STRATEGIC
ORGANIZING
CENTER


Statement of the International Brotherhood of Teamsters and the Strategic Organizing Center to the House Committee on the Judiciary, Subcommittee on Antitrust, Commercial and Administrative Law for the "Reviving Competition, Part 3: Strengthening the Laws to Address Monopoly Power" Hearing

March 18, 2021

The International Brotherhood of Teamsters is America's largest, most diverse union. We represent 1.4 million hardworking men and women throughout the United States, Canada and Puerto Rico. We started in 1903 as a merger of the two leading team driver associations. As we say, "these drivers were the backbone of America's robust economic growth, but they needed to organize" to get their fair share from too-powerful corporations. The Strategic Organizing Center is a democratic federation of labor unions representing millions of working people. We strive to ensure that every worker has a living wage, benefits to support their family and dignity in retirement, and we advocate not just for jobs, but for good jobs: safe, equitable workplaces where all employees meaningfully participate in the decisions affecting their employment. Our organizations are concerned with ensuring corporate power does not overshadow the authority, autonomy and well-being of workers – or anyone else – in our country, and we believe that antitrust law has a vital role to play in that effort.

We are not the first to observe troubling trends in our economy. These include a decline in real wages in spite of significant productivity growth, a huge and growing gap between the wealthy and the rest of us, an increasingly fissured workforce that allows employers to shift labor costs – and deny responsibility for the safety and economic security of the workers that create their wealth – onto others. They also include the disproportionate impact these trends have on workers who are people of color and on reinforcing racism in our economic structure. The concentration of power of large corporations across the economy is of significant concern because this concentration drives and exacerbates all of these trends. We are particularly concerned about the largest digital platform companies because they are able to exercise unprecedented power in our economy in ways that negatively impact workers, consumers and other economic players – and the very structure of the economy itself. Unions – and workers' authority as union members to negotiate employment terms with their employer – are a potent counterweight to concentrated corporate power in labor markets, but we also recognize the paramount importance of the overall structure of the economy and ways that corporate power is dispersed: the very subject that antitrust law was meant to address.

During this period of growing corporate consolidation, antitrust laws have weakened dramatically – not because Congress has changed the laws, but because the courts have. A defining feature of court-made,

"modern" antitrust law is its singular focus on the consumer welfare standard, under which courts have deemed consumer price increases the primary cognizable competitive harm. This fundamental misinterpretation of both the purpose and the language of antitrust law ignores myriad other forms of harm including declining quality, diversity, innovation, choice, and anti-competitive concentration in supply markets, including labor markets – which in turn has allowed these additional competitive harms to manifest in our economy along with highly concentrated corporate power.

It is against this backdrop that we join the growing chorus that considers the hollowing-out of competition law over the past several decades at least partly responsible for the increase in corporate might and the corresponding decline in virtually every other source of power in our economy – workers over their jobs, consumers over choice and privacy, and small businesses over where and at what price they sell their goods. We strongly advocate vigorous antitrust reform to both restore needed protections for competition among diverse participants in the economy, and address the challenges that new, uniquely dominant digital platform companies present. We also believe that our nation's antitrust laws must be updated to address the current economic realities – including that consumer welfare, or price, should not be the sole touchstone of competitive harm, and further, to foreclose judicial distortion of the law. We urge this reform to ensure that antitrust law plays the role that Congress intended by leveling the playing field for workers, consumers, small businesses and other market participants in our economy.

As explained further below, our concerns are driven by evidence of increased corporate concentration across the economy and the effects of this concentration on all market participants, and workers in particular, as well as the rise of extraordinarily powerful digital platform companies with unique characteristics that current antitrust law is ill-suited to address. This statement outlines our specific concerns regarding the current state of antitrust law, and details specific aspects of antitrust law and jurisprudence that we believe are the most in need of reform to protect and promote a robust, competitive economy, including fair and competitive labor markets where workers have a fair shot at family-supporting wages, safe working conditions and a job they can be proud of.

