**Treating Labor Market Power Symmetrically in UK Competition Law**

Matthew Merrigan
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**Introduction**

The question as to whether or not monopsony power characterizes the labor market has entered into the scholarly debate with some verve in recent years. This paper tries to fill the void in the existing policy, striving to regulate the labor market in a symmetrical way to the current treatment of the product market in antitrust laws in the United Kingdom. Given that competition policy enforcement agencies such as the CMA (Competition and Markets Authority) have equally as much jurisdiction over the labor market as the product market, and in theory should have just as much concern for buyer as for seller power, it is critical to ask whether - in light of a great body of evidence of monopsony power in the labor market - an expansion of enforcement policies is necessary, and what policies need be enacted to better combat monopsony power[1].

While it is clear that competition laws in the UK address the product market, it is equally as evident that there is a lack of legal infrastructure for the labor market in most[2]. In light of recent evidence suggesting that monopsony power is equally as pernicious as monopoly power, it is all the more important to remedy this inconsistency[3]. This paper asks the fundamental question: where in the current legislation in the United Kingdom is it most politically and economically feasible to add a policy ensuring that labor markets are regulated in a symmetrical manner to the product market?

Within the context of this paper, “labor market monopsony” is defined as the ability of employers to autonomously act unilaterally, potentially in a collusive manner, to set wages in the labor market rather than take wages as a given defined by perfect competition. In terms of economic theory and models, this amounts to the question of whether firms face an upward-sloping labor supply curve, implying they have the discretion to set wages, or (as in a “perfectly competitive market”) whether firms hire from an infinitely elastic supply curve, and thus take the wages as dictated by market competition.

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[1] Steinbaum, “Evidence and Analysis of Monopsony Power, Including but Not Limited to, In Labor Markets.”
[2] Abel, Tenreyro, and Thwaites, “Monopsony in the UK.”
[3] “Monopsony and Market Power in the Labor Market.”

It is important to remember in classical economic theory that wages in a perfectly competitive market are equivalent to the marginal product of the worker[4]. From the perspective of the workers, the question now posed is whether laborers are paid their full marginal product, or if they experience a potential markdown in their wages reflecting the employers ability to extract rents (and thus a monopsony surplus). This situation is also provided given the assumption that employers do not have the fear that laborers will leave for another job that will pay their full marginal product, which scholars suggest is not incredible.

This definition thus implies that concentration of employers in a market that is well-defined by antitrust laws is only one possible mechanism that would cause monopsony within the labor market. That is, concentration does not *necessarily* imply market power. This is also true of the product market, in which mere concentration is dispositive neither for nor against excessive market power. However, unlike in product markets, there is substantial evidence that suggests that even non-concentrated power can be monopsonized. In a paper on monopsony in the UK, one author posits that "even in relatively competitive industries, some workers may still face very monopsonistic labour markets"[5]. For example, there is anecdotal evidence that quit-rate of jobs do not respond dramatically to wage changes; changes in the minimum wage only have a minimal effect on the employment rate; and that it is now socially normalized for employers to impose on workers legally unenforceable non-compete agreements, thus forcing adverse employment conditions on laborers[6]. What is more, these powers are all self-reenforcing: as employers use their monopsony power to impose vertical restraints on laborers, optionality for laborers is increasingly limited, and the firm-specific monopsony power is further enhanced. Nonetheless, the focus of this paper is purely on how monopsonistic firms can be regulated by *antitrust* policies, and the discussion of non-price mechanisms for labor market distortions begets further research.

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[4] Ashenfelter, Farber, and Ransom, "Modern Models of Monopsony in Labor Markets: A Brief Survey."
[5] Abel, Tenreyro, and Thwaites, "Monopsony in the UK."
[6] Steinbaum, "Evidence and Analysis of Monopsony Power, Including but Not Limited to, In Labor Markets."

