INTERMEDIARY ECONOMICS

The Other Customer

What happened when trusted intermediaries started making money from both sides of the transaction.

01

The other customer

An intermediary earns a buyer's trust. The trust aggregates demand. Then sellers notice.

What sellers notice is usually that reaching the intermediary's buyers directly would cost more than paying the intermediary to do it. That gap is the whole story, and it is wider than most people expect.

> FACT. By the early 1990s, US airlines were paying travel agents roughly $7.5 billion a year in commissions, an amount comparable to what they were spending on fuel. At the same time almost no traveler paid an agent anything.

> FACT. A 2011 House Ways and Means report found that royalty payments from for-profit partners made up nearly 46 percent of one large membership organization's revenue in 2009, while member dues were about 17 percent. Between 2002 and 2009 dues income rose $60 million. Income from business relationships, primarily with insurance companies, rose $417 million.

> FACT. ADP publishes an accountant referral program paying 25 percent of a referred client's first-year payroll billings at one to four referrals, 50 percent at five to nine, and 75 percent at ten or more, plus a 10 percent annual residual for four years. No accountant could charge a client that much for the recommendation itself.

The second customer is frequently the richer customer. Intermediaries do not usually decide to serve it. They grow into it, because the buyer-funded revenue stops keeping pace with the seller-funded revenue and the ratio changes over years without any single decision anyone could point to.

The question is what happens next, and the historical record answers it more precisely than the usual arguments about conflicts of interest do.

02

The compensation test

The useful question is not whether the seller pays. Nearly every intermediary takes seller money somewhere. The useful question is:

> **Does the intermediary make more money if the buyer chooses Seller A rather than Seller B?**

Compensation variance runs along a spectrum, and the closer it gets to the individual recommendation, the stronger the steering incentive.

THE VARIANCE SPECTRUM · STEERING INCENTIVE STRENGTHENS DOWNWARD

LEVEL OF VARIANCE	EXAMPLE	HOW THE RECORD TREATED IT
– **None**	Flat subscription, fee unchanged by outcome	Unquestioned
↓ **Portfolio level, invariant to seller**	GPO administrative fee across contracted volume	Protected by safe harbor with disclosure
↓ **Portfolio level, varies by seller in aggregate**	Contingent commissions on annual book performance	Banned, then restored under universal disclosure
↓ **Transaction level, varies by seller**	Per-sale referral fee, differential commission	Litigation and restructuring
↓ **Term level, varies with what the buyer receives**	Yield spread premium rising with the interest rate	Statutory prohibition
↓ **Intermediary owns the seller**	Affiliate pharmacy margin plus formulary control	Ongoing regulatory crisis

That is one axis. On its own it does not predict outcomes, and this is where the simple version of the thesis breaks.

The second axis is what the buyer believes. Variance became a trust failure specifically where the buyer understood the selection to be independent, unbiased, free, exhaustive, or made on their behalf.

The dangerous configuration is both conditions together.

CONDITION 1

Economics move with the recommendation

The intermediary's economics change depending on which seller, product, or terms the buyer selects.

+

CONDITION 2

The buyer believes the selection is independent

The buyer understands the recommendation to be made independently on their behalf.

= HISTORICALLY DANGEROUS CONFIGURATION

Where both appeared, the cohort produced steering, litigation, regulatory intervention, restructuring, or sustained public scrutiny. Where seller payment existed but could not move the recommendation, trust frequently held for decades. And where compensation varied enormously but the buyer had knowingly agreed to the arrangement in advance, the structure could also remain stable. Franchise vendor programs are the proof of that last point and they are discussed in Section 4.

> EVIDENCE-BACKED INFERENCE. Neither condition alone consistently produced failure in this cohort. The combination did.

When the money moved the recommendation

CASE 01 INSURANCE BROKERAGE · 2004–2012

The case with the internal documents

This is the strongest case in the study because the steering is established from the firm's own communications rather than inferred.

> FACT. On October 14, 2004, the New York Attorney General sued Marsh & McLennan, alleging it steered clients to insurers with which it held lucrative contingency agreements and solicited rigged bids. The complaint stated Marsh collected approximately $800 million in contingent commissions in 2003. By the firm's own admission the 2003 figure was $845 million.

> FACT. The complaint quoted internal messages. One senior executive wrote that the firm needed to place business with insurers that "pay us the most." Another noted that the size of contingent commissions would determine who business was steered to and steered from.

