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Monopsony in the Labor Market

1.1 Introduction

Monopsony is the label that Joan Robinson attached to a market in which a single employer faces a competitively structured supply of labor.[1] If that supply function is positively sloped, the monopsonist can depress the wage that it pays below the competitive level by reducing the quantity of labor that it employs.[2]

Intuition suggests that reduced wages will lead to lower cost and lower output prices that will benefit consumers, but our intuition fails us in this instance. Profit maximization by the monopsonist leads to undesirable economic consequences: lower wages and salaries, reduced employment, and social welfare losses. Moreover, there are no consumer benefits. In fact, the monopsonist's reduced employment leads to a reduction in output, which will increase, rather than decrease, output prices. In *The Wealth of Nations*, Adam Smith observed that:

> What are the common wages of labor, depends everywhere upon the contract usually made between [employers and employees], whose interests are by no means the same. The workmen desire to get as much, the masters to give as little as possible. The former are disposed to combine in order to raise, the latter in order to lower the wages of labor. It is not, however, difficult to foresee which of the two parties must, upon all ordinary occasions, have the advantage in the dispute, and force the other into a compliance with their terms. The masters, being fewer in number, can combine much more easily…. Masters are always and everywhere in a sort of tacit, but constant and uniform, combination, not to raise the wages of labor above their actual rate.[3]

[1] Joan Robinson, *The Economics of Imperfect Competition* (1933) at 293, 295.
[2] In Chapter 2, we spell out the technical details of monopsony.
[3] Adam Smith, *The Wealth of Nations* (1776).

As with many things, Smith was very perceptive. Over time, employers grew along with their power in the labor market.

One hundred years later, Senator John Sherman pointed out that labor markets needed antitrust protection, arguing that a trust "commands the price of labor … for in its field it allows no competitors."[4] For some reason, these early insights, along with the work of A. C. Piguo,[5] J. R. Hicks,[6] and Joan Robinson,[7] did not gain much traction. Recently, however, economists and policymakers have recognized the ill effects of monopsony and have offered some actions aimed at mitigating – if not eliminating – the monopsony problem.[8]

In our view, vigorous enforcement – both public and private – of the antitrust laws can play a large role in reducing the ill effects of monopsony power in the labor market.[9]

1.2 Pervasiveness of Monopsony in the Labor Market

Historically, economists believed that labor markets were perfect, that is, that labor supply functions were perfectly elastic. All employers – large and small – could hire as much or as little as they chose without any impact on the wage rate. British economists Piguo and Hicks recognized the possibility of imperfect labor markets but did not appear to believe that this had much empirical relevance.[10]

Robinson,[11] however, provided a fairly complete theoretical foundation for the economic analysis of imperfect labor markets. She observed that a single employer of labor services could control the wage paid by adjusting the quantity employed. She coined the term *monopsony* as a label for the large employer facing a positively sloped labor supply function.

Despite those early efforts by prominent economists, not much progress was made until the late twentieth century, when economists began to

4 Congressional Record 2457 (1890).
5 A. C. Piguo, *The Economics of Welfare* (1924) at 512.
6 J. R. Hicks, *The Theory of Wages* (1932) at 82.
7 Robinson, *Economics of Imperfect Competition* at 293, 295.
8 For example, Senator Amy Klobuchar (D. MN) has proposed antitrust challenges to mergers that enhance monopsony power.
9 Randy Stutz, *The Evolving Antitrust Treatment of Labor-Market Restraints: From Theory to Practice* (2018) makes a convincing argument that antitrust policy should be used to protect labor from anticompetitive mergers and business conduct that unreasonably restricts employment and compensation.
10 Piguo, *Economics of Welfare* at 512; Hicks, *Theory of Wages* at 82.
11 Robinson, *Economics of Imperfect Competition* at 293, 295.

discover evidence that labor markets were far from perfect. Labor economists found widespread empirical evidence that labor supply functions were positively sloped and the exercise of some degree of monopsony power was pervasive.

In the early 1990s, Card and Krueger examined the effects of minimum wage laws on local fast-food labor markets.[12] Under competitive conditions, it was expected that these laws would lead to a reduction in employment as the theory would have suggested. To the surprise of many, the implementation of these minimum wage laws did not lead to any statistically significant evidence of job loss in the local market for fast-food workers. Card and Kreuger attributed this to monopsony power in the labor market.