*Concentration on the Rise in Both Product and Labor Markets*

The U.S. has a market concentration problem. In terms of product markets, over the last two decades approximately 75 percent of U.S. industries have become more concentrated.[1] Since 1980, in a variety of sectors across the economy, the four largest firms have significantly increased their share of sales.[2] With respect to efficiency and innovation, this is a cause for concern. The entry rate of new firms into

[1] *See* Grullon, Gustavo and Larkin, Yelena and Michaely, Roni, *Are U.S. Industries Becoming More Concentrated?,* Review of Finance, Swiss Finance Institute Research Paper No. 19-41 (October 25, 2018) at 1, *available at* https://ssrn.com/abstract=2612047

[2] *See* Ufuk Akcigit and Sina Ates, *Slowing Business Dynamism and Productivity Growth in the United States,* Federal Reserve Bank of Kansas City publication (October 8, 2020) at 4, 31 note 31, 45, *available at* https://www.kansascityfed.org/documents/4952/aa_jh_201008.pdf. The sectors are manufacturing, retail trade, wholesale trade, services, utilities and transportation, and finance. *Id. See also* David Dayen, *Monopolized: Life in the Age of Corporate Power* at 3 (2020) (noting that in the markets for airlines, commercial banking, and phone, wireless, cable and internet services, four companies control the market).

the U.S. market has fallen sharply, particularly since 2007,[3] while firm exit rates have remained relatively flat.[4] In other words, the number of firms in various industries is declining, and existing producers are gaining share while new entrants find it increasingly difficult to challenge the established dominant players. This implies a lack of economic dynamism and increased market concentration.

Over the past decade, empirical evidence has demonstrated that the majority of local labor markets in the U.S. are also overly concentrated. Research indicates that 20 percent of all U.S. workers work in highly-concentrated labor markets,[5] and that, across all U.S. labor markets, the average measurement of labor market concentration well exceeds the Federal Trade Commission and Department of Justice's own guidelines.[6] Labor market concentration – or labor monopsony, the corollary of monopoly in the supplier or labor market – may significantly impact the wages and working conditions of workers. Labor monopsony power, alongside persistent trends including declining labor mobility,[7] can lead to negative outcomes for U.S. workers. A range of studies have shown that workers in highly concentrated labor markets receive suppressed wages,[8] less non-wage compensation in the form of health benefits,[9] and are more likely to be subject to labor rights violations.[10] Further, such negative impacts fall much more heavily on workers who are people of color, so labor market concentration also exacerbates the existing problems of inequality and ongoing racism affecting our economy.

Further, research suggests that monopolizing employers do not pass on cost savings they receive from reduced wages to consumers.[11] Instead, dominant employers tend to retain savings from lower wages.[12] At the same time, lower wages can increase consumer prices because employers purchase less of the input (labor), which results in higher marginal costs per product, and thus higher prices.[13]

---

[3] *See* John Haltiwanger, *Entry, Innovation and Productivity Growth in the U.S. Economy,* Federal Reserve Bank of Dallas publication (May 31, 2018) at 9, *available at* https://www.dallasfed.org/-/media/Documents/research/events/2018/18ted-haltiwanger.pdf

[4] *Id.*

[5] *See* Azar, José and Marinescu, Ioana Elena and Steinbaum, Marshall and Taska, Bledi, *Concentration in US Labor Markets: Evidence from Online Vacancy Data,* NBER at 2 (August 10, 2018), *available at* https://www.nber.org/system/files/working_papers/w24395/w24395.pdf.

[6] *See* Azar, José and Marinescu, Ioana Elena and Steinbaum, Marshall, *Labor Market Concentration,* NBER at 2 (December 10, 2018), *available at* https://www.nber.org/system/files/working_papers/w24147/w24147.pdf.

[7] *See* Damien Azzopardi, Fozan Fareed, Mikkel Hermansen, Patrick Lenain, Douglas Sutherland, *The decline in labour mobility in the United States: Insights from new administrative data,* OECD (December 14, 2020), *available at* https://www.oecd-ilibrary.org/docserver/9af7f956-en.pdf?expires=1615398612&id=id&accname=guest&checksum=19D81A08C345C32998FCE5FBCBBBE60B.