The question of whether or not monopsony power exists within the labor market rests on the fundamental concept of imperfect competition. It is the goal of antitrust enforcers and regulatory agencies to see the markets function in a competitive way (at least, as close to perfect competition as possible)[7]. However, in light of previous examples, it is increasingly evident that several aspects of the labor market are not characterized by perfect competition, and suffer from many policies - either de jure or de facto - that lead to a degree of imperfect competition[8]. Given this fact and the corresponding monopsony pervasive in the labor market, it is now critical to review important policy interventions that can work to empower workers' rights and enhance efficiency by eliminating - or at the very least mitigating - the deadweight loss of imperfect competition.

This study thus seeks to make policy proposals to incorporate regulation on the labor market into the current regulatory laws in the United Kingdom. Recommendations will include operationalizing specific sections of the Competition Law of 1998 and including additions in the UK Mergers Guideline to specify exact steps that the UK Authorities can take in evaluating whether or not a firm is engaging in monopsonistic practices. This two pronged approach will help to both pre-emptively rid the market of any possible firms that would engage in monopsonistic practices in the labor market, as well as ensure regulation of any existing firms that currently employ individuals below competitive wages. This paper will thus help to more robustly inform regulatory Authorities of how single buyers in the labor market can be detrimental to market efficiency, and how simple policy initiatives can help to counteract their position of market dominance.

**Evidence of Monopsony in the Labor Market**

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[7] Steinbaum, "Evidence and Analysis of Monopsony Power, Including but Not Limited to, In Labor Markets."

[8] "Two Recent Federal Trade Commission Enforcement Actions Shed Light on the Treatment of Buyer Power | Publications and Presentations."

Before outlining the current state of Competition Laws in the United Kingdom and detailing specific procedural steps to remedy the situation, it is important to first review the recent scholarly literature that addresses the real and impactful power of monopsonistic firms in the British economy. This will help contextualize *why* it is so important to ensure adequate regulation of the labor market; not only for improved welfare of individual laborers, but also for improved allocative efficiency and welfare of society as a whole.

Perhaps the most bromidic example of monopsony power is that of a small town in which there is only a singular coal mine. The coal mine is the dominant employer of workers in the town, and thus has the ability to set wages below those that would be determined in a perfectly competitive market. Another conventional example of monopsony power is the hiring practices of nurses by hospitals. Hospitals or other medical practitioners are either the sole hirer in a small geographic area or are historically guilty of colluding with the few other practitioners in the region, allowing them to depress wages for nurses below competitive levels. Both of these examples may seem highly atypical in a more global economy or one in which there is not a sole buyer (employer). However, a growing body of literature seeks to dispel this rumor, pointing to several real-world examples in which monopsonistic power is increasingly pervasive.

Abel et. al., in their seminal work “Monopsony in the UK” (2018), study the evolution of monopsony in the labor market from 1997 through 2018 in the United Kingdom and finds that levels of monopsony power have been relatively stable across time, and that “there is substantial cross-sectional variation in monopsony power at the industry level”[9]. This is evidenced through a relationship in which higher levels of labor market concentration result in lower wages paid to workers. This negative relationship between monopsony power and wages thus denotes the need for more active antitrust law aimed at creating a symmetrical treatment of the labor market and the product market.

[9] Abel, Tenreyro, and Thwaites, “Monopsony in the UK.”

This study thus ostensibly posits that monopsony power has not yet felt the wrath of antitrust regulators or competition laws. With relatively stable rates across the past 20 years, there is reason to believe that competition laws are not being fully utilized to their maximum capacity to "bust" the firms engaging in monopsonistic practices[10]. More concerning, however, is the recent rise of two-earner households and the dramatic decrease in mobility in the UK[11]. As more employers enter the labor force with consistent levels of labor concentration, there is thus even more power for concentrated firms to leverage over the working force. Not only that, but the decrease in mobility augments the geographic effects that allow firms to depress wages. If workers are unable to relocate to find alternative employment opportunities, firms are incentivized to decrease wages without fear of mass labor relocation. Even with a consistent level of market concentration, this has resulted in a dramatically thinner labor market than estimates may suggest. Not only that, but the individuals most often affected by depressed wages are the communities already historically disadvantaged[12]. Unskilled or manual laborers are classically thought of as those who are price-taking in wages, forced to work for whatever wage the firm sets[13]. Monopsony power only further marginalizes these underprivileged communities.

