NRF National Retail Federation

April 20, 2022

Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Jonathan Kanter
Assistant Attorney General
Department of Justice Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan and Assistant Attorney General Kanter:

Re: Request for Information on Merger Enforcement

On behalf of the National Retail Federation ("NRF"), we are pleased to submit these comments to the Federal Trade Commission ("FTC") and Department of Justice ("DOJ", together with the FTC, the "Agencies") in response to your January 18, 2022, solicitation for public comments with regards to merger enforcement.

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and internet retailers from the United States and more than 45 countries. Retail is the nation's largest private-sector employer, supporting one in four U.S. jobs — 52 million working Americans. Contributing $3.9 trillion to annual GDP, retail is a daily barometer for the nation's economy.

NRF commends the Agencies for investing the time and effort to study issues relating to merger enforcement, including with respect to questions related to labor markets. NRF recognizes that mergers have the potential to affect competition in labor markets, particularly in industries featuring highly specialized workforces.[1] NRF believes that existing frameworks for merger review, as reflected in the Horizontal Merger Guidelines ("HMG"), are well-suited to address these potential effects on labor markets, and that no new analytical framework is needed to assure competition in labor markets. In fact, the Agencies have recently contested several mergers on the basis of monopsony, including labor monopsony, using the existing HMG.[2] Although NRF recognizes that it may be prudent to expand on how to analyze monopsony within this framework, NRF sees no need to change this preexisting framework, create guidelines specific to labor monopsony, or impose rigid thresholds or safe harbors.[3]

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[1] *See* Ioana Marinescu & Herbert J. Hovenkamp, *Anticompetitive Mergers in Labor Markets*, 94 IND. L.J. 1031, 1038 (2019) ("This monopsony situation is especially likely to arise in specialized jobs, e.g., miners, for which there is literally only one company hiring in town.").

[2] *See* Complaint, *United States v. Bertelsmann SE & Co. KGaA, et al.*, 1:21-cv-02886, (D.D.C. Nov. 2, 2021), ECF No. 1; Complaint, *United States v. Zen-Noh Grain Corp. and Bunge North Am., Inc.*, 1:21-cv-01482, (D.D.C. June 1, 2021), ECF No. 1; *United States v. Anthem, Inc.*, 236 F.Supp.3d 171, 187 (D.D.C. 2017).

[3] *See* Marinescu & Hovenkamp, *supra* note 1, at 1063 ("[W]e are not recommending any significant changes in the economic analysis applied to mergers. The mechanisms of market definition, measurement of concentration, the

Antitrust law and enforcement should not be used as a tool to further other policy goals, such as enhancing union membership, and seeking to apply antitrust law to serve those goals threatens to undermine competition for labor, and competition more generally, rather than promote it. Most mergers allow industries to evolve in accordance with customer demand and competitive dynamics, including competition for labor.

NRF therefore encourages the Agencies to use care to ensure that any monopsony-focused additions to the Guidelines (a) incorporate the court-endorsed antitrust-based analytical framework already in the HMG; and (b) are narrowly tailored to clarify for the Agencies and businesses whether a merger would violate Section 7.

NRF discourages *labor*-monopsony additions to the Guidelines that fall outside of the current antitrust-based analytical framework already in the Guidelines. Establishing a new labor-monopsony specific framework based on labor policy rather than Section 7 would make it more difficult for parties to determine whether a particular merger would survive a Section 7 challenge. This would increase costs and chill procompetitive mergers, especially those in industries such as retail, where labor is not specialized.

The Retail Labor Sector Is Highly Competitive

One-size-fits-all merger presumptions are particularly inappropriate in labor markets because competitive conditions may differ greatly from one career and geographic area to others. For instance, the economic evidence is overwhelming that the market for highly specialized employees is quite different than that for retail employees. This is because, unlike highly specialized employees, whose skills are suited for only a narrow subset of employers, employees at the retail level enjoy a greater ability to switch between jobs. According to the U.S. Bureau of Labor Statistics ("BLS"), retail sales workers are not highly-specialized in that "there are no formal education requirements for retail sales workers" and that "[m]ost receive on-the-job training, which usually lasts a few days to a few months."[4] Moreover, there are many similar occupations "with job duties that are similar to those of retail sales workers." Some of those occupations also do not have formal education requirements (or have low educational requirements) and earn similar wages, e.g., bartenders, food and beverage serving and related workers. The ability for retail employees to freely switch between jobs has been on full display recently. This reality should inform the policy positions and analytical frameworks that the Agencies should adopt. At minimum, it means that the Agencies should be very cautious in drafting revisions to the Guidelines to avoid making broad, unsupported assumptions about labor markets that are inconsistent with robust competitive conditions for retail workers.

