

 UBS Center
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at the University of Zurich



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Superstar firms

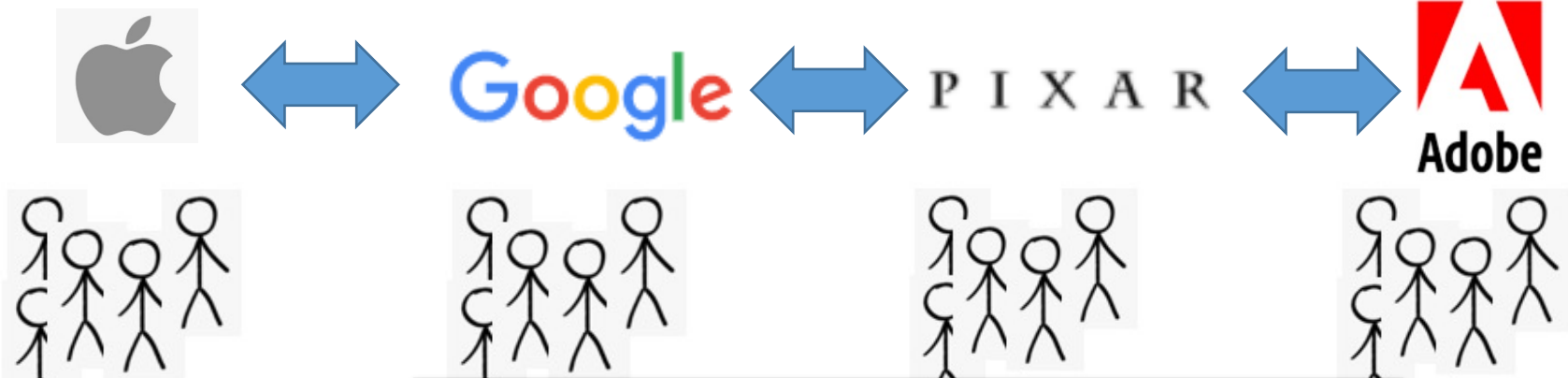
A threat to competition and democracy?

The New Labor Antitrust and the Problem of Superstar Firms

Eric A. Posner

University of Chicago

In re High-Tech Employee Antitrust Litigation (2010)



Subject: RE: Recruiting
Date: Mon, 13 Feb 2006 15:17:11 -0800
From: "Eric Schmidt" <eschmidt@google.com>
To: "Steve Jobs" <sjobs@apple.com>
Message-ID: <200602132317.k1DNHCf1029022@stewie.corp.google.com>

I'm sorry to hear this; we have a policy of no recruiting of Apple employees. I will investigate immediately ! Eric

-----Original Message-----
From: Steve Jobs [mailto:sjobs@apple.com]
Sent: Monday, February 13, 2006 3:15 PM
To: Eric Schmidt
Subject: Recruiting

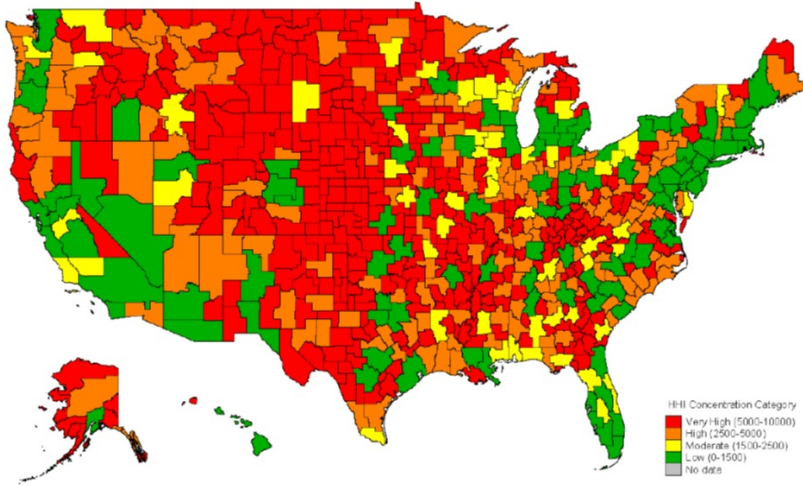
Eric,

I am told that Googles new cell phone software group is relentlessly recruiting in our iPod group. If this is indeed true, can you put a stop to it?

