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The SCP Paradigm Revisited: What Structuralism Really Contributed to U.S. Antitrust

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This article examines the Structure-Conduct-Performance (SCP) paradigm that dominated U.S. antitrust policy until the 1970s, before being displaced by the Chicago School and, from the 1980s onwards, by Post-Chicago analysis, i.e., modern industrial organization. Long portrayed as indifferent to firms' conduct and to economic efficiency, structuralism has been subject to a persistent "black legend." This contribution reassesses that critique by examining: (i) the evolution of structuralism between the 1940s and the 1970s; (ii) the influence of a deconcentrationist perspective embedded in a particular legal interpretation of U.S. antitrust rules; (iii) the implications of the digital economy for contemporary analyses of market structures; and (iv) the SCP paradigm's legacy in Neo-Brandeisian and conservative antitrust thought.

Keywords: Structure-Conduct-Performance (SCP) paradigm; Structuralism; U.S. antitrust; Chicago School; Post-Chicago industrial organization; Merger control; Digital markets; Neo-Brandeisian antitrust; Market structure; Structural remedies.

JEL Codes: L10, L12, L13, L41

I. Introduction

The opposition between the Harvard School and the Chicago School is a standard waypoint in textbooks on industrial organization and competition economics. Harvard is commonly portrayed as "structuralist", emphasising market structure as a primary determinant of competitive outcomes; Chicago, by contrast, is often presented as "behavioural" and effects-oriented, treating outcomes as driven mainly by firms' conduct and efficiencies. In the most caricatured version of this contrast, Harvard's structuralism is not only depicted as dated, but as having been conceptually invalidated by Chicago and its successors.

Several factors help explain why this narrative became so influential. First, the history of paradigms in economics – industrial organization included – is frequently told as a story of cumulative progress: newer theories are seen as strictly superior (both explanatorily and normatively), so that continuing to take structure seriously in the mid-2020s might appear as an exercise in the history of economic thought rather than a live analytical programme. A similar "superseded paradigm" diagnosis is sometimes applied to Chicago itself, since Post-Chicago developments have, for decades, qualified and refined Chicago's prescriptions by modelling strategic behaviour, information problems, and dynamic incentives more explicitly. The practical consequence has been a more discriminating understanding of market dynamics and (often) more nuanced policy recommendations.

Yet even as intellectual history, structuralism has frequently been burdened with an additional charge: a suspicion of a-scientificity. Two mechanisms have contributed to this perception.

First, industrial organization has long stressed that market structure is not, by itself, the decisive object for competition analysis. Already in the early 1980s, the theory of contestable markets argued that what matters most is not a snapshot of market shares, but the credibility of entry and expansion – that is, whether incumbents are constrained by the threat of hit-and-run entry (Baumol, Panzar and Willig [1982]). Likewise, modern approaches to dynamic competition place weight on innovation, repositioning, and the evolution of competitive constraints over time, rather than on static concentration measures alone. More broadly, this shift is consistent with modern IO's emphasis on strategic interaction and entry conditions as central determinants of market power (Tirole [1988]). In policy terms, the same intuition underpins remedies and regulatory instruments designed to strengthen contestability – for example, interoperability and data portability measures meant to reduce lock-in and enable

multi-homing (OECD [2021]). In adjacent debates, a broader reading of access duties – sometimes framed through an expansive interpretation of "essential facilities" reasoning – also reflects the idea that improving the conditions of entry and expansion may matter more than simply condemning size.

Second, the negative image of structuralism owes much to the success with which Chicago economists and lawyers in the 1960s and 1970s popularised their approach, while simultaneously consolidating a critical narrative about the prevailing orthodoxy. In that polemical reconstruction, structuralism was associated with crude concentration-based presumptions, hostility to efficiencies, and a tendency to treat dominance as suspect per se. Part of this narrative gained traction because it resonated with developments in US antitrust doctrine and commentary during the period, particularly through highly influential synthesis works (Bork [1978]). But it is also important to distinguish between (i) what structuralist industrial organization actually claimed at different moments and (ii) what courts and enforcement agencies were doing, sometimes for reasons that reflected statutory interpretation, institutional choices, or broader political economy rather than IO scholarship. For example, some landmark Supreme Court decisions of the 1960s in merger enforcement are often read as reflecting a deconcentration-oriented understanding of Section 7 of the Clayton Act, with structural indicators playing a prominent role in the Court's reasoning (e.g., *Brown Shoe Co v United States* 370 U.S. 294 (1962)). Whatever one's assessment of those cases, it would be misleading to treat them as a direct and faithful application of a single, static "Harvard" template.

Once these factors are acknowledged, the Harvard/Chicago dichotomy – however useful pedagogically – requires substantial qualification.

First, the dichotomy is partly an illusion, because the Harvard tradition itself evolved in ways that narrowed the distance to effects-based reasoning. In the late 1960s, for example, the US Department of Justice issued merger guidelines that sought to articulate enforceable standards under Section 7, reflecting an effort to formalise and "economise" enforcement (US Department of Justice [1968]). In the 1970s, influential work on predatory pricing contributed to the development of more operational tests that aimed to separate pro-competitive price cutting from exclusionary strategies (Areeda and Turner [1975]). More generally, as Kovacic argues, modern US competition law's intellectual lineage is best understood as a "double helix" composed of intertwined Harvard and Chicago strands rather than a clean paradigm replacement (Kovacic [2007]).

Second, the structural dimension never ceased to be central in industrial organization or in competition enforcement. In merger control, notification thresholds and initial screens are built on structural parameters; more importantly, the assessment of unilateral and coordinated effects cannot be conducted without reference to structural conditions, including concentration, symmetry, transparency, and entry/expansion constraints. In unilateral conduct cases, analysis cannot dispense with market definition (when it remains required by the legal test), the characterisation of dominance, and the assessment of barriers to entry and exit. In coordinated conduct cases, structural features are frequently decisive in evaluating whether tacit coordination is plausible and sustainable.