A November 2021 survey by the Federal Reserve of New York shows that 3.8% of respondents who made less than $60,000 a year changed jobs in the last four months, whereas

construction of prima facie cases based on concentration effects, and assessments of consumer welfare, can readily be adapted to merger cases involving labor markets. The fundamentals remain the same.").

[4] *Retail Sales Workers – Pay*, Bureau of Labor Statistics, https://www.bls.gov/ooh/sales/retail-sales-workers.htm#tab-5 (last accessed March 14, 2022).

only 3.1% of those making more than $60,000 a year switched jobs.[5] The same survey shows that, as of November 2021, 14.6% percent of those earning less than $60,000 a year expected to switch jobs in the next four months, versus 8.5% of those making more than $60,000 a year. And not only are low-income employees switching jobs more often, but they are also receiving more job offers when they do. For those making less than $60,000 a year, 4.3% of respondents received four or more job offers in a four-month period, versus only 1.7% for those making more than $60,000 a year. Similarly, according to the BLS' Job Openings and Labor Turnover Survey (JOLTS), the retail sales sector typically has a higher percentage of job openings (by about 1 to 3 percentage points in 2021) than the finance and insurance sectors,[6] suggesting that there may be greater demand in the retail industry than in more specialized industries such as finance and insurance.

Another analysis by the Federal Reserve of Atlanta further underscores this point: in January 2022, job "switchers" saw their median wage growth grow by 4.7%, whereas job "stayers" only saw their median wage rise by 3.7%.[7] This was the case despite that fact that wage levels grew the fastest both for those holding only a high school diploma as well as for those falling within the bottom quartile of wage-earners.

The conclusion is inescapable—there are more jobs available than there are workers to fill them in less specialized labor markets, including the retail sector.[8] Indeed, job openings in the retail sector hit a record high in August 2021.[9] Even if one were to eliminate geographic market differences and assume the same geographic market for both highly and less highly specialized jobs, this conclusion does not change. A 2018 study calculated labor market concentration using the Herfindahl-Hirschman index (HHI) for each U.S. commuting zone based on online job vacancy postings.[10] That study concluded that the "top 5 most concentrated occupations are all high specialized occupations."[11] In contrast, less specialized jobs like fast food workers, retail salespersons, and truck drivers all showed significantly lower average HHIs.[12]

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[5] *See SCE Market Labor Survey*, Federal Reserve Bank of New York—Center for Microeconomic Data, https://www.newyorkfed.org/microeconomics/sce/labor#/experiences-transitions5 (last accessed March 7, 2022).
[6] *Job Opening and Labor Turnover Survey*, Bureau of Labor Statistics, https://www.bls.gov/jlt/ (last accessed March 14, 2022).
[7] *See Wage Growth Tracker*, Federal Reserve Bank of Atlanta—Center for Human Capital Studies, https://www.atlantafed.org/chcs/wage-growth-tracker?panel=1 (last accessed March 8, 2022).
[8] Alex Domash and Lawrence H. Summers have observed that "vacancy and quit rates currently experienced in the United States correspond to a degree of labor market tightness previously associated with sub-2 percent unemployment rates," and "labor market tightness is likely to contribute significantly to inflationary pressure in the United States for some time to come." Alex Domash & Lawrence H. Summers, *How Tight Are U.S. Labor Markets?* at 1 (Feb. 2022), https://www.nber.org/system/files/working_papers/w29739/w29739.pdf.
[9] FRED Economic Data, *Job Openings: Retail Trade*, https://fred.stlouisfed.org/series/JTS4400JOL (last accessed Mar. 9, 2022). This economic evidence suggests that the current U.S. labor markets are extremely tight and the inflationary pressure from the labor market is unlikely to be substantially mitigated in upcoming year.
[10] José Azar et al., *Concentration in US Labor Markets: Evidence from Online Vacancy Data* (August 10, 2018), https://ssrn.com/abstract=3133344.
[11] *Id.* at 15.
[12] *Id.* at Figure 4.

