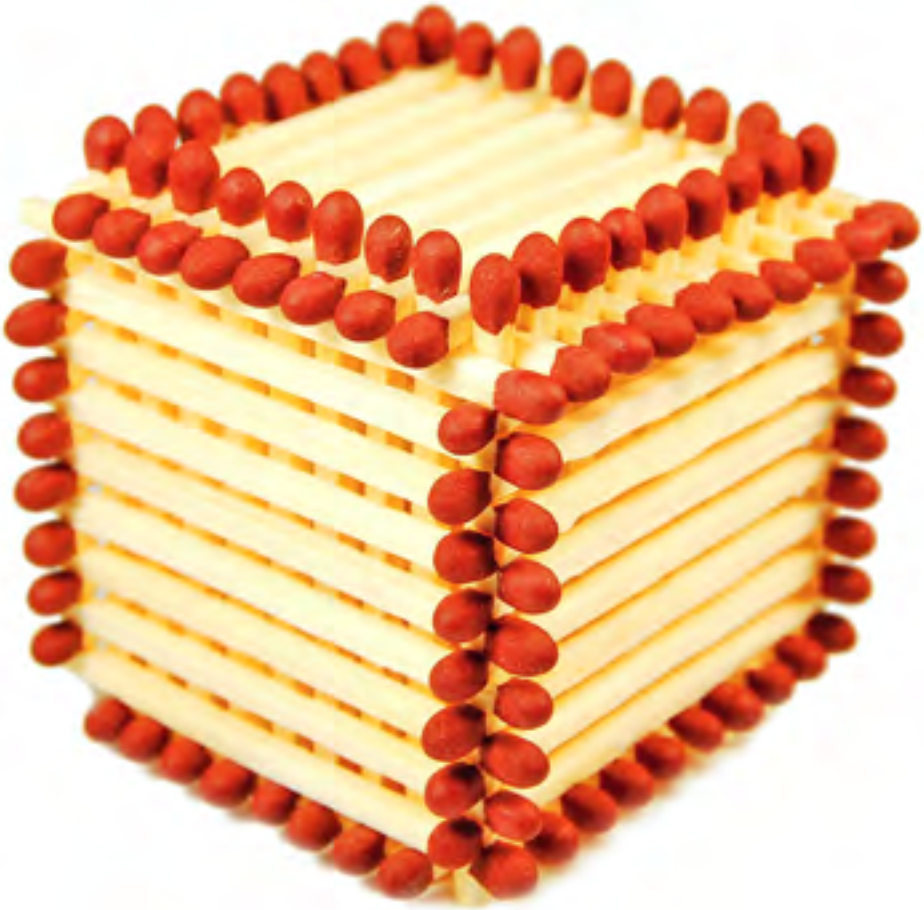
DO WE HAVE A FRAMEWORK FOR DEFINING LABOR ANTITRUST MARKETS? GUIDANCE AND CASE STUDIES IN THE U.S., UK, AND EU



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CPI ANTITRUST CHRONICLE
September 2025

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DO WE HAVE A FRAMEWORK FOR DEFINING LABOR ANTITRUST MARKETS? GUIDANCE AND CASE STUDIES IN THE U.S., UK, AND EU

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Competition agencies in the U.S., UK, and EU are taking a more expansive view of the impacts of labor market concentration and the potential anti-competitive effects of employment practices. This article discusses how competition authorities have approached the question of labor market definition, focusing on both guidance from the agencies and past cases. The authors find that authorities across these jurisdictions are using a fundamentally similar framework for defining labor markets. When applying this framework in practice, competition authorities evaluate a range of quantitative and qualitative evidence that is informative about worker preferences, employer preferences, and the tasks performed by workers.

I. INTRODUCTION

In recent years, issues involving competition in labor markets have received greater attention from competition authorities in the United States ("U.S."), United Kingdom ("UK"), and European Union ("EU"). The authorities' concerns stem from employers potentially having *monopsony* power, which is the "mirror image" of monopoly power.[2] In the U.S., the Federal Trade Commission ("FTC") and Department of Justice ("DOJ") have indicated their intent to scrutinize competition in labor markets by, for example, releasing antitrust guidelines for employers that address a broad range of employment practices.[3] The FTC and DOJ also revised their Merger Guidelines in 2023 to reflect that the authorities would consider whether a merger between competing employers can substantially lessen competition for workers.[4] Similarly, the UK's Competition and Markets Authority ("CMA") has stated that competition in labor markets is one of its important areas of focus.[5] The CMA has also released antitrust guidance to employers as well as a research report on trends in labor market concentration in the UK.[6] Finally, in the EU, the increased focus on labor market issues is evident in the recent publications of policy briefs, reports about competition in labor markets, and employer guidance from the European Commission ("EC"), as well as from national authorities such as the German, Portuguese, Polish, Lithuanian, and Nordic authorities.[7]

Given this increased focus on labor market competition issues, authorities will also need to increasingly contend with how to define the *relevant* labor market.[8] In this article, we aim to answer two questions. First, what is the framework for labor market definition that the competition authorities will use? Second, what types of evidence have authorities considered in practice when defining the relevant labor market?

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2 Just as a monopolist is the only seller of a product in a market, a monopsonist is the only buyer in a market. In labor markets, employers are on the demand side and workers are on the supply side (i.e. an employer purchases the labor services of the worker). See *Competition in Labour Markets*, OECD (2020), https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/03/competition-issues-in-labour-markets_02ec78ba/66980788-en.pdf [hereinafter OECD]. We note that the term "monopsony power" has been used by some academics and practitioners to refer to firms having any amount of market power to set wages (i.e. not being a "wage-taker"). In contrast, the term "monopoly power" in an antitrust context refers to firms that have a *substantial* amount of market power. This is because it has long been understood that all firms have some price-setting power in product markets. See Justin McCrary et al., *Applying the Hypothetical Monopsonist Test for Labor Market Definition*, ABA The Antitrust Source (May 2025), https://www.americanbar.org/content/dam/aba/publications/antitrust/source/2025/may/applying-hypothetical-monopsonist-test.pdf [hereinafter McCrary et al.], n. 4.

3 These new guidelines released in January 2025 illustrate a significant expansion in the scope of antitrust enforcement, targeting a much broader range of employment practices. The guidelines discuss information exchange and non-compete/binding employment agreements that may violate antitrust laws, but the FTC and DOJ signal a particular focus on wage-fixing and no-poach agreements, stating that so called "naked" agreements are *per-se* illegal. See U.S. DOJ & FTC, *Antitrust Guidelines for Business Activities Affecting Workers* 1, FTC (Jan. 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/p251201antitrustguidelinesbusinessactivitiesaffectingworkers2025.pdf at 1, 2; Press Release, FTC, *FTC and DOJ Jointly Issue Antitrust Guidelines on Business Practices that Impact Workers* (Jan. 16, 2025); McCrary et al., *supra* note 2.

4 U.S. DOJ and FTC, *Merger Guidelines*, FTC (Dec. 18, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf [hereinafter HMG] at 26–27.

