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Summary: Antitrust in Labor Markets

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Keywords

labor market monopsony, wage stagnation, mergers, non-compete agreements, anti-poaching agreements, labor market concentration, unions, anti-trust

Disciplines

Business Law, Public Responsibility, and Ethics | Collective Bargaining | Economic Policy | Economics | Industrial and Organizational Psychology | Labor Economics | Labor Relations | Unions

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Summary: Antitrust in Labor Markets

Seminar by Professor Herbert Hovenkamp

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LABOR MARKET MONOPSONY

Wage growth in the U.S. has not kept up with overall economic growth. The causes of this wage stagnation are varied and most have little or nothing to do with antitrust policy. These include the introduction of technologies that reduce labor demand, federal and state policies that negatively affect labor unions, outdated minimum wage laws, and tax policies that promote investment in capital over labor. But, as described in more detail below, there are several anticompetitive firm practices that have become more prominent and are contributing to labor market “monopsony.” Monopsony (a monopoly on the buy-side of the market, rather than the sell-side) in labor markets, whereby a small number of companies dominate hiring, is typically associated with reduced wages. Arguably, antitrust law has not been effectively used to combat this problem.

ANTI-POACHING AGREEMENTS

Anti-poaching agreements are arrangements between employers to not hire away each other’s workers. Anti-poaching agreements, which limit the ability of workers to move around in the job market, are a per se violation of antitrust laws and can be a criminal offense. For instance, in 2012, the U.S. Department of Justice and the state of California filed a lawsuit against eBay, alleging the firm participated in a handshake agreement with fellow Silicon Valley giant Intuit to refrain from hiring one another’s employees. Although eBay publicly insisted that the agreement did not lead to anticompetitive effects, it settled the suit in 2014 and assented to pay restitution for harm caused to individual workers and the California state economy.

MERGERS AND LABOR MARKET CONCENTRATION

There is robust empirical literature on the relationship between labor market concentration—the small number of employers hiring in a certain job category—and suppression of wages. Consider, for instance, a town where there are only two hospitals that employ nurses and compete for their labor. If these two hospitals merge, then suddenly, instead of having two employers competing for nurses and their skills, there is only one. Wages in such a scenario can be expected to go down. New research indicates that, on average, labor markets are highly concentrated, and the degree of labor market concentration tends to be higher in smaller towns and more rural areas. As a result, wages tend to be lower in these areas.

EMPLOYEE NON-COMPETE AGREEMENTS

Employee non-compete agreements prohibit workers from leaving one firm and then taking employment at another firm in the same industry within a defined geographic range. Historically, non-compete agreements were used sparingly to protect companies from “free riding,” whereby companies steal away employees trained at a competitor’s expense, as well as loss of intellectual property rights. Within the last 20 years, however, there has been more widespread use of employee non-compete agreements, and they have been migrating down the hiring chain to cover low-skilled employees, many of whom make around minimum wage. The fast food franchise Jimmy John’s, for instance, was forced to stop making its low-wage workers sign non-compete agreements in a legal settlement reached with the attorneys general of New York and Illinois. Non-compete agreements significantly impair an employee’s mobility and thus the ability to seek out better wages.