The importance of structure is not limited to diagnosing competitive harm; it also permeates remedy design. Competition remedies are conventionally distinguished between behavioural obligations (do's and don'ts) and structural measures (asset divestitures or, in exceptional debates, break-ups). In merger control, structural remedies are often viewed as comparatively robust ways to address future competitive risks, though their scope and feasibility raise acute questions – especially when divestitures may undermine claimed efficiencies. In the wider debate on remedies for anticompetitive conduct, structural measures have attracted renewed scholarly attention – often more than they have been adopted in practice – because they may reduce the risk of recurrence, partially "reset" the competitive process, and avoid the long-term monitoring costs associated with complex behavioural commitments.

The development of competition issues raised by digital markets has profoundly renewed interest in questions of market structure. First, at a conceptual level, it has forced a re-examination of the very definition of the relevant market and of how dominance should be characterised. Multi-sided platforms and digital ecosystems have challenged standard market-definition tools and encouraged more functionally integrated approaches. Dominance itself is now assessed through more differentiated and institutionally specific lenses: from the German concept of "*paramount significance across markets*," to the UK's attribution of a "*strategic market status*," to the European Union's notion of "gatekeeper" status under the Digital Markets Act, to broader concerns about forms of private regulation exercised by key intermediaries.

In merger control, structural categories have likewise been revisited on several fronts. A first debate concerns the identification of the competitive relationship at stake: to what extent should a given operation be treated as horizontal, vertical, or conglomerate? The theories of harm – and hence the evidentiary requirements – differ markedly across these categories, yet digital ecosystems routinely blur the boundaries between them. A second debate relates to (structural)

jurisdictional thresholds for review. Where thresholds are set too high, they may facilitate "stealth consolidation," thereby amplifying the risks associated with killer acquisitions and consolidating acquisitions that escape scrutiny precisely because they do not immediately register in turnover-based metrics.

These developments help explain why contemporary competition debates revisit proposals that were prominent at the turn of the 1970s, including discussions of no-fault monopolization – the idea that persistent monopoly power might justify structural relief even without proof of a discrete anticompetitive act. They also connect to broader disagreements over the aims of competition law: is antitrust exclusively about market efficiency (in a narrow consumer-welfare sense), or does economic concentration pose independent concerns – such as the ability of large firms to shape the competitive process and influence political institutions? In the United States, such questions have re-entered mainstream controversy through renewed challenges to the consumer-welfare paradigm, including neo-Brandeisian critiques during the Biden era (Crane [2025]) as well as strands of "conservative antitrust" discourse that frame enforcement objectives differently (Baker [2025]).

Against this backdrop, this article traces the trajectory of structuralist analysis and its canonical expression in the Structure-Conduct-Performance (SCP) paradigm, and it reassesses its relevance for contemporary competition analysis. The article is organised as follows. Section II reconstructs the historical development of SCP, at the intersection of the history of economic thought and U.S. enforcement and case law. Section III revisits the paradigm's persistent "black legend" by disentangling criticisms of SCP as a research programme from the legal and institutional dynamics of U.S. antitrust in the post-war period. Section IV examines the renewed salience of structural analysis in contemporary competition policy, with a focus on digital markets and merger control. Section V situates these developments within current paradigm debates, including the contestation of the welfarist approach and the return of structural concerns in U.S. and comparative perspectives.

II. Structuralism: Reassessing a Once-Dominant Paradigm

Reconstructing the historical trajectory of the SCP paradigm is a quasi-forensic exercise. As Matthew Panhans' overview – "The Rise, Fall, and Legacy of the Structure–Conduct–Performance Paradigm" – suggests, the task is to explain how a public-policy framework became dominant, how it was challenged and displaced, and what it nevertheless left behind. This section focuses on the first two stages of that trajectory. It traces SCP's consolidation –

from an academic programme to a policy-relevant template – by combining the history of economic and legal ideas with an examination of enforcement practice. We proceed in three steps. Subsection 1 shows how the Harvard School gradually articulated a coherent structuralist framework. Subsection 2 assesses its effective influence on antitrust decisions.

1. The Slow Consolidation of a Dominant Paradigm

For more than four decades, the prevailing interpretation of the Sherman Act in the United States is commonly associated with the Chicago School, and especially with Robert Bork (Bork [1966]; Bork [1978]). On this view, the Act should be read primarily as a consumer-welfare prescription. Market structure is therefore not decisive in itself; what matters are the effects of market behaviour, which become the central object of antitrust analysis. This interpretation was later reinforced by the US Supreme Court, notably in *Reiter v Sonotone Corp* (442 U.S. 330 (1979)). Yet the Borkian reading can be questioned along at least two dimensions.

First, from a legal-historical perspective, legislative intent appears to have included – at least in part – the prevention of monopoly situations regarded as undesirable in themselves, even where measurable economic harms were not straightforward to establish. Second, economic analysis played essentially no role in the drafting of the Sherman Act, and its influence on early enforcement was, at best, marginal.

The relatively limited enforcement of antitrust rules until the late 1930s (with the notable exception of the Roosevelt and Taft presidencies from 1901 to 1914) was partly a product of judicial conservatism. It also echoed the scepticism of many American economists towards legal rules that were perceived as obstructing industrial concentration. For a significant share of the profession, concentration was viewed as a condition for efficiency gains, while competition could be associated with wasteful duplication of resources (Hovenkamp [2022]). If competition naturally tended towards monopoly, the argument went, there was little reason either to resist that outcome or to correct it through structural intervention; regulation was often presented as the more sensible response.

During the interwar period, American "old institutionalism" encouraged sector-based analyses of competition. This approach was central to the creation of the National Bureau of Economic Research (NBER) in 1920, directed by Wesley C. Mitchell for a quarter-century, and to the work of the Temporary National Economic Committee (TNEC), established in 1938. Until US entry into the war in 1941, the TNEC produced sectoral investigations designed to assess market

power (Kirat and Marty [2024]). It published forty-three reports, some general (on market practices) and others sectoral (on competitive structures). From early on, however, this empirically rich, descriptive style of inquiry was criticised as insufficiently connected to theory. Koopmans's well-known critique of Burns and Mitchell's Measuring Business Cycles – labelled "measurement without theory" – became emblematic of this methodological dispute (Burns and Mitchell [1946]; Koopmans [1947]). Similar objections would later be levelled at the SCP approach that, in many respects, succeeded interwar institutionalism in the history of American industrial organization. Still, the claim that SCP was "atheoretical" is too blunt: the paradigm was anchored in clear causal hypotheses, even when it did not adopt the formal axiomatic style that later came to dominate.