5 CMA, *Competition and Markets Authority Annual Plan 2023/24*, Gov.uk (Mar. 23, 2023), https://assets.publishing.service.gov.uk/media/64240e7e60a35e00120cb06f/A_CMA_ANNUAL_PLAN_2023-2024_.pdf, Figure 4; CMA, *Competition and Markets Authority Annual Plan 2024/25*, Gov.uk (Mar. 14, 2024), https://assets.publishing.service.gov.uk/media/65f1a6f5981227a772f61377/CMA_Annual_Plan_2024-25.pdf, ¶ 6.8 ("This part of our ambition is not solely focussed on consumers, but also on competition in labour markets, and an important area of focus for the CMA this year has been in relation to UK labour markets.").

6 In its guidance released in February 2023, the CMA highlighted three types of agreements it considered anti-competitive: no-poach agreements, wage-fixing, and information sharing. See CMA, *Employers Advice on How to Avoid Anti-competitive Behaviour*, GOV.uk (Feb. 9, 2023), https://www.gov.uk/government/publications/avoid-breaking-competition-law-advice-for-employers/employers-advice-on-how-to-avoid-anti-competitive-behavior. The CMA's research report was released in January 2024 by the CMA's new Microeconomics Unit. The focus of the paper was to provide statistics on labor market concentration and employer market power in the UK to complement prior academic research (which had mostly focused on the U.S.). See also CMA, *Competition and Market Power in UK Labour Markets*, GOV.uk (Jan. 25, 2024), https://assets.publishing.service.gov.uk/media/67531c7221057d0ed56a0422/1._Competition_and_market_power_in_UK_labour_markets.pdf [hereinafter CMA Labor Market Research Report], ¶¶ 1.11, 1.8.

7 Alessio Aresu et al., *Competition Policy Brief: Antitrust in Labour Markets*, EC (May 2024), https://competition-policy.ec.europa.eu/document/download/adb27d8b-3dd8-4202-958d-198cf0740ce3_en; Monopolkommission, *Hauptgutachten XXV: Wettbewerb 2024* (Jul. 1, 2024), https://monopolkommission.de/images/HG25/HG25-Gesamt.pdf; Konkurransetilsynet, *Joint Nordic Report 2024: Competition and Labour Markets* (Jan. 16, 2024), https://konkurransetilsynet.no/wp-content/uploads/2024/01/Competition-and-Labour-markets-Joint-Nordic-report-2024.pdf; AdC, *Labour Market Agreements and Competition Policy* (Sep. 2021), https://www.concorrencia.pt/sites/default/files/Issues%20Paper_Labour%20Market%20Agreements%20and%20Competition%20Policy.pdf; AdC, *Guia de Boas Práticas: Prevenção de Acordos Anticoncorrenciais nos Mercados de Trabalho*, https://www.concorrencia.pt/sites/default/files/documentos/guias-promocao-da-concorrencia/Guia%20de%20Boas%20Praticas%20de%20Preven%C3%A7%C3%A3o%20de%20Acordos%20Anticoncorrenciais%20no%20Mercado%20de%20Trabalho.pdf; Urząd Ochrony Konkurencji i Konsumentów, *Zmowy I Nadużycia Na Rynku Pracy: Prawo Konkurencji a Sprawy Pracownicze* (Jul. 5, 2024), https://uokik.gov.pl/Download/725; Konkurencijos Taryba, *Guidance: Anti-Competitive Agreements in Labour Markets*, https://kt.gov.lt/uploads/documents/files/Atmintin%C4%97%20ENG%20%281%29.pdf.

8 Much of the authorities' focus so far has been on *per se/by object* violations of competition law (e.g. wage-fixing and no-poach agreements). In these cases, the authorities may not be required to define the relevant market but, as our review shows, they may nonetheless still choose to do so. The authorities' attention may also eventually expand beyond *per se/by object* cases, as indicated by the merger decisions in the U.S. and the Netherlands that we discuss in Section III.

To answer these questions, we review statements and guidance from the authorities as well as cases investigated in the U.S., UK, and EU. This broad overview is helpful in part because there has been relatively limited guidance on labor market definition from the authorities.[9] There have also been relatively few cases so far that have contended with labor market definition. In the U.S., *FTC v. Kroger Co.* was the first (and so far, only) case to apply the framework for labor market definition outlined in the 2023 Merger Guidelines. In the UK and EU, there have been only a handful of investigations in which competition authorities have released public decisions that provide an analysis of labor market definition.[10] We review these cases to better understand the types of evidence used by competition authorities when arriving at labor market definition.

We find that, despite the limited guidance, competition authorities are following fundamentally similar principles for labor market definition. The framework used parallels the approach taken in product markets, indicating that existing tools can be readily adapted for labor markets. The U.S., UK, and EU competition authorities have all focused on the extent of worker substitution along different dimensions (e.g. occupation and geography) to identify the boundaries of the relevant labor market. When assessing how this framework is applied in practice, we find that competition authorities evaluate a range of quantitative and qualitative evidence that is informative about worker preferences, employer preferences, and the tasks performed by workers.

While we hope that this review is helpful for considering labor market definition in future matters, we would like to emphasize that the approach to market definition is highly case-specific; it is often governed by the available evidence and institutional details in the setting where the conduct or merger investigation is being analyzed.

II. FRAMEWORK FOR LABOR MARKET DEFINITION

A. Applying The HMT to Labor Market Definition

The purpose of market definition is to provide a set of boundaries within which to assess the competitive effects of the conduct or merger being analyzed. Market definition serves this purpose for both product and labor market cases. Consequently, as the FTC and DOJ's 2023 Merger Guidelines state, "[t]he same—or analogous—tools used to assess the effects of a merger of sellers can be used to analyze the effects of a merger of buyers, including employers as buyers of labor."[11] The EC's 2024 Market Definition Notice provides similar guidance.[12] The key difference is that while product market definition focuses on demand-side substitution by customers, the "mirror image" exercise in labor market definition focuses on supply-side substitution by workers.

The standard framework for market definition in product markets is the hypothetical monopolist test ("HMT"). The HMT is a thought experiment that asks whether a hypothetical monopolist of a candidate market could profitably impose a small but significant non-transitory increase in price ("SSNIP"). A price increase leads to a loss of sales as some customers substitute to products that are not owned by the hypothetical monopolist, i.e. outside the candidate market. However, the hypothetical monopolist also earns higher profits from the remaining

9 The U.S. authorities have so far provided the most detailed guidance on labor market definition through the FTC/DOJ's 2023 Merger Guidelines; however, this only gives a high-level conceptual framework. See HMG, *supra* note 4, at 26–27. The EC's revised 2024 Market Definition notice discusses "purchasing markets," but does not contain any guidance specific to labor markets. However, additional guidance may eventually be forthcoming from the EC. The EC is currently reviewing its Merger Guidelines, and it has listed labor market effects as one of the topics for its in-depth public consultation. See Official Journal of European Union, *Communication from The Commission: Commission Notice on the Definition of the Relevant Market for the Purposes of Union* Competition (Feb. 22, 2024), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202401645 [hereinafter EU Market Definition Notice], ¶ 7; Jan Broulík, *Relevant Labour Market: Missing in the New Market Definition Notice*, 00 J. Antitrust Enforcem'T 1 (2025) [hereinafter Broulík]; EU, *Review of the Merger Guidelines,* https://competition-policy.ec.europa.eu/mergers/review-merger-guidelines_en; EC, *Topic G: Public Policy, Security and Labour Market Consideration*, https://competition-policy.ec.europa.eu/document/download/3ebe19c4-4b33-4ae4-a2e0-dbff47916225_en?filename=Topic_G_Public_policy_security_and_labour_market_considerations.pdf [hereinafter EC Discussion]. In contrast, the CMA's revised 2021 Merger Assessment Guidelines do not discuss labor topics at all. See CMA, *Merger Assessment Guidelines*, GOV.uk (Mar. 18, 2021), https://assets.publishing.service.gov.uk/media/61f952dd8fa8f5388690df76/MAGs_for_publication_2021_--_.pdf.