> FACT. On January 31, 2005, Marsh established an $850 million restitution fund, apologized for conduct it called shameful and unlawful, and took a $618 million pre-tax charge. Aon settled for $190 million and Willis for $50 million. The chief executive had resigned in October 2004. Three thousand jobs went in November.

Contingent commissions varied by carrier. A corporate risk manager believed the broker was searching the market as its agent. Both conditions, present at once.

THEN THE PART ALMOST NOBODY REMEMBERS

> FACT. In February 2010, officials in New York, Illinois, and Connecticut amended the settlement agreements and released Aon, Willis, and Marsh to accept contingent commissions again for the first time since January 1, 2005. The release was conditioned on the three firms complying nationwide with a new New York regulation requiring all producers, regardless of size, to disclose their compensation to customers on request. Regulators noted the new standard was in some respects lower than what the three had been operating under since 2005.

> **Seller payment survived. Hidden, steering-capable payment did not. Sixteen years later the model is still running.**

AND THEN THE FIRMS DREW THEIR OWN LINE

> FACT. After the ban lifted, Marsh declined contingent commissions in its core US brokerage business while accepting them in its agency, affinity, and consumer businesses. Aon said it would take them where appropriate and legally permissible. Willis refused them in retail property and casualty, then began accepting them on employee benefits in 2012.

The largest firm in the industry, handed legal permission to take the money everywhere, took it in the distribution businesses and refused it in the advisory business. Nobody required that. It is the single most instructive fact in the cohort.

Limitation worth holding onto. The Marsh case involved bid rigging alongside contingent commissions, and those are separate offenses. Contemporaneous academic commentary argued that contingent commissions absent bid rigging promote competition among insurers. The case is used here for the documented steering mechanism, and the 2010 restoration is decent evidence the compensation form is not inherently harmful.

CASE 02 MORTGAGE BROKERAGE · PRE-2011

Where the regulator drew the structural line

FACT. Before 2011, mortgage brokers commonly received a yield spread premium, a lender payment that increased with the interest rate on the loan placed. Borrowers frequently also paid the broker an upfront fee without understanding that the lender was separately paying a premium that rose with the rate.

RESPA and TILA disclosure regimes had governed this market for decades while that was happening.

FACT. In 2010 the Federal Reserve amended Regulation Z, effective April 1, 2011, to prohibit loan originator compensation based on any term or condition of a transaction other than the loan amount, to prohibit dual compensation from both the consumer and another party on the same loan, and to prohibit steering toward loans producing greater originator compensation. Dodd-Frank codified the prohibition. The CFPB's 2013 final rule defines a term of a transaction as any right or obligation of the parties, and states that a broker cannot be compensated based on the interest rate or on steering a consumer toward affiliated title insurance.

> **The regulator did not ban seller payment. It banned seller payment that moved with the recommendation.**

FACT, AND A REAL COST. Industry groups have argued the remedy overshot, because the rule restricts compensation practices for lenders' own employees rather than only third-party brokers, and prohibits essentially all variation except by loan amount. Structural remedies are blunter than disclosure. That is the price of being administrable.

CASE 03 RESIDENTIAL REAL ESTATE · 2023–2024

Corroboration, briefly

FACT. In October 2023 a Missouri jury returned a $1.78 billion antitrust verdict in Sitzer/Burnett against the National Association of Realtors and several brokerages over the MLS cooperative compensation rule. NAR settled in March 2024 for $418 million, agreeing to prohibit offers of compensation being made on the MLS, to prohibit requiring listing brokers to make them, and to require written buyer agreements specifying compensation before touring a property. Practice changes took effect August 17, 2024.

Seller contribution to buyer-agent compensation survived. What went was the shared system that displayed a variable amount to the agent before showings, plus the absence of a written buyer agreement.

Restraint on this one. This was an antitrust case about a horizontal rule, not a trust case. The compensation structure is the through-line, and the remedy shape is the useful part.

CASE 04 PHARMACY BENEFIT MANAGERS · 2022–PRESENT

The terminal form

FACT. The FTC's July 2024 interim staff report, from Section 6(b) orders issued in 2022, found that the six largest pharmacy benefit managers manage nearly 95 percent of US prescriptions, and that some manufacturer rebates were expressly conditioned on limiting access to lower-cost generic and biosimilar competitors.

FACT. The January 2025 second interim report found that PBM-affiliated pharmacies generated more than $7.3 billion of revenue above estimated acquisition costs during the study period, and that the three largest PBMs generated an estimated $1.4 billion from spread pricing.