The highly competitive retail labor market has seen employers eager to outdo each other on non-wage perks as well, like flexible scheduling, college tuition programs, and referral bonuses.[13] For example, Walmart, the nation's largest brick and mortar retailer, now offers a program that allows its workers to earn college degrees for just $1.00/day, and also covers the costs of tuition, books, and fees. *Id.* Starbucks offers 100% upfront tuition coverage for a first-time bachelor's degree through Arizona State University's online program[14] as well as restricted stock units that turn into shares of Starbucks stock over a two-year period.[15] Apple is planning to double the number of sick days and increase the number of vacation days offered to its retail employees.[16]

Thus, put simply, retail workers already have ample employment options available to them.

The Guidelines Adequately Address Labor-Related Competition Concerns

a. The HMG account for potential labor monopsony and other labor market issues

The current HMG adequately address and account for competitive concerns raised by mergers between competing buyers. When assessing whether a merger will enhance monopsony power, the HMG employ the same analytical framework used to evaluate mergers between competing sellers.[17] The HMG look to define the relevant product and geographic markets, assess how the merger will alter market shares and concentration, and determine whether the changes will result in anticompetitive effects. The current framework is sufficient to challenge and curtail mergers which will result in abuses of monopsony power.

Analysis of buyer-side mergers starts with the same foundational framework as mergers between sellers, but the HMG correctly recognize that mergers between competing buyers present unique factual issues related to market definition and assessing anticompetitive effects. These factual considerations are specifically set forth in Section 12 of the HMG.[18]

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[13] *See, e.g., Tight Labor Market Returns the Upper Hand to American Workers*, The Wall Street Journal (June 20, 2021), https://www.wsj.com/articles/tight-labor-market-returns-the-upper-hand-to-american-workers-11624210501; Mark Hamstra, *Retailers are Wooing Workers with Perks from Flexible Schedules to Free College Tuition in a Tight Labor Market*, U.S. Chamber of Commerce (October 20, 2021), https://www.uschamber.com/co/good-company/launch-pad/retailers-recruiting-in-tight-labor-market.

[14] Starbucks, Starbucks College Achievement Plan, https://www.starbucksbenefits.com/en-us/home/education-opportunity/starbucks-college-achievement-plan/ (last accessed Mar. 14, 2022).

[15] Starbucks, Bean Stock, https://www.starbucksbenefits.com/en-us/home/stock-savings/bean-stock/ (last accessed Mar. 14, 2022).

[16] Kif Leswing, *Apple to Double Sick Days, Boost Other Benefits for Retail Workers in U.S.*, CNBC (Feb. 8, 2022), https://www.cnbc.com/2022/02/08/apple-to-double-sick-days-boost-other-benefits-for-us-retail-workers.html (last accessed Mar. 14, 2022).

[17] *See* U.S. Dept. of Justice & Federal Trade Commission, *Horizontal Merger Guidelines* (August 19, 2010), available at: https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf, at 2 (hereinafter "*HMG*").

[18] *Id.* at 32-33.

When defining the relevant market for mergers between competing buyers, the HMG "focus on the alternatives available to sellers in the face of a decrease in the price paid by a hypothetical monopsonist."[19] From a labor market standpoint, alternative employment options may vary greatly based on workers' occupations. For example, a professor of astrophysics would likely have fewer alternative employment options if her university decreased her compensation in comparison to a retail sales associate at a department store in a mall.[20] In addition, certain types of employees, like the astrophysicist above, would likely be willing and able to travel further for alternative employment.[21] In contrast, a department store employee would likely face far lower stickiness to her current position if he or she was dissatisfied with it. Switching to another retail position could be easy as walking into another store in the mall advertising that they were seeking applicants and asking to fill out an employment application. The training process for a new position could begin the very same day. A major advantage of the current HMG is that they provide the Agencies with the necessary flexibility to distinguish and tailor their analysis based on the unique factual circumstances underlying labor market conditions in each merger and do not impose a rigid presumption regarding the very different labor market conditions facing the astrophysicist and the department store sales associate.[22]

