold for merger review—to a minimum of $50 million merger value—led to an increase in acquisitions below that new threshold).

[9] For a survey of the decline in agency merger review, see Jonathan S. Baker & Carl Shapiro, *Detecting and Reversing the Decline in Horizontal Merger Enforcement*, 22 ANTITRUST 29, 30, 31-32 (2008) (surveying a limited number of practitioners to find, in 2007, that merger review was "significantly more favorable" to the merging parties than a decade prior; finding that the percent of mergers reviewed by the U.S. Department of Justice of those reported decreased to 0.4% during President Reagan's second term and President George W. Bush's entire tenure from a 0.9% average at other times—representing about twenty-four mergers per year not reviewed (when similar dips for U.S. Federal Trade Commission enforcement are also considered); and surveying individual cases); Carl Shapiro, *Protecting Competition in the American Economy: Merger Control, Tech Titans, Labor Markets*, J. ECON. PERSP. (forthcoming 2020) ("The clearest area where antitrust enforcement has been overly lax is the treatment of mergers."); Marshall Steinbaum & Maurice E. Stucke, *The Effective Competition Standard: A New Standard for Antitrust* at 1 (working paper 2019) (describing current U.S. merger policy as "a light-if-any-touch antitrust review"); Diana L. Moss, *The Record of Weak U.S. Merger Enforcement in Big Tech*, Am. Antitrust Inst. July 8, 2019.

The nature of high-tech markets also makes traditional forms of merger analysis more difficult.[10] Even though the anticompetitive consequences of many tech mergers have been "obvious to industry participants, very few of these mergers [have been] investigated or challenged."[11] Antitrust authorities normally define markets and assess market power by measuring increases in price, for instance. But many tech companies provide their services to consumers for free and make their money in other market segments, making it harder for the agencies to assess market power.[12] Further, Internet markets are notoriously fluid. Does Google compete with

---

For example of merger approved by courts even when the government did challenge them, see, e.g., United States v. AT&T Corp., __ F.3d __ (D.C. Cir. 2019) (upholding AT&T's merger with Time Warner despite government challenge); United States v. Oracle Corp., 331 F.Supp. 2d 1098, 1101 (N.D. Cal. 2004) (not enjoining Oracle's merger with PeopleSoft); Baker & Shapiro, *supra*, at 32 (discussing error in case). Other oft-cited examples include United States v. Syufy Enters., 903 F.2d 659 (9th Cir. 1990); United States v. SunGard Data Sys., 172 F.Supp. 2d 172 (D.D.C. 2001). Note that Baker and Shapiro argue the Obama Administration improved merger enforcement, which raised the percent noted above to 1.5%. Jonathan B. Baker & Carl Shapiro, *Evaluating Merger Enforcement during the Obama Administration*, 65 STAN. L. REV. ONLINE 28, 30 (2012). Recent mergers that went through despite concern for competition include LiveNation/Ticketmaster and Comcast/NBC Universal. *Id.* at 32-33.

Tech firms whose mergers were approved despite concerns include: Google/DoubleClick, *see* Dawn Kawamoto, *FTC Allows Google-DoubleClick Merger to Proceed*, CNET (Mar. 21, 2008 1:53 PM PDT), https://www.cnet.com/news/ftc-allows-google-doubleclick-merger-to-proceed-1/; Facebook/WhatsApp, *see* Jeff Roberts, *FTC Approves Facebook Acquis[i]tion of Whatsapp, Warns Companies to Respect Privacy Promises*, GIGAOM (Apr. 10, 2014 10:28 AM CST), https://gigaom.com/2014/04/10/feds-tell-facebook-to-uphold-whatsapp-privacy-promises/.

[10] *See* Kevin Bryan & Erik Hovenkamp, *Startup Acquisitions, Error Costs, and Antitrust Policy* (working paper 2019) (there is "very little antitrust enforcement in this area" in part because of "a strong preference for erring on the side of nonenforcement."); Lina M. Khan, *The Ideological Roots of America's Market Power Problem*, YALE L.J. FORUM, June 4, 2018, at 960, 972.

[11] Glick & Ruetschlin, *supra* note 60, at 3.