Every element is present at maximum intensity. Compensation varies by product. The intermediary controls the formulary that determines the product. The plan sponsor cannot observe the variance. And the intermediary has integrated into the seller side, so steering to itself is the most profitable outcome.

When seller money did not break trust

Wirecutter

FACT. The site launched in September 2011 and generated $150 million in affiliate revenue in its first five years. The New York Times acquired it in October 2016 for a reported $30 million. Affiliate-driven revenue for the parent was estimated at roughly $40 million in FY2023, on reported gross merchandise value exceeding a billion dollars annually.

Seller money on essentially every recommendation, fourteen years, no credible steering accusation.

FACT. It accepts no advertising, specifically so advertisers cannot be perceived as influencing reviews. It returns or discards test products rather than keeping them. Affiliate relationships are disclosed on every page. The commercial team operates separately from editorial, with journalists unaware of commercial agreements in place.

FACT, AND THIS IS THE LOAD-BEARING ONE. The revenue team stated in 2018 that retailer links are chosen based on convenience to the reader regardless of whether the retailer offers affiliate revenue at all, and that the site links to whichever retailer has the best price and delivery even where that reduces its own payout.

THE ORDER OF OPERATIONS

RECOMMENDATION

↓

fixed independently, by testing, before commerce enters

↓

COMMERCE · AFFILIATE ECONOMICS

The commercial layer follows the editorial decision rather than determining it. The money cannot reach the recommendation because the recommendation is already made when the money arrives.

FACT, AND A USEFUL QUALIFICATION. In 2019 a business-side employee at the parent company unilaterally edited a Wirecutter financial product article to insert affiliate links, prompting internal review. The firewall is a control that can be breached rather than a guarantee.

FACT. In 2021 the site added a subscription paywall. It now takes money from the buyer and the seller at the same time.

Healthcare group purchasing organizations

FACT. GPOs are funded by administrative fees from suppliers based on member purchasing volume, typically one to three percent, protected under a safe harbor at 42 CFR 1001.952(j). The safe harbor requires a written agreement with each member stating the GPO may receive vendor payments and specifying the amount or the method of calculation. Where the member is a healthcare provider, the GPO must disclose in writing at least annually the amount received from each vendor on that member's purchases, and must disclose the same to HHS on request.

The fee is earned across the contracted portfolio rather than on which contracted supplier a member ultimately buys from. Disclosure is a condition of the arrangement rather than a courtesy. The structure has been operating since 1991.

Criticism has concentrated where the variance actually lives, which is the decision about which suppliers get contracts at all. GAO examined GPO contracting practices in 2003 and again in 2014, reporting manufacturer complaints that GPOs are slow to place products on contract and that fee levels make obtaining a contract difficult for some firms.

Franchise approved-vendor programs

This case matters because it disproves the tidy version of the thesis.

FACT. Under the FTC Franchise Rule, franchisors must disclose in Item 8 of the Franchise Disclosure Document any requirement that franchisees purchase from designated or approved suppliers, including whether the franchisor or its affiliates are approved suppliers and whether they are the only ones. The

> Amended Rule requires disclosure of rebate programs including amounts received, of any officer or owner interest in required suppliers, and of the process for approving alternate suppliers.

Here compensation variance is at a maximum, because the franchisor takes rebates on franchisee purchase volume. Control over buyer behavior is also at a maximum, because the purchase is contractually mandated. By the simple version of the thesis this should be unstable. It is not.

> **What makes it stable is that Condition 2 is absent. The franchisee agreed in advance, in writing, with the economics disclosed, as a term of a relationship they chose. Nobody told them the vendor selection was independent.**

SMB referral programs, as short corroboration

An accountant can earn substantial revenue share from payroll referrals without producing observable trust problems, because the business owner retains real comparison ability in a market with published pricing and understands that a relationship exists. Conflict severity scales with how much the buyer is relying on the intermediary's search instead of doing their own.

05

Disclosure is not alignment

	ECONOMICS CANNOT MOVE THE RECOMMENDATION	ECONOMICS CAN MOVE THE RECOMMENDATION
DISCLOSED	**Durable** Wirecutter. GPOs. Franchise vendor programs.	**Disclosure frequently insufficient** Pre-2011 mortgage.
NOT DISCLOSED OR MISUNDERSTOOD	**Possibly durable, but unverifiable from outside** —	**Highest risk** Pre-2005 insurance brokerage. TrueCar's per-sale fee.

Mortgage lending is the cleanest evidence in the whole study. Disclosure regimes were in place for decades. The incentive persisted anyway. Regulators eventually stopped adding disclosure and changed the shape of the compensation.

