Negative: Sherman Act

By “Coach Vance” Trefethen

***Resolved: The United States federal government substantially reform the use of Artificial Intelligence technology***

Case Summary: The AFF plan tries to outlaw the use of Artificial Intelligence to set prices in a way that produces the effects of illegal collusion among sellers that would violate the Sherman Antitrust Act of 1890. Under the Sherman Act, it is illegal for sellers to communicate with each other to fix prices, since they’re supposed to be competing with each other. Consumers are harmed if suppliers stop competing. But companies are using AI to set prices, and the AI’s, even without communicating with each other (“tacit collusion”), modify prices in a way that brings about the same end result as if the suppliers were on the phone in a conspiracy to raise their prices without competing. In the status quo, “tacit” collusion (where suppliers change prices in reaction to each other, but without communicating or conspiring with each other) is perfectly legal. And in the status quo, communication between suppliers and explicitly conspiring about price changes is illegal under the Sherman Act.

Negative: Sherman Act 3

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Negative: Sherman Act

INHERENCY

1. New technology will solve

If there is a problem, it will likely fade away on its own as better AI technology develops

**Emilio Calvano, Giacomo Calzolari, Vincenzo Denicolò, Sergio Pastorello 2019** (Calvano - Associate Professor of Economics, University of Bologna and Associate Faculty, Toulouse School of Economics. [Calzolari](https://voxeu.org/user/220338) - Professor of Economics, EUI Florence, Bologna University. [Denicolò](https://voxeu.org/user/224075) - Professor of Economics, University of Bologna. [Pastorello](https://voxeu.org/user/266323) - Professor of Econometrics, University of Bologna)  03 February 2019 <https://voxeu.org/article/artificial-intelligence-algorithmic-pricing-and-collusion> (accessed 21 Aug 2021)

Furthermore, the degree of anti-competitive pricing appears to be limited, and in any case high prices as such do not necessarily indicate collusion, which instead must involve some kind of reward-punishment scheme to coordinate firms’ behaviour. According to the sceptics, achieving genuine collusion without communication is a daunting task not only for humans but even for the smartest AI programs, especially when the economic environment is stochastic. Whatever over-pricing is found in the simulations could be due to the algorithms' failure to learn the competitive equilibrium. If this were so, then there would be little reason to worry, given that the problem will presumably fade away as artificial intelligence develops further.

Further developments in more sophisticated AI will reduce the probability of collusion

Dr. Ulrich Schwalbe 2018. (professor at Univ. of Hohenheim) “Algorithms, Machine Learning, and Collusion” 1 June 2018 <https://www.semanticscholar.org/paper/Algorithms%2C-Machine-Learning%2C-and-Collusion-Schwalbe/3ed98c18307fece4403c67b3f0888268fb5cbd26> (accessed 22 Aug 2021)

In this paper the concerns expressed in the legal literature about algorithmic collusion are examined in the light of several contributions from the computer science literature on machine learning and algorithmic coordination in multi-agent settings. This literature indicates that coordination is in general not easy to achieve and depends strongly on the specific setting that is used and also tends to become more difficult when the complexity of the algorithms increases. As the algorithms employed in practice are increasingly sophisticated due to the rapid progress in machine learning, this tends to reduce the probability of collusion.

HARMS / SIGNIFICANCE

1. No one being harmed

No evidence of AI collusion occurring in the real world thus far. Need to find and quantify it before doing any Plan

*Dr. Thibault Shrepel 2020. (PhD; Assistant Professor at Utrecht University School of Law, Faculty Associate at Harvard University’s Berkman Klein Center for Internet & Society, Associate Researcher at University of Paris 1 Panthéon-Sorbonne) 7 Feb 2020* The Fundamental Unimportance of Algorithmic Collusion for Antitrust Law https://jolt.law.harvard.edu/digest/the-fundamental-unimportance-of-algorithmic-collusion-for-antitrust-law

Algorithmic collusion is the subject of a growing literature, yet, empirical studies documenting the frequency of the phenomenon in the real-world remain to be produced. One cannot find any quantification of algorithmic collusion in official publications coming from antitrust and competition agencies, in any of the reports given to these agencies, or in the OECD publications. When having a look at the litigation brought in the U.S. and in Europe, algorithmic collusion is virtually non-existent. For that reason, the priority is to first quantify the phenomenon rather than to propose drastic changes to antitrust and competition law.

