

# Is Common Ownership a Genuine Issue in Asset Management?

## Capital Markets Institute Panel

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# Ownership of Global Equities

	\$ trillions of market cap owned	Percentage of total market cap owned
<b>Index</b>	<b>11.9</b>	<b>17.5%</b>
Mutual funds	2.3	3.4%
ETFs <sup>17</sup>	2.7	4.0%
Institutional indexing*	5.4	7.9%
Internal indexing*	1.4	2.1%
<b>Active</b>	<b>17.4</b>	<b>25.6%</b>
Mutual funds	8.0	11.8%
Institutional	7.5	11.0%
Hedge funds*	1.9	2.8%
<b>Assets not managed by an external manager (excl. internal index investing)</b>	<b>38.7</b>	<b>57.0%</b>
Corporate (financial and non-financial)**	25.2	37.0%
Insurance and pensions (defined benefit and defined contribution)*	8.5	12.5%
Official institutions*	5.0	7.4%
<b>Total</b>	<b>67.9</b>	<b>100%</b>

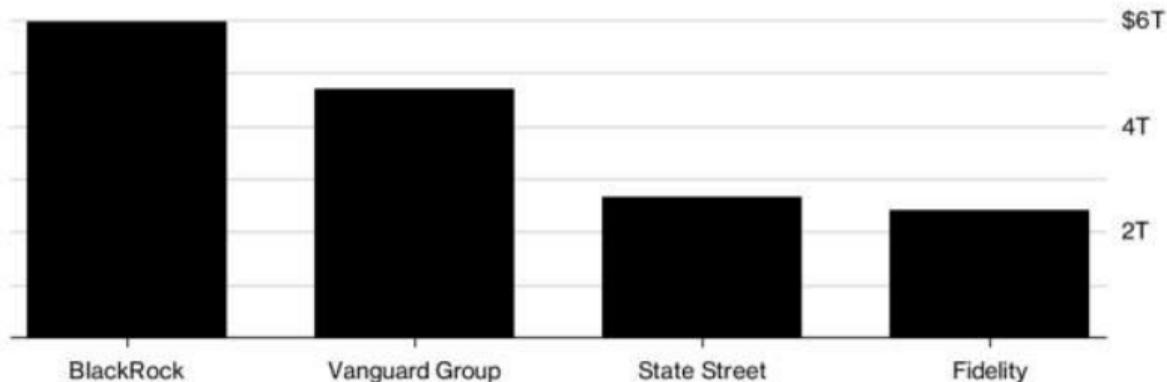
Source: BlackRock, 2017

# Ownership of Global Equities

Today, a small number of investment companies account for a lion's share of equity holders in many firms

## Trillion Dollar Players

The four largest U.S. asset managers control a total of about \$16 trillion



Note: Most recent data for assets under management

**Bloomberg**

# Top 10 Holders of Airline Stocks (% of Shares Outstanding)

Holder	Delta	Southwest	American	United	Alaska
PRIMECAP Management Company	4.18	13.15	14.97	14.09	4.89
The Vanguard Group	6.71	6.51	6.11	7.36	10.04
BlackRock	5.41	4.75	5.02	6.38	5.61
T. Rowe Price Group	2.29	2.58	5.29	3.78	10.37
State Street Global Advisors	3.20	3.14	3.11	3.08	3.36
Berkshire Hathaway	9.60	9.97	9.49	9.54	
Lansdowne Partners	3.86		1.61	1.92	
PAR Capital Management				5.73	2.03
FMR		2.21	2.16		
Newport Trust Company	2.09			1.84	
Boston Partners Global Investors	1.95	1.60			
New England Asset Management		7.68			
Managed Account Advisors					4.76
Altimeter Capital Management				4.27	
Harris Associates			3.61		
Franklin Resources					2.62
J.P. Morgan Asset Management	2.50				
AllianceBernstein					2.10
Merrill Lynch					1.96
Capital Research and Management			1.43		
BNY Mellon Asset Management		1.15			
<b>Total</b>	<b>41.78</b>	<b>52.74</b>	<b>52.80</b>	<b>57.97</b>	<b>47.73</b>

Source: CapitalIQ, as of Sept 30, 2018

# Common Ownership

*Common ownership* is the “the simultaneous ownership of stock in competing companies by a single investor, where none of the stock holdings is large enough to give the owner control of any of those companies”