10 For the EU, we focus on investigations conducted by European national competition authorities. The EC issued its first decision in a labor market antitrust case in June 2025. The case concerned information-sharing, market allocation, and no-poach agreements in the food delivery services sector. As the EC considered these to be *by object* infringements, it did not consider it necessary to define a relevant labor market. See EC, Commission Decision Relating to a Proceeding Under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (Case AT.40795 – Food Delivery Services) (Feb. 6, 2025), ¶ 73.

11 HMG, *supra* note 4, at 26.

12 The EC's notice states that "the same considerations apply when defining relevant markets for the purchase of particular products in a particular area ('purchasing markets')." While this does not specifically mention labor markets, labor markets would be considered as purchasing markets. See EU Market Definition Notice, *supra* note 9, ¶ 7; Broulík, *supra* note 9. In addition, an OECD report notes that "commentators generally agree that the current [competition] framework is suitable" to analyze anticompetitive infringements in labor markets. See also OECD, *supra* note 2, at 27.

customers. Therefore, if substitution to products outside of the candidate market is low enough, then the SSNIP is profitable, and the candidate market is a relevant market.[13]

An analogous framework, called the hypothetical *monopsonist* test, can be used in labor markets.[14] In the hypothetical monopsonist test, we suppose that there is only one employer in the candidate market, i.e. one employer for the job of interest. Then, we ask whether the hypothetical monopsonist employer could profitably impose a small but significant non-transitory decrease in wages ("SSNDW").[15] A decrease in wages would lead to some workers switching to other jobs. As workers leave, the hypothetical monopsonist's production decreases, which leads to fewer sales. However, for the remaining sales, the hypothetical monopsonist makes greater profits because its costs (employees' wages) have decreased.[16] In the case where substitution to jobs outside of the candidate market is low, the SSNDW is profitable, and the candidate market is a relevant market. In contrast, if workers can readily switch to a different job, then the SSNDW will be unprofitable, and the candidate market should be broadened to include more jobs that workers could substitute into.

The hypothetical monopsonist test has been endorsed by competition authorities in the U.S., UK, and EU. In the U.S., the FTC and DOJ's 2023 Merger Guidelines explicitly consider competition issues in labor markets. The Merger Guidelines state that "[w]hen the competition at issue involves firms buying inputs or employing labor, the HMT considers whether the hypothetical monopsonist would undertake … a decrease in the wage offered to workers or a worsening of their working conditions or benefits."[17] And while the UK and EU authorities have not issued formal guidance endorsing the HMT in labor markets, they have published decisions in their investigations and merger reviews that show the use of the hypothetical monopsonist test in their analyses.[18] Therefore, there is broad consensus that the HMT is an appropriate framework for defining labor markets. Given this, we will also refer to the hypothetical monopsonist test in the remainder of the article as the "HMT."

The HMT makes clear that labor market definition depends on the extent of substitutability between jobs. As the CMA stated in its research report, labor markets "approximate the scope of outside options available to an employee."[19] Labor markets may be quite broad or narrow depending on a variety of factors, such as the number of available jobs that align with a worker's skills and preferences. Workers' preferences can include, for example, how much they value flexibility in their work schedule or how far they are willing to relocate for job opportunities.

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13 HMG, *supra* note 4, at 41 ("The Hypothetical Monopolist/Monopsonist Test ('HMT') evaluates whether a group of products is sufficiently broad to constitute a relevant antitrust market. To do so, the HMT asks whether eliminating the competition among the group of products by combining them under the control of a hypothetical monopolist likely would lead to a worsening of terms for customers.").

14 The hypothetical monopsonist test has been described in detail by academics and practitioners. See OECD, *supra* note 2, at 32 ("In labour markets, the market could be defined by adapting the framework that is provided by the hypothetical monopolist test and using the hypothetical monopsonist test."); Kavan Kucko et al., *A Comment on Labor Market Definition* 2, Regulations.gov (Sep. 15, 2023), https://downloads.regulations.gov/FTC-2023-0043-1416/attachment_1.pdf [hereinafter Kucko et al.] ("This framework—where the scope of a relevant market is determined by analyzing substitution opportunities into and out of a proposed relevant market—is referred to as the Hypothetical Monopsonist Test and is the direct analogue of the product market Hypothetical Monopolist Test"); McCrary et al., *supra* note 2, at 1 ("However, this does not mean the existing HMT framework cannot be applied to labor markets using standard economic evidence. When we start from the first principles of the HMT, we can see that the same framework is sufficient for labor market definition and can be used to distinguish reasonable from unreasonable labor markets."); Broulík, *supra* note 9, at 12 ("When identifying the alternatives available to workers and, hence, defining the relevant labour market, one may rely on the hypothetical monopsonist approach. This is an adaptation for a purchasing market of the hypothetical monopolist approach, which is intended for selling markets.").

15 An employer could also change non-wage benefits of a job, which are also relevant for understanding market definition. More generally, a labor market is well defined if the hypothetical monopsonist could profitably impose a small but significant non-transitory decrease in *terms* ("SSNDT") or *compensation* ("SSNDC"). See Kucko et al., *supra* note 14, at 4.

16 McCrary et al., *supra* note 2, at 2.

17 HMG, *supra* note 4, at 41–42. The Merger Guidelines also state that this test can consider other changes in working conditions, such as changes in non-wage compensation. See also HMG, *supra* note 4, at 48 ("The Agencies may consider workers' willingness to switch in response to changes to wages or other aspects of working conditions, such as changes to benefits or other non-wage compensation, or adoption of less flexible scheduling.").

18 CMA, *Decision of the Competition and Markets Authority*, gov.uk (Mar. 21, 2025), https://assets.publishing.service.gov.uk/media/6800fe12e16c376084e7c70c/Non-confidential_decision_1.pdf at n. 32 ("The CMA also notes that in response to a small but significant non-transitory decrease in rates, a hypothetical monopsonist of camera operators would not typically seek to replace sound engineers with camera operators to take advantage of those lower rates. Equally, camera operators would not typically seek work as sound engineers to avoid the rate decrease."); AdC, *PRC/2020/01 Final Decision* (Apr. 28, 2022) [hereinafter AdC Football No Poach Decision], ¶ 390 ("Players in certain positions aren't interchangeable from a demand perspective, especially across the general positions […] For example, a goalkeeper can't easily replace a forward, and vice versa. For this reason, if there's a small, significant, and non-transitory increase in the cost of hiring a player for a specific position, it's plausible that the club wanting to hire them wouldn't replace that hire with a player from a different position") (translated by Gemini). While the EC has not issued guidance specific to labor markets, as discussed previously, the EC endorses using the same considerations (including, e.g. the HMT) in purchasing markets. See also EU Market Definition Notice, *supra* note 9, ¶ 7.