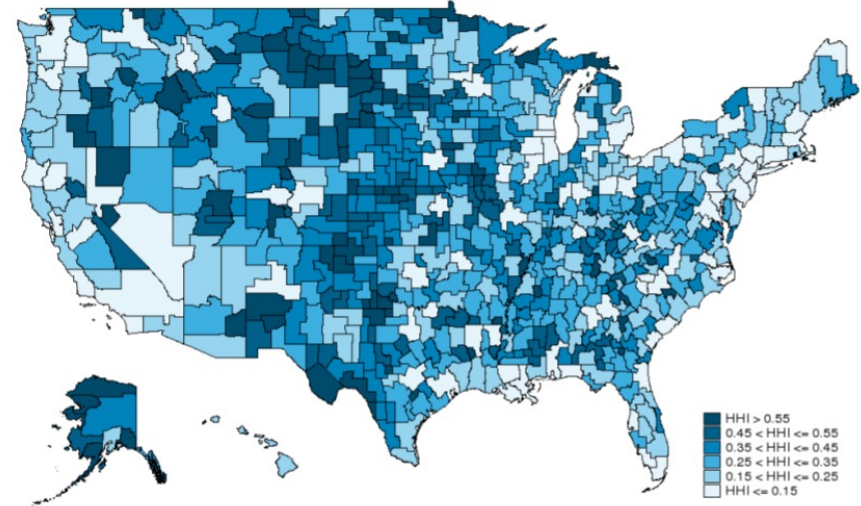
Thanks,
Steve

Empirical Research on Labor Monopsony 1: Concentration

- Labor markets are highly concentrated; highly concentrated labor markets have lower wages
 - Azar, Marinescu, Steinbaum, and Taska 2018
 - Benmelech, Bergman, and Kim 2018
 - Hershbein, Macaluso, and Yeh 2018
 - Rinz 2018
 - Lipsius 2018
 - Qiu and Sojourner 2019
 - And many more



Azar et al. 2018. Source: Burning Glass Technologies (2016)



Rinz 2018. Source: Census Longitudinal Business Database (2015)

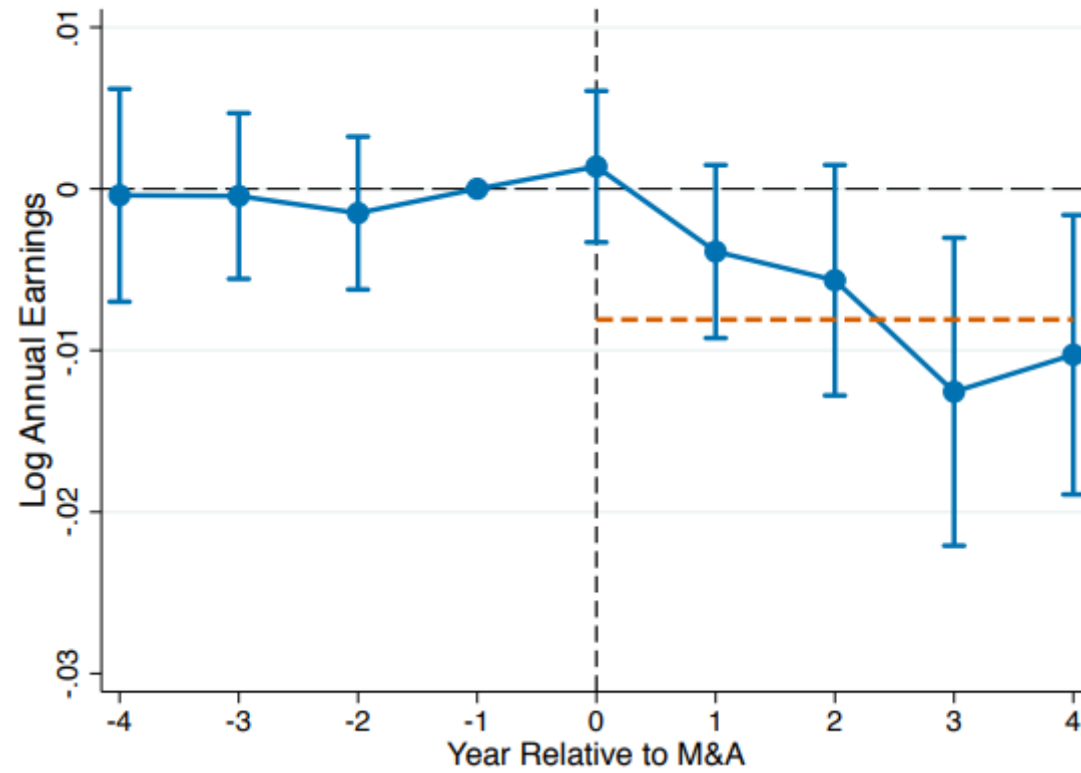
HHI > 7,200 in 25% of labor markets
 HHI > 2,500 in 60% of labor markets
 Average HHI (manufacturing):
 -- Labor markets: 4,374
 -- Product markets: 411