[12] This isn't entirely new—free distribution of Linux has prompted an assessment of this issue before. *See* Wallace v. IBM, 467 F.3d 1104, 1106, 1108 (7th Cir. 2006) (Easterbrook, J.) ("[Licensing agreements among competitors requiring that improvements to] open-source software [be freely distributed] have nothing to fear from the antitrust laws."); Heidi S. Bond, *What's So Great about Nothing: The GNU General Public License and the Zero-Price-Fixing Problem*, 104 MICH. L. REV. 547, 553-55 (2005) (arguing that agreement among cross-licensing competitors requiring free distribution of the combined product should not run afoul of the antitrust laws where ancillary to procompetitive benefits). *But see* Michael S. Gal & Daniel L. Rubinfeld, *The Hidden Costs of Free Goods: The Implications for Antitrust Enforcement*, 80 ANTITRUST L.J. 521, 524-25, 531, 534, 536, 539 (2016) (arguing that a fact-specific inquiry into why a competitor is offering a service for free may show it is part of a strategy to prevent entry in a market for a complement, to manipulate consumer choice or

Facebook? Did Facebook compete with WhatsApp before it bought them? The services have overlapping customers but serve different purposes. But if the market is one for attention or Internet time (as opposed to money spent), there are ways in which they do compete.

Another fact that complicates merger analysis is that many startup acquisitions are not of direct competitors. Antitrust law is more skeptical of "horizontal" mergers between competitors than of "vertical mergers" (deals between buyers and sellers in a supply chain) or "conglomerate mergers" that link unrelated businesses. But how should we analyze two technologies that aren't related but might become so? Things that interconnect and work together but do different things? This was an issue in the government's antitrust case against Microsoft two decades ago.[13] Microsoft's Internet Explorer web browser competed with Netscape's browser, but Internet Explorer wasn't a particularly important product for Microsoft at the time. More important was making sure that Netscape didn't set up a competing Internet portal that could grow over time into a threat to Microsoft's core business, the operating system.[14] But that risk exists even if there is no horizontal relationship between the parties at all. Google purchased DoubleClick, the largest clickstream tracking company. That merger was likely vertical, or at least complementary, not horizontal. But it made it more difficult for Google's actual competitors to track user behavior and monetize user attention with ads.[15] And what

---

encourage product-specific investments in ways that are not rational or welfare-maximizing, or even without benefit to the organization offering the free product or service limit investment in superior paid alternatives).

[13] *See* United States v. Microsoft Corp., 253 F.3d 34, 46 (D.C. Cir. 2001); Robin Cooper Feldman, *Defensive Leveraging in Antitrust*, 87 GEO. L.J. 2079, 2096-99 (1999).

[14] Feldman, *supra* note xxx[246], at 2098 (concluding that "Microsoft is leveraging into browsers for one key reason: to prevent browsers from eroding Microsoft's formidable monopoly in the operating systems market.")

[15] For thinking near the time the merger was approved, see Michael R. Baye et al., *Economics at the FTC: The Google-DoubleClick Merger, Resale Price Maintenance, Mortgage Disclosures, and Credit Scoring in Auto Insurance*, 33 REV. IND. ORG. 211, 213-17 (2008) (reviewing arguments raised in merger review and concluding these showed no real harm was likely to result); Dawn Kawamoto, *FTC Allows Google-DoubleClick Merger to Proceed*, CNET (Mar. 21, 2008 1:53 PM PDT), https://www.cnet.com/news/ftc-allows-google-doubleclick-merger-to-proceed-1/. For a reassessment of international competition authorities' approval of the merger given what appears to have happened since, see n. 52 & accompanying text Damien Geradin & Dimitrios Katsifis, *Google's (Forgotten) Monopoly: Ad Technology Services on the Open Web* (May 21, 2019) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3391913 ("Google did what the Google / DoubleClick opponents had feared of: it used DFP's pivotal role to foreclose the market for ad intermediation.").

are we to do with Amazon's purchase of Whole Foods?[16] At first blush this looks like a pure conglomerate merger between unrelated products, the equivalent of tycoons buying sports teams because they can. But Amazon has continuously expanded its retail presence, and owning Whole Foods may be a way to compete more effectively with brick and mortar businesses by speeding delivery and creating a network of physical stores for local pickup. Traditional antitrust doctrines have trouble assessing mergers like these.