This finding sparked a newfound interest in labor economists as they tried to determine the prevalence of monopsony power in the labor market. In his book *Monopsony in Motion*, Alan Manning estimated the pervasiveness of monopsony power in the U.S. labor market, finding an elasticity of labor supply equal to 1.38.[13] This fell far below infinity, which is what would be expected if the labor market were actually perfectly competitive. While Manning's estimate was not the first attempt at estimating the elasticity of supply in a labor market, his work provided the foundation for a variety of empirical studies attempting to estimate the elasticity of labor supply.[14]

Since Manning's work, there have been many examinations of monopsony power in the labor market. Some economists have tried to identify the sources of monopsony power. The literature has shown that sources of monopsony power can be attributed to a variety of factors, but these factors generally fall into one of three categories: (1) market concentration, (2) job differentiation, and (3) search frictions.

Other economists and legal scholars alike have focused on the policy implications of monopsony power in labor markets. For example, Alderman, Blair, and Saygin examined the effects of outlawing wage discrimination in monopsonistic labor markets with two equally productive groups of workers.[15] Angerhofer and Blair analyzed collusion among

[12] See David Card and Alan B. Krueger, Minimum Wages and Employment: A Case Study of the Fast Food Industry in New Jersey and Pennsylvania, 84 *American Economic Review* 772 (1994), and David Card and Alan B. Krueger, *A Reanalysis of the Effect of the New Jersey Minimum Wage Increase on the Fast-Food Industry with Representative Payroll Data*, unpublished (1998).

[13] Alan Manning, *Monopsony in Motion: Imperfect Competition in Labor Markets* (2003).

[14] For a more in-depth survey of empirical estimates of labor supply elasticities, see Chapter 3.

[15] Brianna L. Alderman, Roger D. Blair, and Perihan Saygin, Monopsony, Wage Discrimination, and Public Policy, 61 *Economic Inquiry* 572 (2023).

employers in the labor market and identified the intended consequences of lower compensation and improved profit.[16] They also identified some unintended consequences – lower prices for complementary inputs and higher output prices. Meanwhile, Naidu, Posner, and Weyl provided an overview of multiple issues affected by the presence of monopsony power, including minimum wage, mergers, and other antitrust policies.[17]

The study of monopsony and monopsony power in labor markets has led to a variety of survey pieces, including those done by Card,[18] and by Manning.[19] These surveys highlight the breadth and depth of the literature on monopsony in the labor market that has been written up to this point. Others have dedicated special issues to examining monopsony in the labor market.[20]

1.3 Monopsonistic Restraints in Labor Markets

The pervasive presence of monopsony power in labor markets has been exercised in several ways. In addition, there are practices that create monopsony power. We briefly describe these restraints and practices here.

1.3.1 Wage Fixing

Wage fixing is precisely what concerned Adam Smith nearly 250 years ago. A wage fixing cartel combines the employment needs of the firms in the local labor market and acts like a pure monopsonist. Wages, other forms of compensation, hours, and working conditions are set at monopsonistic levels rather than competitive levels.

The result is a decrease in the number of employees and a reduction in the compensation of those employees who are hired. Employee surplus falls below the competitive level. Employer profits are enhanced at the expense of the employees as employee surplus is converted to employer surplus.

16 Tirza J. Angerhofer and Roger D. Blair, Collusion in the Labor Market: Intended and Unintended Consequences, *Competition Policy International, Antitrust Chronicle* (June 2020).

17 Suresh Naidu, Eric A. Posner, and Glen Weyl, Antitrust Remedies for Labor Market Power, 132 *Harvard Law Review* 536 (2018).

18 David Card, Who Set Your Wage?, 112 *American Economic Review* 1075 (2022).

19 Alan Manning, Monopsony in Labor Markets: A Review, 74 *ILR Review* 3 (2021).

20 For an example, in a recent special issue of the *Journal of Human Resources* (Volume 57, Supplement 2022), the focus was on monopsony in the labor market. For an overview, see Orley Ashenfelter, David Card, Henry Farber, and Michael R. Ransom, Monopsony in the Labor Market: New Empirical Results and New Public Policies, 57 *Journal of Human Resources* S1 (2022).

