

Trade Union  
Advisory Committee  
to the OECD  
*Commission  
syndicale consultative  
auprès de l'OCDE*

## **Submission to the OECD Competition Committee - Proposals to enhance protection against labour market monopsonies**

Paris, 24 June 2019

### **Key messages**

- In a situation of labour market monopsony, an employer is able to unilaterally lower wage levels and downgrade standards on working conditions without losing its workforce. This can occur either because of the dominant position of the firm, or because of various frictions in the labour market that prevent workers from switching to better paying employers.
- A common situation to all types of labour market monopsonies is where employers' power is not counterbalanced by sufficient bargaining power on the side of the workers. This power imbalance is exacerbated in the context of the digital economy. Online platforms are strong monopsonists, able to impose poor working conditions whilst workers often lose labour law protection and face competition law restrictions to set their own labour price.
- Such unbalanced labour relations contribute to wage stagnation and artificially low levels of employment. This harms the economy, the consumer and ultimately social welfare.
- Traditional competition tests, with their one dimensional focus on consumer price, are not adapted to deal with labour market monopsonies in general and especially in the light of the increasing digitalisation of the economy.
- Negative impacts of labour market concentration are mitigated where there is strong trade union presence and collective bargaining.
- Wider policy discussions are warranted, in particular in relation to trade and industrial policies.
- Considering the above, the OECD could launch research to better understand the drivers for industry and labour market concentration.

## Contents

Key messages.....	1
Introduction .....	2
Section 1: The need to regulate labour market monopsonies.....	2
1.1 What is a labour market monopsony? .....	2
1.2 Why it should matter to competition authorities?.....	3
1.3 What explains labour market monopsonies? .....	4
Section II: Proposals to enhance protection against labour market monopsonies.....	6
2.1 Factor in labour market monopsony in competition analysis .....	6
2.2 Address asymmetries through collective bargaining and workers' involvement....	7
2.3 Beyond competition enforcement: impact of trade policies on industry concentration.....	8
Section 3: Online platforms - the need for stronger rules.....	9
Conclusion .....	10

## Introduction

Following the session on “competition and fairer societies” of the 2018 global forum on competition<sup>i</sup>, and ahead of the upcoming competition committee of 5-6 June 2019, the TUAC is sharing the following submission on labour market monopsonies.

Over the past few years, there has been a remarkable surge in economic research rediscovering the fact that employers have the power to pay below the wage rate normally determined by the market. Whilst economic theory has long recognised the existence of labour market monopsonies, antitrust laws are still lagging behind - perhaps assuming that the free competition model will naturally correct the distortions in the upstream market.

The objective of this paper is to call for enhancing competition enforcement to labour market monopsonies. The first section restates the argument on labour market monopsony in a context of increasing inequalities and decline in the labour share. The second section makes a series of recommendations in order to rebalance bargaining power of workers. The final section makes specific remarks on the business models of online platforms, where the effects of labour market concentration are exacerbated.

## Section 1: The need to regulate labour market monopsonies

### *1.1 What is a labour market monopsony?*

A monopsony is a situation where there is a single or a few dominant buyers on the market. In a situation of labour market monopsony, an employer fails to raise wages to a

level to clear the market and is able to degrade working conditions without losing its workforce.

In a labour market that is “fully competitive”, employers compete with each other to attract and retain workers. This competition forces every individual employer to pay a wage exactly corresponding with the rate at which labour demand equals labour supply. Any attempt at paying a wage below this market equilibrium would result in all workers leaving the firm immediately to take up a job elsewhere.

Things are quite different when the labour market is not “fully competitive”, that is to say when the employer is not facing a “take it or leave it situation” of either paying the wage rate imposed by market or else being confronted with a complete lack of workers on offer. Instead, the employer can, to a certain degree, set the wage himself below a certain level while still being able to command a certain volume of labour. In a situation of labour market monopsony, an employer has the power to pay less than marginal productivity<sup>ii</sup>.

Such monopsony can occur because the firm is dominant and hires large shares of the potential workforce and workers do not have the bargaining power to force higher wages. But labour market frictions can also lead to monopsony. For instance, the excessive use of “non compete” clauses or “non poaching” agreements reduces workers’ ability to seek better employers. Firms can also engage in giving workers irregular schedules, to prevent part-time workers from finding additional employers.

