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)
* 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)


Recommended Reading

* 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)


Background Reading


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)


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