II. Proposed Reforms: Limiting Incumbent-Startup Mergers

The law can and should do more to limit the sale of innovative startups to incumbents. Those sales can entrench market power even — perhaps especially — if they involve not direct competitors but adjacent companies that could change the way people consume content.[17] Antitrust agencies considering mergers can already take into account the involvement of a "maverick" that "plays a disruptive role in the market to the benefit of customers."[18] As the agencies have explained, mergers involving mavericks "can involve the loss of actual or potential competition."[19] Along similar lines, a company that "has often resisted otherwise prevailing industry norms to cooperate on price setting or other terms of competition" can play a vital role in bringing about competition. Taking over a direct competitor is bad because it prevents that competitor from contesting the existing market. But taking over

---

[16] Brent Kendall & Heather Haddon, Updated *FTC Approves Whole Foods-Amazon Merger*, WALL ST. J. (Aug. 23, 2017 6:26 pm ET), https://www.wsj.com/articles/whole-foods-shareholders-approve-merger-with-amazon-1503498623.

[17] Several recent papers briefly discuss this issue. *E.g.*, Steven Berry, Martin Gaynor, & Fiona Scott Morton, *Do Increasing Markups Matter? Lessons From Empirical Industrial Organization*, 33 J. ECON. PERSPS. 44, 61 (2019) (discussing Facebook's acquisitions of Instagram and WhatsApp, and reminding that "when a market is subject to strong network effects, competition is for the market, and the possibility that the nascent entrant could contest the incumbent is an important source of competition."); Carl Shapiro, *Antitrust in a Time of Populism*, 61 J. INDUS. ORG. 714, 739-40 (2018) (arguing that it is not "far-fetched that the dominant incumbent firm, whose market capitalization will fall sharply if successful entry occurs, would pay a premium to acquire the target firm," nor "that a dominant incumbent firm can reliably identify the firms that are genuine future threats before the antitrust agencies or the courts can do so with confidence").

[18] *See* U.S. DEP'T JUSTICE & U.S. FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES § 2.1.5 (2010), https://www.justice.gov/atr/file/810276/download.

[19] *Id.* "Mergers involving mavericks have the potential to exert larger anticompetitive effects than those involving non-mavericks." Alexander J. McLoughlin, *Mavericks and mergers in concentrated markets* at 1 (working paper Oct. 3, 2019).

adjacent companies short-circuits potential Schumpeterian competition that is more likely to displace the incumbent altogether.[20]

I do not recommend a flat ban on mergers, even by monopolists. There are mergers that do make the merged companies work better.[21] Supermarket chains are much better in most ways than the individual corner groceries that preceded them.[22] In some markets, including tech, mergers may allow companies to take advantage of efficient scale or network effects.[23] And in many cases, the alternative to merger is not continued competition by the acquired firm but watching that firm fail. Mergers may make productive use of employees and assets that would otherwise be left by the wayside when the business went under.

Further, given the small number of IPOs, it is reasonable to worry that a flat ban on mergers would discourage venture investment too much. At least until they have some alternative means to cash out their investments, startups and VCs depend on some form of company exit strategy, and we want to be careful in weaning them

---

[20] Wu and Thompson analyze hundreds of acquisitions by both Google and Facebook. They find that Google acquired 171 directly competitive companies, 55 conglomerate/adjacent companies, and 43 others. Only one merger was challenged in the United States, but it was ultimately approved. Facebook acvquired 46 competitors, 40 conglomerate/adjacent companies, and 6 others. Wu & Thompson, *supra* note __. Notably, as their graphics indicate, even the "conglomerate" mergers are actually quite closely related to core competitor business.

[21] Carl Shapiro, *Antitrust in a Time of Populism*, 61 J. INDUS. ORG. 714, 740 (2018) (noting the difficulty of distinguishing cases where a large firm acquiring a nascent rival will decrease consumer welfare from those where the large firm increases consumer welfare by "greatly expand[ing] the reach and usage of the target firm's products" or technology).

[22] Supermarket consolidation might cause smaller rivals to "cut each other's throats" and leave the market to larger stores, but—given today's antitrust goals—so be it. *See* United States v. Topco Assocs., Inc., 405 U.S. 596, 611 (1972) (quoting White Motor Co. v. United States, 372 U.S. 253, 278 (1963)). The disruption to "small dealers and worthy men" is no doubt "a misfortune, [but also] the inevitable accompaniment of change and improvement." United States v. Trans-Mo. Freight Ass'n, 166 U.S. 290, 323 (1897); *see also* Joshua D. Wright & Douglas H. Ginsburg, *The Goals of Antitrust: Welfare Trumps Choice*, 81 FORDHAM L. REV. 2405, 2405 n.4 (2013) (citing case and discussing case law of this period).