> **Disclosure tells the buyer a conflict exists. It does not remove the incentive.**

It also does not tell them whether this particular recommendation was affected by it, and it cannot, because they have no counterfactual.

But the franchise case blocks the stronger claim. Where the buyer knowingly agreed beforehand that the intermediary controls vendor selection, disclosure does legitimize a highly variable structure, because independence was never part of what was promised.

The precise finding: disclosure cannot rescue an incentive that contradicts the service the buyer believes they are receiving. Where the service was never described as independent, disclosure does most of the work.

A private example of the same logic. FACT. TrueCar charged dealers $299 per new vehicle and $399 per used vehicle sold through its platform while advertising "No Surprises... No hidden costs or surprise fees. Ever." Litigation alleged the per-sale fee was undisclosed to consumers. In late 2017 it settled the California New Car Dealers Association suit by switching from per-sale compensation to a flat subscription. No regulator required that. The remedy was removing the variance.

06 / THE SELLER CAN LEAVE

No buyer trust failed. The payer simply left.

Everything above is about trust. Here the record turns.

Even where seller money never touches the recommendation, there is a second problem, and it appears in the one case in this cohort where an entire industry contracted by two thirds without anyone's trust failing.

> FACT. Before the mid-1990s, airline tickets generated as much as 80 percent of US travel agency revenue on a flat, uncapped 10 percent commission. Airlines were paying agents roughly $7.5 billion a year while the domestic industry had lost $14 billion since 1988.

> FACT. On February 9, 1995, Delta capped base commissions at $50 for a domestic round trip and $25 one way. Other carriers matched within days. Further cuts followed in 1997. By March 2002 eight of the ten largest US carriers had taken base commissions to zero. Air Canada followed that April.

> FACT. ARC-accredited agency locations fell from nearly 36,000 at their 1995 peak to slightly under 13,000 by 2015.

> FACT. Surviving agencies rebuilt on buyer-paid service fees and on commissions from hotels, cruises, and tours. Contemporaneous 2002 reporting documents agents charging $75 to plan a vacation, $41 for a domestic flight booking, and $61 for an international one.

No scandal. No steering. No buyer stopped trusting their agent. A supplier concluded the internet made the intermediary optional and stopped paying.

This is a second risk, and it should be named separately.

TRUST RISK	DEPENDENCY RISK
Seller economics distort what the intermediary tells the buyer.	The seller controls the revenue stream and can decide the intermediary is no longer worth paying.

> **Seller-funded revenue can be larger, but it is rented.**

It can exceed buyer-funded revenue precisely because the seller is buying distribution. That also means the seller is continuously re-deciding whether the distribution is still necessary. The revenue is not owned. It is rented, from a counterparty whose long-run incentive may be to remove the intermediary entirely.

Buyer-funded revenue is smaller and it is durable in a way seller-funded revenue is not.

07

What the seller is buying

Sellers were not all purchasing the same thing, and what they purchased predicts how much governance the arrangement required.

01	02	03	04	05
ATTENTION	ACCESS	CONVERSION	TRUST TRANSFER	CONTROL

A listing, a directory entry, a placement. The buyer still does all the work. Cheapest, least conflicted.	The ability to reach a population the seller could not efficiently reach directly. Membership endorsements, marketplace presence.	Payment attached to an attributable outcome. Affiliate links, referral programs. Severity depends on whether the intermediary influenced which seller converted.	The seller borrows the intermediary's credibility. A 2010 Rhode Island rate filing classified 4.95 percent of Medigap premiums sold under a membership organization's brand as royalties.	The intermediary determines, narrows, defaults, or mandates the selection. Formulary placement. Mandated vendor status.

SELLER WILLINGNESS TO PAY INCREASES → GOVERNANCE BURDEN INCREASES →

Seller willingness to pay generally rises as the intermediary gains more influence over what the buyer does next. So does the governance burden.

The franchise evidence adds the refinement. Control itself is not the instability. A franchisee can knowingly agree to required vendors. A health plan member does not knowingly agree to a formulary incentive steering them toward a more profitable drug. What separates those is whether the buyer consented to the selection architecture before they were inside it.

08

Adviser or distribution channel?

The more an intermediary's economics change with the buyer's selection, the more it behaves economically like a distribution channel rather than a neutral adviser, whatever it calls itself.

Seven questions, in rough order of how easily an outsider can check them.