– Written contribution from the United States submitted for Item 6 of the 128th OECD Competition committee meeting on 5-6 December 2017

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**Key Question: Does common ownership by institutional investors have anti-competitive effects?**

# Common Ownership: “The Accusation”

Recent research uncovers a positive correlation between common ownership and:

- airline ticket prices (Azar, Schmalz, and Tecu, 2018)
- prices on checking accounts (Azar, Raina, and Schmalz, 2016)
- executive compensation policies that may lower firms' incentives to compete (Anton, Ederer, Gine, and Schmalz, 2018)

# Common Ownership: “The Accusation”

Some legal scholars argue that common ownership by funds violates antitrust laws in general, and two statutes in particular:

- Section 1 of the Sherman Act
  - prohibits agreements in restraint of trade such as price-fixing
- Section 7 of the Clayton Act
  - prohibits acquisitions of corporate assets or securities where the effect “may be substantially to lessen competition, or to tend to create a monopoly”

Einer Elhauge of Harvard is a prominent critic of common ownership

## Common Ownership: “The Remedies”

The same legal scholars have advocated legal proposals to mitigate anti-competitive effects of common ownership:

- “limit institutions to a stake of no more than 1 percent in more than a single firm in oligopolies” (Posner, Morton, and Weyl, 2017)
- “partial divestitures seem to be most promising” remedy (Morton and Hovenkamp, 2018)
- reduction in voting rights

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Academic institutions and policymakers have held multiple conferences, hearings, and solicited opinions

- Harvard, 2018
- OECD, 2017
- FTC, 2018

# Common Ownership: “The Defense”

The defense revolves around four points (Klovers and Ginsburg, 2018):

- ① Investment management is not economic ownership
- ② Empirical evidence is far from convincing
- ③ Legal case is overstated
- ④ No new antitrust enforcement framework is necessary

# 1. Investment Management Is Not Economic Ownership

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Investment manager is a fiduciary for economic owners

- They vote, but rarely is voting on matters of competitive significance
- Voting patterns reflect the influence of proxy advisory firms such as ISS and Glass Lewis
- Funds do not have voting rights to all shares they hold
  - In 2017, Putnam Investments had the right to vote just 12% of shares it held
  - Fidelity: 19%
- Not all shares of an investment manager are voted the same way
- Investment managers do not vote the same way

## 2. Empirical Evidence Is Far From Convincing

- The number of papers refuting anti-competitive effects of common ownership is more than double the number of papers supporting it
  - O'Brien and Waehrer (2017), Gramlich and Grundl (2017), Kennedy et al. (2017), Dennis et al. (2018), Kwon (2018), etc

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- Mechanisms of anti-competitive harm are unknown
  - Even if higher airline prices benefit airlines, they likely hurt most other firms in funds' portfolios
  - Conclusions are consistent with conscious parallelism, which is not unlawful

### 3. Legal Case Is Overstated

- There is no clear legal basis for antitrust liability under either Section 1 of the Sherman Act or Section 7 of the Clayton Act (Klovers and Ginsburg, 2018)
- Elhauge's legal analysis is based on cross ownership (of one company by another such as via a minority stake) rather than common ownership and is thus based on unsupportive cases (U.S. antitrust agencies' note to OECD)
- U.S. antitrust agencies "have not litigated a case involving common ownership by a single institutional investor"

## 4. No New Antitrust Enforcement Framework Is Necessary

Common ownership is not a special case requiring new rules

- Underlying concerns by critics of common ownership have to do with conventional types of anti-competitive conduct (price-fixing)
- Antitrust agencies and courts have plenty of experience with these types of cases
- Klovers and Ginsburg (2018): Common ownership at worst “may facilitate practices that are themselves facilitating practices” for collusion (e.g., via information exchanges)
  - No supportive cases that infer antitrust violations from such second-order effects
- According to the Supreme Court, conscious parallelism is “not in itself unlawful”

# Concluding Thoughts

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–Klovers and Ginsburg (2018)

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–Klovers and Ginsburg (2018)

“any antitrust enforcement or policy effort in this area should be pursued only if an inquiry reveals compelling evidence of the anticompetitive effects of common ownership by institutional investors in concentrated industries” and needs to “avoid outcomes that would unnecessarily chill procompetitive investment”

– Written contribution from the United States submitted for Item 6 of the 128th OECD Competition committee meeting on 5-6 December 2017

**Thank You**