### *1.2 Why it should matter to competition authorities?*

Competition authorities do not frequently point the finger at monopsonies. A general belief is that the savings made by the buyer will be passed on to the consumer. There are three main reasons for which antitrust authorities need to change their approach.

First, labour market monopsonies are harmful to economic growth. According to growing evidence, monopsonist employers significantly contribute to wage stagnation<sup>iii</sup>. For instance, according to recent research concentrated local labour markets in the US push advertised wages down by between 5 and 17%<sup>iv</sup>. Labour market monopsonies also have an adverse impact on levels of employment. Economic theory suggests that the monopsonist employer will stop short of hiring at the point where it will imply bidding up wages in order to attract new workers<sup>v</sup>.

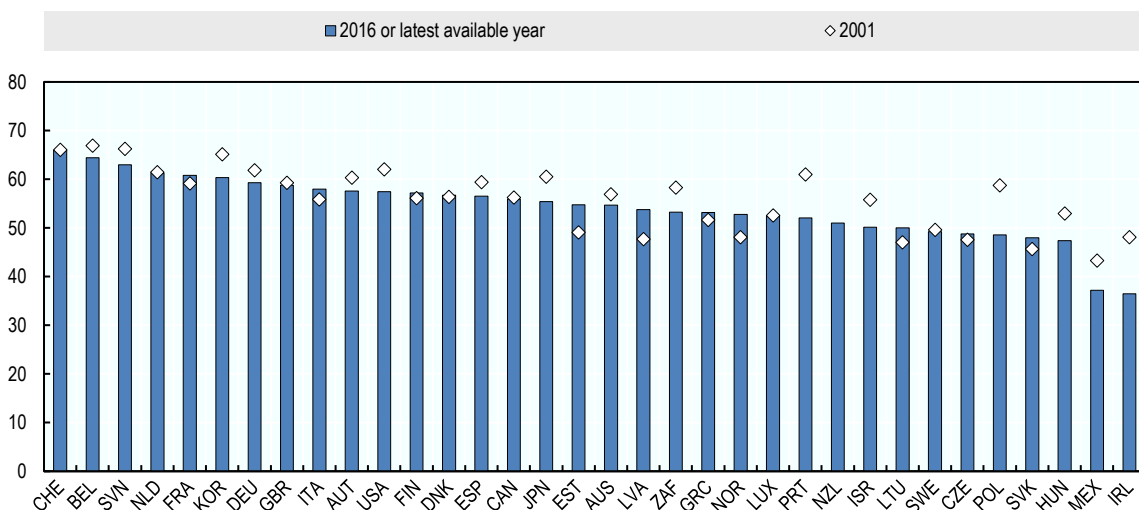
Secondly, monopsonies are the mirror of monopolies, and as such can have an adverse effect on the consumer. As lower wages and lesser employment are linked with lower levels of productivity, monopsonies can impact on quality and innovation thereby harming the consumer in the downstream market. Most importantly, a worker is a consumer. In case of labour market monopsony, the worker pays a double penalty: as a worker its working conditions are deteriorating; as a consumer its purchasing power is shrinking. In the longer run, monopsonies can also block market entry of companies who need to hire workers (Marinescu 2018).

Thirdly, and perhaps most importantly, labour market monopsonies entail a redistribution from workers to employers. They therefore have to be analysed in the context of rising of inequalities and the falling labour share of income. This is particularly significant where monopsonies are caused by market power. As illustrated by OECD research on the US market, market concentration and inequalities are linked. Out of each dollar of monopoly profits, there is a transfer of USD 0.37 from the 90 percent poorest to the 10 percent richest. The research goes on demonstrating that market power benefits essentially the top 5 percent richest, and in particular, the top 1 percent<sup>vi</sup>.

In other words, the wealthy are getting richer, which feed economic resentment and further drive to populism<sup>vii</sup>. Competition law as it currently stands with its one-dimensional focus on consumer price does not sufficiently take into account how social welfare is distributed. It therefore fails to fulfil its goals of achieving economic efficiency and protecting the vulnerable.