19 CMA Labor Market Research Report, *supra* note 6 at Appendix D, ¶ 57.

B. Additional Elements to Consider When Applying the HMT Framework in Labor Markets

Recently, a number of commentators, including various enforcement agencies, have argued that one of the distinguishing features of labor markets is the presence of frictions that can prevent workers from switching jobs.[20] These frictions can arise from, for example, the costs or challenges of searching for a job, worker preferences for a geographical area, and regulatory barriers (e.g. licensing requirements).[21] Importantly, because employment involves finding a suitable match for both employer and employee, these frictions can arise from both sides of the labor market.[22] It is therefore relevant to consider employer (i.e. demand-side) preferences when implementing the HMT. For example, even if a worker wanted to switch to another job in response to a change in wages, one should consider whether an employer would be willing to hire that worker for the other job. The FTC and DOJ's Merger Guidelines recognize that employer preferences can limit the set of jobs available to a worker.[23] In addition, when deploying the HMT framework, the UK and EU authorities have also considered whether employers would change their hiring behavior in response to a SSNDW.[24]

Because of the presence of frictions, the FTC and DOJ's Merger Guidelines express the view that it is possible for labor markets (especially for specialized workers) to be relatively narrow.[25] Similarly, the EC notes that labor markets may be narrow, which can result in a large number of labor markets requiring assessment in a merger context.[26] But, even though labor markets can exhibit frictions, it is also possible for labor markets to be defined broadly. For example, the rise of remote work makes it plausible for the geographic dimension of some labor markets to be relatively wide (e.g. national or even international).[27] We therefore emphasize the importance of assessing the context and institutional details of the setting being analyzed to understand the extent of these frictions and how they impact the definition of the relevant labor market.

When defining labor markets, economists typically think about the boundaries along multiple dimensions. For example, product markets are typically defined along a product dimension and a geographic dimension.[28] Similarly, labor markets are typically defined on an occupation dimension and a geographic dimension.[29] For example, an occupation definition could be "accountant," and a geographic definition could be a given city, e.g. "London".[30] The occupation dimension reflects a worker's role, skills, and preferences for performing a given task; the geographic dimension captures a worker's willingness to commute or relocate for a job. The competition authorities in the U.S., UK, and EU have all stated

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20 OECD, *supra* note 2, at 8 ("Labour markets are different from product markets in that they are characterised by a number of 'frictions', i.e. factors contributing to a 'mismatch between the worker and the employer' (Basu, 2008). Labour market frictions, and matching in particular, may significantly contribute to employer market power and make labour input markets more prone to monopsony than product markets to monopoly (Naidu et al., 2018, p. 554)."). These frictions are also discussed by the FTC/DOJ and the CMA. See also HMG, *supra* note 4, at 27 ("For example, labor markets often exhibit high switching costs and search frictions due to the process of finding, applying, interviewing for, and acclimating to a new job."); CMA Labor Market Research Report, *supra* note 6, at Appendix D, ¶ 57 ("If someone wants to switch out of their job, a labour market gives the set of choices they would consider. There is much economic research highlighting the important frictions when moving between jobs, especially geographical and occupational limits.").

21 OECD, *supra* note 2, at Section 2.5.2.

22 For example, firms also have costs for recruiting workers or must comply with regulatory or legal requirements (e.g. work visas), which can give rise to demand-side frictions.

23 HMG, *supra* note 4, at 27 ("In addition, finding a job requires the worker and the employer to agree to the match. Even within a given salary and skill range, employers often have specific demands for the experience, skills, availability, and other attributes they desire in their employees … This matching process often narrows the range of rivals competing for any given employee.").

24 See note 18.

25 HMG, *supra* note 4 at 27 ("The level of concentration at which competition concerns arise may be lower in labor markets than in product markets, given the unique features of certain labor markets. In light of their characteristics, labor markets can be relatively narrow."). See also Suresh Naidu and Eric A. Posner, *Labor Monopsony and the Limits of the Law*, 57 J. Hum. Resour. S284, S299 (2022) ("While some product markets are fragmented in this way, the problem for labor market antitrust is that fragmentation is pervasive if not universal."); OECD, *supra* note 2, at 33 ("Markets for highly specialised workers may be narrower than markets for generalists, because their experience and skills are likely to be applicable in a smaller range of jobs, providing them with less choice.").

26 See EC Discussion, *supra* note 9, at 122.

27 See Kucko et al., *supra* note 14, at 9; Agostina Brinatti et al., *The International Price of Remote Work*, HBS Working Paper (2023).

28 We note that product markets may also be defined along other dimensions (e.g. time, customer group).

29 Kucko et al., *supra* note 14, at 3; Broulík, *supra* note 9, at 6; EC Discussion, *supra* note 9, at 122; OECD, *supra* note 2, at 33. Kucko et al. further explain that these "dimensions are often interrelated. A worker who has invested in highly specialized skills may be willing to move further in order to leverage these skills." See Kucko et al. *supra* note 14, at 3.

30 Economists (particularly in academic research) sometimes rely on standard administrative classifications for defining occupations and geographic areas. For example, occupations can be classified using Standard Occupational Classification (SOC) codes and geographies can be classified into areas based on empirical commuting patterns (e.g. commuting zones in the U.S.). However, academics and practitioners have cautioned against relying on these standard classifications in an antitrust context as these classifications may not correspond to the antitrust standard of market definition. For a discussion on the potential challenges of using standard classifications, Kucko et al., *supra* note 14, at 7–8, 10; Broulík, *supra* note 9, at 15–16; Ioana Marinescu & Herbert J. Hovenkamp, *Anticompetitive Mergers in Labor Markets*, 94 Ind. L.J. 1031, 1048–1051 (2019).

that labor markets are often defined along these two dimensions.[31] However, depending on the context, there may be other relevant dimensions to consider for labor market definition, such as the employment terms of the worker (e.g. unionized versus non-unionized workers, freelancers versus employees) and the qualifications of the worker (e.g. CPA-qualified accountant).[32]

III. EVIDENCE USED IN CASES INVOLVING LABOR MARKET DEFINITION ANALYSES

Having set out a framework for labor market definition, we next discuss how the competition authorities in the U.S., UK, and Europe have applied this framework when defining labor markets in cases. We discuss mergers where labor market issues emerged as well as investigations of no-poach and information-sharing agreements.

