

Hearing #3 on Competition and Consumer Protection in the 21st Century

George Mason University
Antonin Scalia Law School
October 16, 2018



Welcome

Bruce Kobayashi
Federal Trade Commission
Bureau of Economics



Opening Address

Alan B. Krueger

Princeton University

Woodrow Wilson School of
Public & International Affairs



Economic Evidence of Labor Market Monopsony

Session moderated by:

Devesh Raval & Jeremy Sandford

Federal Trade Commission

Bureau of Economics



Economic Evidence of Labor Market Monopsony

Matthias Kehrig

Duke University

Department of Economics



Empirical findings

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3. High relative goods prices, not low relative wages, make some firms “hyper-profitable.”



Empirical findings

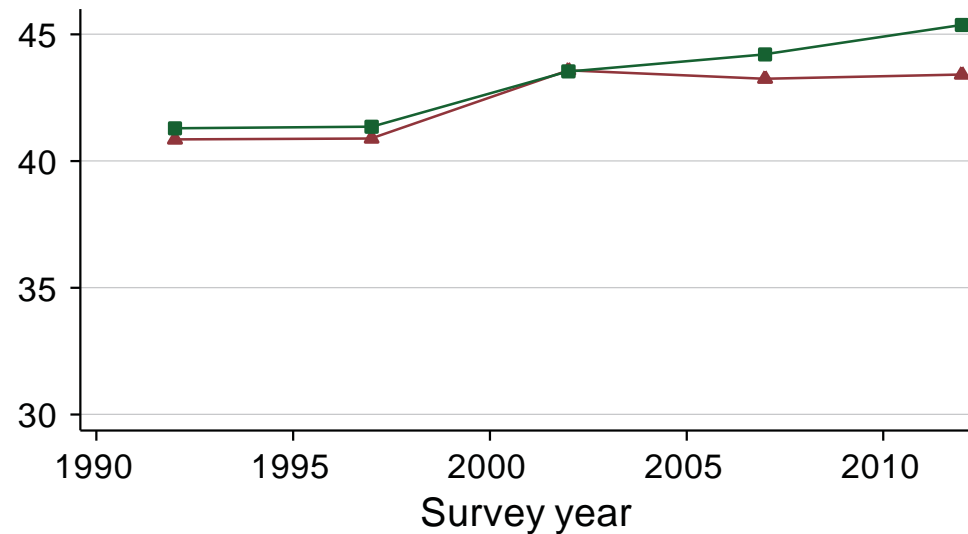
1. How concentration changed in goods and labor markets.
2. Labor productivity and labor compensation diverged in the aggregate economy. Few “hyper-profitable” firms drive that divergence.
3. High relative goods prices, not low relative wages, make some firms “hyper-profitable.”
4. Remarkable churn among high-productivity firms raises questions for standard theories.



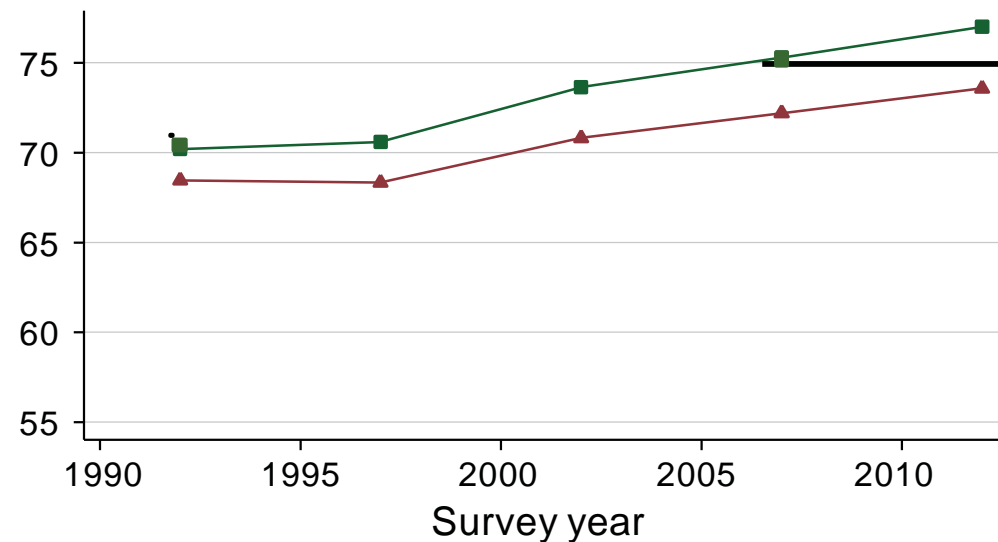
1.a Concentration in output markets increased

Figure 1: Goods market concentration (Autor et al. (AER P&P, 2017), Fig. 2.)