### Labour income shares in the total economy

Total compensation as a share of GDP, percentage



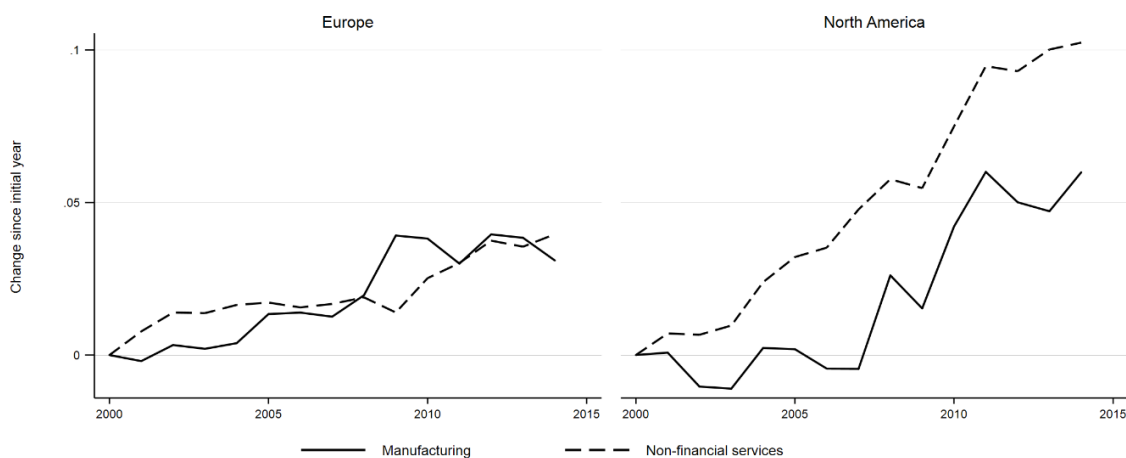
Source: OECD (2018), "Labour income shares", in *OECD Compendium of Productivity Indicators 2018*, OECD Publishing, Paris

### 1.3 What explains labour market monopsonies?

In order to shape appropriate policy response, it is important to understand the sources of monopsony power.

An obvious cause for labour market concentration is the increased concentration of industries, which is now a lasting trend both for manufacturing and non-financial services. The OECD has documented such concentration in Europe as well as in North America.

**Fig 1: Concentration for Manufacturing vs Services in Europe & North America**



Source: Bajgar, M., et al. (2019), "Industry Concentration in Europe and North America", *OECD Productivity Working Papers*, No. 18, OECD Publishing, Paris

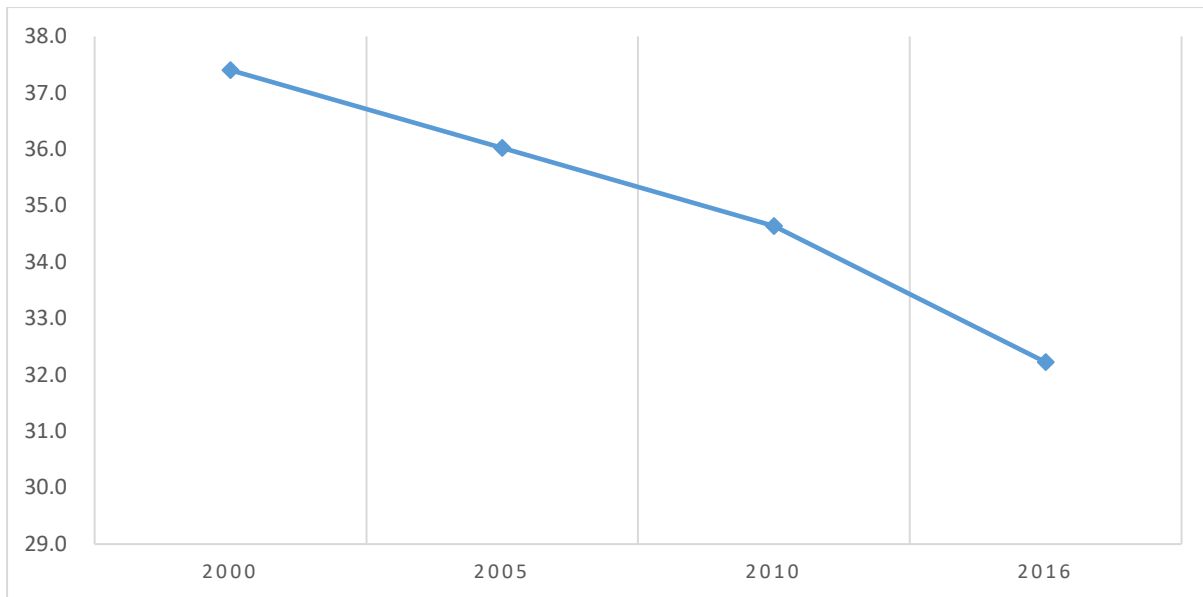
A causality should be established between the rising of superstar firms and rising degrees of concentration in the labour market. The essence of monopoly power is that firms have the ability to raise prices in the output market. In many respects, monopsony is the mirror of monopoly: monopsonists use their market power to also control the volume of inputs<sup>viii</sup>. Empirical evidence points at increasing labour market concentration. Markets are highly concentrated in 60% of US labour markets, accounting for 20 percent of US employment<sup>ix</sup>. Similar findings are also emerging in Europe<sup>x</sup>.