[23] *See, e.g.*, Howard Shelanski et al., Network Effects and Efficiencies in Multi-Sided Markets, *in* RETHINKING ANTITRUST TOOLS FOR MULTI-SIDED PLATFORMS 189 (OECD, ed., 2018), https://www.sipotra.it/wp-content/uploads/2018/07/Rethinking-Antitrust-Tools-for-Multi-Sided-Platforms-2018.pdf#page=190. Similar arguments were made in earlier cases, as in the case of airlines. *E.g.*, Daniel L. Rubinfeld et al., *Airline Network Effects and Consumer Welfare*, REV. NETWORK ECONS. 1 (2013). For more on network effects, see sources sited *supra* note xxx[7].

away from the most common currently available exit lest we dry up the funding that has supported a tremendous amount of innovation.[24]

Nonetheless, there is room for antitrust to regulate acquisitions of startups more than it currently does. First, agencies should pay particular attention to acquisitions by incumbent monopolists even if they don't present as direct competitors. Acquisitions of adjacent firms are likely to increase concentration and prevent the development of fundamentally new sources of competition. And unlike mergers with smaller firms, which might help build a strong competitor to an incumbent, acquisitions of adjacent technologies by an incumbent often reinforce and extend its dominance, not only preventing a new competitor from arising but making it harder for other competitors to dislodge the incumbent.

We think the antitrust agencies should presumptively block acquisitions of directly competitive startups by dominant firms.[25] That presumption would extend to startups worth less than $200 million (the current threshold for closer antitrust scrutiny of mergers). That presumption should be rebuttable if (1) the startup would not be viable as a freestanding entity and (2) there are no other plausible acquirers

---

[24] For one expression of this viewpoint, see generally D. Daniel Sokol, *Vertical Mergers and Entrepreneurial Exit*, 70 FLA. L. REV. 1357, 1357 (2018).

[25] Scott Hemphill and Tim Wu say that "a dominant firm's acquisition or exclusion of a nascent competitor should be prohibited . . . ." C. Scott Hemphill & Tim Wu, *Nascent Competitors* at 2 (working paper 2020); *cf.* C. Scott Hemphill, *Nascent Rivals, Disruptive Incumbents, and Online Platform Entry* (working paper July 26, 2019) (discussing the role that adjacent incumbents can play in challenging a market). But while they identify features and examples of nascent competition they don't fully define it. *Cf.* Bryan & Hovenkamp, *supra* note __ (suggesting that we reverse the presumption that the market will self-correct when an incumbent buys a startup); John M. Newman, *Antitrust in Digital Markets*, 72 Vand. L. Rev. 1497, 1553 (2019) (same). For a suggestion along similar lines but focused on vertical rather than horizontal or adjacent mergers, see Khan, *Antitrust Paradox*, *supra* note 5, at 793. As she describes,

> A stricter approach would place prophylactic limits on vertical integration by platforms that have reached a certain level of dominance. This would recognize that a platform's involvement across multiple related lines of business can give rise to conflicts of interest by creating circumstances in which a platform has an incentive to privilege its own business and disadvantage other companies. Seeking to prevent the industry structures that *create* these conflicts of interest may prove more effective than policing these conflicts. Adopting this prophylactic approach would mean banning a dominant firm from entering any market that it already serves as a platform—in other words, from competing directly with the businesses that depend on it."

Id. Khan has since developed this proposal further, suggesting a "separation regime" limiting merger when "only if a dominant platform that controlled a key distribution channel or marketplace sought to acquire a firm that would compete in that marketplace." Lina M. Khan, *The Separation of Platforms and Commerce*, 119 COLUM. L. REV. 973, 1087 (2019).

(a non-dominant company willing to pay a reasonable price, even if the price is lower than the incumbent would pay).[26] In order to achieve that scrutiny, Congress should eliminate the Hart-Scott-Rodino threshold when dealing with mergers by dominant firms.