2. AI collusion is not a big future threat

AI tacit collusion is not easy nor inevitable. And when more than 2 firms are involved, it requires explicit communication for collusion to succeed

**[…and explicit communication is already illegal under current law]**

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Although legal scholars have generally assumed that algorithmic collusion is not only possible but also exceptionally easy, computer scientists examining cooperation between algorithms as well as economists investigating collusion in experimental oligopolies have countered that coordinated, tacitly collusive behavior is not as rapid, easy, or even inevitable as often suggested. Research in experimental economics has shown that the exchange of information is vital to collusion when more than two firms operate within a given market. Communication between algorithms is also a topic in research on artificial intelligence, in which some scholars have recently indicated that algorithms can learn to communicate, albeit in somewhat limited ways. Taken together, algorithmic collusion currently seems far more difficult to achieve than legal scholars have often assumed and is thus not a particularly relevant competitive concern at present.

“Tacit” collusion doesn’t really work – you need explicit communication to make collusion work if there are more than 2 suppliers in the market

Dr. Ulrich Schwalbe 2018. (professor at Univ. of Hohenheim) “Algorithms, Machine Learning, and Collusion” 1 June 2018 <https://www.semanticscholar.org/paper/Algorithms%2C-Machine-Learning%2C-and-Collusion-Schwalbe/3ed98c18307fece4403c67b3f0888268fb5cbd26> (accessed 22 Aug 2021)

Secondly, these contributions do not refer to the theoretical and experimental economic literature on tacit collusion. Here, it was demonstrated that it is generally not easy to achieve a tacitly collusive, profit maximizing outcome. In particular, it has turned out that communication between agents is of vital importance for a collusive outcome to be reached if there are more than two firms in a market.

Too many assumption and missing details to conclude that AI tacit collusion would actually work in the real world

Dr. Ulrich Schwalbe 2018. (professor at Univ. of Hohenheim) “Algorithms, Machine Learning, and Collusion” 1 June 2018 <https://www.semanticscholar.org/paper/Algorithms%2C-Machine-Learning%2C-and-Collusion-Schwalbe/3ed98c18307fece4403c67b3f0888268fb5cbd26> (accessed 22 Aug 2021)

There are at least two aspects with respect to the discussion of algorithmic collusion that are not completely satisfactory. First, in the contributions by legal scholars on the competitive effects of price setting algorithms, they are treated as a mysterious black box – it is not explained how these algorithms work, what machine learning is, which types of machine learning are employed in price setting algorithms, how algorithms learn and what they are able to learn. In general, these contributions just assume that it is quite easy for autonomous price setting algorithms to behave in a coordinated way. The question, under which conditions in a multi-agent framework coordination can be achieved, is not discussed.

3. Very limited scenarios

Tacit price collusion usually doesn’t happen when there are more than 2 sellers

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The most important aspect with respect to collusion is the number of competitors in the market. This has been demonstrated in a study of number effects in experimental oligopolies (Huck et al. (2001)) who examined oligopolies with two, three, four, and five firms. They found some collusion with two firms while three-firm oligopolies tend to produce competitive outputs and oligopolies with four or more firms never reach a collusive outcome. Potters/Suetens (2014) in their survey of the recent literature of experimental oligopolistic markets come to a similar conclusion: “. . . implicit coordination on a joint-profit maximizing price is frequently observed in markets with two sellers, rarely in markets with three sellers, and almost never in markets with four or more sellers.” This is basically confirmed in the meta-analysis of Horstmann et al. (2016): “Within and across the surveyed oligopoly experiments, markets with two firms are significantly more prone to tacit collusion than markets with three as well as four firms, everything else being equal.”

SOLVENCY

1. Impossible to enforce

Authorities would have a hard time detecting or preventing AI “virtual collusion”

Antonio Capobianco, Pedro Gonzaga and Anita Nyeső 2017 (with the OECD Competition Division; OECD = Organisation for Economic Co-operation and Development, an intergovernmental economic organisation with 38 member countries) ALGORITHMS AND COLLUSION Competition policy in the digital age <https://www.oecd.org/daf/competition/Algorithms-and-colllusion-competition-policy-in-the-digital-age.pdf> (accessed 21 Aug 2021)

It is hard to know whether self-learning algorithms are already leading to collusive outcomes in digital markets or to detect when that happens, as machine learning may result in collusion being observed in effect and substance, but not in format – designated here as virtual collusion. Indeed, by relying on machine learning to move business decisions from humans to computers, managers do not only avoid any explicit communication during the initiation and implementation stages of collusion, but are also released from the burden of creating any structures, such as signalling mechanisms, that could be seen by authorities as facilitating practices of collusion (OECD, 2007). If companies go one step further and implement deep learning algorithms to automatically set prices and other decision variables, collusion becomes even harder to prevent using traditional antitrust tools.

