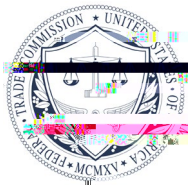

Office of Commissioner
Alvaro M. Bedoya

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

# Statement of Commissioner Alvaro M. Bedoya

labor market competition,[12] the idea that the DOJ or FTC of that era would try to block such mergers finds no basis in reality.

In his treatise exploring the absence of antitrust enforcement targeted at labor markets, Professor Posner presents two other reasons for the lack of labor-based merger challenges, both of which post-date the heyday of the labor injunction in the first half of the 20th century.[13] He argues that, starting in the 1960s, legal scholars began to prevail upon law enforcers to target antitrust enforcement on conduct and combinations that raised the prices on products and services sold to the public – that is, "consumer welfare." More interestingly, he explains that until very recently, most economists assumed that labor markets were more or less competitive, and that labor market power – the power of employers to set wages below a competitive level – was thus not an important problem for society.[14]

That understanding of labor markets has begun to unravel. New research suggests that the fewer companies in a community competing for workers, the lower the wages.[15] Research also suggests that mergers, specifically, help companies keep wages low.[16] This appears to be a common problem in American society. Professor Posner found it plausible that in many labor markets, workers receive thousands of dollars less than the competitive rate.[17] Two years ago, the Treasury Department estimated that as a result of current employer market concentration as well as how time consuming it is to find, interview for, and accept a job, Americans likely lose out on the equivalent of eight weeks of pay every year. In other words, in a perfectly competitive labor market – in a world where we can easily switch jobs to one of any number of firms, most

[12] In 1926, in line with Senator Sherman's intent, the Supreme Court held that antitrust law could be used affirmatively to protect competition in labor markets, allowing a group of sailors to sue shipowners for wage-fixing. *Anderson v. Shipowners Ass'n of the Pac. Coast*, 272 U.S. 359, 365 (1926).
[13] *See generally* Eric A. Posner, *How Antitrust Failed Workers* (2021).
[14] *See id* at 4. Professor Posner cites a popular economics textbook from 2005 which declared that "[m]ost labor economists believe there aipt9 (a)4.223[a16woi9o2?.2 ([)1.7  0 Twndp-a 2005 w(d t)6.9 (ha)93 0 Td16.87hela -1.157 Td[(A)w(d t)6.9l

of us would be about two to four paychecks richer.[18] Few people may know about "labor monopsony," but anyone on a budget knows what they'd do with that money.

In short, my colleagues seem to say that labor monopsony is not a problem even though we've only just started to look for that problem. Then, they wave away tools to help find that problem because we haven't found it yet.[19]

All of this said, a key barrier to *any* merger challenge, including labor-based challenges, is a lack of time. The changes voted out today will help FTC staff quickly find and focus on the mergers that hurt competition in any market, including labor markets. For this and many other reasons, I am proud to support them.

[18] The report's review of academic studies "places the decrease in wages at roughly 20 percent relative to the level in a fully competitive market." This is a middle estimate from an estimated range of $0.15 to $0.25 cents of lost wages on every dollar. The "eight weeks of pay" figure applies the lower bound of that estimate ($0.15, or 15%) to 52 weeks of pay. *See* U.S. Dep't of Treasury, *The State of Labor Market Competition*, at ii (2022) ("20 percent"); *id.* at 24-25 ("15 -25 cents on the dollar").

[19] Commissioner Holyoak states that "[t]he agencies have never made a standalone labor challenge to an acquisition," and Commissioner Ferguson states that the agencies have never made a challenge "based on labor market theories that could have been identified by the proposed requirements." Statement of Commissioner Melissa Holyoak, *Final Premerger Notification Form and the Hart-Scott-Rodino Rules*, at 9-10; Concurring Statement of Commissioner Andrew N. Ferguson, *In the Matter of Amendments to the Premerger Notification and Report Form and Instructions and the Hart-Scott-Rodino Rule*, at 11. I evaluate this new era quite differently. In 2021, our colleagues at the Antitrust Division successfully blocked a proposed merger between two of the nation's largest book publishers based on a labor theory that the elimination of competition between the merging publishers likely would have negatively impacted the advances paid to authors for their work. *See United States v. Bertelsmann SE & Co. KGaA*, 646 F. Supp. 3d 1 (D.D.C. 2022). What's more, in addition to Commission staff's challenge of the Kra (s)9.5 ( pa)4.2y04.6 F.646 [(,)3 ifag5ifag5ifag/MCID 6.2 (nt3.6 (ge)4.2 (s)9.5 ( w)5.1 (ng )12 t)6.9 ())]T3 (c)4.2 ( w)5. ( t)6.912 (