[8] Azar, Marinescu, and Steinbaum, *supra* note 6.

[9] *See* Qiu, Yue and Sojourner, Aaron J., *Labor-Market Concentration and Labor Compensation,* IZA Institute of Labor Economics (January 8, 2019), *available at* https://ssrn.com/abstract=3312197.

[10] *See* Marinescu, Ioana Elena and Qiu, Yue and Sojourner, Aaron J., *Wage Inequality and Labor Rights Violations,* IZA Institute of Labor Economics (August 13, 2020), *available at* https://ssrn.com/abstract=3673495.

[11] *See* Devlin, Alan James, *Questioning the Per Se Standard in Cases of Concerted Monopsony,* Hastings Business Law Journal, Vol. 3, No. 223, 2007 at 224 (July 6, 2009) (citing statements by DOJ antitrust division officials regarding the consumer price impact of monopolies), *available at* https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1106&context=hastings_business_law_journal.

[12] *Id.* at 231.

[13] *Id*.

In spite of the problems caused by labor market concentration, labor market antitrust litigation against employers is extremely rare. Since 1960, there have been fewer than 100 labor market cases compared to over 2,300 product market antitrust cases.[14] Fully half the labor market cases that have been brought under Section 1 of the Sherman Act have addressed only the niche employment setting of sports leagues.[15] At the same time, not a single labor market case brought under Section 2 of the Sherman Act has survived summary judgment.[16] This "litigation gap" is exacerbated by the lack of attention to labor market effects in the Department of Justice and Federal Trade Commission's current Horizontal Merger Guidelines.[17] Indeed, no merger has ever been blocked based on increased labor market concentration.

The lack of antitrust enforcement and successful cases regarding labor markets is another illustration – an even more extreme one – indicating that current antitrust jurisprudence is the product of judicial interpretation rather than Congressional intent. There is broad agreement that the Clayton Act provides for review of the effects of mergers on labor markets as well as on product markets. Indeed, Congress's intention to protect labor markets from the harms of monopsony power has been clear since the inception of U.S. antitrust policy: One of the reasons Senator John Sherman gave for legislating against monopoly was that "[i]t commands the price of labor without fear of strikes, for in its field it allows no competitors."[18]

Contrary to Sherman's intent, courts have generally failed to properly adjudicate or even recognize labor claims under antitrust law. With limited exceptions, including piecemeal victories against certain "no poaching" agreements,[19] the courts have proven largely unreceptive to labor monopsony claims, and instead over the years have eroded important antitrust precedents beneficial to labor.[20] This contradicts not only the original intention of key laws meant to protect fairness in the economy, but also severely limits the ability of workers to vindicate important rights through antitrust law.

This history explains why, to be meaningful, any antitrust reform must not only be written clearly and with enough specificity to prevent courts from subverting its meaning and intent, but must also be emphatically clear that competition in labor markets as well as product markets is protected.

*Rise of Digital Economy Requires New Law and Enforcement*

---

[14] See Eric A. Posner, *Why the FTC Should Focus on Labor Monopsony, Pro Market* (November 5, 2018), *available at* https://promarket.org/2018/11/05/ftc-should-focus-labor-monopsony/.

[15] *See* Marinescu, Ioana Elena and Posner, Eric A., *Why Has Antitrust Law Failed Workers?,* 105 CORNELL L. REV. 1343, 1365 (2020), *available at* https://ssrn.com/abstract=3335174.

[16] *Id.* at 1371.

[17] *Horizontal Merger Guidelines* (Revised April 8, 1997). Department of Justice / Federal Trade Commission, *available at* https://www.justice.gov/atr/horizontal-merger-guidelines-0.

[18] *See* Congressional Record 2457 (1890), *available at* https://appliedantitrust.com/02_early_foundations/3_sherman_act/cong_rec/21_cong_rec_2455_2474.pdf.

[19] *See* Marinescu and Posner, *supra* note 16.