Too complex: Auditing to figure out if they’re creating a collusive outcome would be a gargantuan task

Dr. Ulrich Schwalbe 2018. (professor at Univ. of Hohenheim) “Algorithms, Machine Learning, and Collusion” 1 June 2018 <https://www.semanticscholar.org/paper/Algorithms%2C-Machine-Learning%2C-and-Collusion-Schwalbe/3ed98c18307fece4403c67b3f0888268fb5cbd26> (accessed 22 Aug 2021)

In a recent paper on the problem of competition law and autonomous price setting agents, (Harrington (2017)) suggests to deal with the problem of liability by restricting the class of allowable algorithms or by prohibiting algorithms with certain features that support prices above the competitive level. Harrington suggests a three-step procedure, to analyze which types or properties of algorithms should be prohibited. This approach is based on a simulated market, where, under a variety of market conditions, the properties of algorithms that lead to a collusive outcome are determined. This simulation would have to be carried out by the competition authorities or a specialized agency. Such an auditing of algorithms however, is a gragantuan task as there are so many different algorithms in use which are constantly either modified by the programmers or by self learning and which might develop new, not yet prohibited properties that could lead to a collusive outcome. The examination of algorithms would thus have to be carried out regularly.

Regulators wouldn’t be able to determine much by looking at the software to check for antitrust violations

Antonio Capobianco, Pedro Gonzaga and Anita Nyeső 2017 (with the OECD Competition Division; OECD = Organisation for Economic Co-operation and Development, an intergovernmental economic organisation with 38 member countries) ALGORITHMS AND COLLUSION Competition policy in the digital age <https://www.oecd.org/daf/competition/Algorithms-and-colllusion-competition-policy-in-the-digital-age.pdf> (accessed 21 Aug 2021)

One way to empower the public with a watchdog function is to have regulators reverse-engineering algorithms in order to understand how their decision-making process functions. However, enforcing algorithmic transparency and accountability might turn out to be a challenging task in practice, especially when facing black box algorithms that make inherently autonomous decisions and might contain implicit or explicit biases. The sensible reaction to demand for more transparency about how these algorithms work may not achieve the intended purpose, as making these complex algorithms fully transparent can be extremely challenging. Merely publishing (or disclosing to a regulator) the source code of the algorithm may not be a sufficient transparency measure. Complete transparency would require that someone could explain why any particular outcome was produced, but that might be an impossible task when machine learning systems have made autonomous decisions that have not been instructed by anyone.

Too hard to detect it and too hard to enforce rules against algorithmic collusion

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All in all, the options for competition law and competition policy to deal with the potential problem of algorithmic collusion seem to be rather limited. Only if the concept of an agreement is extended to cover also the case of this type of collusive behaviour, it could be considered as a violation of competition law at all. But even then, severe problems remain with respect to the detection as well as the verification of algorithmic collusion. In addition, the suggestions how to prevent it, put a heavy burden on competition authorities as this would require considerable expertise in computer science as well as significant additional resources to audit the many different and constantly changing price setting algorithms that are employed by firms.

Detection and verification of algorithmic collusion has too many difficulties to work

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Even if algorithms were able to coordinate their price-setting behaviour, it is by no means clear how this problem should be dealt with by competition policy and competition law. Even if competition law would be modified to include algorithmic collusion as an infringement, its detection and verification appears to be fraught with considerable difficulties. This also holds true for the problem of preventing algorithmic collusion in the first place. If the use of self-learning pricing algorithms is not prohibited altogether, algorithms have to be regularly monitored which would put a considerable burden on competition authorities.