A. U.S.: FTC v. Kroger Co.

In February 2024, the FTC announced it would move to block Kroger's acquisition of Albertsons, the largest proposed supermarket merger in U.S. history.[33] The FTC's challenge of the proposed Kroger/Albertsons merger represented the first time the FTC challenged a merger on grounds that included harm to workers, in addition to traditional product market concerns.[34]

The FTC alleged that "union grocery labor" was a relevant antitrust market, in local geographic regions defined by collective bargaining agreement ("CBA") areas.[35] It further argued that Kroger and Albertsons compete head-to-head for union labor and that unions leverage this competition during their negotiations. The FTC alleged that the merger would eliminate this direct competition for labor, resulting in a reduction of unions' bargaining power that would have adverse effects on workers.[36]

To support the proposed "union grocery labor" market, the FTC's expert economic analysis primarily relied on examining the characteristics that allegedly distinguished unionized grocery labor from other types of labor. For example, the FTC's expert claimed that workers in grocery jobs required different skills than non-grocery jobs; that grocery workers, such as meat cutters and bakers, may receive specialized on-the-job training; and that there was limited substitution between unionized grocery workers and other types of workers. The FTC further alleged that unionized grocery workers have a "strong preference to remain with their union employers" because the benefits that unionized grocery workers received from their jobs (such as pensions and health benefits) were often tied to the CBA negotiated by their union.[37]

For the geographic market dimension, the FTC alleged that the relevant geographic markets were defined by the coverage areas of the various CBAs, and that the CBA areas were the geographic region where unions and employers negotiated. Therefore, the CBA areas represent not only the region where competing grocery chains gain leverage in their CBA negotiations, but also where any loss of bargaining leverage would be felt.[38]

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31 The FTC and DOJ discuss these two dimensions in their Merger Guidelines. See HMG, *supra* note 4, at 48 ("When defining a market for labor the Agencies will consider the job opportunities available to workers who supply a relevant type of labor service, where worker choice among jobs or between geographic areas is the analog of consumer choices among products and regions when defining a product market … Depending on the occupation, alternative job opportunities might include the same occupation with alternative employers, or alternative occupations. Geographic market definition may involve considering workers' willingness or ability to commute, including the availability of public transportation."). The CMA's research report on market concentration defines labor markets using a unique combination of an occupation group and geographic group. The report notes that there is "economic research highlighting the important frictions when moving between jobs, especially geographical and occupational limits." In the report's baseline specification, occupations are defined by 3-digit Standard Occupational Classification SOC codes and geographic areas are defined by Travel to Work Areas. Travel to Work Areas are defined by the UK's Office of National Statistics to represent areas where a large proportion of workers both live and work. See also CMA Labor Market Research Report, *supra* note 6, at Appendix D, ¶¶ 57–58; ONS, *Other Geographies – 2. Travel to Work Areas (TTWAs)*, ONS, https://www.ons.gov.uk/methodology/geography/ukgeographies/othergeographies#travel-to-work-areas-ttwas-. The EC has also stated that "labour markets are usually defined by occupation and narrow geographic area." See EC Discussion, *supra* note 9, ¶ 122.

32 For example, the CMA states that labor markets "can be defined geographically, by occupation, by industry or by the skills that the jobs use." See CMA Labor Market Research Report, *supra* note 6, at Appendix B, ¶ 13.

33 Press Release, FTC, *FTC Challenges Kroger's Acquisition of Albertsons* (Feb. 26, 2024).

34 Jody Godoy, *Kroger Case Tests FTC Chair Khan's Bid to Protect Workers*, Reuters (Aug. 26, 2024), https://www.reuters.com/business/retail-consumer/kroger-case-tests-ftc-chair-khans-bid-protect-workers-2024-08-26/; Danielle Kaye, *A Trial Asks: If Grocery Rivals Merge, Do Workers Suffer?*, N.Y. Times (Aug. 26, 2024), https://www.nytimes.com/2024/08/26/business/kroger-albertsons-merger-union-workers.html.

35 *Ibid.*, ¶¶ 63–67.

36 *Ibid.*, ¶¶ 70–71.

37 *Ibid.*, ¶ 63; Opinion and Order, *FTC v. Kroger Co.*, No. 3:24-cv-00347-AN (D. Or. Dec. 10, 2024) [hereinafter FTC v. Kroger Opinion] at 58.

38 Complaint, *FTC v. Kroger Co.*, Dkt. No. D-9428 (Feb. 6, 2024) at 61, 68.

In response to these allegations, the parties claimed that the alleged union grocery market was too narrow. The parties' expert analyzed switching and job transition data and claimed to show that the skills required by union grocery jobs were also valued in non-grocery and non-union retail establishments.[39] This meant that unionized grocery workers had a range of jobs that they could substitute into. Moreover, the parties' expert claimed that switching was likely to occur because there was high turnover among workers (e.g. over 70 percent of hires leave within their first year). On the geography dimension, the parties further argued that CBA areas were "arbitrary" because in some cases they were too broad (such as the entirety of Southern California) while in others they were too small (e.g. including one town while excluding a neighboring town).[40] Therefore, they argued CBA areas did not reflect the "area in which union grocery workers might look for alternate employment."[41] Based on this evidence, the parties' expert concluded that the proposed market would not pass the HMT, i.e. a hypothetical monopsonist of unionized grocery workers would not find it profitable to impose a small but significant non-transitory decrease in wages.[42]

In December 2024, the U.S. District Court for the District of Oregon blocked the merger and granted the FTC's request for a preliminary injunction.[43] However, the court found the FTC had presented insufficient evidence to demonstrate that the merger would substantially lessen competition in the relevant labor markets including "how wages, benefits, and other compensation might change as a result of changes in bargaining power."[44] The court "tentatively" found a plausible labor market for the proposed union grocery labor market, but stated that the market definition "lack[ed] supporting economic analysis that would generally be undertaken to verify whether a market is appropriately bounded."[45]

It further noted that even if some workers switch between union grocery and other non-union or non-grocery jobs, this does not necessarily rule out a relevant submarket for union grocery workers.[46] Instead, the limited data available "makes it difficult to assess how meaningful the movement between jobs is and what motivates it."[47] The court also noted that despite facing competition from non-union and non-grocery jobs, "at least some workers prefer union grocery work […] For those workers, union grocery jobs are 'uniquely attractive.'"[48] We read this conclusion as highlighting and reinforcing the importance of assessing worker preferences in the context of market definition, even beyond the skills and tasks required in a job.

Finally, the court stated that it was "not aware of any standard economic analysis used to measure employee diversion" in the context of a labor market HMT analysis.[49] Indeed, the court concluded that it "cannot demand parties to undertake an analysis using economic models that do not exist."[50] This conclusion suggests that while the HMT framework can apply to labor markets, a consensus may not yet have formed on its empirical application. This may change as further cases are brought before the judiciary and as more academic work and analyses become available to practitioners and judges.

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39 McCrary et al., *supra* note 2; FTC v. Kroger Opinion, *supra* note 37, at 58 ("Applying the *Brown Shoe* indicia, plaintiffs assert that union grocery labor is a submarket that has distinct characteristics, industry recognition, and pricing that distinguish it from the labor market writ large."); *Id.* at 60 ("Dr. McCrary opined that the proposed union grocery labor market excludes non-grocery employment options that are reasonably interchangeable substitutes. He found that there was a high level of substitution between defendants' union grocery positions and non-union and non-grocery positions, and that workers employed in union grocery positions are more likely to move to and from jobs outside of the union grocery market at employers like Amazon, Starbucks, FedEx, and Home Depot. He attributed this in part to the fact that 'general skills' like customer service and reliability required by union grocery jobs are often valued in other retail employment settings, both union and non-union, and that defendants generally do not have any educational requirements.").