HHIs negatively correlated with wages

Empirical Research on Labor Monopsony 2: Mergers and Acquisitions

- Mergers/acquisitions of manufacturers (Benmelech et al. 2018)
 - A merger that causes HHI to increase from one standard deviation below to one standard deviation above the mean level HHI implies wage reduction of 9.1 - 14.4%
- Mergers of non-farm employers (Arnold 2020)
 - Local concentration depresses wages by about 4-5 percent relative to a fully competitive benchmark
- Hospital mergers (Prager and Schmitt 2021)
 - For top quartile of HHI-increasing mergers, wage growth 4.1% lower for skilled health workers and 6.3% for pharmacists than it would have been absent the merger, four years out
 - For unskilled workers, no change

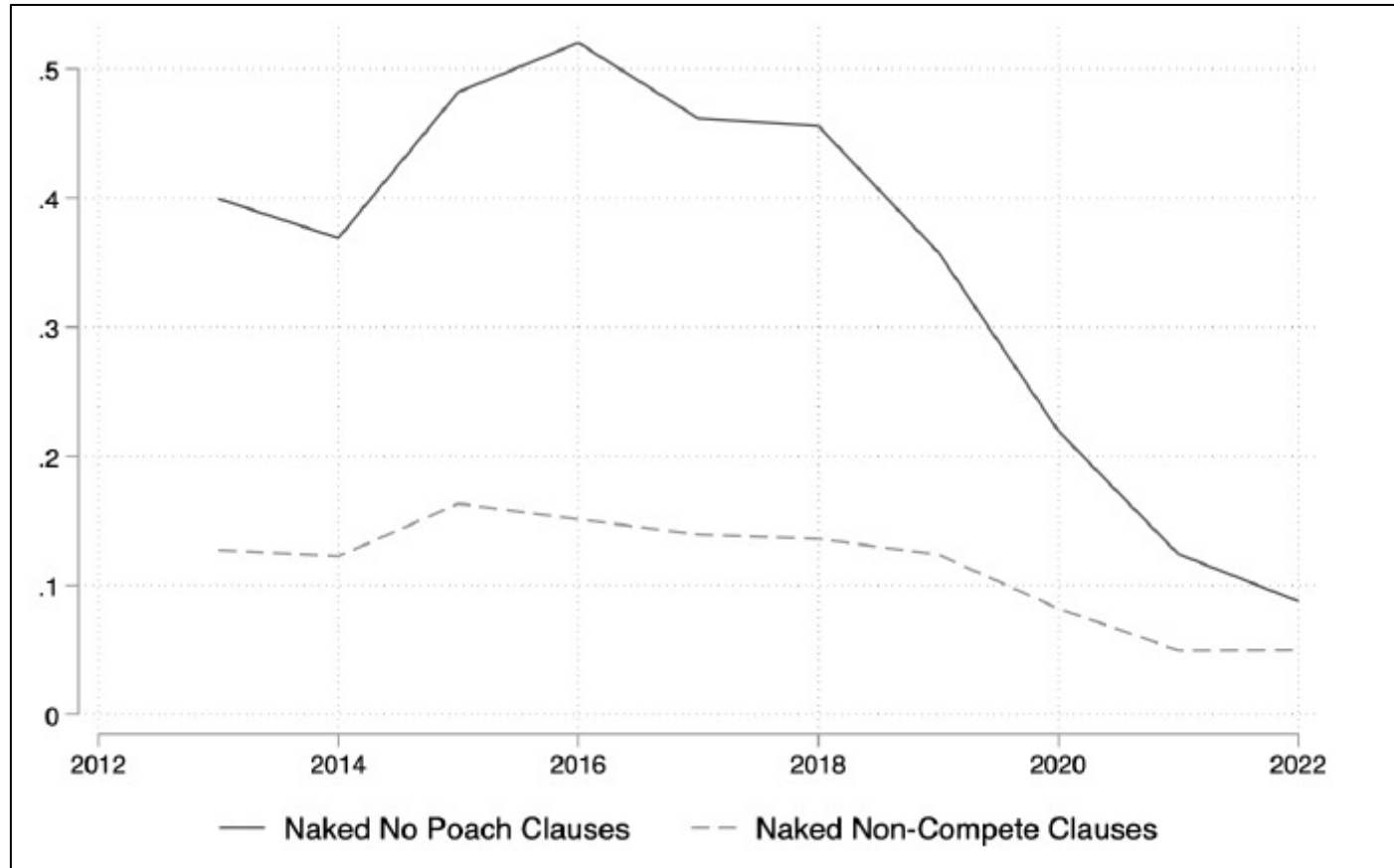
Panel C: Log Earnings Stayers



Arnold, 2020

Empirical Research on Labor Monopsony 3: Collusion and Coordination

- Noncompetes
 - About 15-20% of all workers have been bound by a non-compete clause (or as many as 27.8% - 46.5% are currently (2019) bound) (Starr et al. 2017; Krueger and Posner 2018; Colvin and Shierholz 2019)
 - 12-17% of low-income workers were subject to non-competes
 - 31.8%, of employers “indicated that all employees in their establishment were required to enter into a noncompete agreement, regardless of pay or job duties” (Colvin and Shierholz 2019)
 - Workers have lower wages in states where noncompetes are broadly permitted than in states where noncompetes are restricted or banned (Lipsitz and Starr 2019)
- Within-franchise no-poaching agreements
 - Over 50% of major franchisors use (or used) no-poaching agreements in their franchise contracts, up from about 36% in 1996 (Krueger and Ashenfelter 2017)
 - Meisenbacher and Norlander, 2022 (151,708 franchise contracts)
 - Removal of no-poach agreements in legal settlements raised earnings by 3.3% (Calacci et al. 2022)
- Parallel / collusive (?) wage-setting; wage information exchange
 - Lawyers (Boone 2022); other professionals (Masur & Posner 2022)