It was in the 1930s that the elements of the SCP approach began to coalesce, most visibly at Harvard University (Panhans [2024]). Two key figures, Edward Mason and Edward Chamberlin, held positions at Harvard after completing their doctorates there. Chamberlin's *The Theory of Monopolistic Competition* (1933) opened a systematic avenue for analysing market structures under imperfect competition. Mason, in turn, helped develop a methodological framework for the *in concreto* study of such markets, connecting observed industry characteristics to competitive outcomes. Two further economists played an important role in giving the approach its distinctive profile: John Bain, trained at Harvard (where he attended courses by Mason, Chamberlin and Schumpeter) and later appointed at Berkeley; and Leonard Weiss, who taught at the University of Wisconsin.

Beyond Chamberlin's foundational work, three books were especially formative in establishing the SCP research programme: Bain's *Barriers to New Competition* (1956) and *Industrial Organization* (1959), and Mason's *Economic Concentration and the Monopoly Problem* (1957). Together, they consolidated a framework in which market structure shapes firms' conduct, which in turn determines performance. Over time, however, the framework was often operationalized in a more direct structure-to-performance logic, leaving "conduct" in a comparatively secondary position. Analytical attention therefore concentrated on the architecture of competition – market concentration, barriers to entry, product differentiation, and related features – while performance was typically proxied by profitability, for example the presence of persistent and "excessive" rates of return on invested capital.

Several features of the SCP paradigm are central for understanding its policy appeal. First, the primary unit of analysis is the industry rather than the individual firm. The focus falls on concentration, entry barriers and profit rates. Second, the emphasis on oligopolistic market

structures provides a natural entry point for analysing collusive phenomena, including tacit coordination and patterns of parallel conduct that are notoriously difficult to detect and sanction under antitrust rules (Weiss [1979]).

At the same time, structuralism was not uniformly hostile to concentration. A recurring claim in the SCP tradition is that, depending on industry conditions, a certain degree of concentration may be necessary to realise efficiency gains at the collective level. This pragmatic strand, however, did not fully offset the paradigm's tendency to treat structure as the dominant explanatory variable. In that respect, the structuralist approach to the Sherman Act departed from an older emphasis on practices – monopolization rather than mere monopoly status – an emphasis historically linked to the Act's intellectual and legal background in the English common-law tradition of restraints of trade (Paul [2021]).

This point is crucial because structuralism did not merely propose a descriptive lens; it also supported specific prescriptions for antitrust enforcement. These prescriptions were often expressed through the notion of "no-fault monopoly": a monopoly situation could be challenged as such, independently of any exclusionary conduct by the firm. By shifting attention from conduct to structure, structuralists also sought to limit the discretionary space left to judges when qualifying behaviour (Bain [1959]). At the same time, several authors insisted that structural remedies should remain compatible with an efficiency defence. Weiss, for example, argued that deconcentration measures should allow the firm to show that size is tied to economies of scale or other demonstrable efficiencies (Weiss [1979]).

Finally, it is important not to treat "structuralism" as doctrinally frozen. Like most research programmes that span decades, the SCP tradition evolved substantially in both tools and policy recommendations. Mason's early contributions remained close in spirit to the TNEC: inductive, non-axiomatised, and based on statistical inquiry (Mason [1939]). Bain made selective use of microeconomic tools, but located his analysis at the industry level and largely set aside strategic firm behaviour; concentration and entry barriers were the key determinants of profitability (Bain [1951]; Bain [1956]). The later generation associated with Kaysen and Turner moved further toward incorporating firm strategies and their competitive effects into the legal and policy discussion.

This second generation was also the most directly involved in antitrust institutions and did the most to embed economic reasoning in enforcement practice. Carl Kaysen and Donald Turner, both at Harvard, played a decisive role in the translation of structuralist ideas into competition

policy debates (Kaysen and Turner [1959]). Turner was the first holder of a PhD in economics to lead the Department of Justice Antitrust Division. During Turner's tenure (1965-68), economic reasoning, a more explicit convergence between law and economics took shape, notably from the 1968 Merger Guidelines. Even though these Guidelines were still sceptical regarding efficiency claims, they admitted they might be considered: "*Unless there are exceptional circumstances, the Department will not accept as a justification for an acquisition normally subject to challenge under its horizontal merger standards the claim that the merger will produce economies*" (§10).

2. To What Extent Did SCP Shape US Antitrust Case Law in the Immediate Post-War Period?

Already in Standard Oil (1911), the Supreme Court had confronted – implicitly – whether the Sherman Act could serve as a deconcentration tool as such. The Court's position was clear: Section 2 targets monopolization, not monopoly status. In other words, what is condemned is the unlawful acquisition or maintenance of monopoly power, not the mere fact of bigness. This conduct-centred understanding – shared by Thurman Arnold at the end of the New Deal – stands in sharp contrast with the orientation that progressively took hold in US enforcement and adjudication from the late 1940s through the 1960s. For Arnold, size and dominance were not competitive problems in themselves; dominant firms should not be condemned so long as they operated efficiently and consumers benefited (Waller [2004]).

In the immediate post-war period, by contrast, the Sherman Act was increasingly read as an anti-monopoly statute in a stronger, more structural sense. A striking illustration is United Shoe (1953), where Judge Wyzanski treated overwhelming market dominance as sufficient to trigger Section 2 liability even absent a clearly wrongful course of conduct. The decision moved antitrust reasoning closer to what would later be described as a "no-fault" conception of monopolization.