The evaluation of potential anticompetitive effects resulting from buyer-side mergers also requires a fact intensive analysis not suited to formulaic and strict guidelines. As economist Nancy Rose argued in a 2019 background paper for the ABA Antitrust Section, "empirical correlations of wages and employer concentration should be interpreted with caution."[23] Correlations between wages and buyer-market concentration does not necessarily mean causation. The HMG recognize this fact, specifically noting that "[a] merger that does not enhance market power on the buying side of the market can nevertheless lead to a reduction in prices paid by the merged firm, for example, by reducing transactions costs or allowing the merged firm to take advantage of volume-based discounts."[24] Revising the guidelines to provide specific metrics and formulas for assessing *labor* monopsony concerns may lead to unwarranted merger challenges not supported by the factual circumstances of each case.

b. The Agencies have brought monopsony cases under the Guidelines

The Supreme Court in *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., Inc.*, noted the "close theoretical connection between monopoly and monopsony…. [which] suggests that similar legal standards should apply to claims of monopolization and to claims of

[19] *Id.* at 32.
[20] *See* Nancy L. Rose, *Thinking Through Anticompetitive Effects of Mergers on Workers*, at 4 (February 2019), available at: http://economics.mit.edu/files/20284 ("Low skilled workers may shift across occupations with similar low skill requirements. Young workers may be fluid across occupations early in their career; more experienced workers look within narrower bounds.").
[21] *See id.* at 4-5 (noting that for administrative and support positions almost all applications came from Boston commuting zone, whereas for faculty positions, applications come from an international pool of candidates).
[22] *See HMG* at 33 ("Market power on the buying side of the market is not a significant concern if suppliers have numerous attractive outlets for their goods or services. However, when that is not the case, the Agencies may conclude that the merger of competing buyers is likely to lessen competition in a manner harmful to sellers.").
[23] *See* Rose, *supra* note 19, at 3.
[24] *See HMG* at 33.

monopsonization."[25] Although the DOJ and FTC have not brought many merger cases related to monopsony power, it is clear from the recent increase in such cases that the Guidelines provide sufficient tools for the agencies to address anticompetitive concerns raised by buyer-side mergers.

The most recent example is the DOJ's challenge to the merger between Penguin Random House and Simon & Schuster.[26] The complaint alleges that the two largest book publishers compete in the markets for (1) acquiring U.S. publishing rights to books from authors and (2) acquiring U.S. publishing rights to anticipated top-selling books.[27] The merger would allegedly decrease competition and result in depressing author pay and a reduction of quantity and variety of books published.[28] The case is currently scheduled for trial in August.

The DOJ has also challenged mergers in the agricultural industry on the basis of monopsony power. In *United States v. Cargill, Inc. and Continental Grain Co.*, the DOJ alleged that a merger between competing grain purchasers was likely to decrease prices paid to farmers and other grain suppliers.[29] More recently, the DOJ brought a similar complaint in *United States v. Zen-Noh Grain Corp. and Bunge North Am., Inc.*, against competing grain purchasers alleging that the acquisition would result in farmers "receiv[ing] lower prices and poorer quality service when seeking to sell their grain."[30] In both cases the companies agreed to divest certain assets in order to finalize the transactions.[31]

In *United States v. Anthem, Inc*., the DOJ alleged that the contemplated merger between health insurance providers, Anthem and Cigna, would "result in harm to competition in the market for the purchase of healthcare services, or a monopsony."[32] The district court, however, did not reach the monopsony issue after finding for the DOJ on the monopoly related issues.[33] The decision was affirmed on appeal; however, in a dissent Judge Kavanaugh noted that he would have remanded the case for a decision on the monopsony claim.[34] He noted that "Anthem-Cigna concedes that the merger would be unlawful if the merger would give Anthem-Cigna monopsony power in the upstream market."[35]