That said, labour market monopsonies should be understood as a dynamic concept. Even where there is competition in the downstream market, there can be excessive employers' power in the upstream market, with the ability of setting wages below competitive level. Even in sectors with relatively competitive industries, workers can still face monopsonist markets. For instance, outsourcing and subcontracting are increasingly relied upon by monopsonist employers in order to reduce labour costs. In such cases, wage setting power can still take place in the absence of market concentration<sup>xi</sup>.

Overall, a common factor to all types of labour market monopsonies is where employers' power is not compensated by sufficient bargaining power on the side of the workers<sup>xii</sup>. In this respect, the decline in collective bargaining coverage and trade union density has had a significant impact on increasing asymmetries in labour markets.

Such asymmetries are further aggravated in case of "search frictions", for instance where workers' lack information over job alternatives or are unwilling to leave their employer because of strong ties with a given geographical area.

**Fig.2: Annual percentage of employees with the right to bargain in the OECD**



Source: OECD Stats

## Section II: Proposals to enhance protection against labour market monopsonies

Whilst there is a renewed interest in economic literature on the negative impact of labour market monopsonies, relatively less attention is paid to the ways in which asymmetries can be addressed. According to the traditional competitive labour market model, workers' mobility between firms should be enhanced. This approach works up to a certain point: workers are not commodities. They may be attached to their current job, have accumulated firm-specific knowledge, or have housing and community ties nearby. Most importantly, the lack of job mobility should be considered as a symptom of labour market monopsony rather than as a cause, especially in less populated areas.

Competition authorities should therefore step up their working methods to address labour market monopsonies. Wider policy discussions are also warranted, in particular in relation to trade and industrial policies.

### *2.1 Factor in labour market monopsony in competition analysis*

The first challenge for competition authorities is to improve their methodology in order to factor in employment in general and labour market monopsonies in particular. As labour market monopsonies can also occur in competitive downstream markets, a flexible approach to market definition is appropriate.

Company groups are now rarely about a single activity. But whilst the range of products and services in the output market can be very large, the global operational and labour strategy piloted by the controlling firm remains the same across the entire corporation. It is essential to approach a group of companies as a single entity, and not as an aggregation of distinct legal units. Yet, the perimeters of a firm can be hard to define.

Furthermore, complications appear where the firm hires workers through subcontracting, and outsourcing as part of a monopsony strategy. The dominant buyer whilst no longer a formal employer is nonetheless able to dictate such strict conditions to suppliers that the only variable to obtain the contract is through lower labour costs. Franchising agreements create similar issues, with dominant franchisors imposing specific input suppliers, pre-defined advertisement and customer pricing. As a result, the franchisee firms are left with competing only through labour costs. The situation becomes even worse for workers when franchisees are also imposed non-poaching practices (one franchisee cannot “poach” workers from another franchisee).