This structural reading of the Sherman Act – understood as a commitment to preserving effective rivalry – was defended with particular consistency by Justice William O. Douglas and gained traction during the Warren Court era (1953-69). Douglas (who served on the Court from 1939 to 1975) explicitly claimed the legacy of Louis Brandeis (who served from 1916 to 1939), which he construed as a distrust of Big Business and an attachment to dispersed economic

power. In his writing, the central concern was not the path by which dominance had been achieved, nor even consumer harm narrowly defined, but dominance itself and the political economy of concentrated private power. In that spirit, "*enforcement agencies and the courts tend to equate free competition and atomistic rivalry*" (Meese [2013]).

Yet it is important not to overstate the extent to which this jurisprudence was "SCP-driven" in any strict sense. The post-war judicial suspicion of concentration rested primarily on a legal and political reading of congressional intent – rather than on an explicit economic demonstration that concentration systematically produces inefficiency. SCP-style concerns certainly resonated with Brandeisian themes at one specific point: a presumption that dominance is more often associated with excess profits than with superior efficiency. Structuralists, however, were not simply anti-concentration. A recurrent claim within the SCP tradition is that concentration may reflect economies of scale and, in some industries, may even be necessary for efficiency; structuralism therefore did not entail a blanket preference for regulatory or prophylactic deconcentration (Panhans [2024]). This nuance matters, because it tempers the frequent retrospective portrayal of SCP as intrinsically hostile to size. According to Justice Douglas in *United States v Columbia Steel Co.* (334 U.S. 495, 536 (1948)): *"[t]he philosophy and the command of the Sherman Act […] is founded on a theory of hostility to the concentration in private hands of power so great that only a government of the people should have it*". The issue for SCP economists was not the bigness *per se* but the relative size of competitors in a given industry but the "Brandeis-Douglas" anti-size narrative has influenced the Supreme Court and the antitrust tradition for six decades (Orbach and Campbell Rebling [2012]).

The same divergence appears on the normative plane. SCP economists often advocated institutional and procedural reforms that were remote from Brandeisian populism. Bain, for example, suggested confining the Federal Trade Commission to unfair methods of competition and reallocating core antitrust enforcement to a specialised jurisdiction (Bain [1959]). More generally, structuralists tended to favour rule-like approaches that would reduce the scope of judicial discretion in assessing conduct, while still allowing room – at least in principle – for efficiency-based defences (Weiss [1979]).

This helps clarify the nature of the "structuralist moment" in the Warren era. Contemporary and later commentators sometimes described Warren Court antitrust as "structuralist," but much of what was labelled structuralism was, in fact, a legal logic: a broad anti-monopoly reading of the Sherman Act that prioritised dispersed market structures as a policy objective.

The late-1960s push to introduce a formal notion of "no-fault" monopolization (for example, through the proposed Section 2A reform) was less a response to demonstrated economic effects than an attempt to entrench deconcentrated market structures as a governing principle. Such an objective, of course, carries the familiar risk of protecting competitors rather than competition – and ultimately of sacrificing consumer welfare.

From this perspective, one of the Chicago School's major achievements was to reframe the critique of anti-Big Business antitrust as a defence of the general interest, grounded in effects and economic reasoning. Sullivan's (1982) contrast between the Warren Court (1953-69) and the Burger Court (1969–86) captures this shift: the transition is portrayed not as a mere change in legal interpretation, but as the Court's embrace of a more explicitly economic and efficiency-oriented style of analysis. The post-war "structuralist" jurisprudence was therefore only partially aligned with SCP as an economic programme. SCP provided an emerging intellectual vocabulary and, later, more operational tools – most visibly in merger policy – whereas early post-war case law was driven primarily by a normative commitment to dispersed private power and by a strong, purposive reading of the Sherman Act.

III. The "Black Legend" of SCP

The criticisms directed at the SCP paradigm can be grouped into three broad sets.

A first set concerns SCP's own internal limitations. As noted above, the "C" in SCP was often eclipsed by a somewhat deterministic reading of how market structure translates into economic performance. Yet antitrust law is not a regime for regulating market structures as such; it is a liability system designed to sanction conduct that undermines the competitive process. Historically, its roots lie in English common law – especially tort-based notions of wrongful interference and restraints of trade – so that the legal question is, in principle, whether firms departed from standards of fair conduct, not whether an industry has become highly concentrated (Paul [2021]).

A second set of factors lies in the excesses of US decision-making in the 1960s. Those excesses, however, were often driven less by SCP structuralism properly understood than by a more explicitly "legal" and political distrust of economic concentration associated with the Brandeis–Douglas tradition. In other words, the most aggressive episodes of anti-merger and anti-bigness enforcement were not necessarily the direct translation of the Harvard industrial-

organization programme into law; they also reflected a jurisprudential stance that treated dispersed market structures as an objective in itself.

A third set concerns the extraordinary effectiveness of the Chicago critique. By focusing on the inconsistencies and perceived incoherence of post-war antitrust enforcement, Chicago authors succeeded in portraying antitrust as "anti-economic" – and, by extension, in assimilating SCP to a dogmatic structural doctrine allegedly indifferent to effects. This rhetorical move was especially potent because it exploited the confusion between (i) SCP as a research programme that was evolving internally, and (ii) a set of judicial and administrative outcomes that sometimes reflected a largely non-economic, purposive reading of the Sherman Act.

A fourth line of debate concerns whether tacitly collusive equilibria can be sanctioned under Section 1 of the Sherman Act – an issue that became emblematic of the Harvard-Chicago divide in the 1960s. Turner [1962] argued that parallel conduct in a tight oligopoly, while clearly capable of generating inefficient outcomes, could not be condemned under Section 1. In his view, such behavior is unilateral rather than the product of concerted action; facilitating practices are not systematically present; and, in any event, no workable behavioural remedies could be designed. Market structure, not agreement, explains firms' conduct and thus limits the proper scope of antitrust intervention. By contrast, Posner [1969] advanced a conduct-based perspective, maintaining that Section 1 may be effectively invoked when one can identify necessary facilitating practices, including forms of mutual monitoring of rivals' strategies.

Many of these criticisms are not unfounded – particularly SCP's tendency, in some of its applications, to underweight firms' actual strategies and competitive mechanisms. Yet they are also partly excessive, because they rely on both simplification and conflation.

