Looking at the Monopsony in the Mirror

Maurice E. Stucke
University of Tennessee College of Law

mstucke@utk.edu
Two Key Issues

Should Agencies and Courts Use

1. the Same Market Share Thresholds for Monopolization and Monopsonization Claims?

2. a Consumer Welfare Objective for Evaluating Buyer Power Claims?
Economic Concerns

• Economic concerns of the textbook monopsony are
  – transferring wealth from suppliers to monopsonist &
  – deadweight welfare loss (since fewer of suppliers’ widgets are produced and sold).
Economic Concerns

• One issue is that significant buyer power, even to point of monopsony, does not always lead to less output of the sellers’ goods or the total output of the monopsonist’s goods.

  1. The supply curve of widgets may be *perfectly inelastic*.

  2. Monopsonist, like a monopolist, can price discriminate → pay each widget seller only the minimum amount needed for that seller to produce the widget.

  3. The “commodity problem.”
Other Economic Concerns

• One issue is the effect of monopsony power on downstream consumers.
  – Clearly the case when monopsonist is also a monopolist.
  – Jack Kirkwood’s paper on how buyer power can lead to downstream market power and ultimately a monopsony/monopoly.
  – Roger Noll’s work on the inefficiencies arising from monopsony:
    1. When other suppliers outside the monopsonized market replace the lost production at a higher cost.
    2. The opportunity cost of suppliers who now devote resources in competitive markets to produce more of the output when their resources could be profitably devoted to other uses.
    3. Suppliers have less money to purchase goods and services.
Social and Moral Concerns

• The downward pressure on the seller’s price can lead to other undesirable effects.
  – Increase in negative externalities
  – Concerns over sustainability
    • increased soil erosion,
    • reduced biodiversity,
    • deforestation,
    • water, soil, and air pollution.
  – Human rights concerns over buyer power:
    • Child labor.
    • Sellers’ loss of economic liberty & basic human rights, such as the right to food, work, and development.
Legal Implications of Buyer Power

• U.S. plaintiff under section 2 of the Sherman Act must prove:
  1. Defendant possesses monopsony power &
  2. “the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.”
Types of Evidence

Proving Monopsony Power

Direct

Circumstantial
1st Issue: Proving Monopsony Power

- Should courts rely on minimum market share thresholds?
  - If courts presume that a 50 percent market share is insufficient for monopolization claims, should they make the same presumption for monopsonization claims?
2\textsuperscript{nd} Issue: What Harm Counts

• As the German Bundeskartellamt observed, one must discuss abuses of buyer power in terms of the basic objectives of competition law.

• Should courts and agencies reconcile monopsony claims with a consumer welfare objective?
Problems with a Consumer Welfare Screen

- Buyer cartels
- Lack of consensus over
  - what consumer welfare actually means,
  - who the consumers are, or
  - how to measure consumer welfare
- Risk of false negatives
- Rule of law concerns
Consumer Welfare & Neoclassical Economic Theory

• Assumption: Consumer Welfare = Consumer Surplus

• Consumers only care about maximizing their wealth.
  – Do not care whether the farmers’ families can eat better, keep their kids in school, improve their health and housing, and invest in the future.
  – Would not differentiate between Fair Trade coffee and regular coffee.
Consumer Welfare & Behavioral Economics

• Consumers, the behavioral economics literature shows, do not care are only about promoting their economic self-interest.
  – Concerns over fairness
  – Even when they benefit from the exploitation of sellers, some consumers nonetheless object to such exploitation.

• Consequently, a true consumer welfare standard must incorporate consumers’ other-regarding behavior.