[25] *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., Inc.*, 549 U.S. 312, 321-22 (2007).
[26] Complaint, *United States v. Bertelsmann SE & Co. KGaA, et al.*, 1:21-cv-02886, (D.D.C. Nov. 2, 2021), ECF No. 1.
[27] *Id.* at 13-16.
[28] *Id.* at 17-21.
[29] Complaint, *United States v. Cargill, Inc. and Continental Grain Co.*, Civ. No. 99-1875, (D.D.C. July 8, 1999).
[30] Complaint at ¶ 3, *United States v. Zen-Noh Grain Corp. and Bunge North Am., Inc.*, Civ No. 1:21-cv-01482, (D.D.C. June 1, 2021), ECF No. 1.
[31] Final Judgment, *United States v. Cargill, Inc. and Continental Grain Co.*, Civ. No. 99-1875, (D.D.C. June 30, 2000); United States' Unopposed Mot. And Mem. In Supp. Of Entry of Final Judgment, *United States v. Zen-Noh Grain Corp. and Bunge North Am., Inc.*, Civ No. 1:21-cv-01482, (D.D.C. Sept. 24, 2021). ECF No. 16.
[32] *United States v. Anthem, Inc*., 236 F.Supp.3d 171, 187 (D.D.C. 2017).
[33] *Id.* at 253.
[34] *United States v. Anthem, Inc.*, 855 F.3d 345, 377 (D.C. Cir. 2017) (Kavanaugh, J., dissenting).
[35] *Id.* at 378.

As a final example of the Agencies' ability to adequately address monopsony power through the use of the HMG, in 2018 the FTC required Grifols S.A. to divest blood plasma collection centers as part of a settlement related to claims that its merger with Biotest US could lead to decreased "donation fees in the market for the collection of human source plasma."[36]

These cases, all with unique monopsony implications, demonstrate that the Guidelines provide an adequate framework, and the necessary flexibility, for the Agencies to properly evaluate and analyze buyer-side mergers.

The Agencies Should Not Promulgate New Guidelines for Labor Markets

Merger enforcement should be administrable, predictable and credible.[37] Current economic thinking provides no basis for drafting new guidelines to address potential monopsony issues involving labor markets. Such an approach is a solution in search of a problem. Worse, it would introduce new inefficiencies into the American economy by making the outcome of merger reviews uncertain and thereby potentially deterring mergers that otherwise would have benefitted consumers and workers.[38]

At the outset, the Agencies should appreciate that the economic evidence of mergers' effects on wages in labor markets—particularly for nonspecialized workers in the retail industry—is far from conclusive. As Professor Dennis W. Carlton explains, "[a]ttempts to blame increased market power as the primary cause of large declines in labor's share of value added, in productivity growth, in the rate of new business formation and in investment are likely misplaced," although further study on some issues may be warranted.[39] For instance, a difficulty for the claim that increased market power has led to labor having a lower share of value added is that the decline in labor's share in Germany was similar to the United States.[40] As he explains, this phenomenon "suggests that technological conditions are the driving force of this change in labor's share of revenue, as labor is being replaced by capital, or, alternatively, that there is an increase in the effective supply of labor (through, for example, globalization)."[41] A study of hospital mergers found that wage slowdowns following mergers only occur for "workers whose

[36] *FTC Requires Grifols S.A. to Divest Assets as Condition of Acquiring Biotest US Corporation* (August 1, 2018), https://www.ftc.gov/news-events/press-releases/2018/08/ftc-requires-grifols-sa-divest-assets-condition-acquiring-biotest (last accessed March 14, 2022); Complaint at ¶ 16(c), *In re Grifols, S.A.*, Docket No. C-4654 (F.T.C., July 31, 2018).

[37] *Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson Regarding the Request for Information on Merger Enforcement* (Jan. 18, 2022) , https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-commissioners-noah-joshua-phillips-christine-s-wilson-regarding-request-information-merger (last accessed March 14, 2022).

[38] *See* Dennis W. Carlton, *Some observations on claims that rising market power is responsible for US economy ills and that lax antitrust is the villain*, at 11 (June 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3638500 ("One important concern that has received little, if any, attention from proponents of more aggressive antitrust enforcement is the effect of aggressive enforcement on reducing desirable merger activity or otherwise efficient conduct for fear of mistaken prosecution or of triggering a lengthy and costly process.").

[39] *Id.* at 3.

[40] *Id.* at 8.