It is therefore appropriate to measure labour market monopsonies by reference to the degree of employer power over individual workers. Studies suggest to adapt the current competition tests used to measure monopoly power in markets for products. The idea would be to assess whether the employer can lower wages and degrade working conditions below what would be charged in a competitive market<sup>xiii</sup>. Furthermore, as explained in the following sections, the levels of collective bargaining coverage and the presence of instances representing the workforce (e.g.: works council) are also useful indicators of balanced labour relations.

## *2.2 Address asymmetries through collective bargaining and workers' involvement*

Studies in the US and in the UK finding lower wages when labour market concentration is high also find that this effect is not occurring when there is strong trade union presence and collective bargaining<sup>xiv</sup>. Asymmetries are more pronounced in the absence of trade unions because employers enjoy greater bargaining power than individual workers. In addition, collective agreements can help increase overall levels of employment. Collective agreements setting wages at a competitive level remove incentives for a monopsonist employer to maintain employment levels at an artificially low level.

Therefore, in addressing the adverse impact of monopsonies on employment, a central element is to promote workers' fundamental rights to unionise and to bargain collectively. In some ways, by not applying to collective agreements competition law already recognises the contribution of collective bargaining to more balanced power<sup>xv</sup>. However, this approach is a negative one and interpreted restrictively - as evidenced by legal difficulties faced by trade unions in trying to enforce their agreements against free competition principles<sup>xvi</sup>.

Competition authorities should take a more proactive and positive approach towards workers' bargaining power. Union friendly policies, collective bargaining coverage and the presence of instances for workers' representation should be considered as structural and behavioural remedies to address monopsony power. Furthermore, some anti-competitive practices seeking to strengthen employers' power over individual worker should be banned altogether.

- Mergers & acquisitions

Competition authorities should assess the potential impact of mergers and acquisitions on employment. A first step is to assess to which extent workers have been informed and consulted in the decision leading to the merger or acquisition. The competition authorities should then condition their approval to appropriate negotiations with workers' representatives on possible restructurings and displacements. For this, the recognition of trade unions in all the entities involved should be an essential prerequisite.

The law should also protect employees in case of mergers and acquisitions. Certain jurisdictions guarantee the respect of pre-existing collective agreements and prohibit dismissals of employees for reasons linked to the transfer to a new employer<sup>xvii</sup>.

And just like a merger can be refused in case of too large supplier power, it should also be possible to stop mergers in case of too large buying power when a labour market monopsony which cannot be addressed by structural and behavioural remedies is arising around the corner.

Finally, excessively rigid franchising, subcontracting and outsourcing agreements that limit price competition should be carefully examined in light of their effect on employment.

- Anti-competitive practices

For employers who have monopsony powers unfair labour practices such as “anti-trade union” tactics, restricted access to labour courts, or the non-application of collectively agreed terms and conditions of employment should be treated as competition offenses (without prejudice to parallel action by labour law enforcers).

Other practices unduly restricting employees' mobility should be banned, independently from the existence of a monopsony. Such should be the case for “non-poaching” agreements, whereby firms agree not to compete or ‘poach’ workers from each other. Trade unions are also seeing a surge in “non-compete” clauses, preventing the employee from working at a competitor. Whilst non-compete clauses may find some justification for workers handling trade secrets, they are clearly abusive in the case of low and middle-skilled workers.

### *2.3 Beyond competition enforcement: impact of trade policies on industry concentration*

Further research is necessary to better understand the reasons behind increasing industry concentration, and in particular market power obtained by legal means. A fresh look at competition and international trade policies is warranted. Whilst literature has abundantly reported on the link between trade barriers and market power of firms, less attention is paid to the distribution of market power globally. For instance, sources of market power such as intellectual property rights, processes and brands are generally considered as justified for legitimate business interests. Yet, little is done to understand the ways in which such rights may contribute to wealth capture by a limited number of firms, mostly in developed countries.



Similarly, domestic industrial policies are traditionally perceived as being government-created barriers to entry. Yet, interventionist measures designed to foster fair competition may be warranted to tackle social and tax dumping and to promote the entry of new competitors on smaller markets.

### **Section 3: Online platforms - the need for stronger rules**

While the issues described in this paper affect every sector of the economy, they are particularly exacerbated in the context of the digital economy. In particular, market power of online platforms<sup>xviii</sup> raise such competition concerns that calls to safeguard public interests are multiplying.