The simplification consists in treating SCP as weakly economic – an accusation that echoes the Chicago polemics of the 1960s and 1970s – despite the fact that, within the Harvard tradition itself, the programme was moving toward more explicit economic reasoning, notably under the influence of Donald Turner. The conflation, for its part, stems from the frequent assimilation of the most "benign-merger-hostile" decisions of the 1960s with SCP influence (the 1950 Celler-Kefauver amendment to the section 7 of the Clayton act can be considered at the first clue of such an influence (Crane [2019]), whereas many of those outcomes can be more directly traced to a Brandeisian-Douglas jurisprudence grounded in a legal and political suspicion of

concentration. Chicago's critique gained traction precisely because it could collapse these two objects into one: a caricature of SCP as a rigid structural dogma.

Several Supreme Court decisions from the 1960s helped cement the "black legend" of SCP as dogmatic and indifferent to efficiencies (see Francis [2025]). In *Brown Shoe Co. v United States* (370 U.S. 294 (1962)), the Court condemned a merger that would have produced a modest market share (around 5%). In *United States v Von's Grocery Co.* (384 U.S. 270 (1966)), the combined share was about 7.5%. The Court also treated certain "unwarranted" competitive advantages as suspect – without a sustained assessment of consumer effects – illustrated by *United States v E.I. du Pont de Nemours & Co.* (353 U.S. 586 (1957)) and *FTC v Procter & Gamble Co.* (386 U.S. 568 (1967)). In *United States v Pabst Brewing Co.* (384 U.S. 546 (1966)), it blocked a merger between the 10th and 18th brewers, even though their combined share was below 12%. Taken together, such decisions made it easier for Chicago authors to portray post-war enforcement as structurally formalist and "anti-economic," and to assimilate that jurisprudence to SCP proper—even where the linkage was, analytically, more tenuous.

Chicago's campaign was built in large part on a close reading of post-war enforcement practice, institutionalised through initiatives such as the Free Market Studies Project and, later, the Antitrust Program led by Aaron Director and Edward Levi (Bougette et al. [2015]). The target was not the existence of antitrust rules as such, but rather the inconsistency of their application and their tendency, in Chicago's view, to condemn practices that are in fact efficiency-enhancing. Under this perspective, firm size may just as plausibly – indeed more plausibly – reflect superior performance. Chicago authors also accused SCP of overestimating the role of entry barriers and, as a result, of adopting an overly static conception of competition. The very definition of "barriers to entry" became a key line of conflict: Bain's structuralist definition (Bain [1956]) was opposed by a Chicago view according to which the only truly "insurmountable" barriers are typically regulatory rather than technological or financial (Demsetz [1973]).

Crucially, however, the turn toward efficiency and effects-based reasoning preceded both the jurisprudential shift of the 1970s and William Baxter's leadership at the Department of Justice in the early 1980s. Turner reshaped the Antitrust Division's doctrine by strengthening the role of economic analysis in merger evaluation (Williamson [2002]). When the Department opposed mergers, it increasingly did so on the basis of competitive and efficiency considerations rather than social arguments or a general deconcentration agenda (Niefer [2015]). Indeed, against the backdrop of then-prevailing Supreme Court hostility to mergers, the Department under Turner

even contemplated that merger-specific efficiencies could be invoked to defend an operation (Panhans [2024]).

The same Turner was also a key architect of the modern economic test for predatory pricing, developed with Phillip Areeda (Areeda and Turner [1975]). Here again, what is often remembered as an external Chicago "revolution" was, in part, prepared from within the Harvard orbit itself – and before Chicago's institutional consolidation in the early 1980s.

The idea that SCP mechanically generated a formalist antitrust practice in which outcomes followed from structural parameters alone therefore requires qualification. First, during the period of SCP predominance, US antitrust introduced instruments that are now associated with an effects-based approach: pre-merger review, economic tests for predatory pricing, and more systematic thinking about tacit coordination. Second, the structuralists' own prescriptions were not reducible to "*no-fault monopolization*." Bain, for example, advocated from 1959 onward the creation of specialised courts equipped to handle economically complex cases – an institutional proposal that presupposes, rather than denies, the need for technically informed effects analysis (see Panhans [2024]).

The high-water mark of SCP's influence arguably came with the Neal Report, commissioned by President Johnson and released in 1969, whose aim was to recommend reforms to U.S. antitrust law. Phil Neal, then Dean of the University of Chicago Law School, proposed – among other measures – a *Concentrated Industry Act* that would have empowered the Assistant Attorney General to order divestitures in oligopolistic industries so as to cap firms' market shares at 12%. The report also recommended blocking any horizontal merger in markets where the four-firm concentration ratio exceeded 50% and where at least one of the merging firms held a market share of 10% or more. According to Crane [2019], the last vestige of this structuralist tradition was the "no-fault monopolization" statute proposed under the Carter administration in 1979.

Posner's famous claim that antitrust practice in the 1950s and 1960s was "*untheoretical, descriptive, 'institutional', and even metaphorical*" (Posner [1979], 928) was therefore, if not wholly implausible, at least unfair to the internal evolution of the Harvard tradition. Echoing this diagnosis, Hovenkamp remarks that "*antitrust policy has always had a love-hate relationship with structuralism*." (Hovenkamp [2003], 920). In his review of Posner's *Antitrust Law*, he also offers a compact reconstruction of what "structuralism" is taken to mean in that tradition – namely, an emphasis on market structure (especially concentration and entry

conditions) as a primary indicator of competitive harm – before contrasting it with the "rationalization" project, more explicitly grounded in effects-based analysis and economic reasoning (Hovenkamp [2003], 919–20). By the 1970s, antitrust economics already exhibited a convergence toward effects analysis – well illustrated by Turner's work – so that the period can be read less as a clean replacement of one "school" by another than as a gradual realignment of methods and evidentiary standards. Kovacic's (2007) metaphor of a "double helix" in the DNA of American antitrust captures precisely this intertwining of intellectual lineages.