[20] *See* Steinbaum, Marshall, *Antitrust, the Gig Economy, and Labor Market Power,* Law and Contemporary Problems at 49 (June 12, 2019), *available at* https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4918&context=lcp.

In addition to concerns related to the broader U.S. economy, the rise of dominant digital companies present unique issues and threats to competition and people's welfare. Companies including Amazon, Apple, Facebook and Google are increasingly dominant across a number of markets including e-commerce, online search, online advertising and cloud computing. It has been projected, for example, that Amazon's market share will account for 50 percent of the entire e-commerce market in 2021.[21] Many sources have documented how these companies have utilized their dominance in ways that harm consumers, small businesses, and workers as these platforms seek to expand, including self-preferencing over businesses competing on their platforms, data collection and use practices that may harm consumers, and the decline in diversity in such industries as publishing because of consolidated control.[22] Meanwhile, the Amazon Web Services (AWS) segment of Amazon's business controls 32 percent of the cloud computing market, greater than the share held by AWS's three largest competitors combined.[23] While many industries are dominated by only four corporate players, in the Big Tech arena a single company often dominates the market: for example in social media (Facebook), internet search (and search advertising) (Google), or e-commerce (Amazon).[24]

Such consolidation of control over product markets begets control over corresponding labor markets. The example of Amazon is again illustrative of this phenomenon. Following unrelenting expansion of its business, Amazon now employs approximately 1.3 million workers worldwide,[25] the majority in the US. The company's growth within labor markets is both record breaking[26] as well as diverse in terms of the categories of workers affected. Indeed, from white collar technology workers to blue collar warehousing workers, Amazon is an increasingly powerful employer. For example, it is now estimated that Amazon employs fully one-third of all warehousing workers in the US.[27] As a consequence of Amazon's power in warehousing labor markets, there are reports that in areas where the company has established warehouses, wages for warehouse workers have declined.[28]

---

[21] *Projected retail e-commerce GMV share of Amazon in the United States from 2016 to 2021,* Statista (December 1, 2020), *available at* https://www.statista.com/statistics/788109/amazon-retail-market-share-usa/.

[22] *See* Investigation of Competition in Digital Markets, Subc. on Antitrust, Comm'l & Admin. Law of the H. Comm. of the Judiciary (2020); Petition for Investigation of Amazon.com, Inc., submitted to Fed. Trade Comm'n (2020), *available at* http://www.changetowin.org/wp-content/uploads/2020/02/Petition-for-Investigation-of-Amazon.pdf. Regarding the impact of Amazon's 65% market share in e-books over diversity in publishing, *see* Lina M. Khan, Amazon's Antitrust Paradox, 126 YALE L.J. 710, 766 (2017), *available at* https://www.yalelawjournal.org/note/amazons-antitrust-paradox.

[23] *Cloud Infrastructure Spend Grows 46% in Q4 2018 to Exceed US$80 Billion for Full Year*, CANALYS (Feb. 4, 2019), available at https://www.canalys.com/newsroom/cloud-market-share-q4-2018-and-full-year-2018.

[24] Dayen, *supra* note 2.

[25] *See* Form 10-K for Amazon, Inc. filed with the U.S. Securities and Exchange Comm'n, February 3, 2021, at 4, *available at* https://www.sec.gov/ix?doc=/Archives/edgar/data/1018724/000101872421000004/amzn-20201231.htm.

[26] Michael Mandel, *A Historical Perspective on Tech Job Growth*, PROGRESSIVE POLICY INST. (Jan. 13, 2017), available at https://www.progressivepolicy.org/wp-content/uploads/2017/08/PPI_TechJobGrowth_V3.pdf.

[27] According to Bureau of Labor Statistics estimates, the warehousing and storage sector counted a total of 1,194,400 employees in June 2020. The total number of Amazon warehousing and storage workers was approximately 425,000 as of June 2020, or 36% of the sectoral total.