Social welfare is impaired as well owing to a misallocation of resources. At the cartel's optimal employment level, the incremental value of the output produced by the last unit of labor exceeds the worker's reservation wage. From society's perspective, too few workers are hired.[21]

1.3.2 No-Poaching Agreements

No-poaching agreements reduce competition in the labor market. While the specific terms of such agreements vary, the essence of no-poaching agreements is simple. Firm A agrees with Firm B to refrain from hiring Firm B's employees. Firm B reciprocates by making the same commitment to Firm A. The result is a reduction in the demand for the labor services of those workers employed by Firms A and B. The economic results are reduced compensation and fewer job opportunities for employees.[22]

1.3.3 Noncompete Agreements

In most instances, when an employee is hired, they fill out and sign several forms. At this time, the employee often signs a noncompete agreement (NCA). When an employee leaves their current job, they cannot work for a rival employer for some period of time. Typical time frames are as short as six months and as long as two years. The economic results of NCAs are ambiguous. For the worker, their job mobility is sharply curtailed. Consequently, they cannot seek better paying jobs with better opportunities. For the employers, NCAs protect their investment in developing human capital. In addition, they protect trade secrets. Currently, there are efforts to ban or severely limit the use of NCAs in employment contracts.[23]

1.4 Prevalence of Employer Collusion

There are many examples of employers colluding in the labor market. In some instances, the employers agree among themselves on wages, salaries, and other forms of compensation. In other instances, the employers agree not to poach one another's employees. The following examples provide some substance for our concerns regarding collusion.

[21] The undesirable economic consequences of monopsony are developed in Chapter 2. Wage fixing cartels are analyzed in Chapter 6.

[22] No-poaching agreements are examined in some detail in Chapter 7.

[23] NCAs receive close scrutiny in Chapter 8.

1.4.1 Collusion on Compensation

The Department of Justice (DOJ) filed a suit against Activision Blizzard for its imposition of a luxury tax on esports teams who pay a total team payroll that exceeds Activision's prescribed maximum.[24] There was a one dollar tax for every dollar that the total team compensation exceeded the maximum, that is, a 100 percent tax. Activision had argued that the tax was imposed to ensure competitive balance in the league, which allegedly increases fan interest.[25]

Only teams with the very best players are apt to earn salaries that invoke the luxury tax. Consequently, this tax will then depress the compensation that the best players will receive. For example, suppose that the so-called Competitive Balance Tax is triggered when a team's total payroll exceeds $1 million. Now assume a team is currently earning $900,000 but, given their talent, the market value of the team's players is $1.3 million. Paying the team their market value would trigger the luxury tax, and the resulting cost to the owner would be $1.6 million. Since the cost to the team's owner exceeds the value of the team, the owner will not pay the players their total market value. As a result, the team will be paid $400,000 less than they are worth.[26]

In another recent example, we can turn to the National Collegiate Athletic Association (NCAA) ban on academic achievement awards. For many years, the NCAA defined a "full ride," which they called a "grant-in-aid," as room, board, tuition, books, and related fees. Since this sum turns out to be quite a bit below the full cost of attendance, the NCAA responded to an antitrust suit by increasing the maximum compensation

[24] *U.S.* v. *Activision Blizzard, Inc.*, No. 1:23-cv-00895 (D.D.C. Apr. 3, 2023). See www.bloomberglaw.com/bloomberglawnews/exp/eyJpZCI6IjAwMDAwMTg3LTQ4NzktZGY0Yi1hYjk3LWNjN2JmZTliMDAwMCIsImN0eHQiOiJBVE5XIiwidXVpZCI6InJaM3lJZ3BrRmFFNE0yK25paGJ3Nnc9PW9telAzMEJ0eWVEaTdBUEpHTGVOaFE9PSIsInRpbWUiOiIxNjgwNjA2ODk0ODAyIiwic2lnIjoiZVFFY2JPbDh4TkFSQkJTTFNFZlBwZFlBOWo4PSIsInYiOiIxIn0=?isAlert=false&item=headline&region=digest&source=newsletter&udvType=Alert and www.bloomberglaw.com/bloomberglawnews/exp/eyJpZCI6IjAwMDAwMTg3LTQ4NTAtZDU2Yi1hM2NmLWNmNWY1NDdmMDAwMCIsImN0eHQiOiJBVE5XIiwidXVpZCI6InQwVzRwRTluNngvYkQ4L2JJdHBPNGc9PTBDMTFySmVDU0g3YjFXSjR5NUdMVVE9PSIsInRpbWUiOiIxNjgwNTQ2NjkwMTMxIiwic2lnIjoiTGhRSklSWEZoUzhlMkVkcVBrVW05eDNPRVlFPSIsInYiOiIxIn0=?isAlert=false&item=headline&region=digest&source=breaking-news&udvType=Alert.

