UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of Commissioner
Mark R. Meador

Keynote Remarks of Daniel Graulich
Chief of Staff and Attorney Advisor for Competition to Commissioner Meador

NERA Global Enforcers Summit
What Should Economics Do in Antitrust?
June 26, 2026

I. Economics as the Study of Exchange

In 1964, the economist James Buchanan famously asked, "What Should Economists Do?"[1] He answered with a critique. Economists had developed useful tools for measuring economic effects, but too often framed their questions as problems of resource allocation: how to assign scarce resources to maximize economic welfare, expressed in dollars and cents, subject to defined constraints.[2]

Buchanan called for a different approach. Economics, in his view, is about trading dynamics and, more specifically, the institutional conditions that make exchange between individuals possible. Citing Adam Smith, he argued that economics concerns "the propensity to truck, barter, and exchange," and that economists "should" focus on that activity and the institutional arrangements arising from it.[3]

That distinction matters for defining competition. Under the resource allocation approach, competition is a condition focused on end states, and the economist's task is largely computational.[4] A perfectly competitive market is defined by assumptions: a large number of price-taking buyers and sellers, perfect information, zero transaction costs, and homogeneous products. The economist then asks whether the market reached that efficient end-state, or whether intervention would raise output or lower price.[5]

Buchanan thought that framework provides the wrong starting point. A model of perfect competition can describe how market forces operate at equilibrium, but, by stipulating away any

[1] James M. Buchanan, *What Should Economists Do?*, 30 S. ECON. J. 213 (1964).
[2] *Id.* at 214.
[3] *Id.* at 213–14.
[4] *Id.* at 216.
[5] *Id.* at 219.

single participant's influence on market outcomes, it cannot explain the process through which markets become competitive.[6]

His objection was not that perfect competition is unrealistic. Useful models often simplify reality. Rather, its assumptions define away the social and institutional conditions that make competition possible.[7] As he put it: "A market is not competitive by assumption or by construction. A market *becomes* competitive, and competitive rules *come to be* established as institutions emerge to place limits on individual behavior patterns."[8] Competition is therefore a process, emerging through voluntary exchange and through formal and informal rules that structure market interactions.[9]

The two approaches draw on much of the same data, like price and output, but differ in what each asks of it—specifically, whether it shows the market reached an efficient end-state, or whether it explains how institutional arrangements structure exchange. That is the choice to confront in answering what economics should do in an antitrust case.

II. The Value of Economics in Antitrust Cases

Economics offers frameworks for analyzing bargaining dynamics in market settings, which can help identify evidence about how challenged conduct affects the availability of alternatives. Effects evidence can help analyze trading relationships, but it does not offer definitive conclusions standing alone and is relevant only insofar as it is put in context.[10]

[6] *Id.* at 218 ("There is no place in the structure of the model for internal change").
[7] *Id.* ("At each stage in this evolution towards solution, there are gains to be made, there are exchanges possible, and this being true, the direction of movement is modified.")
[8] *Id.*
[9] *Id.* at 219.
[10] *See, e.g.*, Mark R. Patterson, *Coercion, Deception, and Other Demand-Increasing Practices in Antitrust Law*, 66 ANTITRUST L.J. 1, 6–7 (1997) (explaining that coercive and deceptive practices can increase demand for a product even though they impose costs on buyers rather than reflecting genuine improvements in the product); *see generally* John M. Newman, *The Output–Welfare Fallacy: A Modern Antitrust Paradox*, 107 IOWA L. REV. 563 (2022) (explaining situations in which increases in output can nonetheless correspond with harm to competition and consumers as in the case of deception-based claims); John B. Kirkwood, *Antitrust and Output*, 53 U. BALT. L. REV. 427 (2024) (explaining situations where output can rise even where conduct reduces competition and leaves consumers worse off on balance).

A familiar approach stops at metrics, reducing the relevant harm to a price increase or an output reduction.[11] That approach mistakes a symptom for the violation. The federal antitrust laws establish an enforcement framework keyed to conduct, not market outcomes.[12]

The relevant inquiry is therefore narrower and more institutional than whether a market has reached some welfare-maximizing end state.[13] It asks how a challenged practice operates on the conditions of exchange itself: does it let participants transact more effectively within their trading relationships, or does it impede others' ability to transact effectively with rivals?

Economics helps answer those questions by asking who is constrained, what alternatives exist, how bargaining positions shift, and whether the conduct creates or appropriates material value.

