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Monopolies Are Not Taking a Fifth of Your Wages

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A recent Treasury report on labor market competition provided a misleading narrative about labor market concentration and its effect on workers. Labor market power is largely due to labor market frictions, not concentration. Firms are not profiting at the expense of workers.

KEY TAKEAWAYS

- Labor markets are not highly concentrated. Local labor market concentration has been declining for decades with the most concentrated markets seeing the largest declines.
- Labor market power is largely due to labor market frictions such as worker preferences, search costs, bargaining, and occupational licensing rather than concentration.
- As a case study, changes in concentration in the labor market for nurses have little to no effect on wages, whereas nurses' preferences over job location are estimated to lead to wage markdowns of 50 percent.
- Firms are not profiting at the expense of workers. The decline in the labor share of national income is primarily due to rising home values, not increased labor market concentration.
- Policy reform should focus on reducing labor market frictions and strengthening workers' ability to collectively bargain. Policies targeting concentration are misguided and will be ineffective at improving outcomes for workers.

INTRODUCTION

President Biden, as part of his executive order on competition, directed the U.S. Department of Treasury to report "on the effects of lack of competition on labor markets."[1] In March, the Treasury released a report, "The State of Labor Market Competition," concluding that "a careful review of credible academic studies places the decrease in wages [due to labor market power] at roughly 20 percent relative to the level in a fully competitive market."[2] Neo-Brandeisians seized on this conclusion to claim that "monopolies take a fifth of your wages," generating yet another myth about the need for significant antitrust reform.[3] Progressives use the report to justify much more aggressive antitrust enforcement, including in merger review, even though it presents virtually no viable evidence for the claim that industry concentration has played any role in this supposed 20 percent decline in wages. The report's analysis is widely inaccurate, with Treasury analysts using every possible assumption to generate the largest possible estimate.

The Treasury's report and the studies it is based on are used by progressives to support their view of a zero-sum game between capital and labor. However, what they overlook is that workers are also consumers. Lower wages do not necessarily translate to higher profits if labor savings are passed on to consumers in the form of lower prices. If a competitive labor market would generate a 20 percent increase in wages at the expense of firm profit, it would mean that personal income on receipts of assets (e.g., capital income) would be just 2 percent of personal income instead of its current 14 percent (and its average of 16.2 percent from 1930 to 2021)—a completely unrealistic number.

Policy reform aimed at reducing labor market frictions and improving worker bargaining power is likely to be more effective at improving outcomes for workers than misguided policies aimed at reducing labor market concentration would be.

The approach economists use to evaluate the competitiveness of labor markets is similar to the one used to evaluate the competitiveness of product markets. In product markets, setting prices above the marginal cost of production is often an indicator that firms are exercising market power. In labor markets, the analogous indicator of the exercise of market power is setting wages below the marginal revenue product of labor—a firm's revenue from selling the additional output produced when hiring another worker. In the absence of market power, workers are paid the additional value they contribute to the firm.

As in product markets, labor markets can deviate from the competitive benchmark when they are dominated by just a few firms. In concentrated product markets, a firm exercises monopoly or oligopoly power when it reduces output in order to raise prices. In concentrated labor markets, the analogous concept is the exercise of monopsony or oligopsony power, whereby the firm reduces the number of workers it hires to lower wages. As the ability to suppress wages can arise in many ways, reduced employment is an important indicator that firms are exercising monopsony power.

The Treasury report provides some evidence for the presence of market power in labor markets but offers little support for the idea that this market power is due to labor market concentration or that firms are exercising monopsony power. Labor markets are not highly concentrated, nor has labor market concentration been increasing. Labor market frictions are an important source of market power and contribute significantly to a firm's ability to suppress wages. Policy reform aimed at reducing labor market frictions and improving worker bargaining power is likely to be more effective at improving outcomes for workers than misguided policies aimed at reducing labor market concentration would be.