40 McCrary et al., *supra* note 2, at 8.

41 FTC v. Kroger Opinion, *supra* note 37, at 61.

42 McCrary et al., *supra* note 2.

43 Press Release, FTC, Statement on FTC Victory Securing Halt to Kroger, Albertsons Grocery Merger (Dec. 10, 2024); Danielle Kaye, *Federal Judge Blocks $25 Billion Kroger-Albertsons Grocery Merger*, N.Y. Times (Dec. 10, 2024), https://www.nytimes.com/2024/12/10/business/kroger-albertsons-merger-ftc.html.

44 FTC v. Kroger Opinion, *supra* note 37, at 68.

45 FTC v. Kroger Opinion, *supra* note 37, at 61. As McCrary et al. note, the court's opinion was based largely on testimony about long-tenured and specialty workers, which could be considered a sub-market of the FTC's alleged market. See McCrary et al., *supra* note 2, at 9.

46 FTC v. Kroger Opinion, *supra* note 37, at 60.

47 *Ibid.* at 60.

48 *Ibid.* at 61.

49 FTC v. Kroger Opinion, *supra* note 37, at 62.

50 However, the court also stated that "[m]ore robust economic analysis at a later stage of the proceedings could modify this preliminary finding." See FTC v. Kroger Opinion, *supra* note 37, at 61.

B. UK: Production and Broadcasting of Sports Content

In March 2025, the CMA made a landmark decision in its investigation of freelance labor in the production and broadcasting of sports content. This decision marked the CMA's first-ever ruling on an antitrust infringement related to labor market practices, providing valuable insights into how it may approach similar cases in the future.[51]

The investigation centered on the purchase of freelance services by five prominent sports broadcasting and production companies. The CMA found that these companies had exchanged "competitively sensitive information" regarding the purchase of freelance labor used in the production and broadcast of sports content in the UK. It further found that this information exchange had "as its object the prevention, restriction or distortion of competition." Although the CMA ultimately determined that the restrictions were anticompetitive by *object*, it still conducted an analysis of relevant labor markets as this impacted the financial penalties imposed on the companies.[52]

The investigation included a wide range of freelance workers who have a specialization or expertise in the production and broadcasting of sports content, such as camera operators, sound technicians, and producers.[53] As part of its market definition analysis, the CMA analyzed whether these roles were sufficiently specialized to be treated as separate labor markets or whether they should be grouped together into a wider labor market.[54]

To answer this question, the CMA focused on qualitative evidence submitted by industry participants on the extent of switching between occupations. It recognized that it was possible for workers to switch between some roles due to career progression or if they received sufficient training. For example, a camera assistant could, with sufficient training, switch to another role that uses camera equipment. But this switching was also limited: based on the available evidence, it would "not typically be feasible for someone to be able to switch between different types of craft role." Because there was limited switching between roles in practice, the CMA noted that workers would be unlikely to switch jobs in response to a SSNDW. It therefore concluded that each role (e.g. camera operators, sound technicians) would be treated as its own labor market.[55]

In addition to defining labor markets along the occupation dimension, the CMA also considered how to define the labor market on other dimensions. For instance, it considered whether the relevant markets should be limited to freelance workers or also include non-freelance/employed workers (i.e. an employment terms dimension). It also considered whether the relevant markets were limited to sports content or should include a broader range of video content, such as TV shows (i.e. an industry dimension).[56]

On both these dimensions, the CMA concluded that the relevant markets should not be widened, but instead limited to freelance workers in sports content production.[57] Even though freelance and employed workers could perform the same tasks, it found that these were not in the same labor market due to the small demand for full-time employees in production roles as well as worker preferences, such as having flexibility in work. Similarly, the CMA found demand-side and supply-side reasons for why the relevant markets should not include non-sports content. For example, companies had a preference for hiring workers with experience and knowledge of sports content, and freelance workers had a preference for continuing work in the same genre (i.e. sports or non-sports content).[58] This analysis indicates that the CMA would not only look at the actual day-to-day tasks that a worker performs when defining labor markets but would also consider other factors such as worker and employer preferences.

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51 CMA, *Anti-competitive Behaviour Relating to Freelance Labour in the Production and Broadcasting of Sports Content,* GOV.UK (Apr. 17, 2025), https://www.gov.uk/cma-cases/suspected-anti-competitive-behaviour-relating-to-the-purchase-of-freelance-services-in-the-production-and-broadcasting-of-sports-content; CMA, *Competition and Regulatory Newsletter: CMA Issues First Labour Markets Antitrust Infringement Decision in Sports Broadcasting Sector*, Slaughter and May (Apr. 2, 2025), https://www.slaughterandmay.com/insights/new-insights/competition-and-regulatory-newsletter-cma-issues-first-labour-markets-antitrust-infringement-decision-in-sports-broadcasting-sector/.

52 The financial penalties were determined based on the companies' expenditure in the relevant markets affected by the information exchange, which meant that the CMA had to first define the relevant markets. See CMA, *Decision of the Competition and Markets Authority*, GOV.UK (Mar. 21, 2025), https://assets.publishing.service.gov.uk/media/6800fe12e16c376084e7c70c/Non-confidential_decision_1.pdf [hereinafter CMA Freelance Decision], ¶¶ 1.3, 2.6.

53 *Ibid.* at Table 3.

54 *Ibid.*, ¶¶ 2.8–2.11.

55 Ibid.*, ¶¶ 2.10, 2.11, and nn. 31, 32.*

56 *Ibid.*, ¶¶ 2.12–2.23. Note that geographic definition was recognized by the CMA but was not a major part of the market definition exercise. The CMA concluded that the geographic market was the UK for the purposes of its investigation. See *ibid.*, ¶¶ 2.24–2.25.

57 *Ibid.*, ¶¶ 2.14, 2.22.

58 *Ibid.*, ¶¶ 2.15, 2.16, 2.20–2.22.

C. EU: News Media Mergers

The Dutch competition authority ("ACM") issued multiple decisions on mergers between media companies where it considered the potential impact on labor markets. We discuss two of these mergers: (i) the acquisition of the news publisher Sanoma Media by the media company DPG Media, approved by the ACM in April 2020, and (ii) the acquisition of audio-visual content provider RTL Nederland by DPG Media, approved by the ACM in June 2025.[59] As part of the investigations, the ACM considered the concentration in the market for journalists. It then analyzed how the mergers could change the acquirer's purchasing power of journalistic services and therefore impact journalists' working conditions.[60]

To assess the concentration in the market for journalists, the ACM had to first define the relevant labor market. The ACM's analysis focused primarily on two points. First, it assessed which workers performed "journalistic services," and whether journalists with different fields of expertise (e.g. national or regional news) are substitutable. Second, it assessed whether there should be separate markets for freelance journalists and employed journalists.[61]

To answer the first question, the ACM in *DPG Media/Sanoma Media* considered the practical characteristics of different tasks and jobs. It relied on information from other market participants, academic literature, and public sources to do so.[62] It found that "journalistic services" could not be clearly defined because there were many different workers who perform similar "journalistic" tasks (e.g. gathering, researching, and analyzing facts about recent events of interest and publishing them).[63] As a result, the ACM defined the relevant market to include all production workers in the information industry — including journalists, editors, and copywriters — who had considerable overlaps in their tasks.[64]

In the case of *DPG Media/RTL Nederland*, the ACM's initial candidate market was the market for the purchase of journalistic services, based on its previous findings in *DPG Media/Sanoma Media*.[65] However, similar to the first case, the ACM considered whether the relevant labor market should be broadened to include jobs that require similar skills to journalism, such as communication, public relations, or marketing.