Accordingly, before analyzing market effects, it is necessary to identify the nature and scope of the challenged conduct.[14] Difficulties arise when courts treat observed market outcomes as the whole of the inquiry, leading them to misapprehend the causal chain and make unfounded economic assumptions. Starting with identified effects can invite courts to presume that existing outcomes are market-based, without first asking whether the conduct producing them is consistent with institutional commitments that structure exchange in a given commercial setting. The risk is not only that effects may be absent or hard to observe, but that the analysis spots one effect while failing to trace the mechanism through which challenged conduct reallocates costs and benefits among market participants.

Let me illustrate with a few cases.

III. *FTC v. Qualcomm*: Formal versus Economic Incidence

Consider the Ninth Circuit's 2020 decision in *FTC v. Qualcomm*.[15] The opinion accepted that Qualcomm participated in standard-setting for cellular standards and, on the district court's

---

[11] *See, e.g.*, Herbert Hovenkamp, *On the Meaning of Antitrust's Consumer Welfare Principle*, NETWORK L. REV., Winter 2020, at 3 ("*the consumer welfare principle in antitrust should seek out that state of affairs in which output is maximized*"); ROBERT H. BORK, THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF 51 (1st ed. 1993) (1978) ("'Competition,' for purposes of antitrust analysis, must be understood as a term of art signifying any state of affairs in which consumer welfare cannot be increased by judicial decree.")

[12] *See* Mark Meador, *America First Antitrust* 3–4, (FED. TRADE COMM'N Mar. 19, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/meador-america-first-antitrust.pdf.

[13] *See, e.g.*, BORK, *supra* note 11, at 122 ("The task of antitrust is to identify and prohibit those forms of behavior whose net effect is output restricting and hence detrimental."); Herbert Hovenkamp, *Antitrust's Forensic Tools*, NETWORK L. REV., Winter 2025, https://www.networklawreview.org/forensic-tools/ (arguing selection of economic tools is driven by antitrust's "single-minded focus on prices, output, or less frequently on innovation").

[14] Chicago Bd. of Trade v. United States, 246 U.S. 231, 239–41 (1918) (analyzing the "nature" and "scope" of a commodity exchange rule before analyzing its competitive effects).

[15] FTC v. Qualcomm Inc., 969 F.3d 974 (9th Cir. 2020).

findings,[16] had committed to license its standard-essential patents (SEPs) on fair, reasonable, and non-discriminatory (FRAND) terms.[17]

It also recognized that Qualcomm held a dominant position in modem chips and maintained a "no license, no chips" policy, under which original equipment manufacturers (OEMs) unwilling to accept Qualcomm's terms risked losing access to its chips.[18]

For purposes of its analysis, the court assumed, without deciding, that Qualcomm breached its commitments to license rival chip suppliers and that its royalties may have been unreasonably high.[19] The court nonetheless concluded that this conduct did not harm competition in the supply of chips.[20]

Because OEMs, rather than chip suppliers, paid higher prices and Qualcomm collected the same royalty regardless of whose chips an OEM used, the court reasoned that the royalties were "chip-supplier neutral," and that any harm incurred by OEMs related to licensing outside the relevant chip market.[21]

That reasoning starts in the wrong place of the causal chain. The court reasoned from an observed outcome—elevated royalties—and treated evasion of contractual commitments as collateral to chip competition.[22] But that ordering misses the alleged mechanism of harm: on the court's own assumption, those royalties were the product of a systematic breach of FRAND commitments and reinforced by the 'no license, no chips' policy.

Because Qualcomm both supplied chips and licensed patents necessary to produce standard-compliant devices, it could recover an elevated charge through an integrated return across licensing and chip sales.[23] Rival chip suppliers, lacking licensing revenue to offset those costs, were disadvantaged because OEMs evaluated their chips against an all-in cost that included Qualcomm's terms.[24]

---

[16] FTC v. Qualcomm Inc., 411 F. Supp. 3d 658 (N.D. Cal. 2019), *rev'd and vacated*, 969 F.3d 974 (9th Cir. 2020).
[17] *Id.* at 672; *Qualcomm*, 969 F.3d at 982.
[18] *Qualcomm*, 969 F.3d at 985–86.
[19] *Id.* at 997–98.
[20] *Id.* at 985.
[21] *Id.* at 996.
[22] *Id.* at 995–997.
[23] *See id.* at 984 ("Qualcomm licenses its patent portfolios exclusively at the OEM level, setting the royalty rates on its CDMA and LTE patent portfolios as a percentage of the end-product sales price"); FTC v. Qualcomm Inc, 411 F. Supp. 3d 658, 776–82 (N.D. Cal. 2019), *rev'd and vacated*, 969 F. 3d 974 (discussing how Qualcomm's "unreasonably high royalty rates" were only possible because it had monopoly power in the modem chip market).
[24] *Qualcomm*, 411 F. Supp. 3d at 791 (detailing how Qualcomm's all-in price included "(1) the nominal chip price; and (2) Qualcomm's royalty surcharge").