**Competition Law in the United Kingdom**

The Competition Act of 1998 is the culmination of decades worth of evolution of competition policies, eventually leading towards a "relatively depoliticized and effects-based approach" to enforcement[14]. The Competition Act formalizes the UK's relationship with the European Union (acting through the European Commission, or the EC), with the ultimate goal of ensuring a consistent application of antitrust regulation in both the EU and the UK. The Competition Act is thus modeled on Articles 101

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[10] Abel, Tenreyro, and Thwaites.
[11] "Monopsony and Market Power in the Labor Market."
[12] Manning, "Monopsony in Motion."
[13] Manning, "Imperfect Competition in the Labor Market."
[14] Rodger and MacCulloch, *The UK Competition Act*.

and 102 of the European Commission (which concern anti-competitive agreements and abuse of market power, respectively)[15]. Moreover, Section 60 of the Competition Act of 1998 goes so far as to formally incorporate into UK law "a governing principle that UK law should not diverge in its substantive application from EU law"[16]. While the predominant focus of this research is antitrust regulation in the UK, the last section will detail possible steps to reform regulation of the European Commission in an effort to reach consonance between the two agents.

The Act can be divided into regulations under three broad classes of ideas: anti-competitive agreements and cartels, abuse of market power, and merger investigation. I will concentrate on Chapters I and II of the Act, which specifically deal with anti-competitive agreements and abuse of market power, respectively. The prohibition of Chapter I applies specifically to anti-competitive agreements and practices. In order for the Chapter I prohibition to be violated, there are four elements each of which must be satisfied. These include: "an agreement, decision, or concerted practice"; "between undertakings"; "which may affect trade within the UK"; and which has the object or effect of "prevention, restriction, or distortion of competition within the UK"[17].

With these four simple elements, it becomes clear that the wording of the prohibition allows for a great deal of liberalism in interpretation. For example, oligopolistic (or oligopsonistic) practices are henceforth outlawed under the Act. It also covers informal agreements (be it oral or written), and the term "undertakings" is frequently interpreted as any "natural or legal person engaged in economic activity"[18]. With this, implicit agreements or tacit arrangements, such as non-compete agreements, may be considered infringements on the prohibition.

Additionally, Chapter I further specifies that the prohibition applies specifically to decisions that "directly or indirectly fix purchase or selling prices or any other trading conditions" or "apply dissimilar

[15] Dabbah, *EC and UK Competition Law: Commentary, Cases, and Materials*.
[16] Slaughter and May, "An Overview of the UK Competition Rules."
[17] "Competition Act of 1998."
[18] Slaughter and May, "An Overview of the UK Competition Rules."

conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage"[19]. This subsection thus allows for one to interpret anti-competitive situations that arise in the marketplace broadly, and will allow for possible recommendations to directly address the Competition Act. Throughout Chapter I, there is no mention of either monopolistic or monopsonistic practices. At this point in the legal infrastructure, there is *no discrepancy* between product markets and labor markets.

Chapter II continues by targeting undertakings that directly challenge competition in the market by exercising significant market power. Stated most simply, the act prohibits "any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in the market"[20]. The most cited example of such conduct is "directly or indirectly imposing unfair purchase or selling prices", just as it is in Chapter I. Market dominance, in this context, must be carefully considered through an extensive assessment of the goods and services which form part of the market, as well as the relative geographic extent of the market. As a rule of thumb, dominance will generally be considered to exist above "a market share of 40%"[21].