Market concentration is a key feature of the digital economy<sup>xix</sup>. It is sometimes argued that the level of investment in research & development is such that a position of economic power is required. However, as far as online platforms are concerned, digital production features near-zero marginal costs. Dominant positions are the natural consequence of new business models. Online platforms enjoy bigger scale returns than ordinary businesses: the bigger the network and data volumes, the more consumers and suppliers will be willing to access the platform. Furthermore, smaller digital companies tend to be squeezed out partly due to an aggressive mergers & acquisitions strategy by larger rivals, partly because of their difficulty to find sufficient financing for research and development.

In this context, it is no surprise that labour market monopsonies are particularly strong and working conditions deplorable. According to a 2018 study analysing labour relations on a popular micro-task platform, should a requester pay a 10% lower wage, they'd only lose around 1% of workers willing to perform the task<sup>xx</sup>. Drawing from an infinite pool of informal labour, online platforms rely heavily on self-employment, which has adverse consequences on remuneration, working conditions and social protection. In many cases, formally independent workers nonetheless remain under the full control of the platform.

The dominant position in the primary market has trickling down effects in secondary market, leading to widespread labour concentration. For instance, an online delivery platform with quasi monopoly status will also enjoy heavily dominant position in the warehouse sector, entailing unbalanced labour relations on both markets<sup>xxi</sup>.

Competition rules designed for traditional business are not a good fit for online platforms. There is an urgent need to adapt to change methodologies and objectives with a view to adapt to the changing business landscape.

- Mergers and acquisitions

Mergers and acquisitions need to be controlled more strictly on a more systematic basis. This means that the usual triggers and thresholds need to be adapted to new business models, in order to take into account decoupling network effects.

As far as market definition is concerned, a flexible approach as described in the above paragraph 2.1 is fundamental. In the case of an online intermediary service, a traditional

competition test would assess price effects on one side of the market only and ignore the other side of the platform. As such, the test would probably be irrelevant. Rather, more efforts should be devoted to measuring the degree of control of the firm over platform users, especially on workers.

- Addressing asymmetries

As described in the above section 2.2, asymmetries must be addressed through workers' participation and collective bargaining. In the case of platform workers, the lines between dependent employee and independent worker can sometimes be blurred. Traditional anti cartel provisions has in the past come as an obstacle to collective bargaining on behalf on self employed workers<sup>xxii</sup>. Collective voice to set standards should in fact be upheld.

Furthermore, the use of algorithms marking workers should be assimilated to anti competitive practices, having the same effects as no poaching agreements and abusive non-compete clauses.

- Cross-border data flows

In the light of increasing digitalisation of the economy, data has become so valuable that it is sometimes referred as the new "oil"<sup>xxiii</sup>. Traditional trade policies would tend to advocate for free flow of data as an opportunity for developing entrepreneurship.

However, limited competition for online platforms means that a great volume of data, and the market power that goes with it, is concentrated among a few firms. Deregulatory policies could prove particularly counterproductive in the context of digital trade. Fostering healthier competition also means fostering countries' ability to develop additional digital opportunities. The purpose of digital liberalisation should be to lift restrictions to SME access to IT services. But a full liberalisation of trade exchanges without accompanying industrial policies measures might achieve the opposite effect, i.e. the strengthening of even more oligopolistic markets, usually to the detriment of developing countries.

## **Conclusion**

Recent economic research points to the need to better address labour market monopsonies. Excessively unbalanced labour relations contribute to wage stagnation and artificially low levels of employment. This harms the economy, the consumer and ultimately social welfare.

This paper suggests that traditional competition tests, with their one dimensional focus on consumer price, are not adapted to deal with labour market monopsonies, in general and especially in the light of the increasing digitalisation of the economy. A key aspect that should guide reform is that the effects of labour market concentration are mitigated where there is strong trade union presence and collective bargaining. Without interfering with labour law, there is significant room for competition authorities to address asymmetries in this regard.

As this is yet unexplored grounds for many competition authorities, the OECD could launch research to better understand the drivers for industry and labour market concentration.