LABOR MARKET CONCENTRATION

Labor markets are not highly concentrated. Like the measurement of product market concentration, labor market concentration can be measured using the Hirschman-Herfindahl Index (HHI)—the sum of squared market shares. Typically, labor market shares are calculated using employment or payroll shares, but some studies also use vacancy shares. Berger et al. found that while labor market concentration in three-digit NAICS industries has increased at the national level since the mid-1980s, concentration in local labor markets, as measured by commuting zones, has been decreasing over the same period, with a payroll HHI of around 1,000 by 2013.[4] To the extent an occupation spans multiple NAICS industries (e.g., customer service representatives), local labor market concentration is likely to be even lower. As labor markets are typically local, this study demonstrates that not only are labor markets not concentrated, but that concentration in labor markets has been decreasing. Rinz observed similar trends in local labor market concentration, finding the employment HHI had fallen to about 1,500 by 2015 and showing that the local labor markets with the highest levels of concentration are the ones that have seen the largest declines since 1976.[5] He also suggested the decreasing trend in local labor market concentration is due to the increased participation of large national firms in local labor markets, mirroring a similar trend in product market concentration.[6]

The Treasury report relies on two studies to support its claim that labor markets are highly concentrated, neither of which lends adequate support for such a claim. The first study relied on is Rinz's which, as noted, demonstrates that local labor markets are not highly concentrated. The second study is from Azar et al., which is too narrowly focused to make any generalizations about the state of labor market competition in the U.S. economy.[7] They studied local labor market concentration using vacancies on CareerBuilder.com for 26 narrowly defined occupations (e.g., medical secretary). Taking the simple average of HHIs for every occupation-commuting zone pair, they found an average vacancy HHI of 3,157. However, the occupations they studied accounted for less than 14 percent of U.S. employment in 2020.[8] If they had wanted to accurately assess labor market concentration, they would have used a broader sample of the 867 different occupations for which the Bureau of Labor Statistics collects data.

Furthermore, given that only a subset of employers in a local labor market post vacancies at any given time, an HHI based on vacancy shares will find that labor markets are more concentrated than they are. When the authors constructed a population-weighted HHI, which gives more weight to larger labor markets and more accurately reflects the concentration faced by the average worker, they found an HHI of only 1,691—about half as large as the unweighted HHI—reflecting that larger cities tend to have less-concentrated labor markets. The population-weighted HHI is reasonably close to the estimates provided by Berger et al. and Rinz (even with its significant upward bias). Despite the population-weighted HHI being a more accurate representation of workers' experience, the Treasury report focuses on the much higher HHI generated from the simple average of HHIs from occupation-commuting zone pairs. On this basis, it would be inappropriate to conclude, as the Treasury report does, that labor markets are highly concentrated.

THE ROLE OF LABOR MARKET FRICTIONS IN CREATING MARKET POWER

While there is little evidence to support the idea that labor market concentration is contributing to market power, the Treasury report highlights several labor market frictions that play a role in creating market power. Some of these frictions, such as worker preferences over a job's location, are inherent to all labor markets, while others, such as noncompete agreements, are actively cultivated by firms to create market power. Importantly, these market frictions exist even in labor markets with many firms and very little concentration. Therefore, it is important to recognize that while these frictions allow firms to exercise market power, this market power does not necessarily arise from concentration in the labor market.

But that is only the first part of the story. The second—and critically important—part is what happens to those labor savings the firm now achieves. Progressives and the Biden administration believe that they go to profits. But this would only be the case if product markets were not competitive. In reality, most of these savings get bid away in the form of lower prices as firms compete with one another. This is why a century of higher productivity has not led to higher profits but has led to lower consumer prices that are reflected in higher real wages (e.g., the number of labor hours needed to buy a loaf of bread has fallen dramatically). In this sense, the critical question is not about wages, but whether the wage savings go to consumers or capital owners. For each of the labor market frictions described ahead, the real issue is the effect not just on wages but also on prices. If increased labor market power means lower wages but also lower prices, the effect on all workers is likely neutral.