Moreover, by the 1980s, both Harvard and Chicago were progressively eclipsed in economic research by the so-called Post-Chicago industrial organization, grounded in game theory. As Panhans (2024) recalls, Richard Nelson already argued in 1979 that neither a purely structural approach nor a Stiglerian price-theory framework was well suited to explaining firm behaviour and market dynamics (Nelson [1979], 949). The persistence of Chicago's policy influence – despite the challenges raised by the new industrial organization literature – contrasts with the rapid relegation of structuralism to an allegedly outdated paradigm, even though several Post-Chicago results are, in fact, compatible with structuralist intuitions.

Why, then, did SCP acquire such a durable "black legend"? One reason is that the tradition was often reduced to its first generation, with insufficient recognition of the later methodological advances associated with Turner. Another is that emblematic litigation in the late 1970s and early 1980s – most notably IBM and AT&T – provided highly visible arenas in which structuralist-leaning expert testimony (for example by Weiss) was criticised effectively (Panhans [2024]). In IBM, the Fisher-McGowan line of argument helped entrench the view that size and profitability are frequently the reward of merit (Fisher et al. [1983]). In AT&T, the case contributed to the idea that dominance is not, by itself, a competitive problem when potential competition can exert sufficient discipline.

A deeper reason is that SCP gradually became, in practice, closer to an "SP" framework: it increasingly underplayed the strategic dimension of firm conduct under imperfect information, dynamic rivalry, and contestability, and it struggled to account for feedback effects between firm strategies and market boundaries – phenomena that are central in contemporary economies, not least in digital markets. Structuralists tended to treat market structure as exogenous, whereas from the 1980s onward it became increasingly standard to view structure as endogenous to strategic interaction (Uzunidis [2016]). In that sense, structuralism's relative neglect of the firm as the primary locus of analysis became a genuine handicap.

Even within the structuralist canon, some prescriptions can appear dated by contemporary standards. Bain criticised the Sherman Act for its emphasis on conduct, precisely because this focus limited the legal tools available against "ultra-dominance" when no clearly anticompetitive practice could be proven (Bain [1959], 607). Late-period proposals could still display this inclination: Weiss, for example, suggested that structural remedies should be available when a firm persistently holds more than 50% of a market and faces no close rivals in terms of market power (Weiss [1979], 1140). Yet even there, efficiency concerns were not absent: Weiss explicitly envisaged an efficiency defence, so the desired dispersion of economic power is not equivalent to the anti-bigness jurisprudence associated with Hand or Douglas.

Taken seriously, the internal trajectory of SCP points to a different conclusion from the caricature. The Harvard tradition moved on its own toward an effects-based, efficiency-attentive approach, and it was never defined by an unconditional hostility to concentration. The size of firms and the degree of market concentration were treated not as political evils but as economic variables whose welfare implications depend on context. Weiss, for instance, recognised that an "efficient" firm size and even a welfare-maximising degree of concentration may exist in a given industry, and he criticised Supreme Court decisions of the 1960s that blocked horizontal mergers involving market shares that, by today's standards, would appear trivial (Weiss [1979], 1197).

Ultimately, structuralism became the victim of a dual process: its conflation with a legal reading of the Sherman Act as an anti-concentration statute, and the rhetorical success of Chicago in presenting itself as the only genuinely "economic" approach. Once this is acknowledged, Kovacic's double-helix image becomes more than a metaphor: it captures the fact that the evolution of US antitrust was not a simple succession of paradigms, but a contested and partially convergent reconfiguration of the relationship between law, economics, and institutional practice.

IV. Reassessing the Contemporary Relevance of Structuralism

The claim that the SCP paradigm now belongs solely to the history of economic thought can be questioned (Panhans [2024]). In fact, several recent developments – especially in merger

control and in the governance of digital markets – invite a renewed assessment of structuralist intuitions.

Merger control has naturally remained the competition policy field most strongly shaped by a structuralist orientation, insofar as it is centrally concerned with the supervision of market structures (preventing harm to the competitive structure) rather than with punishing anticompetitive practices. As noted above, merger control relies on structural thresholds. This concern for structure is intuitive: the competitive risks associated with a horizontal or vertical transaction generally rise with the parties' combined market shares. Over time, however, attention has increasingly shifted from aggregated shares to the acquirer's *specific* market position – particularly where the buyer functions as a pivotal firm within an ecosystem. Ecosystem dynamics, especially in digital markets, blur the boundaries between horizontal and vertical mergers: acquiring a complementor (that is, a commercial partner) may neutralize a potential competitor; likewise, a transaction that appears conglomerate may in fact reflect strategies of platform annexation or platform envelopment (Eisenmann et al. [2011]). Put differently, the structural question is reframed around the acquirer's position and the risk that the transaction triggers a structural failure of competition. The 2020 proposals in the United States for a moratorium on acquisitions by Big Tech, as well as the specific provision in the EU Digital Markets Act (DMA) requiring designated gatekeepers to inform the Commission of intended acquisitions even below the usual structural thresholds, reflect this logic.

A second dimension of the structural turn in merger control lies in the growing debate over the use of structural remedies not only *ex ante* – as conditions for clearing a notified transaction – but also *ex post*, where a transaction was not notified or where post-merger developments suggest that initial remedies were insufficient. As Kwoka and Valletti [2021] put it: "*We believe that a policy of breakups can have a much greater chance at success compared to efforts to regulate such firms through rule-making conduct remedies*".

This renewed emphasis on structural remedies also appears in discussions about the sanctioning of anticompetitive practices, even though the antitrust consensus has traditionally approached such remedies with great caution, given implementation costs (including legal complexity) and the potential efficiency losses that may follow (Hovenkamp [2024]). Structural separation has nonetheless been proposed in the literature as a response to conflicts of interest inherent in a dual role whereby a firm operates both as an intermediation platform and as a market operator (Khan [2019]). The objective is then to prevent "at source" the risk of self-

preferencing strategies, since a platform competing with dependent business users may distort competition to its own benefit.

Competition authorities themselves no longer exclude structural remedies *in principle* in contentious proceedings. Two examples illustrate this shift. First, the U.S. Department of Justice (DoJ), in the remedies phase of the Google Search case, requested the divestiture of Chrome and suggested a potential divestiture of Android should the required behavioural remedies prove insufficient (U.S. DoJ [2025]). Second, at EU level, the Commission's decision of 5 September 2025 – sanctioning Google for abuse of dominance in online advertising – required Google to propose commitments capable of addressing the conflict of interest presented as inherent to its market position, while indicating a preference for structural remedies (European Commission [2025]).