Formal incidence is not economic incidence: uniform collection shows only that OEMs formally paid the surcharge, not whether it raised their effective costs when choosing a rival chip.[25]

When products incorporate standardized technologies, industry standards form a critical part of the institutional conditions of competition. Firms often compare technologies, make sunk investments, and forego alternatives based on assurances that standardized technologies will be licensed on FRAND terms.[26] That commitment guards against strategic opportunism after standards are adopted: once switching becomes infeasible, the patent holder can demand royalties it could not have obtained ex ante when alternatives remained available.[27]

Against that backdrop, conditioning chip access on acceptance of non-FRAND terms could have allowed Qualcomm to place rivals at a cost disadvantage it could not have achieved absent breach.[28] Because OEMs were required to take a license to build a standard-compliant handset, any supra-competitive royalty would function as a surcharge on all devices, including those using competitors' chips.[29]

Leveraging its dominant position in chips to demand non-FRAND terms would thus create cross-market leverage, neutralizing OEMs' practical ability to challenge Qualcomm's terms and pursue alternative chip options.[30]

Whether that theory holds turns on the breach question, which the Ninth Circuit deemed unnecessary to resolve.[31] If Qualcomm complied with its FRAND obligations, breach would not have been available as a mechanism for imposing the surcharge.[32] In an ordinary FRAND negotiation, a dissatisfied implementer can bargain in the shadow of adjudication. The district court found that Qualcomm's "no license, no chips" policy materially weakened that outside option by linking chip supply to acceptance of Qualcomm's licensing terms.[33]

On that account, the challenged conduct was a pervasive practice operating across OEM relationships that affected market-wide substitution conditions.[34] By isolating royalty effects

[25] *Id.* at 792 ("Because the surcharge also raises the parker price of rivals' chips, Qualcomm prevents rivals from underbidding Qualcomm, so that Qualcomm can maintain its modem chip market power.").
[26] *Id.* at 671–72.
[27] *See id*. at 786 (discussion of how Qualcomm's royalty rates should have declined over time as negotiations on FRAND terms proceeded, if they had not been sustained by Qualcomm's monopoly modem chip share).
[28] *Id.* at 790; *see id.* at 758 (concluding that Qualcomm has an antitrust duty to license its SEPs to rival modem chip suppliers).
[29] *Id.* at 754, 759–761, 790.
[30] *Id.* at 698–744 (detailing Qualcomm's anticompetitive conduct against OEMs that tried to negotiate with Qualcomm's licensing practices).
[31] FTC v. Qualcomm Inc., 969 F.3d 974, 1005 (9th Cir. 2020).
[32] *Qualcomm*, 411 F. Supp. 3d at 796.
[33] *Id.* at 788.
[34] *Id.* at 801–03; *cf. Qualcomm*, 969 F.3d at 993.

from the assumed breach, the Ninth Circuit drew conclusions about royalty incidence that failed to account for the capacity of Qualcomm's integrated practices to distort the conditions under which OEMs could obtain licensed technologies and negotiate chip prices with rival suppliers.[35]

IV. *In re Merck*: Petitioning versus Misuse of an Approval

Consider next the Third Circuit's 2024 decision in *In re Merck Mumps Vaccine Antitrust Litigation*, where the direct purchaser plaintiffs alleged that Merck's drug label misrepresented the vaccine's efficacy, which raised entry barriers for a rival manufacturer.[36] For purposes of summary judgment, the court accepted that Merck had been the sole U.S. supplier of a mumps vaccine for over a decade; that the FDA had raised concerns the vaccine might lose potency before its shelf life ended; and that, on the plaintiffs' account, Merck concealed the problem, ran a flawed trial, and used the resulting data to preserve label claims prospective rivals would have to match to obtain approval.[37]