[41] *Id.*

skills are industry-specific" (e.g. doctor, but not cafeteria workers).[42] Studies have also found that mergers can increase labor productivity and reduce frictions such as search, termination, information, and training costs for employees and employers.[43] For instance, merging parties can "benefit from the internal labor markets created by the coownership of production processes in different industries," which can "facilitate communication and collaboration between workers with similar skillsets in different divisions" and "enable the firm to bypass frictions in external labor markets—such as search, termination, information, or training costs."[44]

Any new guidelines, including related to labor specifically, should be based solely on antitrust principles, sound economics, and case law precedent, rather than on policy goals relating to non-competition values. Promulgating new guidelines that are not based on traditional antitrust jurisprudence would render merger enforcement unpredictable, un-administrable and un-credible. For instance, evaluating whether employment changes caused by a merger will ultimately harm or benefit workers and consumers is inevitably a difficult exercise; using tools other than traditional antitrust and economic analysis would make the exercise even less predictable and may deter potentially procompetitive acquisitions that create significant incentives for companies to operate efficiently. Adopting new guidelines that are unpredictable in application also creates new opportunities for rent-seeking behavior by companies that threaten to object to procompetitive mergers for non-competition related reasons. Last, departing from the guidelines risks placing the Agencies in an impossible position of weighing benefits and costs to different public policy goals that are outside the Agencies' expertise, making the outcome of merger reviews mere guesswork.

As explained above, labor monopsony is just one type of input monopsony, and the legal and economic frameworks for evaluating labor monopsony should be consistent with input monopsony analysis generally, which is already provided for in the Guidelines. The Guidelines also already provide a sufficient framework for evaluating different monopsony markets, and labor markets do not have any common unique characteristics that warrant a new framework. To the extent any other asymmetries exist in particular markets in a particular geographic area, the current Guidelines are also already sufficient to address any competition-related concerns. Any additional guidelines relating to labor markets that seek to prescribe behavior or boundaries would be too rigid, rendering merger enforcement less administrable and less credible. Competitive dynamics within specific labor markets are highly fact-specific and differentiated. For instance, there is a wide range of concentration levels for labor markets of different levels of

[42] *See* Elena Prager & Matt Schmitt, *Employer Consolidation and Wages: Evidence from Hospitals*, *American Economic Review*, 111(2): 397-427 at 406 (2021), https://www.aeaweb.org/articles?id=10.1257/aer.20190690; *see also* Steven Berry et al., *Do Increasing Markups Matter? Lessons from Empirical Industrial Organization*, *Journal of Economic Perspectives*, 33 (3): 44-68 at 58 (2019), https://www.aeaweb.org/articles?id=10.1257/jep.33.3.44 ("At present, the extent to which any decreased competition in the labor market is a major driver of increased markups is not clear, and research that sheds light on this question would be most welcome.").

[43] Geoffrey A. Tate & Liu Yang, *The Human Factor in Acquisitions: Cross-Industry Labor Mobility and Corporate Diversification* (Sept. 26, 2016), US Census Bureau Center for Economic Studies Paper No. CES-WP-15-31, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2667940).

[44] *Id.* at 1.

specialization and geographies. The Agencies should hesitate before creating new generalized prescriptions or presumptions to the massive and dynamic private sector workforce. This is particularly important in the midst of the pandemic, which has accelerated changes in workforce trends, especially in the retail sector.

Furthermore, considerations relating to incentives to unionize, lay-offs, and other non-competition based public policy goals are not appropriate subjects for antitrust review of mergers. The terms and conditions of private sector employment, including but not limited to wage and hours, employee benefits, union activity, and workplace safety, are already regulated by the Department of Labor and National Labor Relations Board, among other federal agencies. The antitrust agencies should defer to these agencies who have decades of experience in regulating private employment relationships. In addition, Congress and states have passed many labor statutes and can pass others. Given this extensive regulatory backdrop and the heavy interest from elected lawmakers and their constituents around the country, antitrust law would not be the appropriate regulatory mechanism for addressing labor public policy goals that relate to non-competition values.

Conclusion

For these reasons, we urge the Agencies to continue merger enforcement in accordance with traditional antitrust jurisprudence, sound economics, and the existing Guidelines, but avoid promulgating new rules relating to labor markets that are not consistent with traditional antitrust jurisprudence.

Sincerely,

David French
Senior Vice President
Government Relations