

ISTANBUL COMPETITION FORUM ANNUAL WEBINAR

in cooperation with UNCTAD

16.12.2020

07.00 Salt Lake City, USA
15.00 Geneva, Switzerland
17.00 Istanbul, Turkey

“Competition Issues in Labor Markets”

In this Webinar, we aim to explore the competition issues in labor markets. The reason why we chose this topic was the increased attention by both scholars¹ and competition agencies (especially in the EU^{2 3 4 5} and US^{6 7 8}) to this topic as one of the causes of declining growth rate and rising income inequality is attributed to the increasing market power of firms in labor markets⁹.

As we all know, competition issues in labor markets stems from the buyer power of employers. As stated by OECD (2019), depending on the market structure, ‘buyer power’ may amount to ‘monopsony’. Eshenfelder, Farber and Ransom (2010)¹⁰ provides a brief explanation of the monopsony: *“Where monopoly refers to the case of a single seller confronted in a market by many buyers, monopsony refers to the case of a single buyer confronted in a market by many sellers. Just as the monopolist faces a downward sloping demand curve for his product and can set the price, the monopsonist faces an upward sloping supply curve for the good being purchased and can set the price”*.

¹ See <http://www.oecd.org/daf/competition/competition-concerns-in-labour-markets.htm>

² <https://www.competitionpolicyinternational.com/eu-vestager-says-collective-bargaining-in-gig-economy-would-not-be-cartel-like-behavior/>

³ https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1237

⁴ <https://kt.gov.lt/en/news/konkurencijos-taryba-launches-investigation-into-suspected-anti-competitive-agreement-among-lithuanian-basketball-league-and-basketball-clubs>

⁵ <https://www.concurrences.com/en/bulletin/news-issues/may-2020/the-portuguese-competition-authority-imposes-on-the-national-football-league-a>

⁶ <https://www.justice.gov/opa/speech/counsel-assistant-attorney-general-antitrust-division-doha-mekki-testifies-house>

⁷ <https://globalcompetitionreview.com/ftc-considers-workers-in-deal-reviews>

⁸ <https://www.justice.gov/opa/press-release/file/1268506/download>

⁹ Naidu S., Posner E and Weyl E (2018); “Antitrust Remedies for Labor Market Power”; University of Chicago Law School

¹⁰ Ashenfelder, Orley C., Farber Henry and Ransom Michael R. (2010); “Modern Models of Monopsony in Labor Markets: A Brief Survey”; Discussion Paper No: 4915.

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A good example for monopsony power in a labor market was given by Marinescu and Hovenkamp (2019)¹¹,

“The classic case of a labor market monopsony is the company town, where a single company, such as a mine, dominates employment. This monopsony situation is especially likely to arise in specialized jobs, e.g. miners, for which there is literally only one company hiring in town.”

and they go on to state that *“the term ‘monopsony’ is used today in labor economics to refer to both a monopsony proper and to an oligopsony, where the number of purchasers of labor is small, but greater than one.”*

The competition issues in labor markets range from wage fixing and no-poaching agreements to merger control and abuse of monopsony power. While wage fixing agreements between firms are considered as per se illegal, there is no consensus on which standard of review should be adopted for no-poaching agreements. This is because no-poaching agreements may be justified as preventing free riding of competitors with regard to know-how, training and trade secrets (OECD, 2019).

For mergers, even though there are studies that show concentration can affect wages and working conditions (Prager and Schmitt 2019; Benmelech et al. 2019), there has been no case in which a merger was blocked solely on its effect on labor market.

Lastly, in various jurisdictions’ competition laws, there is an exemption from the antitrust law for collective bargaining of labor¹². However, there is a general consensus that competition laws do not grant any exemption for the agreements between the firms which decrease the bargaining power of workers and thus competition agencies can take action for agreements to suppress workers’ wages.

¹¹ Marinescu, Ioana and Hovenkamp, Herbert J., "Anticompetitive Mergers in Labor Markets" (2019). Faculty Scholarship at Penn Law.

¹² For example Section 6 of the Clayton Act: “The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.”
In Article 3 of the “Grounds for the Articles of the Turkish Competition Law No: 4054” it is stated that “While intellectual or physical activities or activities that concern both, undertaken for a price or benefit, are defined as service, in its largest sense this definition also includes banking, insurance, money, credit, capital, knowledge and the other elements. Of course, the labor market, where the principle of collective bargaining is accepted, is not included in this definition.”

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In this Webinar we will explore the answers to the below questions;

- Is consumer welfare standard suitable for enforcement against labor market restraints?
- What are the sources of monopsony power in labor markets?
- How can firms abuse their monopsony power?
- What are the different types of anticompetitive agreements in labor markets?
- What role do mergers play in suppressing wages or salaries?
- What tools are available for competition agencies to tackle competition issues in labor markets? (for agreements as well as unilateral conduct and mergers)
- What are the competition policy implications of the labor market platforms that rely on labor from workers who are not legally employed by the platform itself?