Things are more complicated if the startup doesn't compete directly with the incumbent. Acquisition of a truly unrelated firm is unlikely to do much competitive harm (though it also won't offer any great benefits). And acquisitions of complementary firms can enhance efficiency, as we noted above.[27] So we shouldn't ban all acquisitions by incumbents. At the same time, much of the potential harm from acquisitions comes not in the form of suppression of direct competition but in accreting complementary technologies and shutting down potentially disruptive alternatives. Currently the law pays little if any attention to non-competitive mergers involving startups.[28] We need a much greater focus on mergers that involve adjacent or potentially market-disrupting technologies.[29] A presumption against those mergers may also be appropriate, though it should be a weaker presumption that could be rebutted by sufficient proof of efficiencies from the merger. And it could also be rebutted by strong evidence that the startup's technology is uniquely complementary to the incumbent's, so that it is unlikely to be profitably deployed by anyone other than the incumbent.[30]

Focusing on merger review limits the potential for abuse of this proposal by private plaintiffs. And the fact consummated mergers so often prove inefficient

---

[26] This is consistent with the "failing firm" defense to mergers in antitrust law. That defense requires proof that a company (1) is in danger of imminent business failure, (2) cannot reorganize successfully in bankruptcy, and (3) made unsuccessful good faith efforts to find alternative purchasers. *See International Shoe Co. v. FTC*, 280 U.S. 291 (1930).

[27] *See supra* notes __-__ and accompanying text.

[28] For a detailed discussion of this fact and why it's a mistake, see Kevin Bryan & Erik Hovenkamp, *Antitrust Limits on Startup Acquisitions*, REV. INDUS. ORG. (forthcoming 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3350064; Kevin Bryan & Erik Hovenkamp, *Startup Acquisitions, Error Costs, and Antitrust Policy*, U. CHI. L. REV. (forthcoming 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3376966.

[29] Shapiro, *Protecting Competition, supra* note __, at 8 ("agencies and the courts could express greater wariness when a dominant incumbent firm seeks to acquire a firm operating in an adjacent market, especially if the target firm is well positioned to challenge the incumbent's position in the foreseeable future.").

[30] For example, a company that developed an add-on specific to Microsoft Word might be valuable only to Microsoft.

This exception will be hard to prove. That's by design. We don't want the exception to swallow the rule. Investors who don't think they'll be able to make that argument of complementarity won't buy that startup. Corporations may have to do more innovation in-house.

means any false positives created here will likely be less costly than any false positives we might create were we to reform other parts of antitrust doctrine.[31]

This approach won't eliminate acquisitions of startups, and it isn't intended to. It will make it harder for *incumbent monopolists* to acquire startups. That will drive startups to look for alternative strategies — not all of them exits. Some of those alternatives, like continuing to operate as a profitable company, are better for the world. Even sales to non-dominant firms are better for the world than reinforcing the power of incumbency. It may also drive investors to change their approach, and so a stronger merger enforcement policy may need to be coupled with some of the carrots we described above to ensure that VCs or others are willing to fund startups.

---

[31] While Frank Easterbrook famously warned that the risks of overenforcement in antitrust were greater than the risks of underenforcement, Frank H. *Easterbrook*, *The Limits of Antitrust*, 63 TEX. L. REV. 1 (1984), that was before three decades of systematic weakening of antitrust. *See* Stacey L. Dogan & Mark A. Lemley, *Antitrust Law and Regulatory Gaming*, 87 TEX. L. REV. 685 (2009). As Doug Melamed testified before Congress, "[h]orizontal mergers might be an especially fruitful area for [potential antitrust reform] . . . for three reasons":

> First, there are studies that suggest underenforcement, i.e., false negatives, in the past. Second, there are studies that suggest parties often fail to realize anticipated efficiencies from mergers and, thus, that the costs of false positives might be less than previously thought. Third, merger enforcement is largely a matter for the expert enforcement agencies, and adjusting the legal standards for merger enforcement is therefore less likely to lead to abuse by private litigants.

Does America Have a Monopoly Problem? Examining Concentration and Competition in the U.S. Economy: Hearing Before the Subcomm. on Antitrust, Competition Policy, & Consumer Rights, S. Comm. on the Judiciary, 116th Cong. [9] (Mar. 5, 2019) (statement of A. Douglas Melamed, Professor of the Practice of Law, Stanford Law School), https://www.judiciary.senate.gov/imo/media/doc/Melamed%20Testimony.pdf; *see also* Lina M. Khan, *The Separation of Platforms and Commerce*, 119 COLUM. L. REV. 973, 1074-75 (2019) (reviewing similar points); Bryan & Hovenkamp, *Antitrust Policy, supra* note __, at __ (same).