2. More study needed

Nobody knows how to write regulations to prevent AI from tacit price collusion, partly because there’s not enough evidence of it actually happening

Antonio Capobianco, Pedro Gonzaga and Anita Nyeső 2017 (with the OECD Competition Division; OECD = Organisation for Economic Co-operation and Development, an intergovernmental economic organisation with 38 member countries) ALGORITHMS AND COLLUSION Competition policy in the digital age <https://www.oecd.org/daf/competition/Algorithms-and-colllusion-competition-policy-in-the-digital-age.pdf> (accessed 21 Aug 2021)

It is still unclear at this point whether any regulations can be created to prevent machine learning algorithms from autonomously reaching tacit co-ordination, at least not without harming the competitive process in other ways. To the best of the Secretariat’s knowledge, no solutions have been proposed so far in the antitrust literature to tackle this conduct. Moreover, there are no competition cases or investigations providing supportive evidence of this “virtual” form of collusion, making it hard to justify the creation of regulations to prevent the negative impact of conducts that have not been observed yet.

Regulating before we know how to do it right could make things worse

Antonio Capobianco, Pedro Gonzaga and Anita Nyeső 2017 (with the OECD Competition Division; OECD = Organisation for Economic Co-operation and Development, an intergovernmental economic organisation with 38 member countries) ALGORITHMS AND COLLUSION Competition policy in the digital age <https://www.oecd.org/daf/competition/Algorithms-and-colllusion-competition-policy-in-the-digital-age.pdf> (accessed 21 Aug 2021)

The list of potential regulatory interventions discussed here is not intended to direct policy in any particular direction, but merely to set a framework for discussion and promote future debate. In fact, if any regulations must be designed to make markets less prone to collusion, policy makers should adopt a conservative approach, since such rules could have many other unpredictable implications that could ultimately compromise the good functioning of digital markets.

A lot more study needed. If we change policy before further study, we could make things worse

Antonio Capobianco, Pedro Gonzaga and Anita Nyeső 2017 (with the OECD Competition Division; OECD = Organisation for Economic Co-operation and Development, an intergovernmental economic organisation with 38 member countries) ALGORITHMS AND COLLUSION Competition policy in the digital age <https://www.oecd.org/daf/competition/Algorithms-and-colllusion-competition-policy-in-the-digital-age.pdf> (accessed 21 Aug 2021)

This paper mentions a few regulatory approaches that might be considered in the future to tackle algorithmic collusion, such as price regulation, policies to make tacit collusion unstable and rules on algorithm design. However, at this stage, there are still concerns that any regulatory interventions might have severe negative impacts on competition that could outweigh their potential benefits. If regulatory solutions are to be considered, competition concerns would only be an element of such discussion and considerations going beyond the risk of collusion would have to be factored in such discussions. Given the multi-dimensional nature of algorithms, policy approaches should be developed in co-operation with competition law enforcers, consumer protection authorities, data protection agencies, relevant sectorial regulators and organisations of computer science with expertise in deep learning. In conclusion, despite the clear risks that algorithms may pose on competition, this is still an area of high complexity and uncertainty, where lack of intervention and over regulation could both pose serious costs on society, especially given the potential benefits from algorithms. Whatever actions are taken in the future, they should be subject to deep assessment and a cautious approach.

Even if AI learns to collude on prices, we need more research before considering policy moves

**Emilio Calvano, Giacomo Calzolari, Vincenzo Denicolò, Sergio Pastorello 2019** (Calvano - Associate Professor of Economics, University of Bologna and Associate Faculty, Toulouse School of Economics. [Calzolari](https://voxeu.org/user/220338) - Professor of Economics, EUI Florence, Bologna University. [Denicolò](https://voxeu.org/user/224075) - Professor of Economics, University of Bologna. [Pastorello](https://voxeu.org/user/266323) - Professor of Econometrics, University of Bologna)  03 February 2019 <https://voxeu.org/article/artificial-intelligence-algorithmic-pricing-and-collusion> (accessed 21 Aug 2021)

What is most worrying is that the algorithms leave no trace of concerted action – they learn to collude purely by trial and error, with no prior knowledge of the environment in which they operate, without communicating with one another, and without being specifically designed or instructed to collude. This poses a real challenge for competition policy. While more research is needed before considering policy moves, the antitrust agencies’ call for attention would appear to be well grounded.