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Preferences, Search, and Bargaining

In monopolistically competitive product markets, despite the presence of many firms, prices are above marginal cost. Dry cleaners are a classic monopolistically competitive market. There are many dry cleaners, which keeps the profits of dry cleaners low, but because consumers care about the characteristics of the service offered (e.g., location, quality, etc.), dry cleaners can charge prices above marginal cost. The analogous concept in labor markets is monopsonistic competition wherein, despite many firms, wages are below the marginal revenue product of labor. Just as consumers have preferences over products, workers have preferences over jobs. For example, workers with young children may prefer jobs near better schools or child care facilities or jobs with flexible hours or that allow for telework to make it easier to address unexpected child care needs. These preferences lead workers to accept lower wages for jobs in their preferred locations or with their preferred characteristics.

Preferences over job characteristics also interact with frictions relating to job search. Job search is costly for workers. Each hour a worker spends on job search is an hour of forgone wages from either the worker's existing job or some future job if the worker is unemployed. Therefore, when a worker receives a job offer, they face a trade-off between accepting the job offer or continuing to search in the hopes of receiving a better offer. But because search is costly, workers will accept lower wage offers to avoid those search costs.

In addition to frictions created by preferences and search, bargaining frictions give firms additional market power over workers. For some jobs, firms bargain with workers over wages instead of making "take-it-or-leave-it" offers. Bargaining is effectively a negotiation between the worker and the firm about how to divide the surplus between the lowest wage the worker will accept and the highest wage the firm is willing to pay (i.e., the marginal revenue product of labor). How this surplus is divided depends on the outside options for both sides in the negotiation. If the worker has a specialized skill in high demand (e.g., nurses during the pandemic) and the firm has few outside options, the worker will obtain a higher share of the surplus. But if a worker is relatively uninformed about their outside options and search is costly, or if there are fewer outside options for the worker, then the firm will be able to obtain a higher share of the surplus. In either case, the worker will receive less than their marginal revenue product of labor due to this bargaining friction. Therefore, even in labor markets with many competing employers, labor market frictions due to preferences, search, and bargaining can give firms market power to pay lower wages. Even in relatively unconcentrated labor markets, firms can mark down wages below marginal revenue product.

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Occupational Licensing

An additional source of labor market friction identified in the Treasury report is occupational licensing. Occupational licensing can be welfare improving when "quality meaningfully varies, differences in quality are difficult to observe, and the consequence of that variation matters."[9] Some occupations, such as medical doctors, clearly meet these criteria, but many other occupations do not. Yet, state licensure is required. When quality is easy to observe, market forces will either drive out low-quality providers or low-quality providers will be forced to charge lower prices and only serve consumers who do not care very much about quality. As Maureen Ohlhausen, former acting chair of the Federal Trade Commission (FTC), has pointed out, it seems unlikely that "the state has a legitimate interest in protecting the public from rogue interior designers carpet-bombing living rooms with ugly throw pillows. Market dynamics will naturally weed out those who provide a poor service, without danger to the public."[10] The extent of occupational licensing in the United States likely exceeds what is optimal. The share of the U.S. workforce subject to occupational licensing increased from 5 percent in the 1950s to around 30 percent by 2008.[11] The substantial variation across states both in terms of the occupations that are licensed and the requirements for licensure strongly suggests that the current extent of occupational licensing is excessive.[12]

Excessive occupational licensing is problematic, as it creates barriers to entry into occupations without any countervailing benefits for consumers. Entry barriers in labor markets operate similarly to entry barriers in product markets and lead to higher wages for licensed workers and higher prices for consumers. However, occupational licensing can suppress wages as well. First, occupational licensing reduces the demand for qualified, yet unlicensed, workers. Lower demand limits the outside options for these unlicensed workers, leading to lower wages. Second, because occupational licensing requirements typically vary by state, licensed workers are more likely to restrict their job search to the state in which they are licensed. As noted, worker preferences over location allow firms to exercise market power and pay lower wages.

