

AntitrustConnect Blog

Antitrust Division Commits To Labor Market Enforcement As A Top Priority

Robert E. Connolly (Law Office of Robert Connolly) · Monday, October 4th, 2021

At an October 1, 2021 in-person conference (Fordham's 48th Annual Conference on International Antitrust Law and Policy) Acting Assistant Attorney General Richard A. Powers of the Antitrust Division spoke about the history of and Antitrust Division's commitment to enforcing the antitrust laws, including criminal enforcement, in labor markets: "If it was important for enforcers to protect competition in labor markets decades ago — and I believe it was — it is essential now."

I suggest reading the speech in its entirety ([here](#)) but I'll quote a few of the remarks:

- "Between 2010 and 2012, the Division filed civil enforcement actions against Adobe, Apple, eBay, Google, Intel, Intuit, Lucasfilm, and Pixar for entering into unlawful agreements not to compete for each other's workers through various means. These enforcement actions were important for a few reasons. First, they made clear that companies that do not compete to make or sell the same products or services nonetheless compete vigorously in labor markets. That is why they have incentives to collude in a labor market in the first instance. Second, the investigation reaffirmed that agreements to allocate labor markets are no different than agreements to allocate markets by territory or customer. [Well, they were treated a little differently as these likely would have been criminal cases given the explicit evidence of agreement but civil cases were brought first as a sort of "warning shot]."
- Beginning in October 2016, the Division made a series of public statements that, going forward, it intends to criminally prosecute naked labor market allocation and wage-fixing conspiracies.
- Since that time, labor market investigations have comprised a growing portion of our docket. Thus far, we have charged four criminal cases for alleged collusion in labor markets.
- At bottom, the Division is committed to prosecuting naked conspiracies in labor markets because they rob workers of competitive wages, benefits, and other terms of employment. While this work is principally criminal enforcement, we are not blind to the social impact of this work. Free market competition for workers can mean the difference between saving for a home, sending kids to college, and leaving a toxic workplace, or not. Work is also fundamental to our dignity. As enforcers, we know firsthand what it means to ascribe dignity and values to work.
- Importantly, criminal prosecution of labor market conspiracies is the tip of the spear; the Division's focus on labor markets extends beyond its cartel program. The Division is also committed to using its civil authority to detect, investigate, and challenge anticompetitive non-compete agreements, mergers that create or enhance monopsony power in labor markets, the unilateral exercise of monopsony power, and information sharing by employers.
- While competition policy is not conducive to a one-size-fits-all approach, I note that many

international enforcers have used their enforcement authority to root out labor-market conspiracies with admirable results....”

There is much more in Mr. Powers’ remarks including a discussion of continued cooperation among international enforcers. There are also footnotes with citations to many of the cases/facts mentioned in the speech.

If there was ever a “hot topic” in antitrust compliance counseling it would be to advise clients that not just the DOJ, but the FTC, State AG’s and international enforcers are focusing on agreements between competitors to reduce or eliminate competition for an input commonly known as employees. It is key to understand, that like any other cartel, buyer or seller, agreements to reduce competition can be prosecuted even if they don’t eliminate all competition or are unsuccessful. While a bit simplified: It is just as unlawful to fix the price at which you pay employees as it is to fix the price of the widgets those employees make.

Thanks for reading.

This post originally appeared on the [CartelCapers Blog](#).

This entry was posted on Monday, October 4th, 2021 at 5:36 pm and is filed under [Department of Justice Antitrust Division, U.S. Department of Justice](#)
You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. Both comments and pings are currently closed.