It is important to note that Chapter II also does not make reference to either monopoly power or monopsony power, instead referring only to "abuse of dominant position"[22]. However, countless legal interpretations of these two chapters exclusively engage with the text as it relates to monopolies, while I have yet to find a single interpretation that applies the law to monopsony power. Additionally, both chapters provide for specific exclusions to the prohibitions, namely, cases of mergers and concentrations[23]. Because of these provisions, this paper also considers the Merger Assessment Guidelines set forth by the Competition and Markets Authority.

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[19] "Competition Act of 1998."
[20] "Competition Act of 1998."
[21] Dabbah, *EC and UK Competition Law: Commentary, Cases, and Materials*.
[22] "Competition Act of 1998."
[23] "Competition Act of 1998."

**Merger Assessment Guidelines in the UK**

In light of the exceptions put forth under the Competition Act of 1998, the Competition and Markets Authority (CMA) released the Merger Assessment Guidelines so as to advise firms engaging in mergers or concentrations. The guidelines begin by noting the rigorous "community dimension" under which the government must report to the European Commission if the firm in question falls outside the jurisdiction of the Act, and they also explicate the logistical differences between the UK and the EC's relative approaches to handling mergers (hence the later consideration of EC Laws)[24]. While the UK applies a test to determine a "significant lessening of competition" (SLC Test), the European Commission considers whether a merger would "impede effective competition"[25]. However, it notes that the "underlying economic approaches" to assessment are "generally similar" between the two authorities.

The Guidelines outline several tests that the CMA may take in order to determine whether a merger will breach the Competition Act. One possible test is the Share of Supply Test, which is satisfied if the the merged enterprise will "after the merger collectively supply or acquire 25% or more of those goods or services in the UK as a whole or a substantial part of it"[26]. Yet another approach taken by the CMA is the "theory of harm" approach, in which the authority draws up possible frameworks to assess the effects of mergers to deem whether or not it could lead to an SLC. Theories of harm describe possible "changes arising from the merger, any impact on rivalry, and expected harm to customers as compared with the situation likely to arise without the merger", or the counterfactual[27]. In this way, the theories of harm approach allows the Authorities to formulate two possible realities and compare the pros and cons of each.

In empirical analysis when considering the SLC test, the Authorities generally conduct analyses

[24] Slaughter and May, "An Overview of the UK Competition Rules."
[25] Competition Commission and Office of Fair Trading, "Merger Assessment Guidelines."
[26] Competition Commission and Office of Fair Trading.
[27] Competition Commission and Office of Fair Trading.

on the following: "market definition, measures of concentration, and horizontal mergers"[28]. For the sake of recommendations, these will be the critical elements that this paper advises should be readdressed. In terms of market definition, the Guidelines claim that the "the relevant market may not be the narrowest market that meets the hypothetical monopolist test"[29]. This allows freedom of interpretation, but fails to explicitly cover monopsony power in the same way in which monopoly power is delineated. Additionally, the Guidelines continue to "define the product market", including explicating the "demand-side factors" and the "hypothetical monopolist test", but make no mention of defining the labor market or a monopsonist test in similar terms. Here, clearly, exists an asymmetry.

Finally, the most critical section of the Guidelines in terms of protecting against monopsony is the section that delineates how one deals with "Increased Buyer Power". The Guidelines explicate that while a "merged firm may enjoy greater buyer power", "an increase in buyer power is not likely to give rise to unilateral effects; and some of the benefits to the firm from its greater buyer power may be passed on to the merged firm's customers"[30]. Not only that, but the one circumstance in which buyer power may lead to unilateral effects, according to the Guidelines, is a scenario in which the firm "has an incentive to lower the amount it purchases so as to reduce the price it pays, and the merged firm also has sufficient market power over its customers so that, as it reduces the quantity sold to them in the market, it can increase the price at which it sells to them"[31]. Clearly, this section should inherently deal with monopsony power. And yet, although an effort is made to address depressing prices that the firm "pays", even this section is discussed using rhetoric familiar to monopoly power, and fails to engage with a description of how monopsony power influences the labor market. I believe that this section either needs to be reframed to address the nefarious nature of monopsony in the labor market, or should make it clear that this section details *only* "increased buyer power" *in the labor market*.