3. Prohibiting “tacit collusion” won’t work

Unwise to make “tacit collusion” a violation of the Sherman Act because it would make it almost impossible for firms to stay out of trouble

Judge Richard Posner 2015. (federal appeals court judge, 7th Circuit Court of Appeals) IN RE TEXT MESSAGING ANTITRUST LITIGATION 9 Apr 2015 <https://www.leagle.com/decision/infco20150409121> (accessed 21 Aug 2021)

The point that they have particular difficulty accepting is that the Sherman Act imposes no duty on firms to compete vigorously, or for that matter at all, in price. This troubles some antitrust experts, such as Harvard Law School Professor Louis Kaplow, whose book *Competition Policy and Price Fixing* (2013) argues that tacit collusion should be deemed a violation of the Sherman Act. That of course is not the law, and probably shouldn't be. A seller must decide on a price; and if tacit collusion is forbidden, how does a seller in a market in which conditions (such as few sellers, many buyers, and a homogeneous product, which may preclude nonprice competition) favor convergence by the sellers on a joint profit-maximizing price without their actually agreeing to charge that price, decide what price to charge? If the seller charges the profit-maximizing price (and its "competitors" do so as well), and tacit collusion is illegal, it is in trouble. But how is it to avoid getting into trouble? Would it have to adopt cost-plus pricing and prove that its price just covered its costs (where cost includes a "reasonable return" to invested capital)? Such a requirement would convert antitrust law into a scheme resembling public utility price regulation, now largely abolished.

4. No net benefits

Too difficult to figure out how to stop algorithmic collusion without also blocking the benefits of market transparency

Dr. Ulrich Schwalbe 2018. (professor at Univ. of Hohenheim) “Algorithms, Machine Learning, and Collusion” 1 June 2018 <https://www.semanticscholar.org/paper/Algorithms%2C-Machine-Learning%2C-and-Collusion-Schwalbe/3ed98c18307fece4403c67b3f0888268fb5cbd26> (accessed 22 Aug 2021) (ellipses in original)

To avoid the problem of algorithmic collusion altogether, would be to prohibit the use of selflearning price-setting algorithms in the first place. This, however does not seem an acceptable solution because this would also preclude the realization of many efficiencies that these algorithms generate. Also, the suggestion by Ezrachi/Stucke: “. . . to condemn and challenge the creation of market conditions which led to sustaining tacit collusion – the creation of a transparent market in which monitoring and punishment mechanisms are present” is not convincing. First, it is in general difficult to assess whether the structural market conditions for tacit collusion are satisfied and secondly, it is unclear what competition authorities could do to challenge the creation of a transparent market. In this context, it has to be taken into account that market transparency is advantageous for consumers because they can easily compare prices and find the best offer.

DISADVANTAGES

1. Distracts policy makers from the real threats

Link: Focus on algorithmic collusion distracts us from solving real antitrust problems elsewhere

*Dr. Thibault Shrepel 2020. (PhD; Assistant Professor at Utrecht University School of Law, Faculty Associate at Harvard University’s Berkman Klein Center for Internet & Society, Associate Researcher at University of Paris 1 Panthéon-Sorbonne) 7 Feb 2020* The Fundamental Unimportance of Algorithmic Collusion for Antitrust Law https://jolt.law.harvard.edu/digest/the-fundamental-unimportance-of-algorithmic-collusion-for-antitrust-law

To sum up, algorithmic collusion is not yet quantified, and even if it was, it would not raise fundamental problems for antitrust and competition law. The law will respond to relevant issues in due course. Antitrust and competition agencies would, therefore, be well advised to focus their resources where consumer harm can already be quantified. Unfortunately, the publication bias that pushes part of the scientific community to publish on the subject of algorithmic collusion creates a headwind and leads authorities to misdirect these resources.

Example: Block-chain collusion is a real threat [and FYI, blockchain contracts are not AI]

*Dr. Thibault Shrepel 2020. (PhD; Assistant Professor at Utrecht University School of Law, Faculty Associate at Harvard University’s Berkman Klein Center for Internet & Society, Associate Researcher at University of Paris 1 Panthéon-Sorbonne) 7 Feb 2020* The Fundamental Unimportance of Algorithmic Collusion for Antitrust Law https://jolt.law.harvard.edu/digest/the-fundamental-unimportance-of-algorithmic-collusion-for-antitrust-law

