

# Common Ownership Directors

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# Summary / Claims

- “Overall, we present a **mechanism** through which common ownership may affect managerial incentives.”
  - “This paper proposes one such mechanism: **overlap in the boards of directors of competing firms.**”
- “Using data on overlapping directors and institutional shareholding from 2000 to 2019, we show that common ownership across firms in the same industry is associated with a higher probability that they share a director.”
  - “The results are particularly strong for institutions with lower portfolio turnover and longer investment horizons.”
  - “However, we find little relationship using common ownership by the ‘Big Three’ fund families (BlackRock, Vanguard, and State Street).”
  - “[I]nstitutions’ investment horizon seem to matter significantly for director appointments, except for hedge fund investors... This suggests that the common ownership by highly concentrated investors that predicts common director appointments is to a large extent based on common ownership by hedge fund investors.”

# Overview of Comments

- Interesting findings on interlocking/overlapping directors and institutional shareholding.
  - Contributes to common ownership literature on one of the biggest questions: is there a mechanism through which common owners affect corporate strategy or managerial behavior?
  - Deserves attention & further investigation.
- 3 main suggestions:
  - Clarify the claimed mechanism.
  - Clarify (avoid?) any claims of causality.
  - Dig into the industries and provide examples.

## Suggestion #1: Clarify the claimed mechanism.

- “Regardless of its consequences, however, identifying a *channel* through which common ownership affects managerial behavior has proved challenging because institutional investors rarely intervene in the management of their portfolio firms (Mancini & Nyeso, 2017). This paper proposes one such mechanism: overlap in the boards of directors of competing firms.”

# Suggestion #1: Clarify the claimed mechanism.

- ⇒ **What is the mechanism by which the investors affect the interlocking directors?** (Explain how the proposed mechanism works as a matter of corporate law & governance.)
- ⇒ **And then what?** (How would one get to affecting corporate strategy or managerial behavior?)
- ⇒ **What direction does this go? Is it really a “mechanism”?** (More on this with Suggestion #2).
- ⇒ **What else could explain the findings?**

# Corporate law & governance?

- “[T]he appointment of directors is **often the only way** shareholders can exert influence on firms.” (p. 1)
- “While appealing, the authors’ [Antón, Ederer, Giné & Schmalz] mechanism may be incomplete, because in practice **the board of directors sets compensation without clear input from investors.**” (p. 3)
- “First, there is little evidence of a pre-trend in director interlocks in the years preceding common ownership increases. The three coefficients for the preperiod,  $\beta_{-1,-2,3}$ , are statistically indistinguishable from zero, implying that the increase in director interlocks appears in the year of the increase in common ownership, not in the years leading up to it. Second, **the effect appears immediate** and permanent. If the effect were delayed, we would observe post-period coefficients above zero, as they given the difference in interlock probability relative to the event year.”


# Suggestion #2: Clarify (avoid?) any claims of causality.

- “Our finding shows that institutions may affect board appointments calls for further investigation of the type of owners that drive these results.” (p. 2)
- “We find that a one standard deviation increase in the level of common ownership between two firms in the same industry increases the probability that they share a director by 0.04%.” (p. 2)
- “Consistent with this view, we find that common ownership by the ‘Big Three’ fund families is not associated with an increase in common directors. Instead, our baseline result is driven by non-Big Three investors.” (p. 2)
- “In particular, non-hedge funds that are larger, more concentrated, and have longer investment horizons are associated with a greater likelihood of appointing a common director.” (p. 3)
- ⇒ What direction does this go? Could some investors be attracted by seeing a director with industry & board expertise & then invest (rather than the other way around – that they push for a common director)?
- ⇒ “In addition, the measures based on size, turnover, concentration, and the hedge fund classification exclude holdings by the Big Three investors.” (p. 9) Why do you exclude the Big Three?


# Suggestion #3: Dig into the industries and provide examples.

**Table II. Distribution of Interlocks by Industry**

This table reports the distribution of industries in the SIC-3 universe. We report the top ten industries sorted by the number of additions of a common director, which occurs when a pair of firms does not share a director in year  $t - 1$  but shares a director in year  $t$ . The percent shares are computed with respect to all observations and not only the top ten in the table.