[25] Activision claimed that the collected taxes were redistributed to teams that did not exceed the maximum compensation level.

[26] This case has since been settled. Activision has discontinued its Competitive Balance Tax at the DOJ's urging.

that an athlete can receive to the full cost of attendance. But the NCAA did not permit academic achievement awards for athletes.

There are, however, many athletes who are on the Dean's List and deserve any academic achievement award for which they are qualified. For whatever reason, the NCAA did not permit the athletes that they should have been most proud of to receive such awards. Following the *Alston* decision by the Supreme Court,[27] the NCAA began permitting such awards up to $5,980. The NCAA and the major conferences are currently (2023) being sued in a class action antitrust suit on behalf of athletes who did not receive academic achievement awards despite meeting the qualifications for such awards.[28]

1.4.2 No-Poaching Agreements

No-poaching agreements became "breaking news" with two important antitrust suits filed by the DOJ: *Adobe Systems*,[29] and *Lucasfilm*.[30] In *Adobe Systems*, the major employers of hardware and software engineers – Adobe Systems, Apple, Google, Intel, Intuit, and Pixar – agreed not to solicit one another's employees. For example, if Intel spotted a talented engineer currently employed by, say, Apple, the agreement precluded Intel from cold calling that engineer in an effort to poach that person. This agreement was taken seriously. In one instance, a human resources person at Google was dismissed for inadvertently cold-calling an Apple employee.

In *Lucasfilm*, there was an agreement among movie studios that similarly precluded competition in the market for digital animators.

In both cases, the government obtained consent decrees that banned the use of no-poaching agreements in the future. But that was not the end of the defendant's woes. Private damage suits were filed on behalf of the employees.[31] Those two cases settled for a combined total of half a billion dollars.

In spite of clear warnings that no-poaching agreements may be the target of antitrust prosecution, they appear to be irresistible. The Attorney

27 *National Collegiate Athletic Association* v. *Alston*, 594 U.S. ___ (2021).
28 *Hubbard* v. *National Collegiate Athletic Association*, No. 4:23-cv-01593 (N.D. Cal. Apr. 4, 2023).
29 *U.S.* v. *Adobe Systems, Inc.*, No. 1:10-cv-01629 (D.D.C. Sept. 24, 2010).
30 *U.S.* v. *Lucasfilm Ltd.*, Case No. 1:10-cv-02220-RBW (D.D.C. Dec. 21, 2010).
31 *In re: High-Tech Employee Antitrust Litigation*, Case No. 5:11-cv-02509-LHK (N.D. Cal. May 4, 2011) and *In re: Animation Workers Antitrust Litigation*, No. District of California, Case No. 14-cv-04062-LHK (123 F.Supp.3d 1175 (2015)).

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General for the State of New York investigated no-poaching agreements among title insurers.[32] Fidelity National Financial Inc., the largest title insurer in the United States, agreed to pay $3.5 million to settle with the State of New York. There was verbal and written evidence of agreements to not solicit, recruit, or hire employees of rival companies.

1.5 Policy Proposals

As concern for the plight of workers has grown in the past decade, proposals for change have emerged from Congress, the White House, the DOJ, and the Federal Trade Commission (FTC). Although many of the proposals have not been implemented, it is clear that their focus has been on protecting workers from the exercise of monopsony power.

1.5.1 Congressional Proposals

There have been numerous proposals aimed at monopsony. Senator Amy Klobuchar (D. MN) suggested that Section 7 of the Clayton Act, which prohibits mergers that may be anticompetitive, be amended to remove any doubt that it applies to threats of monopsony. In some instances, a merger may easily pass muster because the firms compete in a national market for the sale of their output but have monopsony power in the local labor market. Although the amendment was not adopted, threats of enhanced monopsony power have been raised in two recent merger challenges.[33]

When the proposed merger of the second and third largest health insurers, Anthem and Cigna, respectively, was challenged, one of the counts dealt with monopsony.[34] In particular, the competitive concern was that the merged entity would be able to depress reimbursement rates for hospitals and physicians. Since the Court ruled in favor of the government on other grounds, it did not reach the monopsony issue.