[28] *See, e.g.,* Amazon Has Turned a Middle-Class Warehouse Career Into a McJob, Bloomberg, Dec. 17, 2020, *available at* https://www.bloomberg.com/news/features/2020-12-17/amazon-amzn-job-pay-rate-leaves-some-warehouse-employees-homeless; Unfulfillment Centre: What Amazon does to wages, The Economist, Jan. 20, 2018, *available at* https://www.economist.com/united-states/2018/01/20/what-amazon-does-to-wages.

The power of dominant tech companies in labor markets has also contributed to – and accelerated – the fissuring of the American workplace. Fissuring has allowed corporations to treat large portions of their workforces as non-employees, and to shift responsibility for their workforce's work conditions, safety and well-being out of their sphere of corporate liability.[29] We find this trend highly problematic as it not only shifts responsibility away from corporations but also reduces worker power to secure decent wages and working conditions and address workplace abuses. We believe that this increasing labor market dominance and fissuring by large digital companies should not go unchecked.

The need for updated tools to regulate dominant digital companies has been written about elsewhere at length,[30] but we note that dominant digital companies have several unique features for which current antitrust law – particularly in its current anemic, price-focused form – is ill-suited. Features of these companies include platform or other utility-like structures that generate network effects: the platform becomes more and more valuable as more people use it. These network effects accumulate and multiply until a tipping point is reached, beyond which entry by new competitor platforms is difficult. As a result, these markets become essentially winner-take-all. Second, in part because of the potential network effects, these companies' corporate strategies turn on growth – acquisition of market share – and not profit. Similarly, companies also focus on expanding their business lines, including through acquisitions whose aim is to eliminate nascent competition. Finally, for digital platform companies, the acquisition and use of data play a key role in both the value of the company and how it can exercise dominance and exclude others from markets. Relatedly – because companies invariably have been able to acquire data for free – digital companies' services are often "free" to consumers, which makes traditional consumer welfare-price analysis inapplicable.

Because of the unique features of these platform companies, antitrust reform must develop new tools suited to these types of firms. These tools must include: recognizing harms beyond consumer welfare/price and traditional profit-driven strategies for growth; recognizing the value of consumer data acquisition and use in exchange for supposedly "free" services; and grappling with the ability of such companies to exercise dominance and squelch new entry and competition at lower-than-monopoly levels of market share, because of the network effect features of such platforms.

With the dominance of large digital platform companies comes equally problematic power in labor markets: In the high tech industry, tech companies dominated by colluding to prevent competition among high tech employees for jobs.[31] Google workers have complained en mass regarding sexual harassment and anti-union as well as race-related dismissals.[32]

---

[29] *See* David Weil, The Fissured Workplace (Harvard Univ. Press 2014).
[30] *See, e.g.,* Khan, Amazon's Antitrust Paradox, 126 YALE L.J. 710.
[31] Judge Koh OKs $415M Google, Apple Anti-Poaching Deal, Law360, Sept. 3, 2015, *available at* https://www.law360.com/articles/677683/judge-koh-oks-415m-google-apple-anti-poaching-deal.
[32] *Hundreds of Google Employees Unionize, Culminating Years of Activism*, N.Y. Times (Jan. 4, 2021), *available at* https://www.nytimes.com/2021/01/04/technology/google-employees-union.html#:~:text=OAKLAND%2C%20Calif.,staunchly%20anti%2Dunion%20Silicon%20Valley.

In addition, the extraordinary growth of Amazon's direct and indirect employment, as discussed above, has impacted labor markets. Amazon's dominance in employment has brought reports that Amazon's warehouses result in declining warehouse wages in areas where they locate.[33] The New York Attorney General believes Amazon has so blatantly ignored state COVID safety protocols in New York that she has sued Amazon under general public safety laws, seeking injunctive relief including disgorgement of profits.[34] Amazon continues to exercise its power to substantially increase fissuring of the workplace, including by pushing employment responsibility onto hundreds of small delivery businesses that it effectively controls, and by using thousands of delivery/logistics drivers who not only are without traditional employment protections as independent contractors, but are also subject to unrelenting delivery load and speed demands that may compromise safety.[35] Similarly, it has created a whole new army of Prime Now shoppers who pick and delivery groceries, again as "gig workers" with none of the traditional protections of employment.