The ACM highlighted both quantitative and qualitative evidence that indicated the market should be made wider. First, it found that a large proportion of journalists have no prior journalism training, according to the Dutch Association of Journalists. The ACM also reviewed DPG Media's job postings and found that, for certain vacancies, the company was open to candidates without a journalism background.[66] Second, the ACM found that a large proportion of journalists switched to non-journalism jobs, according to evidence from internal company data, industry sources, and academic studies. For instance, more than half of the journalists who had left DPG Media switched to fields outside journalism. In addition, the ACM noted that many journalists who left DPG Media remained in journalism as freelancers.[67] Third, the ACM found that many freelance journalists also worked for non-media clients. Freelance journalists derived, on average, a third of their income from non-journalistic work, according to the Dutch Association of Journalists.[68]

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59 We discuss the two acquisitions together given that the ACM considered similar questions in both cases (and, in fact, the acquiring firm in both cases was DPG Media). See ACM, *Decision Approval of the Concentration Between DPG Media BV and Sanoma Media BV*, No. ACM/19/038207 (Apr. 10, 2020) [hereinafter ACM DPG Media/Sanoma Media Decision]; ACM, *Decision Granting of a Permit under DPG Concentration Regulations Media and RTL Netherlands*, No. ACM/24/189955 (Jun. 27, 2025) [hereinafter ACM DPG Media/RTL Nederland Decision].

60 ACM DPG Media/Sanoma Media Decision, supra note 59, ¶¶ 126, 128; ACM DPG Media/RTL Nederland Decision, *supra* note 59, ¶¶ 787, 777.

61 ACM DPG Media/Sanoma Media Decision, *supra* note 59, ¶ 126; ACM DPG Media/RTL Nederland Decision, *supra* note 59, ¶ 794.

62 ACM DPG Media/Sanoma Media Decision, *supra* note 59, ¶¶ 134, nn. 92, 93. The ACM cites an academic study (Mark Deuze & Tamara Witschge, *Beyond Journalism: Theorizing the Transformation of Journalism*, 19 Journal. 165 (2017)) which summarizes both quantitative evidence, mainly derived from worker surveys related to tasks and skills, and qualitative academic studies.

63 *Ibid.*, ¶ 135 and n. 89.

64 *Ibid.*, ¶¶ 135, 136. Even though the ACM defined the labor market more broadly than "journalists," when it came to empirically calculating market shares, the ACM relied on the narrower "journalist" occupation code published by the Dutch national statistical service. Even though this code includes journalists and editors, it may not include all workers whom the ACM claims perform "journalistic services." This example illustrates the potential limitations of relying on standardized occupation codes. See *ibid.*, ¶ 137, n. 94. See also the supplemental material at *Werkzame Beroepsbevolking; Beroep, 2003-2022*, CBS (Aug. 17, 2022), https://www.cbs.nl/nl-nl/cijfers/detail/82808NED?dl=2494D#shortTableDescription.

65 ACM DPG Media/RTL Nederland Decision, *supra* note 59, ¶ 799.

66 *Ibid.*, ¶¶ 802–804.

67 *Ibid.*, ¶¶ 802–805.

68 *Ibid.*, ¶ 803.

Based on the available evidence, the ACM considered it plausible that the relevant market in *DPG Media/RTL Nederland* was broader than the provision of journalistic services. However, it left open whether the market should be defined more broadly, as it concluded this would not have affected its findings.[69]

On the second question — whether freelance journalists and employed journalists were in separate markets — the ACM left its conclusion open in both decisions. In *DPG Media/Sanoma Media*, the ACM analyzed both a combined market and a separate market for freelancers.[70] In *DPG Media/RTL Nederland*, it assumed that employed and freelance journalists were in the same labor market, noting that there may not always be a clear distinction between these types of journalists. The ACM noted that freelance journalists are able to, and often do, perform the same tasks as employed journalists.[71]

D. EU: Football Clubs

In April 2022, the Portuguese competition authority ("AdC") fined football clubs in the Portuguese League system for no-poach agreements. The investigation centered on the clubs' agreements not to hire players who had terminated their contracts due to the COVID-19 pandemic.[72]

In this matter, the definition of the relevant market revolved around the three main questions. First, whether clubs could substitute between training their own players and signing players from other clubs. Second, whether clubs could substitute among the different types of player contracts (e.g. signing a player using a permanent transfer versus a loan transfer). Third, whether clubs could substitute among different types of players based on player characteristics, such as field position, perceived quality, and age group.[73]

For its assessment of the relevant occupation, the AdC considered a wide variety of quantitative and qualitative evidence to determine the clubs' ease in switching among different options. This included quantitative evidence from industry reports and football associations, including data on the frequency of each transfer type, as well analysis of players' salaries and playing time.[74] In addition, it considered qualitative evidence that recognized industry features, such as the uncertainty associated with training players, regulations around hiring players, and difficulties in replacing well-known players.[75]

Based on the evidence described above, the AdC concluded the relevant market to be the hiring of professional football players through transfers, regardless of the signing method. However, it left open the possibility of segmenting the relevant market further based on player characteristics, such as position and quality, but did not consider it necessary for this investigation.[76]

In terms of the geographic market, the AdC considered whether the relevant market could be national or international. In Europe, this question is particularly relevant because a significant share of players in European football clubs are foreigners. The question led the AdC to analyze whether clubs facing a SSNIP for the hiring of players currently playing in Portugal would substitute towards hiring players who were outside of Portugal.[77]

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69 *Ibid.*, ¶ 805.

70 ACM DPG Media/Sanoma Media Decision, *supra* note 59, ¶¶ 137–140. The merging parties' arguments were consistent with a narrow market definition, pointing out the differences in journalists' fields of expertise. See *ibid.*, ¶ 129.

71 ACM DPG Media/RTL Nederland Decision, *supra* note 68, ¶¶ 806, 808. In its assessment of market shares, the ACM again considered both a combined market and two separate markets for freelancers and employed journalists. See *ibid.*, ¶¶ 837–842.

72 Press Release, AdC, AdC Issues Sanctioning Decision for Anticompetitive Agreement in the Labor Market for the First Time (Apr. 29, 2022); AdC Football No Poach Decision, *supra* note 18. While the AdC considered the agreement a *by object* infringement, it still conducted a detailed analysis of the relevant labor market, assessing the substitutability of workers to define the relevant occupations and geographies. See also *Ibid.*, ¶¶ 418, 648, 649. Notably, in May 2025, Advocate General Emiliou issued an opinion on this case and found that the agreements should not be found restrictive by object if their "genuine rationale was to preserve the fairness and integrity of the sports competition affected by the pandemic." See also Opinion of Advocate General Emiliou, *CD Tondela – Futebol v. Autoridade da Concorrência*, Case C133/24, ECLI:EU:C:2025:364 (CJEU, May 15, 2025); James Killick et al., *More Nuanced Approach to the Assessment of No-Poach Agreements Under EU Competition Law? AG Emiliou Opinion in the Portuguese COVID Football No-Poach Case*, White & Case (Jun. 5, 2025), https://www.whitecase.com/insight-alert/more-nuanced-approach-assessment-no-poach-agreements-under-eu-competition-law-ag.