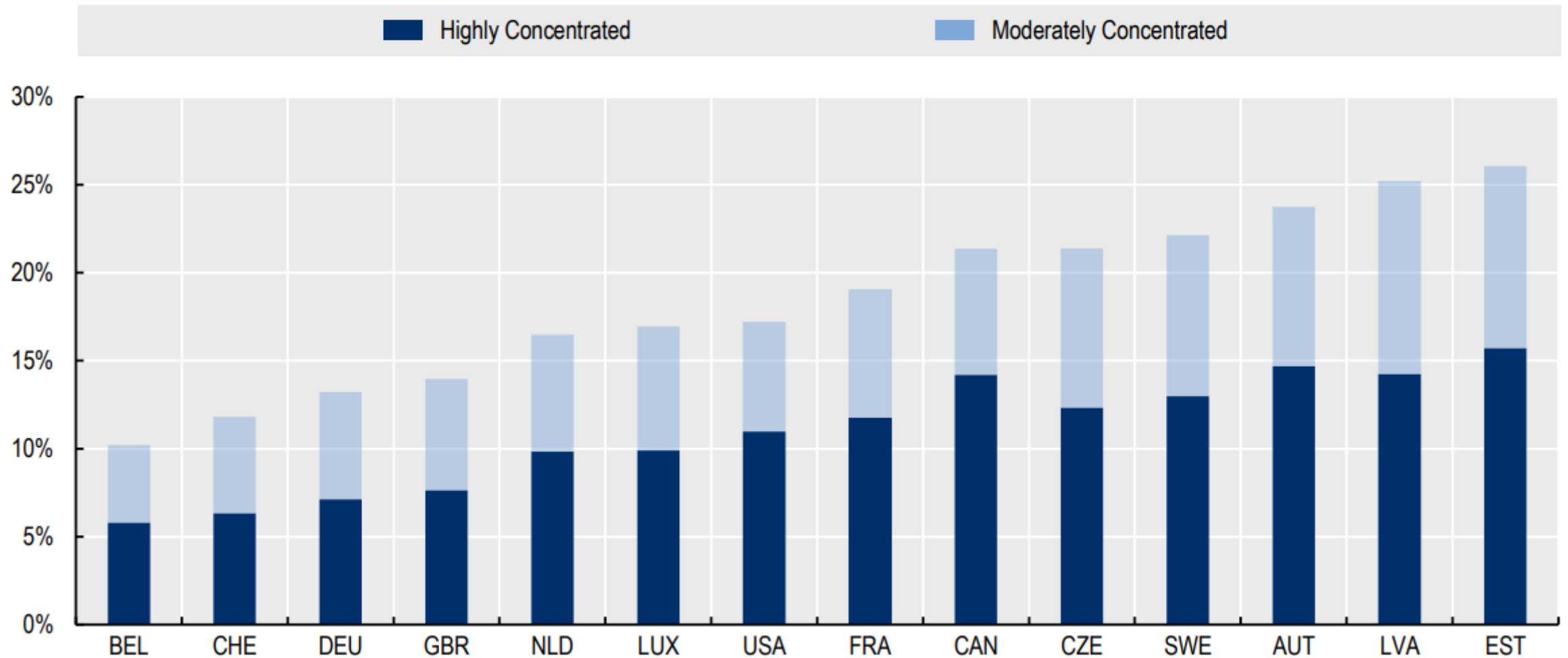


Meisenbacher and Norlander 2022 (151,708 franchise contracts)

Empirical Research 4: Non-U.S.—Similar Results

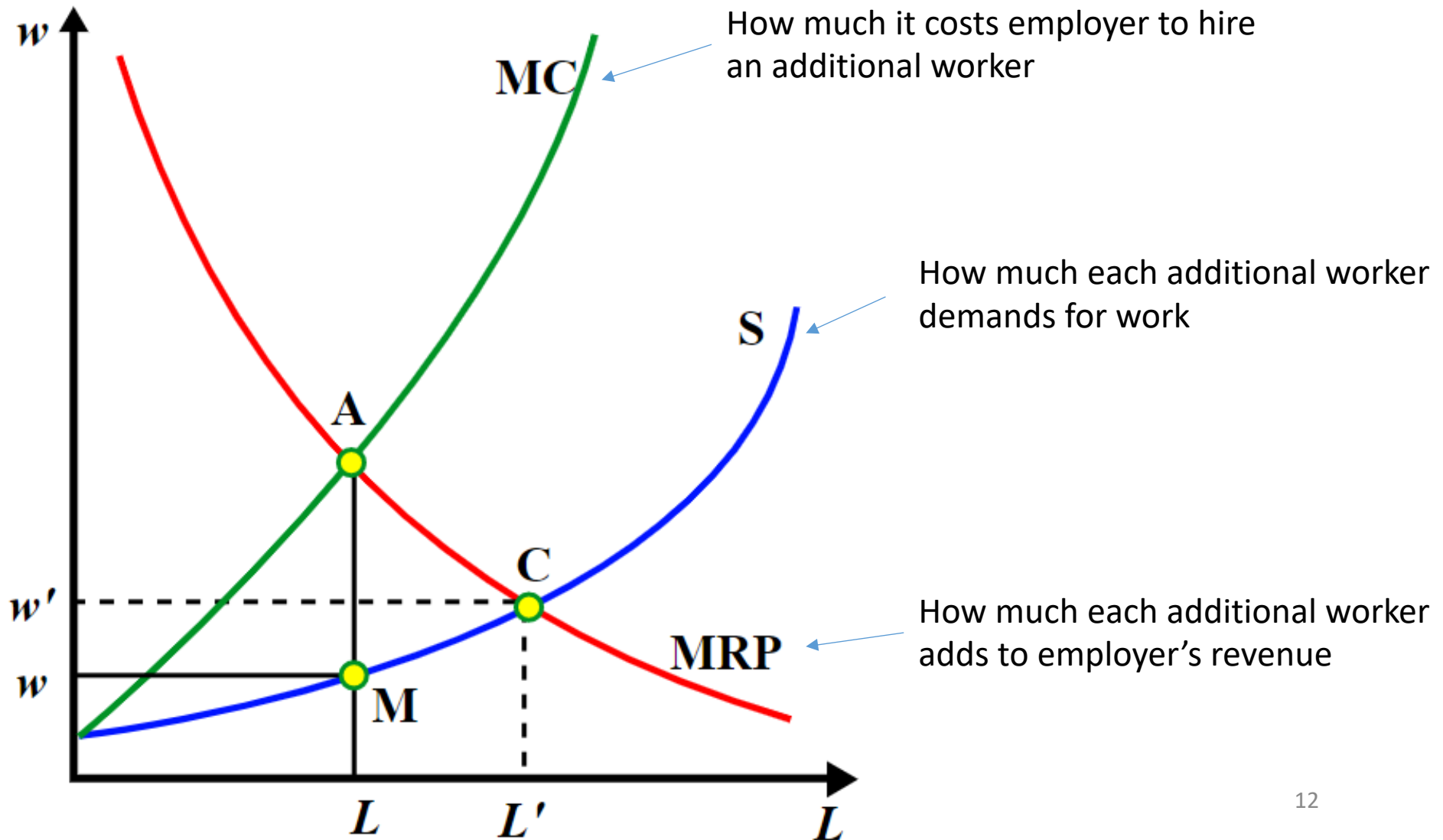
- France (Marinescu et al. 2020)
- Denmark, France, Germany, Italy, Portugal and Spain (Andrea Bassanini et al. 2022)
- Austria, Belgium, Czech Republic, Estonia, France, Germany, Latvia, Luxembourg, the Netherlands, Sweden, Switzerland, UK, Canada, U.S. (18% of employees in moderately concentrated labor markets; 11% in highly concentrated labor markets) (Araki et al. 2022)
- Portugal (Martins 2018)
- Germany (Popp 2021)
- Noncompetes in Italy (16% of private sector employees subject to non-compete agreement) (Boeri et al. 2022) Similar figures from surveys in Denmark, Finland, and the Netherlands.