[28] Competition Commission and Office of Fair Trading.
[29] Competition Commission and Office of Fair Trading.
[30] Competition Commission and Office of Fair Trading.
[31] Competition Commission and Office of Fair Trading.

The Competition Act of 1998 uses language interpretable to combat both monopoly power and monopsony power, regardless of the market setting (either product or labor). In stark contrast, the Merger Guidelines mentions monopsony power only once, indicating that it is a problem unlikely "to give rise to unilateral effects", and goes so far as to indicate that the "benefits to the firm from its greater buyer power may be passed on"[32]. Moreover, even the section on buyer power operates through a monopolistic lens. One of the questions initially asked was: at what point in the legal infrastructure does the product-side of the market become highlighted at the expense of the labor market. It is my opinion that it is in the Merger Guidelines. This leads into the next section of the paper, recommendations to more robustly combat monopsony power in the labor market.

**Recommendations**

*Recommendation #1: Incorporate a Supplementary Amendment in the Merger Guidelines*

When analyzing the current legal infrastructure of antitrust regulatory laws in the United Kingdom, I believe that the most politically feasible and most impactful place to start is the Merger Guidelines produced by the CMA. As previously mentioned, the Competition Act of 1998 does not necessarily create a distinction between the product market and the labor market, and treats "competition" as a more general idea. However, there is a clear asymmetry in the Merger Guidelines, and thus presents a viable point to propose recommendations. Monopsony power theoretically can amount to an SLC, but at this point it would virtually not be considered under the current Guidelines as they are written. To remedy this, it is critical to promote monopsony in the labor market as a theory of harm. At this point, the Guidelines include several analytical tools as tests for an SLC. The Guidelines claim that the assessment of the SLC test is framed in terms of the "identification of the market for the goods concerned" and the "assessment of the competitive effects of the mergers in the markets"[33]. Therefore, recommendations will

[32] Competition Commission and Office of Fair Trading.
[33] Competition Commission and Office of Fair Trading.

focus on redefining more explicitly the labor market (paralleling the current definition of the product market), as well as forming tests specific to address concentration in the labor market and the unilateral effects of horizontal mergers.

As is made clear by the Authorities, proper market definition is crucial to understanding concentration, and its purpose is to provide a framework for the CMA's analysis of the effects of a merger. In their current definition of markets, the Guidelines utilize a "hypothetical monopolist test". For a given market size, the hypothetical monopolist test asks if it would be profitable for a monopolist to impose a small, significant, non-transitory increase in price (SSNIP). As is standard with the literature, the Guidelines select a SSNIP of 5%[34]. The SSNIP test essentially evaluates whether the increase in price outweigh the corresponding reduction in customers. This illuminates the observable parameter of the price elasticity of demand facing such a hypothetical monopolist. If the demand is quite elastic, it would not be profitable to institute a SSNIP, and the labor market must be expanded from its too-narrow view. The "critical elasticity" is that wherein it is just profitable for a monopolist to impose the SSNIP.

While this test is included in the Guidelines, this recommendation specifically seeks to add a parallel "Hypothetical Monopsonist Test", in which the SSNIP Test is substituted for a SSNRW Test. Proposed by Azar et al. the SSNRW Test rephrases the monopolist question, instead asking: would it be profitable for a hypothetical monopsonist to impose a small, significant non-transitory reduction in wages (SSNRW)? Here, the observable parameter is now the elasticity of the labor supply, rather than demand. Previous empirical analysis has determined that firm-specific labor elasticities are quite small, with the average among firms being ~0.1 with little-to-no heterogeneity[35]. The Guidelines delineate a step-by-step definition of the hypothetical monopolist test, and it would be additive to do the same for a hypothetical monopsonist, simply employing the SSNRW test rather than the SSNIP. Redefining the labor market to parallel the hypothetical monopoly test would not only help further characterize monopsony as a

[34] Competition Commission and Office of Fair Trading.
[35] Azar et al., "Concentration in US Labor Markets: Evidence from Online Vacancy Data."

legitimate form of market imperfections that work against competition, but it would assist the Authorities in deeming whether or not a firm is engaging in monopsonistic practices.