Many states delegate the regulation of occupational licensing to members of the occupation. For example, state medical licensing boards are often composed of licensed physicians. Given the wage benefits from the barrier to entry created by licensing, self-regulated licensing bodies sometimes abuse their regulatory authority to maintain this lucrative entry barrier. For example, in North Carolina, the state dental board sent cease-and-desist letters to nondentists providing teeth-whitening services alleging they were practicing dentistry without a license. In 2015, the Supreme Court affirmed lower court decisions that this conduct was outside the state's authority delegated to the board and was anticompetitive.[13] While anticompetitive abuses of regulatory authority, such as those of the North Carolina state dental board, increase wages of licensed workers, they exacerbate the labor market frictions created by occupational licensing and further depress wages for unlicensed workers.

Noncompete Agreements

The Treasury report also highlights noncompete agreements as a source of labor market friction that, like occupational licensing, have benefits in limited circumstances but may also be used to exercise market power in labor markets. Noncompete agreements prevent former employees from working for a competitor for some specified period. A common justification for using noncompete agreements is to mitigate hold-up problems associated with a firm's provision of training to its workers. To the extent that the skills workers attain through training are transferable to other firms, firms will be less likely to provide costly training to their workers, as they will not be able to appropriate the returns to their investment. Noncompete agreements limit this hold-up problem and allow firms to reap the benefits of productivity-enhancing investments in their workers. Similarly, when intellectual property is easy to appropriate (e.g., trade secrets), a firm might also use noncompete agreements to ensure that its competitors do not benefit from its costly investments in research and development (R&D) by hiring away its workers. For these reasons, noncompete agreements are generally more prevalent in high-skill occupations and industries where costly training and R&D may be more important for worker productivity.

Noncompete agreements, by construction, limit the outside options for workers when bargaining over wages.

This does not mean noncompete agreements are limited to high-skill occupations. Noncompete agreements are also present in low-skill occupations where their use is much less defensible on efficiency grounds. For example, the Jimmy John's sandwich chain "barred departing employees from taking jobs with competitors of Jimmy John's for two years after leaving the company and from working within two miles of a Jimmy John's store that made more than 10 percent of its revenue from sandwiches."[14]

Even where noncompete agreements can be justified to mitigate hold-up problems, they still act to depress wages. Noncompete agreements, by construction, limit the outside options for workers when bargaining over wages. Anything that limits a worker's outside options increases the share of the bargaining surplus that accrues to the firm and consequently leads to the worker's wage being lower. This does not mean noncompete agreements are inconsequential for low-skill workers who are less likely to bargain over wages. Worker mobility is an important source of wage growth for younger workers. To the extent noncompete agreements limit the mobility of low-skill workers, their lifetime earnings are likely to be lower.[15]

Wage-Fixing and No-Poach Agreements

Wage-fixing and no-poach agreements are the labor market analogs of price-fixing and market-division agreements wherein, instead of allocating customers, they allocate workers. The strategic interaction between firms competing for workers limits to some extent their ability to exercise market power. While large firms have greater market power and mark down wages more relative to small firms, they also are more productive, which leads them to pay higher wages despite their greater market power.[16] Competition with these high-productivity, higher-wage firms leads low-productivity firms to mark down wages less. This strategic interaction leads to higher wages overall. Therefore, both types of firms have an incentive to limit this strategic interaction, which they sometimes try to accomplish through wage-fixing and no-poach agreements. These illegal agreements eliminate labor market competition and allow firms to exercise their collective market power to pay lower wages, but with an indeterminate effect on prices and profits.

EVIDENCE ON THE EXERCISE OF MARKET POWER: THE LABOR MARKET FOR NURSES

The Treasury report surveys the literature studying the impact of labor market power on wages and concludes “that labor market power reduces wages by *at least* 15 percent” but does not attempt to identify to what extent the various sources of labor market power contribute to that wage reduction.[17] The report merely notes that “evidence suggests that this power derives more from labor market frictions than from market frictions.”[18] But even assuming this estimate is correct, the real issue is whether firms use these labor savings to reduce prices or increase profits. If all the savings go to reducing prices, then the real wage effect is close to zero. Some of the population who are not workers (e.g., students, unemployed, and elderly) would receive some of this benefit, with workers receiving the rest.