Figure 1. The share of employment in moderately concentrated to highly concentrated labor markets, 2019

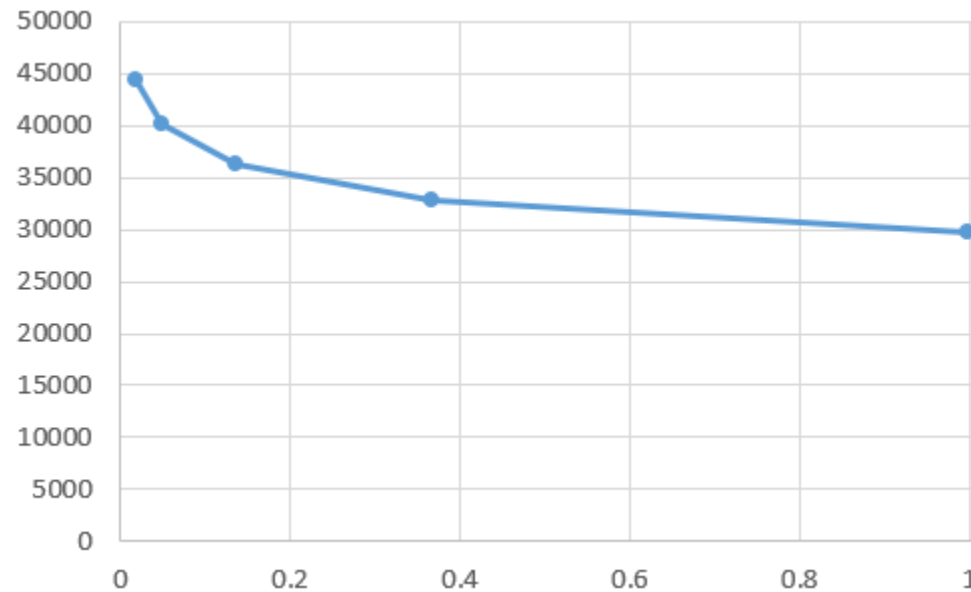


Labor Monopsony: Theory

The employer has **labor market power**, which it uses to reduce wages and employment



Labor monopsony reduces wages (and should also reduce employment, output)