73 AdC Football No Poach Decision, *supra* note 18, ¶¶ 373–400.

74 *Ibid.*, ¶¶ 376, 379, 395, 403, 406.

75 *Ibid.*, ¶¶ 374, 381, 515.

76 *Ibid.*, ¶¶ 415, 416.

77 *Ibid.*, ¶¶ 402, 403, 515.

In its assessment of this question, the AdC evaluated evidence of labor market frictions in international transfers of football players. Among the frictions it considered are information asymmetries and switching costs, including players' cultural adaptation and the loss of personal connections, as well as the strict restrictions on international mobility related to COVID-19 at the time.[78] It also weighed evidence that players had a preference to remain in their home countries. For example, it found that the majority of players who left Portuguese clubs transferred to another Portuguese club. In addition, the AdC cited studies that found local players in European leagues had lower wages than foreign players, likely reflecting the value players placed on staying in their home country.[79] The AdC concluded that the relevant geographic market was likely national as this was consistent with the agreements at issue, which were limited to Portuguese clubs, but did not arrive at a definitive conclusion.[80]

E. EU: Technology Consulting

In February 2025, the AdC fined the technology consulting firm Inetum for entering into no-poach agreements with other firms in Portugal.[81] It investigated four companies (SAP, Deloitte, Accenture, and Inetum) that offered consulting services for SAP software, a widely used business management software.[82]

In its investigation, the AdC defined the relevant market as the hiring of SAP software specialists in Portugal.[83] While this definition was strongly driven by the nature of the conduct in question,[84] we highlight two important considerations for labor market definition based on the AdC's analysis.

First, it defined the relevant market narrowly around a specific type of expertise (SAP specialists). This excludes, for example, IT consultants with knowledge of other software. While the AdC acknowledged numerous ways to gain knowledge of SAP software, it highlighted the value of accreditations to enter the labor market for SAP consultants, as well as the need for these consultants to specialize in particular parts of the SAP system.[85] This indicates how market boundaries may be set based on the high level of training, specialization, or accreditation required to undertake a given occupation.[86]

Second, the AdC defined the geographic market as national (due to the geographic scope of the conduct), but raised the possibility of an international labor market.[87] This is because the tasks could be performed remotely and the IT workforce tended to be mobile.[88] This illustrates that new work arrangements, which include remote working even across international borders, could play an important role in defining certain labor markets.

IV. CONCLUDING COMMENTS

Our review of the approaches taken by each of the competition authorities illustrates that there is a common framework being used in defining labor markets in antitrust cases. Our intention in providing a review of past cases where authorities have defined labor markets is to provide some key insights into potentially converging approaches for future labor antitrust cases. We highlight three key takeaways.

78 *Ibid.*, ¶¶ 407–411.

79 *Ibid.*, ¶ 406, nn. 401, 402.

80 *Ibid.*, ¶¶ 412, 414, 417.

81 Press Release, AdC, AdC Fines Inetum Group for Anti-competitive Practices in the Labour Market (Feb. 19, 2025). AdC, PRC/2022/3 Final Decision, Non-Confidential Version (Feb. 18, 2025) [hereinafter AdC Inetum Decision]. The other three companies investigated by the AdC for these no-poach agreements opted for settlements.

82 Tania Luisa Faria et al., *Year in Review: Cartels and Leniency in Portugal*, Lexology (Mar. 5, 2025), https://www.lexology.com/library/detail.aspx?g=51e38461-761e-4949-88f7-a81907a3f152; AdC, *Case Details: PRC/2022/3*, https://extranet.concorrencia.pt/PesquisAdC/Page.aspx?lsEnglish=True&Ref=PRC_2022_3; AdC Inetum Decision, *supra* note 81, ¶ 217.

83 *Ibid.*, ¶ 216. While a market definition exercise was not required for this investigation (because the AdC considered it a *by object* infringement), the AdC assessed the relevant market to facilitate its assessment of the conduct. See also *ibid.*, ¶¶ 214–215, 313.

84 *Ibid.*, ¶ 230.

85 *Ibid.*, ¶¶ 326(i)–(iii), 221.

86 In fact, the AdC left open the possibility of segmenting the labor market even further. See *Ibid.*, ¶ 228.

87 The AdC defined the relevant market as national because the conduct related to recruitment of employees in Portugal. See *ibid.*, ¶¶ 230–231.

88 *Ibid.*, ¶¶ 229–231. See also *ibid.*, ¶ 245.

First, similar to product market definition, labor market definitions should not be based solely on functional characteristics, such as typical tasks or training. Competition authorities recognize this by incorporating worker job preferences in their assessment, resulting in markets that are more narrowly or broadly defined than when assessing tasks alone. The Dutch media merger decisions and the UK investigation of sports content production illustrate this. Here, the ACM found that the relevant markets were broad (i.e. "journalistic services") and allowed for a potentially even broader definition, not just because the tasks were similar in these jobs, but because journalists were willing and able to switch to a wide variety of jobs. In contrast, the CMA found comparatively narrow markets in its investigation (e.g. camera operators for sports content), in part because it found the workers had a strong preference for working on specific types of tasks and content. It also highlighted that, in addition to worker preferences, employer preferences were relevant in identifying the jobs that a worker could feasibly switch to, noting that companies preferred hiring workers with experience and knowledge of certain content.

Second, the importance of geographic market definition may differ across jurisdictions. In the UK and EU cases, the authorities considered the relevant markets to be at least national, but the analysis of the geographic dimension was generally less detailed than that of the occupation dimension. In contrast, in *FTC v. Kroger Co.* the FTC proposed geographic markets that varied in size but were generally more local (e.g. areas within a state). The parties critiqued these geographic markets by putting forward economic analyses of worker mobility and commuting times. While these definitions may reflect the specifics of the cases, this may also indicate that geographic market definition could play a more important role in future U.S. cases. On the other hand, as the Portuguese investigations show, European cases may also have to contend with international labor markets.

Finally, we find that there is no consensus yet on the type of empirical evidence that is informative for market definition. One of the challenges that authorities face when defining labor markets is that important factors (such as worker preferences and switching costs) may be difficult to capture empirically. As such, competition authorities have primarily relied on qualitative evidence so far. This may change in future cases, but we expect that the empirical evidence would typically be driven by the institutional details. For example, the AdC's analysis of wage penalties for football players is informative about players' geographic preferences, but this type of evidence may not be available in settings with little variation in worker compensation. Consistent with the HMT framework, empirical evidence on worker switching patterns could be applicable in many settings (if the data are available). However, as the court ruling in *FTC v. Kroger Co.* illustrates, it will also be important to provide a clear explanation of how to interpret such switching data and how these are informative for an HMT. As the authorities continue evaluating competition issues in labor markets, we expect that this will also continue to inform the empirical evidence used in labor market definition.