In addition, such corporations are able to mount vigorous corporate backlash against workers who attempt to exercise their right to organize. At Amazon, the company tried to recruit "labor spies and anti-union analysts with background in federal intelligence work,"[36] to surveille its direct employees for union activity. The company even allegedly conducted anti-union surveillance of its independent contractor Flex drivers, manifesting an "Orwellian" program that allegedly monitored as many as 43 driver Facebook accounts for hints of union sympathies.[37] The company is also pursuing a highly-funded, vicious union-busting campaign at Amazon's 6,000-worker warehouse facility in Bessemer, Alabama where workers are voting on union representation this month.[38]

*Recommendations for Antitrust Reform*

---

[33] *See supra* note 29 and accompanying text.

[34] *James v. Amazon.com, Inc*. (N.Y. Sup. Ct., Feb. 16, 2021). *See also Palmer v. Amazon*, 20-cv-02468-BMC (E.D.N.Y. June 20, 2020) (public nuisance suit brought against Amazon alleging that Amazon's failure to protect workers adequately from COVID created a public nuisance, a common law tort that endangered public safety). The suit was dismissed on the grounds that OSHA preempts state claims regarding workplace safety. *Palmer*, Slip Op. (Nov. 2, 2020). *See also Smalls v. Amazon*, 20-05492 (E.D.N.Y., Nov. 12, 2020) (Class action federal civil rights case alleging that Amazon violated civil rights statutes by failing to protect a workforce that has a majority of people of color from the dangers of COVID.) *Smalls* is still pending in federal court in the Eastern District of New York.

[35] Amazon's Next-Day Delivery Has Brought Chaos and Carnage To America's Streets, BuzzFeed, Aug. 31, 2019, *available at* https://www.buzzfeednews.com/article/carolineodonovan/amazon-next-day-delivery-deaths.

[36] 12 Facts About Morgan Lewis, Amazon's Powerful Anti-Union Law Firm, LaborOnline, Feb. 18, 2021 (citing report that Amazon posted-and then deleted-a job listing for an 'intelligence analyst' to monitor workers' efforts to unionize, Business Insider, Sept. 1, 2020), *available at* http://www.lawcha.org/2021/02/02/12-facts-about-morgan-lewis-amazons-powerful-anti-union-law-firm/.

[37] Amazon Flex Driver Fights Attempt to Arbitrate Privacy Claims, Law360, March 1, 2021 (detailing Amazon Flex driver's class allegations that Amazon "purportedly hired intelligence experts to use automated tools and monitoring software to track and intercept drivers' social media activity."), *available at* https://www.law360.com/articles/1359635/amazon-flex-driver-fights-attempt-to-arbitrate-privacy-claims

[38] Amazon is Paying Nearly 10K a Day to Anti-Union Consultants, The Sludge opinion, March 8, 2021, *available at* https://readsludge.com/2021/03/08/amazon-is-paying-nearly-10k-a-day-to-anti-union-consultants/; Amazon fights aggressively to defeat union drive in Alabama, fearing a coming wave, Washington Post, March 9, 2021, *available at* https://www.washingtonpost.com/technology/2021/03/09/amazon-union-bessemer-history/ .

For reasons discussed above, we urge vigorous antitrust reform. Meaningful reform should include the following:

a) Eliminate rule of reason: Eliminate the highly open-ended and problematic "rule of reason" decision-making, in favor of a clear, simple rules against abuse of market power, to prevent courts misinterpreting the law or imposing additional barriers to antitrust protections in the future.[39] As this implies, parties should be permitted to prove an antitrust violation by showing anti-competitive harm from a dominant firms' conduct in a labor or product market. Firms should not be able to defend, or rebut, evidence of abusive conduct by offering a pro-competitive justification. Piecemeal or partial rules that permit certain pro-competitive justifications, or that allow other "rule of reason" defenses provide too great an opening for continued judicial law-making and subversion of antitrust protections.

b) Include labor markets in merger reviews: For merger review, establish labor market-related filing triggers, and require consideration of the effects on labor market concentration of all mergers reviewed.