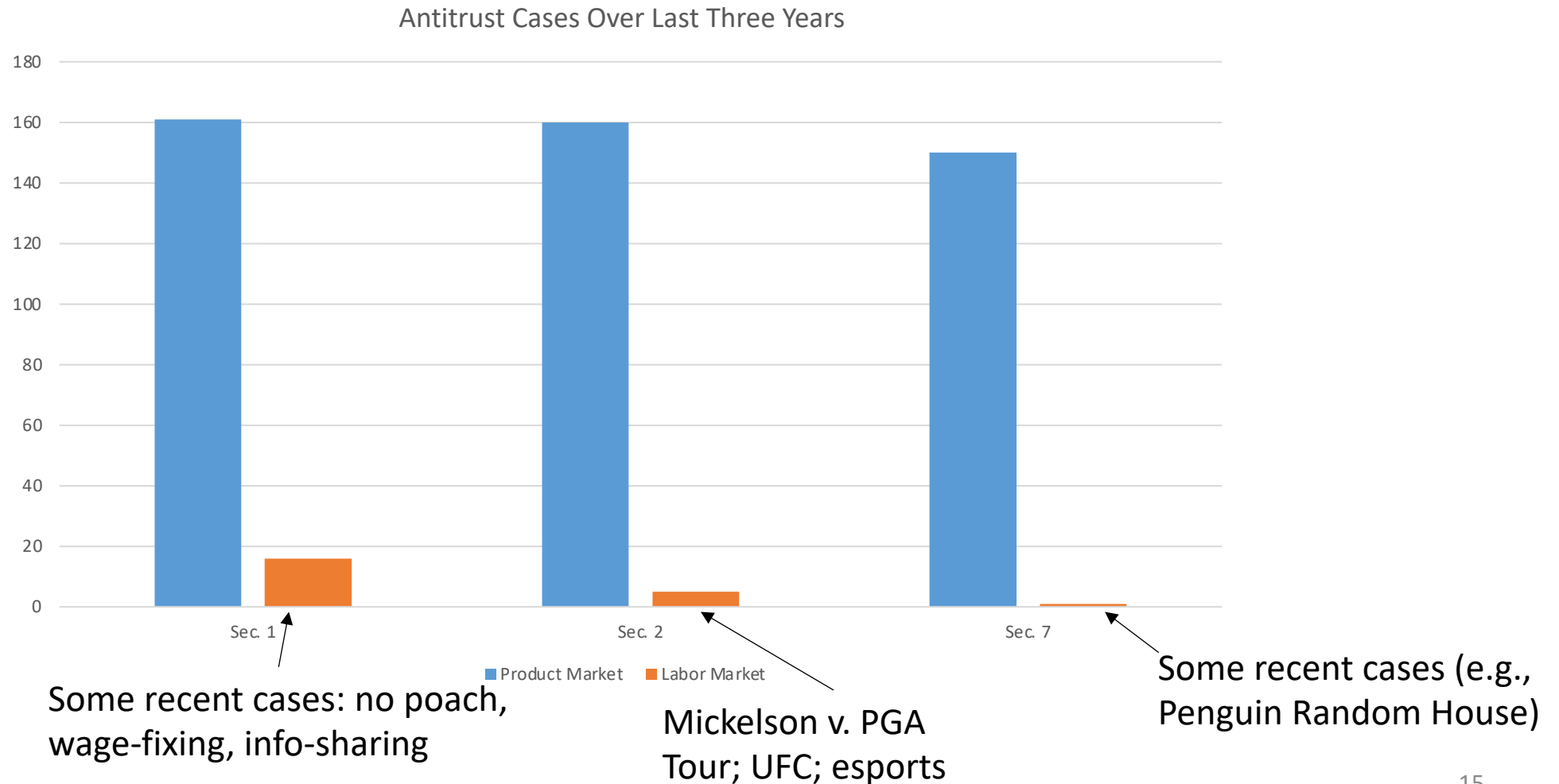
Correlation between HHI and wages (uncontrolled); a 10% increase in HHI leads to a 0.4% to 1.5% decrease in wages. Azar et al., 2018.

Output losses of 5 to 20 percent from labor market power (Berger, Herkenhoff, and Mongey 2022)

Anticompetitive behavior in labor markets

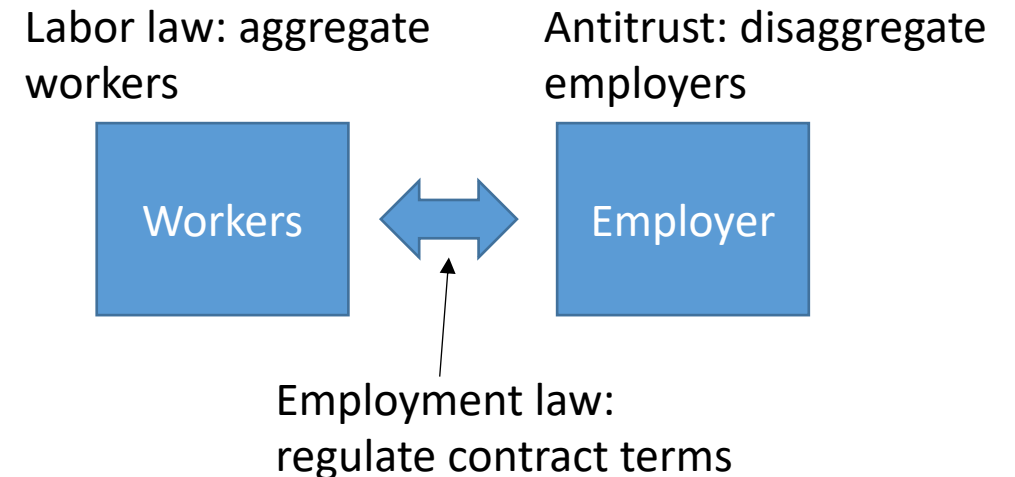
- Illegally obtaining or maintaining a labor monopsony (Sherman Act, section 2)
 - Tying, predatory wage-setting, etc.?
- Contractual methods for expanding labor market power (Sherman Act, section 1)
 - Wage-fixing, no poach agreements, wage information sharing agreements, noncompetes
- Mergers and acquisitions (Clayton Act, section 7)