Continuing, the Guidelines also explicate a section on the use of market concentration as an indicator of monopoly power. Various measures of market power include market shares, extent of product differentiation, turbulence in concentration, and/or variable profit margins using such data as sales revenue, production volume, capacity or reserves. It is not unreasonable to anticipate that the inclusion of concentration in the labor market would make more robust the Authorities' approach to "busting" monopsonies. While many of the metrics currently included in the Guidelines as viable measurements of concentration are specific to the product market, many other measurements can be fitted to suit analyzing the labor market. Specifically, the Guidelines currently use a market share threshold, as well as the Herfindahl-Hirschman Index (HHI) as viable measurements of concentration, both of which are applicable to the labor market[36].

The Guidelines indicate that any combined market share of above 40% is cause for concern. It would be beneficial to evaluate the market share in the context of the labor market of some of the larger or geographically separate firms. Additionally, the Guidelines make use of the HHI, a measure the concentration of employment across firms, deeming that "any market with a post-merger HHI exceeding 1000 may be regarded as concentrated and any market with a post-merger HHI exceeding 2000 as highly concentrated"[37]. The Roosevelt Institute conducted an analysis discovering that the average labor market has an HHI in excess of 4000. With this in mind, it is likely that any additional guidelines focusing on concentration in the labor market will prove useful for targeting monopsonistic firms. A useful recommendation here would be applying the HHI test for economic concentration to the labor market.

Finally, it is important to address the section of guidelines specific to the unilateral effects of horizontal mergers. The Guidelines define unilateral effects as being able to arise "when one firm merges

[36] Competition Commission and Office of Fair Trading, "Merger Assessment Guidelines."
[37] Competition Commission and Office of Fair Trading.

with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices on its own and without needing to coordinate with its rivals"[38]. This language is incredibly biased towards monopolies. It would be beneficial simply to alter the phrase to end "... profitably to raise prices or depress wages on its own…". This simple change reframes the whole section to read as combative towards both monopolies and monopsonies. The Guidelines elaborate on a section of "Loss of existing competition for undifferentiated and differentiated products". A possible recommendation may be the inclusion of an additional section delineating the effects of "loss of competition in the labor market".

Additionally, the section detailing "increased buyer power" must be reframed to acknowledge the malevolence of monopsonists. As it currently stands, the Guidelines seem to trivialize the effects of increased buyer power. Perhaps this is within the context of the products market, or perhaps monopsonists were not considered as nefarious at the time of writing. Whatever the case, it is important that this section details the harmful impacts of increased buyer power, especially as it relates to the labor market. It would be helpful to remove the line stating that buyer power is "not likely to give rise to unilateral effects", and include an additional line that makes explicit the effects that buyer power can have in the labor market, including (but not limited to), propagating allocative inefficiencies, decreasing societal welfare, and depressing wages.

It is unclear whether these goals are best achieved through a rewording of the existing language, or the addition of entirely new subsections under each respective header dedicated solely to the labor market. In my opinion, it would be most efficient and direct to simply include additional subsections, and drafts of these additions are included in an appendix to this paper. The supplements should not fail to include theories of harm that are founded in non-price effects (e.g. imposing disadvantageous terms of

[38] Competition Commission and Office of Fair Trading.

employment on workers, and re-classification of de facto employees as "independent contractors"), but still these non-price effects remain outside the scope of this paper.