Contrary to what can be said for algorithmic collusion, taking a closer look at blockchain-based collusion is urgent, precisely because it creates fundamental issues for antitrust and competition law. Blockchain is a technology allowing for different layers to be superimposed on top of each other. The first level is generally described as the “platform layer.” It is a database with the following characteristics: decentralized, pseudonymous, immutable, and unstoppable. The second level, called the “software layer,” is then added on top of it . All kinds of applications can operate on the basis of the characteristics and data contained within the first level. One of these applications, *smart contracts*, is of particular interest to anti-competitive agreements. A smart contract is a potential transaction that is recorded in a blockchain and will be automatically executed *if* and *when* several conditions are met. It can be the automatic sending of a sum of money when a plane or train is delayed for more than an hour, the unlocking of an apartment’s door rented on Airbnb when the amount is paid into the owner’s account, or, an agreement between companies whose governance follows a combination of smart contracts.

Link: Blockchain collusion will destroy anti-trust law as we know it

*Dr. Thibault Shrepel 2020. (PhD; Assistant Professor at Utrecht University School of Law, Faculty Associate at Harvard University’s Berkman Klein Center for Internet & Society, Associate Researcher at University of Paris 1 Panthéon-Sorbonne) 7 Feb 2020* The Fundamental Unimportance of Algorithmic Collusion for Antitrust Law https://jolt.law.harvard.edu/digest/the-fundamental-unimportance-of-algorithmic-collusion-for-antitrust-law

Unlike algorithmic agreements, however, antitrust and competition law as we know it today will be mostly ineffective the day blockchain-based agreements are documented, hence the importance of studying the issue without further ado. Indeed, such agreements meet the characteristics of the blockchain’s first layer, on top of which they operate. These agreements are decentralized, the identity of its participants is unknown, and above all, they cannot be altered or stopped by any user of the blockchain. For these reasons, it is essential to address the issue of blockchain-based collusion before the phenomenon becomes apparent. The applicability of antitrust and competition law is at stake.

Impact: Turn Affirmative harms

If AFF is truly worried about the harms of market supplier collusion, the best thing we could do is abandon their plan and redirect all of its resources away from Artificial Intelligence and devote them to researching the effects of blockchain contracts and how they can circumvent antitrust law.

Alternative: Limited antitrust enforcement resources shouldn’t be devoted to tacit algorithmic collusion, but should go to more pressing problems like large online platforms

Dr. Ulrich Schwalbe 2018. (professor at Univ. of Hohenheim) “Algorithms, Machine Learning, and Collusion” 1 June 2018 <https://www.semanticscholar.org/paper/Algorithms%2C-Machine-Learning%2C-and-Collusion-Schwalbe/3ed98c18307fece4403c67b3f0888268fb5cbd26> (accessed 22 Aug 2021)

Communication between algorithms is also a topic in artificial intelligence research and some recent contributions indicate that algorithms may learn to communicate, albeit in a rather limited way. This leads to the conclusion that algorithmic collusion is currently much more difficult to achieve than often assumed in the legal literature and is therefore currently not a particularly important competitive concern. In addition, there are also several legal problems associated with algorithmic collusion, for example, questions of liability, of auditing and monitoring algorithms as well as enforcement. The limited resources of competition authorities should rather be devoted to more pressing problems as, for example, the abuse of dominant positions by large online-platforms.

2. Blocks new entrants into the market

Link: Making “tacit collusion” illegal would have the effect of blocking new suppliers from entering the market and competing with existing suppliers

Judge Richard Posner 2015. (federal appeals court judge, 7th Circuit Court of Appeals) IN RE TEXT MESSAGING ANTITRUST LITIGATION 9 Apr 2015 <https://www.leagle.com/decision/infco20150409121> (accessed 21 Aug 2021)

And might not entry into concentrated markets be deterred because an entrant who, having successfully entered such a market, charged the prevailing market price would be a tacit colluder and could be prosecuted as such, if tacit collusion were deemed to violate the Sherman Act? What could be more perverse than an antitrust doctrine that discouraged new entry into highly concentrated markets? Prices might fall if the new entrant's output increased the market's total output, but then again it might not fall; the existing firms in the market might reduce their output in order to prevent the output of the new entrant from depressing the market price. If as a result the new entrant found itself charging the same price as the incumbent firms, it would be tacitly colluding with them and likewise even if it set its price below that of those firms in order to maximize its profit from entry yet above the price that would prevail were there no tacit collusion.

Impact: Turn the AFF harms

AFF’s harms are based on lack of competition. That gets worse if the Plan has the effect of discouraging competition.