A majority nonetheless held, in an unpublished decision, that Merck's conduct constituted protected petitioning activity under the Noerr-Pennington doctrine, even while acknowledging "troubling evidence" that Merck had misrepresented vaccine claims on its FDA-approved label.[38]

That reasoning begins at the wrong end of the causal chain. The majority treated the approved label as the relevant output of the FDA process and characterized the plaintiffs as objecting to the result of the petitioning.[39] But that conclusion is undermined by the majority's own acknowledgement that Merck preserved label claims it knew to be overstated in lieu of correcting them, continuing to make sales under a label that communicated misleading information to patients, physicians, pharmacies, and payers.[40] The majority also acknowledged that Merck was duty-bound to ensure its drug label was accurate,[41] and that it could have disclosed to the FDA that its vaccine might be misbranded and pursued remedial measures, such as reducing the labeled shelf life.[42]

The majority nonetheless reasoned that plaintiffs could not connect Merck's advertising to its rival's delayed entry "without passing through" the approved label.[43] But that conclusion holds

[35] *Qualcomm*, 969 F.3d at 997–1003.
[36] *In re* Merck Mumps Vaccine Antitrust Litig., No. 23-3089, 2024 WL 4432076, at *1 (3d Cir. Oct. 7, 2024), *cert. denied sub nom.*, Chatom Primary Care, P.C. v. Merck & Co., 146 S. Ct. 325 (2025).
[37] *Id.* at *2.
[38] *Id.* at *1, *4–6
[39] *Id.* at *4, *8 ("Appellees fail to explain how it was Merck's decision to publish the label—instead of the FDA's decision to approve the underlying drug-label claims—that delayed GSK's entry.").
[40] *Id.* at *7.
[41] *Id.* at *2.
[42] *Id.* at *7.
[43] *Id.* at *8.

only if the inaccuracy of the label and the approval are treated as the same thing. Merck's alleged decision to withhold corrective information was conduct undertaken separately from, and in part before, the FDA's approval.[44]

Even to the extent that part of the injury flowed from the approved label, it does not follow that the injury flowed from protected petitioning. That conclusion conflates the use of an approved label consistent with one's regulatory obligations with the deceptive use of an approved label to enhance one's market position. It also equivocates between a favorable outcome obtained through good-faith petitioning and a distorted regulatory output procured through material misrepresentations.

Although both are the formal result of communications with the FDA, treating them alike overlooks an essential distinction: the alleged use of deception to "corrupt" the agency's decision-making.[45] Whether petitioning is a sham turns not only on whether the petitioner used the governmental process to impose collateral harm on a rival, but also on whether the petitioner distorted regulatory deliberations through deceptive conduct that went to the core of the petition and deprived others of the chance to respond.[46] Further, beyond the FDA process, the affirmative distribution of false information that is material to market participants can impact commercial decision-making, investment pathways for alternatives, and entry conditions.

Petitioning is protected as a means of seeking government action, but in the adjudicatory context that protection depends on the legitimacy of the process and adherence to the institutional expectations that structure exchange in regulated markets. The antitrust inquiry therefore cannot be reduced to the fact that the FDA approved the label.[47] It must ask whether the label was

---

[44] *Cf. id.* at *9 ("[C]ategorizing omissions as private conduct would seem to carve out a vast exception to *Noerr-Pennington* immunity, as plaintiffs could evade the doctrine altogether—includ[ing] its exceptions, like the sham-petition exception—by focusing on omissions from petitions instead of the petitions themselves.").

[45] *See* Cal. Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 513 (1972) ("There are many other forms of illegal and reprehensible practice which may corrupt the administrative or judicial processes and which may result in antitrust violations.").

[46] *Id.* at 613 (stating that once the conclusion is drawn that administrative and judicial processes have been abused, "the case is established that abuse of those processes produced an illegal result, *viz.*, effectively barring respondents from access to the agencies and courts"); Pro. Real Est. Invs., Inc. v. Columbia Pictures Indus., 508 U.S. 49, 68–69, 75 (1993) (Stevens, J., concurring) ("The label 'sham' is appropriately applied to a case, or series of cases, in which the plaintiff is indifferent to the outcome of the litigation itself, but has nevertheless sought to impose a collateral harm on the defendant by, for example, impairing his credit, abusing the discovery process, or interfering with his access to governmental agencies. It might also apply to a plaintiff who had some reason to expect success on the merits but because of its tremendous cost would not bother to achieve that result without the benefit of collateral injuries imposed on its competitor by the legal process alone. . . . It is important to remember that the distinction between 'sham' litigation and genuine litigation is not always, or only, the difference between lawful and unlawful conduct; objectively reasonable lawsuits may still break the law."); *see also Merck*, 2024 WL 4432076, at *10 n.2 (Shwartz, J., dissenting) (discussing eight other circuit courts of appeal that have recognized or suggested the existence of a misrepresentation exception to the *Noerr-Pennington* doctrine).