As mentioned, labor market frictions can create market power independent of labor market concentration. Therefore, to develop effective policies to address the impact of market power on wages, it is important to understand how the different sources of market power contribute to a firm’s ability to depress wages. Many of the sources of labor market power previously described are present in the market for nurses. The large number of studies on nurse employment allow us to observe the relative importance of the various sources of market power for the determination of nurses’ wages. Importantly, these studies demonstrate that market power due to labor market frictions has a far greater impact on nurses’ wages than monopsony power does.

Concentration: Azar et al., in their study on labor market concentration, found an average HHI for registered nurses based on vacancies in commuting zones of around 2,000. Their results suggest that a 10 percent increase in concentration for registered nurses would reduce wages by about 1.4 percent.[19] This relatively small reduction in wages is consistent with Prager and Schmitt, who found that hospital mergers in commuting zones with premerger HHIs similar to those found by Azar et al. do not affect wages for nurses.[20] To provide context for these HHI estimates, the Department of Justice (DOJ) and FTC *Horizontal Merger Guidelines* characterize product markets with HHIs between 1,500 and 2,500 as moderately concentrated, and merger-induced increases in the HHI of at least 100 as raising significant competitive concerns and warranting scrutiny.[21] While a 10 percent increase in the HHI in a moderately concentrated market may raise significant competitive concerns in product markets, a similar change in concentration in the labor market for nurses does not appear to impact wages very much. It is important to note that these studies only inform us about how changes in concentration might affect nurses' wages but do not tell us anything about the extent to which nurses' wages are marked down due to the exercise of market power arising from the current level of concentration. Nor do they say anything about whether the lower wages reduce health care costs. However, the limited wage effects from concentration changes that normally warrant scrutiny in product markets strongly suggest that monopsony power is not an important determinant of nurses' wages.

Preferences and Search: Staiger et al. developed a model to analyze how geographic differentiation among hospitals affects the labor supply of nurses. Their model captures the idea that nurses may prefer to work at nearby hospitals or hospitals that better match their job preferences. They use an exogenous change in wages for nurses at nearby VA hospitals to estimate short-run labor supply elasticities (i.e., how responsive nurses are to changes in wages). They found that the labor supply of nurses to a given hospital is relatively inelastic, suggesting hospitals have a high degree of market power. They estimated that hospitals may mark down nurses' wages by as much as 50 percent. It is worth emphasizing that this market power is due to the geographic differentiation of hospitals and nurses' preferences over those hospitals and not due to concentrated hospital markets, as "changes in the VA wage has [*sic*] similar effects on hospitals in competitive markets to those in less competitive markets."[22] That is, this large estimated markdown in nurses' wages is not due to monopsony power but due to labor market frictions arising from the geographic differentiation of hospitals.

Bargaining: Prager and Schmitt studied the impact of hospital mergers on the wages of hospital workers, examining the wage impacts separately for unskilled workers, skilled workers without health-care-specific skills, and skilled workers with health-care-specific skills. The health-care-specific skilled workers are composed of nurses and pharmacists. Prager and Schmitt found that hospital mergers have no impact on the wages of unskilled workers. With respect to skilled workers, they found wages were effected only when the labor market was already highly concentrated before the merger (i.e., labor markets with only about three hospitals and HHIs over 4,500 premerger). They estimated that mergers in these highly concentrated labor markets reduce the wages for nurses and pharmacists by 6.8 percent and reduce the growth rate of their wages by about 50 percent.[23] Importantly, they did not find any employment effects from the mergers. These wage reductions do not arise from monopsony power, which relies on reducing employment to achieve wage reductions. The mechanism they identified is reduced bargaining power for nurses whose outside employment options are made worse due to the merger. However, "high levels of unionization appear to meaningfully attenuate the estimated post-merger reductions in wage growth," demonstrating the importance of unions in preserving bargaining power when a local labor market is highly concentrated.[24]