Within the context of this paper, the steps outlined above are the most actionable, cost efficient, and politically feasible. The Guidelines need not seek approval for revisions from a large political block, and it is unlikely that large firms will be able to exert political clout during the revision process so as to block key additions. Moreover, while I believe the legal infrastructure is already in place so as to prevent the formation of new monopsonies, there is currently a complete void of any legal language to address mergers that may result in monopsonies. That is, monopsonies are mentioned but once (and in a trivialized manner) in the entire document of Merger Guidelines. Including any language on monopsonies would be nothing if not beneficial for the future of labor market regulation. This step is the most critical in making a more robust regulatory system.

*Recommendation #2: Engage in Merger Retrospectives*

There is evidence that suggests that many firms that have already merged may have done so legally, but have since been able to engage in monopsonistic pricing in the labor market. Transactions that were previously approved may have had disadvantageous effects on the labor market since the merge, and it is important to address these as well. Wilmers (2018) outlines one such specific process, in which powerful buyers are able to impose price reductions on suppliers, who in turn then impose subsequent pay cuts on their workforce.

Thus, it is important that the CMA conducts annual, or bi-annual, reviews of its prior transactions. Increasing merger retrospective capacity in general may provide for a more robust analysis of whether or not mergers of past transactions diminished competition in the labor market ex-post[39]. Standards in ex-post review may be similar to those outlined in Recommendation #1 (labor market definition, analysis

[39] Steinbaum, "Evidence and Analysis of Monopsony Power, Including but Not Limited to, In Labor Markets."

of market concentration, unilateral effects, etc.), with the ultimate goal to be the evaluation of ex post mergers and acquisitions from the perspective of concentration of monopsony power.

Like the previous recommendation, this is also incredibly actionable. The Authorities currently engage in retrospectives of previous transactions. This recommendation simply calls for a strengthening of capacity, with the Authorities paying particular attention to possible examples of monopsony power in the labor market.

*Recommendation #3: Incorporate a Supplementary Amendment in the Competition Act of 1998*

The Competition Act does not necessarily explicate either the ills of “monopoly power” or the product market. However, in Subsection (2) of Chapter I, Part (b) specifies that it is prohibited to “limit or control production, markets, technical development or investment”[40]. While this does not explicitly contain rhetoric specific to monopolies, the implication is still there. Thus, one possible recommendation includes adding another part (in Chapter I, Subsection (2), this would be Part (f)) making explicit that buyer power in the labor market and either setting or depressing wages beneath those defined in a competitive market is also prohibited. Additionally, a possible extension of Part (a) could also suffice. The section currently reads “directly or indirectly fix purchase or selling prices or any other trading conditions”. Instead, it could potentially read “directly or indirectly fix purchase or selling prices, wages, or any other trading condition”. Again, a draft of this resolution is included at the end of the paper.

I recognize that this may perhaps not be politically feasible. Passing such an amendment would require a good deal of political clout and momentum, and it is all but guaranteed that large businesses would oppose such an addendum. However, this may be the most all-encompassing recommendation and would prohibit non-merger companies from concentrating market power. Not only would this make

[40] “Competition Act of 1998.”

prosecuting firms for monopsonistic practices in the labor market all the easier, but it would also ensure that monopsonies receive the legal attention that they have heretofore lacked.

**Extensions for the European Commission**

The Competition Act of 1998 and the Mergers Assessment and Guidelines parallel the stipulations set forth by the European Commission in a number of ways. Most predominantly, the fundamental goal of the Competition Act of 1998 was to provide a "governing principle that UK law should not diverge in its substantive application from EU law"[41]. This makes it far more viable to institute changes at both the UK and EU level, and may actually be helpful in terms of gaining political momentum in addressing the issue of monopsony in the labor market. Chapter I and Chapter II of the UK Competition Act of 1998, for example, are based largely on Articles 101 and 102, respectively, of the Treaty of the Functioning of the European Union (2007). Article 101 prohibits cartels and other agreements that may inhibit free trade, while Article 102 prohibits abuse of dominant positions in a marketplace. Similarly, the Mergers Guidelines of the EU make a prospective analysis of whether or not a merger or concentration would "significantly impede effective competition" (language taken directly from Article 101)[42]. This SIEC Test, which parallels the SLC Test of UK Merger Guidelines, functions in much the same way, differing primarily in its assurance that the "non-coordinated effects of a merger in an oligopolistic merger be caught".