What these positions reveal is a broader inflection: in such cases (primarily involving self-preferencing), competitive concerns are treated as consubstantial with market structures, such that only structural remedies can provide an adequate response. This move is not confined to antitrust enforcement. It also extends to regulatory instruments, whose development – especially in the European Union – shows a form of complementarity with competition law. Competition law primarily sanctions conduct; it serves deterrent and restorative functions. By contrast, regulation aims to manage situations of structural failure of competition. The DMA targets contexts in which competition cannot be sustainable or self-correcting, due to a tendency towards irreversible ultra-dominance, or where tipping has already occurred.

The DMA imposes a number of obligations on firms designated as gatekeepers and provides for the possibility of breakups where prior sanctions have failed to prevent repeated infringements (Knapstad [2023]). Similarly, the New Competition Tool proposed by the Commission in June 2020 – prior to the DMA – envisaged structural measures in market configurations exposed to tacit collusion equilibria.

More generally, questions raised by the digital economy prompt a reassessment of several structuralist insights, particularly those relating to barriers to entry. The notion of the gatekeeper is central here. Several characteristics long emphasised by structuralists reappear: a tendency towards durable ultra-dominance (which may not result from anticompetitive conduct), the existence of insurmountable entry barriers, and the ability to extract significant profit by leveraging the dependency of business partners and consumers. In this way, digital markets renew attention to structural factors – both as sources of competitive problems (that is, the

ability of the competitive process to prevent or erode dominance) and as potential remedies, insofar as public authorities essentially dispose of two families of tools to counter the concentration of economic power: behavioural remedies of a regulatory nature, or structural remedies in the form of breakups.

Digital markets are also a particularly revealing domain for revisiting structuralism through the lens of merger control. As noted above, concentration in digital sectors is often attributed to acquisition strategies by large firms, which can purchase targets at early stages of development and thereby evade notification obligations – and hence scrutiny. Yet thresholds are not the only issue. A substantial body of work explains sectoral concentration not only through tipping and stealth consolidation, but also through merger control that has been insufficiently stringent (Kwoka [2013]). Against this backdrop, Lancieri and Valletti [2024] argue that enforcement capacity constraints have historically pushed regulators toward higher notification thresholds and weaker enforcement, allowing a growing number of transactions to escape serious review – an outcome they view as welfare-detrimental.

Historically, merger control became a key arena in the long move toward a more Chicago-oriented U.S. antitrust approach. The 1968 Merger Guidelines, however, reflected a distinctly structuralist framework: they focused on mergers likely to increase concentration or raise entry barriers in ways that could enable non-competitive conduct, while also treating certain "unwarranted" advantages – such as those arising from foreclosure or reciprocal dealing – as suspect rather than benign. They were also generally unreceptive to efficiency claims as a justification for otherwise problematic transactions. Subsequent guidelines – most notably the 1982 revision – shifted the emphasis further toward an effects-and-efficiencies logic, under which even a concentration-increasing transaction may be cleared if merger-specific efficiencies are likely to benefit consumers and outweigh the harm from reduced competitive intensity.

This trajectory was reinforced by later iterations of the Horizontal Merger Guidelines (1984 (revision), 1992, 1997 (revision), and 2010), notably through an increasingly explicit treatment of efficiencies. Shapiro [2010] famously suggested that, over four decades, the Guidelines had transformed merger control "*from hedgehog to fox*". Yet concerns associated with digital markets contributed to a renewed inflection with the Merger Guidelines issued jointly by the DOJ and the Federal Trade Commission (FTC) in December 2023. These have been criticised as reversing part of the post-1982 trend, while also drawing on an older enforcement tradition that predates 1982 (Williamson [2002]).

The 2023 Guidelines are distinctive in that they draw heavily on Supreme Court merger decisions from the 1960s, while giving less weight to the subsequent line of cases and commentary that had counselled caution toward strong structural presumptions and placed greater emphasis on effects-based assessment (Francis [2025]). They revive structuralist precepts insofar as a merger may face a presumption of illegality when it increases market concentration and is likely substantially to lessen competition, may facilitate coordinated effects (that is, tacit collusion), or forecloses rivals' access to products or services necessary for effective competition.

This shift is all the more consequential – if it were to be confirmed by U.S. judicial practice, which is far from certain – because it is embedded in a broader theoretical challenge to the welfarist approach initially carried by the Chicago School. That challenge, which can be read as an attempt to rehabilitate certain elements of structuralism, will be analysed in the next section. The 2023 Guidelines reflect the influence of this competing paradigm not only in the United States, but also in other jurisdictions. Canada provides a telling example: the amendments to the Competition Act entering into force on 15 December 2023 (notably just three days before the U.S. Guidelines were published) removed the possibility of an efficiencies defence in merger review. This echoes the position taken in the United States by Lina Khan (Khan [2022]), rejecting "*the notion that efficiencies might justify a merger that was otherwise illegal*", a notion introduced by the 1982 Merger Guidelines and presented as inconsistent with the Clayton Act, which – on this reading – does not authorise a balancing of effects. Beyond the content of the Guidelines themselves, recent proposals also advocate an inversion of the burden of proof through stronger rebuttable structural presumptions: mergers above specified thresholds would be presumed unlawful unless the parties can demonstrate that merger-specific efficiencies will be passed on to consumers and generate tangible welfare gains (Lancieri and Valletti [2024]).

V. Putting These Developments in Perspective with Contemporary Competition Policy Paradigms

At this point in our discussion, it is worth identifying the forces behind – and the boundaries of – this apparent revival of structuralist reasoning.