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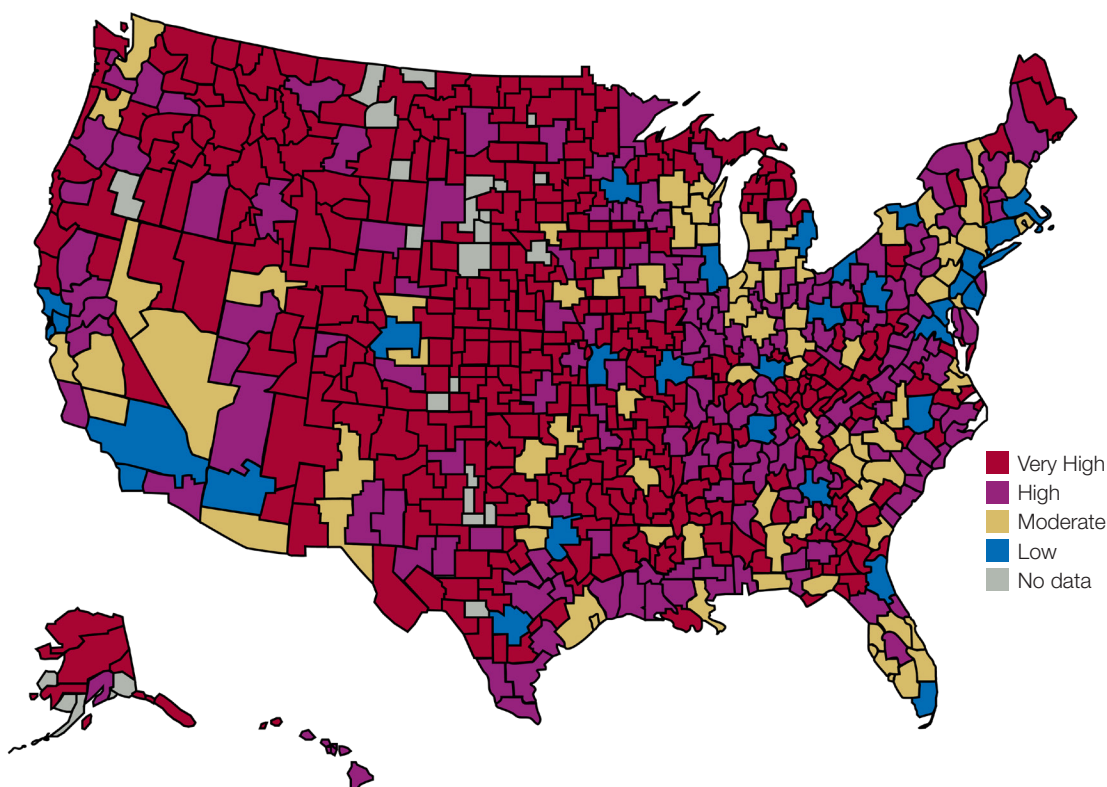


Figure 1: Labor Market Concentration by Commuting Zone

This figure depicts labor market concentration, using the Herfindahl-Hirschman Index (HHI), a standard measure used by antitrust regulators. It shows the average HHI by 6-digit Standard Occupational Classification code for the labor markets, between the first quarter of 2010 and the fourth quarter of 2013. HHI is equal to the sum of the squares of the market shares of each firm in the market. In the construction of this figure, market shares are based on the share of job vacancies posted by all the firms in that labor market, as reflected in data from CareerBuilder.com. The categories used for the HHI concentration levels are as follows—Low: HHI between 0 and 1500; Moderate: HHI between 1500 and 2500; High: HHI between 2500 and 5000; Very High: HHI between 5000 and 10000. These categories correspond to DOJ/FTC guidelines, except that we add the additional distinction between high and very high concentration levels around the 5,000 HHI threshold. For more on the measurement of labor market concentration, see <https://publicpolicy.wharton.upenn.edu/issue-brief/v6n3.php>.

OCCUPATIONAL LICENSING

Occupational licensing also can have anticompetitive effects. Licensing typically is instituted by professional organizations to help protect consumers from harm and preserve the integrity of an industry—as with the requirement of the legal profession that practitioners have a law license and that they pass the bar exam. In some instances, though, licensing seems to be nothing more than a mechanism for restricting the ability of certain types of workers to enter an industry. For example: On June 17, 2010, the FTC filed a complaint alleging that the North Carolina State Board of Dental Examiners (NCBDE) had broken the anticompetitive laws outlined by the Federal Trade Commission Act. Acting upon complaints by dentists, the Board had issued cease-and-desist orders to non-dentists offering tooth whitening services and teeth whitening products. These orders prompted cosmetologists, self-employed dental hygienists, and other non-dentists to stop offering teeth whitening services in North Carolina, thereby reducing market competition. The case went to the Supreme Court and in 2015 the Court ruled 6-3 that a Board can invoke state-action antitrust immunity only if it is subject to active supervision by the State, and in the North Carolina case that requirement was not met.

CONCLUSION

There is no real closure on any of these labor market issues described above. All are moving targets still, and are statutory—which means that Congress can change them to better protect the interests of labor, if it wants.