SIC-3	Description	Observations		Interlocks		Additions	
283	Drugs	885525	(22.92%)	7782	(50.37%)	921	(46.52%)
737	Computer & data processing services	879016	(22.76%)	2787	(18.04%)	408	(20.61%)
367	Electronic components & accessories	184010	(4.76%)	1099	(7.11%)	158	(7.98%)
384	Medical instruments & supplies	130339	(3.37%)	839	(5.43%)	132	(6.67%)
357	Computer and office equipment	52685	(1.36%)	250	(1.62%)	46	(2.32%)
131	Crude petroleum & natural gas	74357	(1.92%)	401	(2.60%)	44	(2.22%)
602	Commercial banks	1060944	(27.47%)	223	(1.44%)	36	(1.82%)
581	Eating & drinking places	26574	(0.69%)	199	(1.29%)	25	(1.26%)
382	Measuring & controlling devices	62645	(1.62%)	175	(1.13%)	23	(1.16%)
366	Communications equipment	43533	(1.13%)	187	(1.21%)	22	(1.11%)





**Justice Department's Ongoing Section 8 Enforcement Prevents More Potentially Illegal Interlocking Directorates****Antitrust Division Continues to Focus on Competitors Sharing Company Directors in Violation of Section 8 of the Clayton Act**

The following companies and directors unwound interlocks or declined to appoint board members, without admitting liability:

- **Qualys, Inc., SumoLogic, Inc., and F5, Inc.** – Qualys, SumoLogic, and F5 are providers of cloud security assessments, audit and compliance services, and firewall and monitoring products and services. One director served simultaneously on the boards of all three companies. After the division expressed concerns about the alleged interlock, the director recently resigned from Qualys's board and declined to stand for reelection to F5's board.
- **N-able, Inc., Dynatrace, Inc., and SolarWinds Corp.** – N-able, Dynatrace, and SolarWinds are software companies. Representatives of the investment firm Thoma Bravo sat on all three companies' boards. As the department previously announced in October 2022, three Thoma Bravo representatives resigned from the SolarWinds's board in response to the division's concerns about the alleged interlock between Dynatrace and SolarWinds. Shortly thereafter, in November 2022, two separate Thoma Bravo designees resigned from the N-able board.
- **Brookfield Asset Management Inc. and American Equity Investment Life Holding Company (AEL)** – AEL and a Brookfield Asset Management subsidiary's wholly-owned company American National are both insurance companies. Brookfield and/or its subsidiary appointed the officers or directors on the American National board. Additionally, the Brookfield subsidiary has the contractual right to appoint a director to the AEL board, and in December 2022, the Brookfield subsidiary announced that it would exercise that right. After the division raised concerns regarding the potential interlock, the Brookfield subsidiary announced it had changed course and it was withdrawing its proposed nomination to the AEL board.
- **Sun Country Airlines Holdings, Inc. and Atlas Air Worldwide Holdings, Inc.** – Sun Country and Atlas Air both provide crew, maintenance, and insurance for domestic air freight routes. In August 2022, an investment group led by Apollo Global Management, Inc. proposed acquiring all of Atlas Air's outstanding shares. At the time, two Apollo-affiliated individuals sat on the Sun Country board of directors. After the division raised concerns regarding a potential interlock arising from Apollo's proposed acquisition of Atlas Air, the two Apollo-affiliated directors resigned from the Sun Country board.



## Antitrust implications?



- Section 8 of the Clayton Act (1914) prohibits, subject to limited exceptions, (1) a “person” from (2) being a director or board-appointed officer of (3) two or more “corporations” that (4) are engaged in U.S. commerce and (5) that are “competitors” if (6) certain monetary thresholds are met. (*See also* Section 5 of the FTC Act)
  - Interlocking directorates that violate Section 8 are per se illegal, meaning that no anticompetitive effects or injury are necessary for liability.
- Government challenges to interlocking directorates have been historically rare and mostly arise in the merger-review context.
  - But see some high-profile examples of enforcement – 2009: Eric Schmidt (Google) resigned from Apple’s board and Arthur Levinson (Apple) resigned from Google’s board.



# *Antitrust implications?*

## *(Recent signs of shift...)*



- **April 2022:** DOJ Assistant Attorney General Kanter said DOJ is “ramping up efforts to identify violations across the broader economy” and “will not hesitate to bring Section 8 cases to break up interlocking directorates.”
- **Oct. 2022:** DOJ announced 7 directors resigned from their board positions at 5 public companies in response to DOJ concerns about the interlocking directorates. 3 of the directors represented private equity firms.
- **Nov. 2022:** FTC released a new Section 5 Policy Statement identifying interlocking directorates that fall outside the “literal language” of the Clayton Act as ripe for Section 5 enforcement.
- **Feb. 2023:** U.S. Senate Majority Whip Dick Durbin (D-IL), Chair of the Senate Judiciary Committee sent a letter to the DOJ and FTC encouraging them to investigate interlocking directorates in the “life science” industry.
- **March 2023:**
  - 5 directors resigned from 4 public company boards, and 1 PE firm declined to exercise board appointment rights, in response to DOJ enforcement efforts.
  - Kanter said the DOJ now has a “vibrant Section 8 enforcement” program with nearly 20 open investigations and “many additional opportunities.”

# Conclusion

- “In Figure 1, we show a time series plot of the frequency of director interlocks and the average level of common ownership, both of which steadily increase steadily throughout our sample.” (p. 10)
  - Very curious to learn more about what is going on!
- Suggestions on clarifying mechanism, causality (or lack), & relevant industries and examples.
- Thanks for the opportunity to engage with this interesting work on such an important topic!