When Penguin Random House, the largest book publisher in the relevant market, attempted to merge with Simon & Schuster, the third largest

[32] See www.bloomberglaw.com/bloomberglawnews/exp/eyJpZCI6IjAwMDAwMTg3LTJkYzUtZGQ0OC1hZDk3LWJkZDdkNjVjMDAwMyIsImN0eHQiOiJBVE5XIiwidXVpZCI6Ik9oaVJEVHl0QnRYZU85a0RmZVFJeXc9PW16enVEcEs1bUU0akEzbHlUdWNmN2c9PSIsInRpbWUiOiIxNjgwMTc1MDA5OTIwIiwic2lnIjoia0tpQkNoVzJLbmw1b1g1bDlFRng2WUsvUEVzPSIsInYiOiIxIn0=?isAlert=false&item=read-text&region=digest&source=newsletter&udvType=Alert.

[33] Mergers that create monopsony concerns are addressed in Chapter 10.

[34] *U.S.* v. *Anthem, Inc., and Cigna Corporation*, No. 1:16-cv-01493 (D.D.C. July 21, 2016).

book publisher, the proposed merger was blocked.[35] The government's challenge was posed solely on issues of monopsony related to advances to authors. In this case, the Court ruled in favor of the government.[36]

Senators Elizabeth Warren (D. MA) and Cory Booker (D. NJ) have tried to outlaw no-poaching agreements in the bill called the End Employer Collusion Act.[37] Booker went as far as to say:

> It's critically important that we ban these inequitable and anti-competitive agreements that leave workers without an opportunity to translate their value and skills into higher pay.

1.5.2 Policy Recommendations by the Council of Economic Advisers

In today's labor markets that are marred by anticompetitive conduct on the part of employers and labor market frictions, the Council of Economic Advisers (CEA) advocated a multipronged effort to improve wages and other forms of compensation.[38] After reviewing the empirical evidence and examining trends, the report contained several policy proposals.

First, the CEA urged vigorous antitrust enforcement. Stamping out collusion among employees can help to enhance competition. But the CEA also recognized that antitrust enforcement cannot resolve all the problems, so they recommended additional policy changes. Policies that facilitate job search, increase job options, and directly affect the wage-setting power of employers were mentioned specifically.[39]

The CEA recommended that the use of noncompete clauses in employment contracts be limited. More specifically, the CEA advocated the elimination of NCAs in employee contracts when they serve only to limit worker mobility and depress compensation below the level that would exist in the absence of a noncompete clause. The CEA also recommended that much future research be conducted on the economic consequences of noncompetes.

35 *U.S.* v. *Bertelsmann SE & CO. KGAA*, No. 1:21-cv-02886 (D.D.C. Dec. 31, 2022).

36 Penguin Random House decided not to appeal the Court's decision and abandoned the merger.

37 This is not the first time Senator Booker has introduced legislation outlawing no-poaching agreements. In 2018, he proposed a bill that would give workers the ability to sue employers who threatened the use of no-poaching agreements.

38 The CEA is not the only committee to comment on competition in the labor market. The anticompetitive consequences of monopsony in the labor market were identified by the Organisation for Economic Co-operation and Development. See *Executive Summary of the Roundtable on Competition Issues in Labour Markets* (June 5, 2019).

39 The antitrust law and economics of NCAs are addressed in Chapter 8.

In spite of the fact that we live in the information age, the CEA expressed concern about the availability of information to workers regarding employment opportunities. It also endorsed transparency on wages and other forms of compensation. Increasing the flow of such information will permit workers to seek better job opportunities.

Finally, the CEA recommended that unnecessary licensing requirements be eliminated. Occupational licensing has been severely criticized by Nobel Laureate Milton Friedman. It restricts entry into those occupations where licenses are required. As a result, it limits competition, to the detriment of unlicensed workers and consumers, who will pay higher prices.

1.5.3 Enforcement Agencies

In their *Guidance*, the DOJ and FTC make it clear that collusion on any terms of employment will not be tolerated. They express a commitment to filing criminal suits, which expose individuals to fines of up to $1 million and prison sentences of up to ten years. Although these are maximum sanctions and are rarely, if ever, imposed, they should give pause to a business executive who would prefer to avoid the label of "convicted felon."

