

# Monopsony

Almost all antitrust cases target firms that possess power on the seller side of markets. But antitrust law also targets monopsony power—consolidated power on the buyer side. For this reason, antitrust law protects all ‘sides’ of, or trading parties in, a market. Recent research has demonstrated that labor markets in particular have significant competition problems, and wages often exhibit substantial markdowns due to monopsony power. Furthermore, employers engage in practices (like no-poaching agreements and non-compete provisions) that hurt wages, working conditions, benefits, and job mobility. This module explores monopsonies and the way that courts have treated them in the United States, with a focus on labor.

The economic analysis of monopolies and monopsonies is symmetric. Why, then, have courts and regulators been so much more concerned with monopolies? Is it an economic reason, or is it something else?

## Reading

### Required Reading

*NCAA v. Alston*, 141 S. Ct. 2141 (2021)

*Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., Inc.*, 549 U.S. 312 (2007)

*Toys R Us, Inc. v. FTC*, 221 F.3d 928 (7th Cir. 2000)

*In re Animation Workers Antitrust Litig.*, 123 F. Supp. 3d 1175, 1178 (N.D. Cal. 2015)

Clayton Act §6, 15 U.S.C. §17 (stating that “[t]he labor of a human being is not a commodity or article of commerce” and exempting labor organizations from certain antitrust laws)

Suresh Naidu, Eric Posner & E. Glen Weyl, *Antitrust Remedies for Labor Market Power*, 132 HARV. L. REV. 537 (2018) (read section I; sections II–III are interesting but optional)

### Recommended Reading

*United States v. Topco Associates, Inc.*, 405 U.S. 596 (1972)

*Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1 (1911) (in which John D. Rockefeller used buyer power to squeeze competitors)

Marshall Steinbaum, *Antitrust, the Gig Economy, and Labor Market Power*, 82 L. & Contemp. Probs. 45 (2019)

### Background Reading

C. Scott Hemphill & Nancy L. Rose, *Mergers that Harm Sellers*, 127 Yale L. J. 2078 (2018)

Jonathan B. Baker, Joseph Farrell & Carl Shapiro, *Merger to Monopoly to Serve a Single Buyer: Comment*, 75 ANTITRUST L. J. 637 (2008)

[Marius Schwartz, Buyer Power Concerns And The Aetna-Prudential Merger, 5th Annual Health Care Antitrust Forum \(October 1999\)](#)

[FTC/DOJ Joint Guidance for Human Resources Professionals \(2016\)](#)

*United States v. Adobe Systems, Inc.*, Case No. 1:10-cv-01629 (D.D.C. September 24, 2010)  
(Competitive Impact Statement)

Marina Lao, Workers in the “Gig” Economy: The Case for Extending the Antitrust Labor Exemption, 51 U. CALIF., DAVIS L. REV. 1543 (2018)

Sanjukta Paul & Nathan Tankus, The Firm Exemption and the Hierarchy of Finance in the Gig Economy, 16 U. ST. THOMAS L. J. 45 (2019)

[Michael Lipsitz & Evan Starr, Low-Wage Workers and the Enforceability of Non-Compete Agreements \(October 19, 2020\)](#)