[47] The analysis parallels antitrust treatment of patents procured by fraud. *See* Walker Process Equip., Inc. v. Food Mach. & Chem. Corp., 382 U.S. 172, 177 (1965) (enforcement of a patent obtained through knowing and willful fraud on the PTO may give rise to antitrust liability where the other elements are present).

obtained through abuses of that process, and whether conduct beyond petitioning leverages the result in ways that distort market-facing uses of the label. By maintaining claims it allegedly knew to be overstated, Merck, on the majority's own reasoning, subverted that process, distorting the information conditions that govern vaccine purchases and obscuring the basis on which rivals could gauge their own approval prospects.

V. *Sanderson v. Culligan*: False Advertising versus Advertising

Lastly, consider Judge Easterbrook's 2005 opinion in *Sanderson v. Culligan International Co*.[48] In holding that false commercial speech cannot support an antitrust claim, the Seventh Circuit reasoned that "false statements about a rival's goods do not curtail output in either the short or long run," and merely "set[] the stage for competition in a different venue: the advertising market."[49]

Even setting aside that the ruling conflicts with Supreme Court precedent confirming that false or misleading advertising "has an anticompetitive effect,"[50] this claim is stated categorically and without empirical support. It also leaves unclear what counts as cognizable harm, beginning with the term "output" itself.

"Output" is not self-defining. It measures quantity, but can be adjusted to capture quality, and the opinion does not confront the possibility that quality-adjusted output can fall even as units sold rise. A market with significant information asymmetries can become a lemons market, where low-quality goods drive out high-quality ones because buyers cannot distinguish them before purchase.[51] Total volume could hold steady or climb even as consumers derive less value from what remains.

Even on its own terms, the claim that output is unchanged is unlikely to hold. In the short run, it follows only if every consumer diverted from the rival buys another product within the relevant market; if some forgo purchase or turn to indirect substitutes, output falls. And in the long run, correcting the distortion may require counteradvertising or litigation, diverting rivals' resources from quality improvements and innovation that would otherwise enhance quality and output.[52]

On the claim that false statements merely set the stage for "competition in a different venue," the court equivocates on the difference between advertising and false advertising. Truthful

[48] Sanderson v. Culligan Int'l Co., 415 F.3d 620 (7th Cir. 2005).
[49] *Id.* at 623.
[50] Cal. Dental Ass'n v. FTC, 526 U.S. 756, 771 n.9 (1999).
[51] *See* George A. Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 Q.J. ECON. 488 (1970).
[52] *See id.* at 495 ("The cost of dishonesty, therefore, lies not only in the amount by which the purchaser is cheater; the cost also must include the loss incurred by driving legitimate business out of existence.").

advertising can create value when it conveys material information relevant for purchases or may prove ineffective in persuading consumers;[53] false advertising, by contrast, appropriates value by misleading trading partners about the information needed to make voluntary and informed decisions.[54] The court falls into the broken-window fallacy[55] by treating the extra advertising activity generated by false advertising as a benefit, without accounting for the consumer value appropriated by firms engaging in deception and the opportunity cost associated with channeling resources into deception rather than genuine product and service improvements.[56]

Efforts to exploit information asymmetries therefore have an inherent capacity to distort competitive decision-making and produce exclusionary effects, such as higher consumer transaction costs and reduced investment in alternatives, when undertaken by a dominant firm.[57] Deception, moreover, generally offers no offsetting efficiencies. As the Supreme Court has stated, "coercive activity that prevents its victims from making free choices between market alternatives is inherently destructive of competitive conditions and may be condemned even without proof of its actual market effect."[58]

These problems intensify where market power is durable and verification is costly. False claims are generally cheap to make and costly to correct as consumers may discount corrective information.[59] Rivals may also lack credibility to engage in effective corrective efforts or risk amplifying the original claim.[60] Where deception diverts demand from several rivals, no single rival has sufficient incentive to bear the full correction cost, even as the deceiving firm appropriates sales from all of them.[61]