Occupational Licensing: While occupational licensing specifies who may take up certain occupations, scope-of-practice regulation specifies "the kinds of services and tasks that members of a particular occupation may perform."[25] Kleiner et al. studied how changes in state scope-of-practice regulations that gave nurse practitioners more autonomy to perform tasks usually performed by physicians affect wages and health care costs. They found that giving nurse practitioners more autonomy increases their wages by about 5 percent but has no impact on hours worked.[26] These changes in the scope of practice for nurse practitioners are effectively a weakening of the entry barrier created by occupational licensing and provide some evidence for how occupational licensing can depress wages for unlicensed workers. Like other labor market frictions, the market power created by occupation licensing for nurse practitioners cannot be viewed as monopsony power due to the lack of employment effects from relaxing the licensing constraint.

These studies of the labor market for nurses allow us to understand better how the various sources of labor market power separately impact their wages. Bargaining and occupational licensing frictions alone likely reduce nurses' wages by about 12 percent—nearly 80 percent of the minimum wage reduction from labor market power reported by the Treasury. However, nurses' wages appear to be most significantly impacted by labor market frictions related to worker preferences, which are estimated to produce markdowns of about 50 percent. Notably, monopsony power does not appear to have much impact on nurses' wages.

MARKET CONCENTRATION AND LABOR'S SHARE OF NATIONAL INCOME

The Treasury report discusses the widely reported decline since the 1980s in the share of national income going to workers. It largely points to increased product market power and product market concentration to explain declining payroll and self-employment shares, suggesting that firms have gained at the expense of workers.[27] But product market concentration has not increased.[28] When product and labor markets are appropriately defined at the local level, we see that for many industries, concentration has been decreasing over this period.[29] Moreover, as the Treasury report notes, the declining labor share is a global phenomenon that argues against increased concentration as the cause.

Furthermore, Berger et al. explicitly examined whether changes in labor market concentration could be responsible for the decreased labor share and concluded that declines in local labor market concentration have likely *increased* labor's share of income by 4 percentage points.

To support their conclusion that product market power may have a role to play in explaining the declining labor share, the Treasury report relies on two studies. The first study, De Loecker et al., which examines markups in the U.S. since the 1960s, finds that while overall markups have increased, two-thirds of the increase can be explained by a reallocation of market share within industries from low-markup firms to high-markup firms. The authors argued that the resulting increase in market power decreases the demand for labor and thereby explains the declining labor share. Markups measure the extent to which a firm's price exceeds its marginal cost. Markups can increase because either prices have increased or costs have decreased. In general, we would not expect an increase in prices to result in increased market shares, suggesting that this shift in market share to high markup firms does not represent an increase in market power but an increase in productivity.

The second study Treasury relies on, Autor et al., supports the idea that increased productivity could be driving higher market shares of some firms. The authors found that the unweighted mean of labor's share across firms has not decreased much since the 1980s, but more productive firms have gained market share at the expense of less productive firms. These "superstar" firms are gaining market share, not because they have market power, but because they are more productive and more efficient, and have lower costs. The authors pointed out, "If rising concentration reflects weakening competition, we would instead expect to see a general rise in markups, a rise in profit shares, and a fall in labor shares that is common across [all] firms within an industry" and not just at superstar firms.[30] Labor's share within specific firms has been relatively constant, but more efficient firms using less labor have gained market share. Despite both studies supporting a productivity-driven explanation for the declining labor share, the Treasury report persists in suggesting that lax antitrust enforcement could play a role.

Firms have not gained at the expense of workers. Much of the reduced labor share of income is due to the increase in housing value.

The core problem with the De Locker et al. and Autor et al. studies is that they miss the forest for the trees. To fully understand the decline in the labor share of income, one must examine the U.S. National Income and Product Accounts (NIPA). Strikingly, the Treasury report does not do this. Perhaps this is because the NIPA data does not support increased market power as an explanation for the reduced labor share of income. "[T]he decline in the labor share of income is not due to an increase in the share of income going to productive capital—which has largely been stable—but instead is due to the increased share of income going to housing capital."[31] That is, firms have not gained at the expense of workers. Much of the reduced labor share of income is due to the increase in housing value, which the Bureau of Economic Analysis records as rental income in the NIPA data. While the returns to capital (excluding housing capital) have been near their long-run average, the returns to housing have been steadily increasing since the Great Recession. To the extent that workers are also homeowners, their share of national income may have changed very little.[32] If the problem is not business power but rental power, the answer is not antitrust enforcement but broad-based housing policy reform.