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<sup>i</sup> <https://tuac.org/news/how-can-competition-contribute-to-fairer-societies-tuac-raises-the-alarm-bell-on-market-concentration-of-online-platforms/>

<sup>ii</sup> Marinescu, Ioana Elena and Posner, Eric A., “A Proposal to Enhance Antitrust Protection Against Labor Market Monopsony” (December 21, 2018). Available at SRN: <https://ssrn.com/abstract=3317575> or <http://dx.doi.org/10.2139/ssrn.3317575>

<sup>iii</sup> See for instance: Manning, A. (2003), “Monopsony in motion : imperfect competition in labor markets”, Princeton University Press

Ashenfelter, O., H. Farber and M. Ransom (2010), “Modern Models of Monopsony in Labor Markets: A Brief Survey”, IZA Discussion Paper , No. 4915, IZA, Bonn

Blair, R. and J. Harrison (2010), “Monopsony in Law and Economics””, Cambridge University Press, Cambridge

<sup>iv</sup> Marinescu and Posner (2018)

<sup>v</sup> Manning (2003)

<sup>vi</sup> Inequality: a hidden cost of market power, (2018) OECD

<sup>vii</sup> Jenny F (November 2018), “Fairness and competition”, presentation available at: <https://www.slideshare.net/OECD-DAF/how-can-competition-contribute-to-fairer-societies-jenny-november-2018-oecd-gfc-discussion>

<sup>viii</sup> Harrison Jeffrey and O’Connell Stephen (December 2010), “Complications in the antitrust response to monopsony”, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1722687](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1722687)

<sup>ix</sup> Marinescu and Posner (2018)

<sup>x</sup> Portugal: Martins, P. (2018), “Making their own weather? Estimating employer labour-market power and its wage effects”, QMUL Working Papers

UK: Abel, W., S. Tenreyro and G. Thwaites (2018), “Monopsony in the UK”, CEPR Discussion Paper, No. 13265, CEPR, London

<sup>xi</sup> Council of economic advisers (October 2016), labor market monopsony: trends, consequences and policy responses. Available at: [https://obamawhitehouse.archives.gov/sites/default/files/page/files/20161025\\_monopsony\\_labor\\_market\\_cea.pdf](https://obamawhitehouse.archives.gov/sites/default/files/page/files/20161025_monopsony_labor_market_cea.pdf)

<sup>xii</sup> OECD (2019), “Labour market monopsony: evidence and policy”, Annex 4A to Chapter 4 of 2019 Employment outlook

<sup>xiii</sup> Marinescu and Posner (2018)

Naidu, S., E. Posner and E. Weyl (May 2019), “Antitrust Remedies for Labor Market Power”, Harvard Law Review

<sup>xiv</sup> Abel, Tenreyro, Thwaites (2018)

Benmelech E, Bergman N. and Kim H. (February 2018), “ Strong Employers and Weak Employees: How Does Employer Concentration Affect Wages?”, NBER Working Paper No. 24307

<sup>xv</sup> See for instance Albany C-67/96, 21 September 1999

<sup>xvi</sup> See in particular FNV Kunsten Informatie en Media C-413/13, where the Court of Justice of the EU held that collective bargaining on behalf of genuine self employed workers might fall under the scope of EU competition law

<sup>xvii</sup> UK Transfer of Undertakings (Protection of Employment) Regulations 2006

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Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses

<sup>xviii</sup> For the purpose of this contribution, an online platform is defined as a digital service that facilitates interactions between two or more distinct but interdependent sets of users who interact through the service via the Internet

<sup>xix</sup> OECD (July 2018), *Maintaining competitive conditions in the era of digitalisation*

<sup>xx</sup> *Monopsony in online labour markets* (March 2018), A. Dube, J. Jacobs, S. Naidu, S. Suri, <https://www.nber.org/papers/w24416>

<sup>xxi</sup> *Amazon's stranglehold*, (November 2016), ILSR available at [https://ilsr.org/wp-content/uploads/2016/11/ILSR\\_AmazonReport\\_final.pdf](https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf)

<sup>xxii</sup> See above note xv

<sup>xxiii</sup> For a description of data flows, see: Casalini, F. and J. López González (2019), "Trade and Cross-Border Data Flows", OECD Trade Policy Papers, No. 220, OECD Publishing, Paris, <https://doi.org/10.1787/b2023a47-en>.