---

[53] *See* Luigi Guiso et al., *The Cost of Steering in Financial Markets: Evidence from the Mortgage Market*, 143 J. FIN. ECON. 1209, 1225 (2022) ("[S]teering has an informational value and can be beneficial to customers even when it is not done with their best interest in mind.").
[54] *See* Fed. Trade Comm'n, FTC Policy Statement on Deception (Oct. 14, 1983), *reprinted in* 103 F.T.C. 110, 174 (1984).
[55] *See* FRÉDÉRIC BASTIAT, THAT WHICH IS SEEN, AND THAT WHICH IS NOT SEEN § I (François-René Rideau, ed.) (1850), http://bastiat.org/en/twisatwins.html.
[56] Michael A. Carrier & Rebecca Tushnet, *An Antitrust Framework for False Advertising*, 106 IOWA L. REV. 1841, 1852 (2021) ("Burning a building down generally sets firefighters into motion and can trigger insurance payouts and new construction, but we don't think that makes arson productive for the overall economy.").
[57] *See, e.g., id.* (explaining how misleading advertising forces competitors to expend resources "defending truth against falsehood instead of investing them elsewhere, harming their overall ability to compete").
[58] Associated Gen. Contractors v. Cal. State Council of Carpenters, 459 U.S. 519, 528 (1983).
[59] Peter R. Darke & Robin J.B. Ritchie, *The Defensive Consumer: Advertising Deception, Defensive Processing, and Distrust*, 44 J. MKTG. RSCH. 114, 125 (2007) ("Our findings lay bare any assumption that firms can immunize themselves against the effects of consumer distrust by eliminating deceptive claims from their own advertisement or by simply selling good products with clear, superior benefits. The negative impact of defensive stereotyping that deceptive advertising induces generalizes even to these contexts."); Steven C. Salop, A Modern Economic Approach to Antitrust Law: Industrial Organization Decision Theory and Antitrust 4-157 (Feb. 2, 2026) (unpublished manuscript) (on file with Georgetown University Law Center), https://ssrn.com/abstract=5379164.
[60] Salop, *supra* note 59, at 4-157.
[61] *Id.* at 4-158; *see also* Jessica Fong, Tong Guo & Anita Rao, *Debunking Misinformation About Consumer Products: Effects on Beliefs and Purchase Behavior*, 61 J. MKTG. RSCH. 659, 679 (2024) ("[D]ebunking may not be

For that reason, the antitrust significance of deception, if grounded in economics, cannot turn solely on whether quantity fell in the short term. The relevant question is whether the challenged conduct impaired the institutional conditions under which exchange occurs: whether misrepresentations were isolated or systematic, made through multiple levels of the supply chain, or concerned price, quality, safety, compatibility, or performance, whether customers could verify them, whether rivals could respond without disproportionate cost, and whether the conduct distorted consumers' ability to make informed and voluntary purchasing decisions on a market-wide basis.

VI. Concluding Thoughts

A final point about what economics should do in antitrust cases.

The problem courts face is that an approach focused on outcomes does not resolve which effects, metrics, and parameters are legally relevant.

Static metrics like price and output are therefore the wrong unit of analysis because they do not, standing alone, distinguish conduct that creates value within a trading relationship from conduct that appropriates value by leveraging market power to distort others' dealings with rivals. Only when empirical benchmarks are assessed against institutional conditions can a court draw that distinction.

Institutional analysis is also more practical for answering the core legal question: whether competitive decision-making was distorted. Empirical modeling can yield precise outputs, but can also pose tractability concerns and still requires interpretation to connect those outputs to that question. Institutional conditions, by contrast, can be directly observed from ordinary-course business records, contracts, and market testimony, and often speak more directly to market participants' expectations and reliance interests. In that sense, they are as fit for economic study as the outputs of an econometric model.

A proper use of economics in antitrust accounts for process as well as outcomes.

To close with a final quote from Buchanan: "The mutuality of advantage from voluntary exchange is, of course, the most fundamental of all understandings in economics."[62] That insight is an important part of the answer to what economics should do in antitrust.

---

the incumbent's most profitable equilibrium strategy. Simulations shown that introducing a product that conforms to the misinformation leads to a greater increase in per capita profit than debunking").

[62] James M. Buchanan, *Game Theory, Mathematics, and Economics*, 8 J. ECON. METHODOLOGY 27, 29 (2001).