POLICY RECOMMENDATIONS

Given that there is little evidence that labor market concentration is contributing to market power, policy reform should be aimed at reducing labor market frictions—including those intentionally cultivated by firms to create market power. In addition to reducing labor market frictions, reforms to strengthen workers' ability to collectively bargain will allow workers to obtain a larger share of the surplus they help create irrespective of the source of labor market power. Policies that target labor market concentration are misguided and likely to be ineffective at improving outcomes for workers.

Strengthen Enforcement Against Horizontal Agreements in Labor Markets

In 2016, DOJ and the FTC issued guidance targeted to human resource professionals in which the DOJ provided notice that it intended to criminally prosecute wage-fixing and no-poach agreements.[33] While this may seem uncontroversial given the longstanding criminal liability for price-fixing in product markets, this was the first time DOJ had articulated its view that criminal liability attaches to these naked horizontal agreements in labor markets. However, it was not until the last days of the Trump administration that DOJ brought its first criminal cases—and it has only used its criminal authority against five labor market conspiracies to date.[34] Naked horizontal agreements in labor markets directly reduce wages, have no offsetting efficiency justification, and harm competition and economic growth. DOJ should aggressively prosecute these criminal conspiracies. Additional funding to the Antitrust Division to support increased enforcement against naked horizontal agreements in labor markets is warranted.

Limit Excessive Use of Occupational Licensing and Noncompete Agreements

Excessive occupational licensing reduces the wages of licensed workers by restricting their job search to the state in which they are licensed, and unlicensed workers by reducing demand for their services. To limit the wage impacts of licensing, states should consider expanding the scope of practice for complementary occupations (e.g., nurses, dental hygienists, etc.). Allowing dental hygienists, for example, to take on more basic tasks typically performed by dentists increases the demand for dental hygienists, thereby raising their wages and shifting care from higher-cost dentists to lower-cost hygienists and lowering the costs of dental care and improving access to care. While many states have undertaken some form of scope-of-practice reform, the extent of reform across states varies significantly.[35] In addition to expanding scope of practice, states should consider reforms to license portability. During the COVID-19 pandemic, many states issued temporary reciprocal licensing waivers, which allowed medical professionals to practice based on a license from another state.[36] Where the skills required to perform an occupation successfully do not meaningfully vary by geography, states should consider harmonizing licensing requirements and permanently recognize licenses from other states. And when the states resist doing so because of lobbying from key interest groups, the federal government should step in. Given the recent experience with reciprocal licensing waivers during the pandemic, the medical professions would be a good place to start.[37]

The excessive use of noncompete agreements also contributes to lower wages. While efficiency justifications exist for noncompete agreements in high-skill occupations, their use in low-skill occupations is generally unwarranted. Despite this, among "workers earning $20 per hour or less, 12 percent reported having a non-compete contract in their current or most recent job."[38] In last year's executive order on competition, President Biden encouraged FTC to exercise its rulemaking authority to curtail the unfair use of noncompete clauses.[39] A well-crafted FTC rule that bans noncompete agreements absent efficiency and innovation justifications could limit their excessive use and improve wages for low-skill workers. However, given the legal uncertainty around FTC's competition rule-making authority and the diversity of approaches to the enforcement of noncompete agreements by states, Congress should act to limit the use of noncompete agreements in low-skill occupations.[40]

Strengthen Worker Collective Bargaining Power

Individual workers have limited ability to gain a larger share of the bargaining surplus when negotiating with a firm with market power. It is immaterial to workers whether the market power they face arises from labor market concentration or from other labor market frictions. Workers' ability to collectively bargain with firms has been seriously diminished over the last 40 years. As a result, it is much more difficult to both win a union election and secure a contract.[41] This difficulty is evident in the dramatic decline in the share of workers who are union members or represented by unions, which has fallen by half since the early 1980s.[42] As Prager and Schmitt showed in their study of the labor market effects of hospital mergers, unions can be effective in securing greater returns for workers in the presence of firm market power.