The Antitrust Division of the DOJ and the FTC encountered anticompetitive conduct in various labor markets. Concerned that human resources professionals may be engaged in unlawful conduct without being aware of the antitrust significance of their actions, the agencies issued their *Antitrust Guidance for Human Resource Professionals*.[40]

The document sets out the enforcement policies of the DOJ and the FTC regarding anticompetitive conduct in the labor market.[41] Their central message is crystal clear: Do not agree with rival employers to refrain from or limit competition for employees. Unilateral decisions to limit competitive involvement in the labor market are ordinarily legal, but agreements to do so are not. The *Guidance* warns that naked agreements to limit competition may result in criminal prosecution of both the firms and the individuals involved.[42]

The *Guidance* specifically addresses (1) agreements to fix wages, all forms of compensation, and working conditions, (2) agreements not to

[40] See www.justice.gov/atr/file/903511/download.

[41] It is not only in the United States that the anticompetitive consequences of monopsony have been recognized. In Kenya and South Africa, antitrust rules regarding the exercise of buyer power have been issued.

[42] An agreement is deemed to be "naked" if it is not part of a legitimate cooperative venture.

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solicit or hire employees of a rival employer, that is, no-poaching agreements, and (3) information exchanges that involve competitively sensitive information on wages, benefits, hiring plans, and the like. The *Guidance* also points out that an employer's decision to reduce cost is not a defense. While monopsonistic collusion on wages does, in fact, lower average costs and thereby improve the employer's profit, it raises marginal cost, which leads to reduced output and higher prices for consumers.[43]

Additionally, the FTC and the National Labor Relations Board have signed a memorandum of understanding that commits the agencies to cooperate in promoting the well-being of workers.[44] The focus is on (1) labor market concentration that limits compensation and working conditions, (2) one-sided contract terms such as noncompete clauses, and (3) the classification of gig workers that prevents collective action. By joining forces, the agencies expect to promote the interests of labor.

1.6 A Preview of What Is to Come

Our treatment of monopsony in the labor market proceeds in the following fashion. The exposition throughout these theoretical chapters relies on line graphs, numerical examples, and verbal explanation. Algebra and calculus will be confined to footnotes and/or appendices.

1.6.1 Economic Theory of Monopsony

Chapter 2: We begin with the basic economic theory of monopsony. In this chapter, we present the economic models of (1) pure monopsony, (2) the dominant employer, and (3) oligopsony. In these cases, we show that profit maximization results in ill effects for workers. These include reduced compensation, reduced employment, and the redistribution of wealth. We also show that social welfare is reduced below the level that society would have experienced in the absence of monopsony.

1.6.2 Empirical Evidence

Chapter 3: Here we provide an overview of the empirical results with ample references to the literature. There is a substantial body of research that establishes the pervasive presence of monopsony in labor markets. The root

[43] These economic results are developed in Chapter 2.
[44] See www.ftc.gov/system/files/ftc_gov/pdf/ftcnlrb%20mou%2071922.pdf.

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cause of monopsony power lies in the fact that labor markets are imperfect. In other words, labor supply functions are positively sloped, which allows the dominant employers to depress compensation by reducing employment. Moreover, there are various frictions that reduce an employee's ability to respond to alternative employment opportunities. These include costs of job search, turnover, mobility barriers, noncompete contracts, no-poaching agreements, legislation, and increased concentration.

1.6.3 Antitrust Policy

Chapter 4: The exercise of monopsony in labor markets is limited to one degree or another by public policy. Employer conduct aimed at creating monopsony power is governed by the Sherman Act of 1890, which forbids collusion among employers as well as competitively unreasonable conduct by a single employer.

Chapter 4 discusses private suits, the prohibition of Section 1, and the sanctions for violations. Corporations are subject to fines, while individuals may be fined and/or imprisoned. Section 1 forbids collusive restraints of trade. In the past, there was some confusion regarding the applicability of Section 1 to labor markets. These days are gone. The DOJ and FTC have issued their *Antitrust Guidance for Human Resource Professionals*, in which the agencies make it crystal clear that they will pursue criminal convictions for collusion in labor markets. In addition to public sanctions, Section 4 of the Clayton Act provides a private right of action for antitrust victims.