c) Prohibit anti-competitive worker restraints: Prohibit outright anticompetitive worker restraints such as noncompetes and no poach restrictions. Such restrictions directly interfere with workers' mobility and limit their ability to compete for different jobs with better wages or other terms of employment. These restraints exacerbate inequality and the imbalance between corporate and worker power, distorting competition in labor markets. Similarly, unfair and anti-competitive mandatory arbitration clauses should be made illegal and unenforceable.

d) Provide for labor monopsony claims clearly and expressly: Expressly provide for labor monopsony claims under antitrust laws by including abuse of labor market power and exclusionary conduct in labor markets in antitrust laws and legal standards. These changes should be done using clear and express language so that courts may not refuse to apply antitrust laws to labor monopsony behavior.

e) Establish an appropriate threshold for labor market power: Establish a lower market share threshold at which a firm is presumed to have market power. Evidence suggests that a special feature of labor markets is that they become significantly less competitive at lower levels of concentration than product markets; we thus urge a 20 percent threshold for labor markets.[40]

[39] The last 40 years of courts weakening antitrust laws in response to Robert Bork's *The Antitrust Paradox* is the most commonly cited example of judicial activism in antitrust (Khan, *supra* note 30 at 717-721), but judicial attempts to subvert the purpose – as well as specific provisions – of antitrust law have been endemic since antitrust laws were first enacted. Khan relates how Congress outlawed predatory pricing starting in 1914, only to pass several new statutes outlawing the same practice as courts repeatedly held those statutes allowed predatory pricing conduct, until finally "by the mid-twentieth century, the Supreme Court recognized and gave effect" to the statutory prohibition on predatory pricing. *Id*. at 723-24.

[40] *See* Investigation of Competition in Digital Markets, Subc. on Antitrust, Comm'l & Admin. Law of the H. Comm. of the Judiciary (2020) at 393 ("It is the view of Subcommittee staff that the 30% threshold established by the Supreme Court in Philadelphia National Bank is appropriate, although a lower standard for monopsony or buyer power claims may deserve consideration by the Subcommittee."), *available at*

f) Expand antitrust exemption to include gig/fissured worker organizing: Organizing activity by workers classified as independent contractors should be exempt from antitrust laws just as employee organizing is exempt. Independently-classified workers must be permitted to engage in collective activity to improve their working conditions.

g) Address special problems posed by Big Tech for a healthy, competitive economy: Revise antitrust laws to address the unique characteristics of digital platform companies in ways that recognize the value to such companies of growth in market share over profits in the areas of predatory pricing, mergers and recognition of cognizable competitive harms; the threat posed by vertical integration and cross-business-line self-preferencing and exclusionary conduct; and the outsized power such firms can exercise over workers and over the fissuring of the workplace when they become dominant economic actors.

We believe that the structure of our economy matters. In order to have a fair chance at a good job, good wages, and chance to have a choice and negotiate these conditions – as well as a choice about what we buy, where we live, who has our information – it matters who has power in our economy and in our system. In all of these areas, as discussed above, we believe the power of individuals has been declining, and the power of the large corporation has increased. And it is increasingly clear that corporate concentrations of power harm consumers, workers and other market participant as well as the economy itself in a multitude of ways – from wage inequality to corporate influence on politics to innovation.

Antitrust laws – and how those laws are interpreted, applied, and enforced – have a tremendous role to play in how corporate power is allocated, exercised, and manifested in our system. Those laws have quite simply failed to play their necessary role for far too long, and have languished as the economy evolved with new challenges, from digital platform companies to fissured workplaces. We urge this subcommittee to undertake substantial – and lasting—revisions of our antitrust laws that will protect and enhance fair competition in our country's economy going forward.

International Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, DC 20001

Iain Gold
202-437-0963
IGold@teamster.org

The Strategic Organizing Center
1900 L St NW #900,
Washington, DC 20036

Joan Moriarty
(917) 208-5978
JMoriarty@thesoc.org

Marka Peterson
(202) 215-6115
MPeterson@thesoc.org

https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519.