Not only that, but these "structural differences between the regimes [the UK and the EU] have implications for the substantive assessment of the mergers". Whereas the UK Merger Guidelines apply the SLC test, the SIEC Test conducted by the European Commission investigate "whether a merger would significantly impede effective competition". This looser definition focusing explicitly on "market

[41] "Competition Act of 1998."
[42] Dabbah, *EC and UK Competition Law: Commentary, Cases, and Materials*.

dominance" is meant to endow the Commission with greater powers and the ability to pursue investigations in more liberally[43].

However, I believe that the political landscape of the European Union may preclude conducting reviews that focus specifically on monopsony power. In contrast to the United Kingdom, the European Union has countless member states with putative autonomy. Labor markets are quite localized, and effective review and market definition of labor markets would likely require oversight by individual member states, not necessarily the European Commission as a whole. This draws into question whether it is even under the purview of the EC to conduct such merger investigations, even of multinational corporations. Secondly, according to Mr. Valletti, Chief Economist for Competition Commissioner Vestager of the European Commission, this type of change is unlikely to gather the political momentum needed for institution. Buyer power is all-too-often "assumed to be good for the consumer because of an assumed pass-through"[44]. While Mr. Valletti acknowledges that this may be true in some product markets (i.e. vertical integrations that result in lower prices for consumers), it is definitively untrue in the labor markets, although "politicians fail to see the difference between the two"[45]. Unfortunately, Mr. Valletti does not believe that these types of policy interventions have a viable political future. Nonetheless, I believe that the introduction of specific language that targets concentration of power in the labor market may provide the necessary autonomy and guidance to individual member states to regulate and "bust" monopsonies.

The relevant EC Guidelines are specified around the following elements: "the approach of the Commission to market shares and concentration thresholds; the likelihood that a merger would have anticompetitive effects in the relevant markets, in the absence of countervailing factors; the likelihood that buyer power would act as a countervailing factor to an increase in market power resulting from the

[43] Dabbah.
[44] Valletti, Tommasso. Interview by Matthew Merrigan. Email. December 19, 2018.
[45] Valletti, Tommasso.

merger"[46]. The guidelines suggest that investigation may ensue of any firms that hold a market share of over 40% (with a high likelihood of condemnation for those firms with a market share of above 50%). In terms of market concentration, the guidelines also suggest an HHI Test, with investigations likely for firms with an index between 1000 and 2000. In this manner, the guidelines are quite similar to those of the UK.

The section detailing ways in which non-coordinated effects may inhibit competition does not, in contrast to the UK Guidelines, include a Hypothetical Monopolist Test. Instead, it includes many sections that specify a variety of ways in which mergers may provide opportunities for diminished competition in the marketplace. While some of these are specific to the product market, many of them address competition writ large. In this way, my recommendation here would be to include an additional subsection - no more than a paragraph or two - simply making clear that the Guidelines also protect against monopsony power in the labor market. Like previous recommendations, a draft of this is included at the end of the paper. Like *Recommendation #1*, I believe that this is the most politically feasible and effective avenue of pursuit in order to institute legislative change.

**Conclusion**

This paper has demonstrated the existence and negative effects of monopsony power and concentration in the labor market. It is also evident that there is a discrepancy between the treatment of the product market and the treatment of the labor market, with the current legal infrastructure overwhelmingly work to mitigate market dominance in the product market while the labor market goes virtually unmentioned. Having read through the current laws in the United Kingdom and the European Commission, it is my opinion that the most viable path to mitigate this inconsistency is through an addition in the UK Merger Guidelines that incorporate language specific to regulation of labor markets.

[46] Dabbah.

These steps are explicitly intended to preemptively strike down any possibility of mergers that may form monopsonies in the labor market, and exactly address the particular point of discordance between product market and labor market.

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