Chapter 5: In this chapter, we point out that private damage suits are not available to all victims of monopsonistic exploitation. In addition to the underpaid employees who have standing to sue, there are five groups that do not have standing: indirect suppliers, fringe suppliers, suppliers that are priced out of the market, suppliers of complementary inputs, and consumers of the final goods.

1.6.4 Public Policy in Action

Chapter 6: Here we present an economic model of employer collusion that explores the economic consequences of concerted efforts to depress wages and other forms of compensation. This chapter spells out the organizational challenges of building and implementing an employer cartel. It also examines the incentives to cheat on the cartel agreement. Our central focus is on the harm done to employees as well as the impact on social welfare.

In this chapter, we review an assortment of antitrust cases that alleged collusion on wages paid and other terms of employment. These examples include hospital nurses, temporary duty nurses, college athletes, and highly talented college students. Finally, we explore the unintended consequences of collusion in the labor market – higher prices for consumers.

Chapter 7: This deals with agreements among rivals not to hire one another's employees ("no-poaching" agreements). These have been found in a number of labor markets on numerous occasions. Such agreements, of course, depress the demand for these employees and thereby put a lid on compensation. In this chapter, we review some prominent cases involving (1) hardware and software engineers, (2) digital animators, (3) medical school faculty, (4) physical therapists, and (5) professional athletes.

For the most part, the suits filed by the DOJ have been resolved. Many of the private suits filed by the antitrust victims have been settled, but some are still pending. The chapter also explores the enforcement policies of the antitrust agencies that are provided in the *Antitrust Guidance for Human Resource Professionals*.

We provide an extended analysis of no-poaching agreements in professional sports. The four major sports leagues in North America – Major League Baseball (MLB), the National Basketball Association (NBA), the National Football League (NFL), and the National Hockey League (NHL) – all have antitampering provisions that apply to the athletes. The extent to which these provisions extend to coaches, front office personnel, and scouts varies in many ways and this is included in our coverage.

Chapter 8: Here, we focus on NCAs. These severely limit job mobility and reduce a worker's opportunities to exploit their human capital. Most NCAs preclude a worker from obtaining a position with a rival employer for six months to two years after separation. In addition, the former employee may not start their own business in the same industry. The economic result of these restrictions is to reduce labor supply elasticity, which enhances an employer's ability to depress employee compensation, other benefits, and working conditions.

Employers argue that they need NCAs for two primary reasons. First, upon separation, an employee could take the former employer's trade secrets to a rival employer. An NCA may solve this problem because many trade secrets, such as short-run production plans, are short-lived. Second, employers often invest in an employee's human capital with schooling or training. An NCA provides protection for such investments in human capital.

In Chapter 8, we examine the pros and cons of NCAs. We also examine the FTC's proposal to ban all NCAs completely.

Chapter 9: In this chapter, we turn our attention to labor unions and their role in providing countervailing power. Congress recognized the consequences of individual employees having to negotiate with large employers. For the most part, individual employees have no bargaining power and face all-or-nothing offers that reflect monopsony power. Consequently, Congress passed legislation that permits employees to unionize and thereby create a labor monopoly. The idea was to level the playing field so workers could not be abused. This chapter provides a brief review of the statutes and the scope of the labor exemption.

The formation of a union converts a monopsony into a bilateral monopoly. The economic effects of this are generally positive: Employment and output expand; thus, both employees and consumers are better off. We explain this analysis and illustrate it with references to professional sports. This chapter also explores the antitrust conundrum arising from bilateral monopoly.

Chapter 10: Mergers that involve issues of monopsony are addressed here. In some cases, a merger may be procompetitive or competitively neutral. In others, however, a merger may be anticompetitive and therefore should be barred. Horizontal mergers combine two (or more) firms that operate in the same output market. Since they employ similar workers, the merger may create monopsony power. Antitrust policy regarding horizontal mergers is provided by Section 7 of the Clayton Act and its judicial interpretation. Typically, the focus is on concentration in the output market, but there has been some recent recognition that a merger may have ill effects in the labor market. We examine this recent concern and provide some examples.

Chapter 11: In the final chapter, we summarize the antitrust law and economics of monopsony in the labor market. We provide some policy recommendations that are consistent with economic principles and empirical reality.