Effective worker organizing can also address the reduced worker bargaining power arising from the "fissuring" of the workforce. "Fissuring," which has generally been increasing since the early 1980s, refers to the outsourcing of jobs that are outside of a firm's core competency (e.g., janitorial services). For example, the federal government's use of contract workers increased from just over 20 percent in 1984 to around 40 percent by 2015.[43] Fissuring limits workers' ability to collectively bargain. As noted in the Treasury report, "By removing the immediate nexus between workers and the firm for which they perform services, workers are prevented from bargaining directly with the entity that has the economic power."[44] In the absence of formal collective bargaining, informal organizing through local community institutions can be effective in creating bargaining power for fissured workers, as demonstrated by successful living wage campaigns.[45] Collective bargaining, whether formal or informal, allows workers to attain a larger share of the surplus they help create. Congress should strengthen labor laws to make it easier to establish unions and reach union contracts with employers.

Merger Review Should Not Include Evaluation of Labor Market Effects

Earlier this year, DOJ and FTC announced their intention to revise the *Horizontal Merger Guidelines*.[46] The agencies' request for information specifically calls out "monopsony power and labor markets" as a topic on which they are interested in receiving public comment. In particular, the agencies asked whether "the guidelines set forth a sufficient framework to analyze mergers that may lessen competition in labor markets and thereby harm workers."[47] Introducing the evaluation of labor market effects unnecessarily complicates merger review and needlessly ties up agency resources at a time when the agencies are facing severe resource constraints.[48] As discussed previously, labor markets are not highly concentrated, nor is labor market concentration a key factor driving down wages.

A proposed merger that is reportable to the agencies under the Hart-Scott-Rodino Act and likely to have an anticompetitive effect in a relevant labor market is also likely to have an anticompetitive effect in a relevant product market. The labor market effects of hospital mergers found by Prager and Schmitt only occurred in very highly concentrated labor markets with only around three hospitals premerger. FTC would surely challenge such a merger irrespective of any labor market effects. The additional review is unnecessary as FTC's recent challenge of the Lifespan/Care New England merger in Rhode Island demonstrates. While there was evidence that this proposed hospital merger may have labor market effects, FTC successfully blocked the merger based only on the expected product market effects.[49] Evaluating mergers for labor market effects is unnecessary and costly for both firms and the agencies. The current merger guidelines adequately address competition concerns in input markets, so any contemplated revision to the guidelines should not incorporate a "framework to analyze mergers that may lessen competition in labor markets."[50]

Raise the Minimum Wage

Given that the minimum wage, currently at $7.25 per hour, has not been increased since 2009, a clear solution to improving outcomes for low-skill workers is to raise it. Congress should at least be able to agree to restore its real purchasing power and include an automatic inflation adjustment to increase the minimum wage annually. This would help boost productivity but have no net negative effect on overall jobs.[51]

CONCLUSION

Market power is a problem in labor markets, but this is largely due to labor market frictions and not labor market concentration. Moreover, simply asserting that workers obtain lower wages than they might otherwise get in a more competitive market is only the first half of the analysis. The entire Biden administration approach to competition assumes that the trade-off is between workers and capital. In reality, given that the rate of nonfinancial domestic profits is stable—or even lower in the last half of the 2010s than it was in the 1960s—it's clear that increased productivity did not go to profits but to lower prices, which is reflected in higher purchasing power.

Labor markets are not highly concentrated, nor is labor market concentration increasing. The decline in the labor share of national income is primarily due to rising home and apartment values and not increased labor market concentration.

To improve worker wages, policymakers should focus on reducing labor market frictions and improving worker bargaining power rather than adopting misguided policies aimed at reducing concentration.

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ENDNOTES

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