U.S. Antitrust Law: The Litigation Gap (slowly closing?)



The Litigation Gap: Theories

- Confused conventional wisdom
 - “Labor markets are competitive” (e.g., Carlton 2004)
 - “Consumer welfare standard”
 - Labor cost worries
- Legal barriers for labor-side litigation
- History and path dependence
 - The role of unions
 - The role of “employment law”
- Limits of labor antitrust
 - Matching markets
 - Frictions



Will the Litigation Gap Narrow?

- FTC: “The Commission takes very seriously the potential for monopsony power among employers to affect workers’ wages and mobility.” (Senate Testimony of FTC chair Joseph Simons, 2018)
 - Hearings, 2018-2019
 - 2021 merger guidelines RFI (with DOJ)
- DOJ: “The Division expects to pursue criminal charges” for no-poaching agreements that began after October 2016 (Principal Deputy Assistant Attorney General Andrew Finch, 2018)
 - No-poach prosecutions / statements of interest
- White House policy statement (2016) and executive order (2021)
- State AGs
 - No-poaching litigation
 - The Antitrust and Labor Issues Working Group of National Association of Attorneys General (2019)
- Congress: some monopsony-related proposals have circulated.
- Private litigation: no-poach and wage-fixing

Superstar Firms and Labor Antitrust

- Superstar (highly productive) firms have spread because of globalization and technological change, resulting in greater concentration (Autor et al. 2020)
 - Hypothesized explanation for decline of labor share
 - More productive firms hire more employees (Berger et al. 2022)
 - Superstar firms gain product market share by offering lower prices, possibly resulting in local labor monopsonies as they displace competitors (Wiltshire 2021, on Walmart supercenters); however, no evidence of increasing labor market concentration over time
- A problem for competition law: highly productive firms are tolerated even though they may obtain market power
 - A reprise of the natural monopoly problem, except firms may charge low prices on their way to monopoly; superstars may push down wages even while charging low prices
 - Complex implications for merger policy (Berger et al. 2022)

Beyond economics: why work is different

- Time spent at work (versus goods/services)
 - 38.7 hours/week U.S. (42.1 hours/week for full-time); 37 EU; 34 Japan
- Importance of work (versus goods/services) for
 - Personal well-being
 - Dignity (51% of Americans have sense of identity with job)
 - Community standing / status
 - Happiness / mental health (34% of Americans “engaged” at work); Dunn et al. 2008
 - Freedom / autonomy (“employers are dictators of their workplaces” —Anderson 2017)
- Job satisfaction and choice of employer
 - 75% believe “job hopping” is positive (Ahuja 2018)
- Race/gender/equity
 - Slavery / planter criminal anti-enticement laws (1875-1930) (Naidu 2010)
 - Race and gender discrimination (Becker 1957; Posner and Sunstein 2022)
 - Income / wealth distribution

Policy implications: more focus on labor

- “Labor markets are competitive” → “labor markets are characterized by monopsonistic competition”
- Antitrust/competition law
 - Collusion (Alexander and Salop 2022, Masur and Posner 2022)
 - Monopsony
 - Merger review (Naidu et al. 2018, Marinescu and Hovenkamp 2019)
- Employment law (Naidu and Posner 2020)
 - Minimum wage
 - Pay transparency
- Labor law (Hafiz 2020)
 - Cf. Farber et al. 2022
- Gig economy
 - Misclassification
 - Seller cooperatives (Capper-Volstead immunity)??



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A threat to competition and democracy?

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