1. **Does the payment differ among the sellers being presented?**
2. **Can the person making the recommendation see that difference?**
3. Does the buyer understand who pays?
4. **Does the buyer believe the service is independent or free?**
5. Does the intermediary narrow the choice set?
6. Does seller revenue exceed buyer revenue?
7. Does the intermediary own or control any seller?

THE HISTORICALLY DANGEROUS COMBINATION · 1 + 2 + 4

Variable compensation + **Economics visible to the recommender**
+ **Buyer believes the recommendation is independent**

Variable compensation, visible to the recommender at the moment of recommendation, held by a buyer who thinks the recommendation is independent. That describes pre-2005 insurance brokerage, pre-2011 mortgage brokerage, and the MLS compensation display. It does not describe Wirecutter, GPOs, or franchise vendor programs.

Worth noting that regulators in three separate industries converged on remedies of the same shape. Reg Z prohibits compensation based on the terms of the transaction, not lender payment. The NAR settlement prohibits compensation offers on the MLS, not seller contribution. The GPO safe harbor protects a portfolio-level fee with per-vendor disclosure. TrueCar reached the same structure privately under litigation pressure. Marsh reached it voluntarily inside its own firm.

HYPOTHESIS. That convergence may reflect regulators borrowing from one another rather than four independent discoveries. The private settlements and the voluntary internal split cut the other way. I would not claim more than that.

09

The durable structure

1 **Seller payment is not the conflict.** Recommendation-dependent economics held against a buyer who thinks the selection is independent is the conflict.

2 **Disclosure cannot neutralize an incentive that contradicts the service the buyer thinks they are buying.** Where the buyer never expected independence, disclosure does most of the work.

3 **The more buyer behavior an intermediary controls, the more valuable it becomes to sellers and the more governance the arrangement requires.** Control is survivable where the buyer agreed to it in advance.

4 **Seller-funded revenue is larger and it is rented.** The payer can go direct.

5 **Where advisory and distribution live inside one company, they need different compensation rules.** In 2010 the largest insurance broker in the world was released to take contingent commissions everywhere and chose to take them in its agency and affinity businesses while refusing them in core brokerage. That decision has held for sixteen years and nobody imposed it.

10

The finding

The historical record does not say trusted intermediaries should refuse seller money. Most of them eventually take it, because seller acquisition budgets are larger than what buyers will pay for the same service, and that arithmetic does not care what anyone intended.

What the record says is that the second customer creates two distinct risks that get discussed as though they were one.

The first is that the seller's payment changes what the buyer is told. That risk is manageable, and the mechanisms that manage it are visible in every durable case: keep the economics away from the recommendation, or make sure the buyer knew the arrangement before they relied on it.

The second is that the seller eventually decides it no longer needs to pay. That risk is not manageable by governance at all, and the travel agencies never saw it coming.

Trust survives when the economics match the promise. The business survives when the intermediary is not dependent on one payer continuing to find the distribution worth buying.

BUYERS DO NOT OBJECT TO SELLERS PAYING.

THEY OBJECT TO BEING TOLD THE CHOICE WAS THEIRS WHEN THE PAYMENT MADE IT.

APPENDIX

Evidence and limits

Failure produces records. Quiet success does not. Litigation, regulatory action, and congressional inquiry generate documents. An intermediary that has taken seller money uneventfully for thirty years generates nothing. The durable counterexamples here were harder to find than the failures, which biases the framing toward conflict.

Trust is inferred, not measured. No case in this cohort has longitudinal buyer trust data. Litigation volume, regulatory action, market share, and business survival are the proxies. They are reasonable proxies and they are proxies.

Some sources are interested parties. The membership organization figures come from a congressional report produced by one party's committee staff, from litigation filings, and from a critic's research. The underlying numbers are verifiable in Form 990 filings and a state rate filing. The framing around them is not neutral, and I have tried to use the numbers rather than the characterizations. Nothing here establishes intent.

Contingent commissions cannot be cleanly separated from bid rigging in the Marsh case. Those are distinct offenses and the 2010 restoration is evidence that the compensation form alone was not the issue.

The real estate case was an antitrust case about a horizontal rule. It is used for the remedy shape rather than as a trust collapse.

Regulators may have borrowed from one another. The 2013 mortgage rule postdates the GPO safe harbor by twenty-two years.

The two-condition model is a strongly supported mechanism, not a law. Sixteen cases is enough to see a pattern and not enough to rule out configurations that did not appear in the sample. The absence of a documented counterexample is weaker evidence than its presence would be.

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COMPANY MATERIALS

ADP Accountant Revenue Share Program terms. Wirecutter published affiliate disclosure.