

The New Populist Movement in Antitrust: Could it Change the Status Quo and Does it Threaten American Businesses?

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In recent years, a new populist school of antitrust thinking has emerged, known as “Neo-Brandeisian” to its proponents and “hipster” to its detractors. There are varying formulations of this movement, but proponents generally point to the purported increase in economic concentration and corporate profits in the U.S. economy to advocate for more aggressive antitrust enforcement, with respect to both mergers and other conduct. One notable element of this movement is a push to expand or even replace the established “consumer welfare” standard—which focuses on prices and outputs in balancing potential competitive harms against procompetitive efficiencies—by adopting a more rigid presumption that corporate “bigness” and large market share in themselves harm consumers. Some proponents, moreover, advocate for consideration of nontraditional factors in antitrust analysis, such as wages, employment levels, or growing inequality.

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