At first sight, the return of structuralist arguments is striking. In US decisional practice, the Supreme Court had already rejected, in 1986, a claim brought by a firm against the merger of two competitors – a transaction that would create the second-largest firm in the market and thus confer a competitive advantage. For the Supreme Court, such a concentration is not prohibited by the antitrust laws: "*to hold that the antitrust laws protect competitors from the loss of profits due to such price competition would, in effect, render illegal any decision by a firm to cut prices in order to increase market share. The antitrust laws require no such perverse result*" (U.S. Supreme Court, *Cargill v Montfort of Colorado*, 479 US 104, 1986). Similarly, in academic debates, the antitrust consensus did not appear any more inclined to move away from an effects-based consideration of efficiencies in merger analysis (Berry et al. [2019]).

If we shift the perspective to the European Union, the "*more economic approach*" likewise seemed broadly consensual. Moreover, the EU's initial ordoliberal tradition cannot straightforwardly be assimilated to structuralism, insofar as it focused on controlling the conduct of dominant firms rather than dominance as such.

How, then, should we explain this apparent return to arguments that resemble the standards associated with the SCP paradigm? One answer follows the line sketched in Section IV: the impact of the digital economy.

Even if the underlying trigger is similar on both sides of the Atlantic, the two dynamics should be distinguished. The European trajectory departs the least from the antitrust consensus.

Indeed, the DMA does not reflect a competition-law logic but a regulatory one. Its purpose is to prevent, or to manage, the consequences of tipping dynamics towards durable situations of ultra-dominance. Put differently, it seeks to address risks – or realities – of structural competition failure. In this framework, the objective is not to deconcentrate the sectors concerned, nor even to prohibit mergers or systematically tighten merger control, but rather to impose specific regulatory obligations on undertakings designated as gatekeepers. Competition rules apply in parallel to this regulation, and both antitrust enforcement and merger control continue to rest on a balancing of effects.

By contrast, the evolution in the United States is more significant, as it affects the very core of procedures by reaffirming the importance attached to market structures – thereby challenging the efficiency paradigm advanced by the Chicago School and, in the 1980s, consolidated by post-Chicago approaches. In merger control in particular, that paradigm was marked by a break with structuralism, whose application could lead to blocking mergers that harmed no one except

less efficient rivals (Francis [2025]). More generally, concentration was no longer seen as problematic insofar as it was treated as the outcome of superior efficiency.

This paradigm, hegemonic for four decades, began to be challenged in the early 2010s in the United States by the neo-Brandeisian movement. Applied to mergers, its core claims are that enforcement has been too permissive and that alleged efficiency gains are only rarely realised. These premises support prescriptions favouring more formal rules based on concentration thresholds, and a reduced role for an efficiency defence (Kanter [2022]). Assistant Attorney General Kanter notably invoked the Supreme Court's *Procter & Gamble* precedent in order to argue that "*efficiencies are no defense to anticompetitive merger because Congress "struck the balance in favor of protecting competition*"" (FTC v. *Procter & Gamble Co.*, 386 U.S. 568, 580 (1967)).

This potential return to structuralism generated intense controversy within the antitrust community – particularly because it relied on the mobilisation of certain 1960s precedents that the Supreme Court has since moved away from, and because it could itself produce welfare-reducing outcomes by protecting market structure for its own sake and, indirectly, protecting competitors at the expense of consumers.

A similar reinvigoration of structuralist thinking could also be detected in practice through more frequent calls for structural remedies, even though these have long been viewed as especially difficult to implement effectively. The Microsoft case is often cited to show that behavioural remedies can deliver comparable outcomes without exposing enforcement to welfare losses linked to divestitures (Hovenkamp [2024]). Somewhat paradoxically, the argument for structural remedies has re-emerged to address inherent conflicts of interest within digital ecosystems. While such a solution might avoid ongoing regulatory supervision (for which the DMA could be taken as an example), it simultaneously raises potentially even more significant efficiency risks.

Neo-Brandeisianism could thus be seen as continuing structuralism, given its deconcentrationist lens and its tendency to relegate economic effects to a secondary plane. The very invocation of Brandeisian heritage – Wu [2018] re-used a title of Louis Brandeis for his book, *The Curse of Bigness* – arguably places it closer to the tradition associated with Justice William O. Douglas than to structuralists strictly speaking, notably those of the 1960s and 1970s. Claiming this heritage amounts to treating concentration as intrinsically inefficiency-generating: a stance akin to "big is bad", and one that would revive, in merger control,

decisional practices from which Donald Turner had already started to move US antitrust away. Even though the 1968 Guidelines' criteria were highly restrictive (mergers involving firms with more than 5% market shares were treated as potentially challengeable; see Francis [2025, p. 7]), the DOJ under Turner was already leaning towards pro-efficiency arguments. As Niefer (2015, p. 56) notes, in *United States v. Von's Grocery Co.* (384 U.S. 270 (1966)) the DOJ "*did not argue for blocking the merger to protect small businesses or advance other social goals; rather, it focused on the competitive effects of the Von's-Shopping Bag merger*".

Overall, one can trace a form of continuity between the SCP paradigm (hybridised with the Douglas legacy) and the neo-Brandeisian approach. Four of the five features identified by Khan [2018] can be mapped onto this lineage: (i) "Antimonopoly is a key tool and philosophical underpinning for structuring society on a democratic foundation", (ii) «Antimonopoly is more than antitrust", (iii) "Antimonopoly must focus on structures and processes of competition, not outcomes", and (iv) "There are no such things as market 'forces'" (that is, markets are not self-regulating). The only feature that arguably introduces a distinction – and it is the most fundamental for our purposes – is (v) "Antimonopoly does not mean 'big is bad'". In certain contexts, especially digital markets, firm size and market concentration are shaped by technical factors (increasing returns, and so forth). Break-ups can therefore be value-destroying, and the only viable route, as Khan [2018] concedes, may be regulation.

The neo-Brandeisian moment was, of course, disrupted by the change of administration in January 2025. Yet accusations of a structuralist retrenchment directed at US antitrust enforcers (the DOJ Antitrust Division and the FTC) have not disappeared, insofar as the conservative agenda claimed by their leadership is characterised by an (asserted) willingness to deconcentrate markets and to substitute more legalistic decision standards for economic ones in the enforcement of competition rules. The antitrust consensus that prevailed over the past four decades therefore remains contested (Coniglio [2025]).

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