Panel A. Top 4 concentration



Panel B. Top 20 concentration

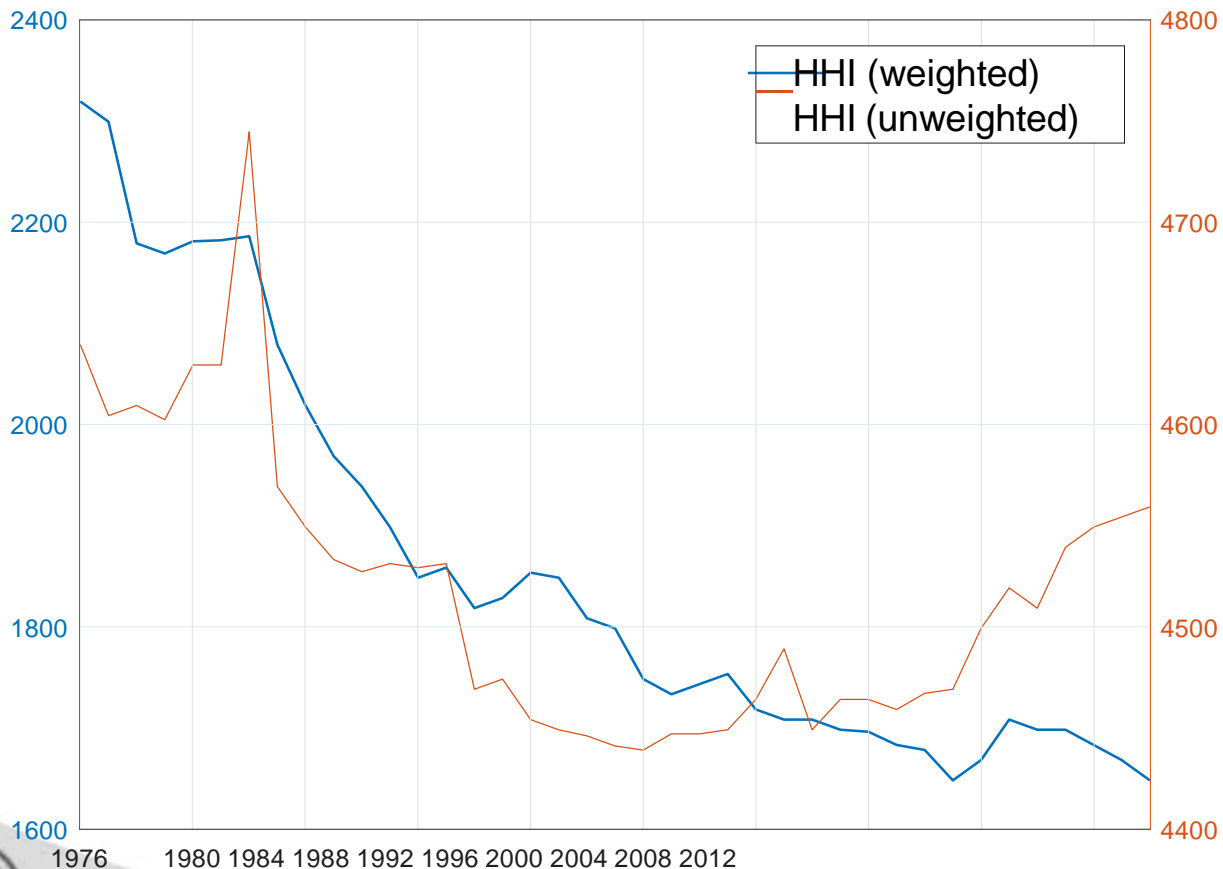


— Sales by domestic firms — Including imports

- Data from Economic Census
- Captures all economic activity in any economic unit (“establishment”)
- Aggregated to level of firm (Walmart Inc., not Walmart store in Alexandria)

1.b Concentration in labor markets looks different

Figure 2: Labor market concentration (Hershbein/Macaluso/Yeh, mimeo, 2018)

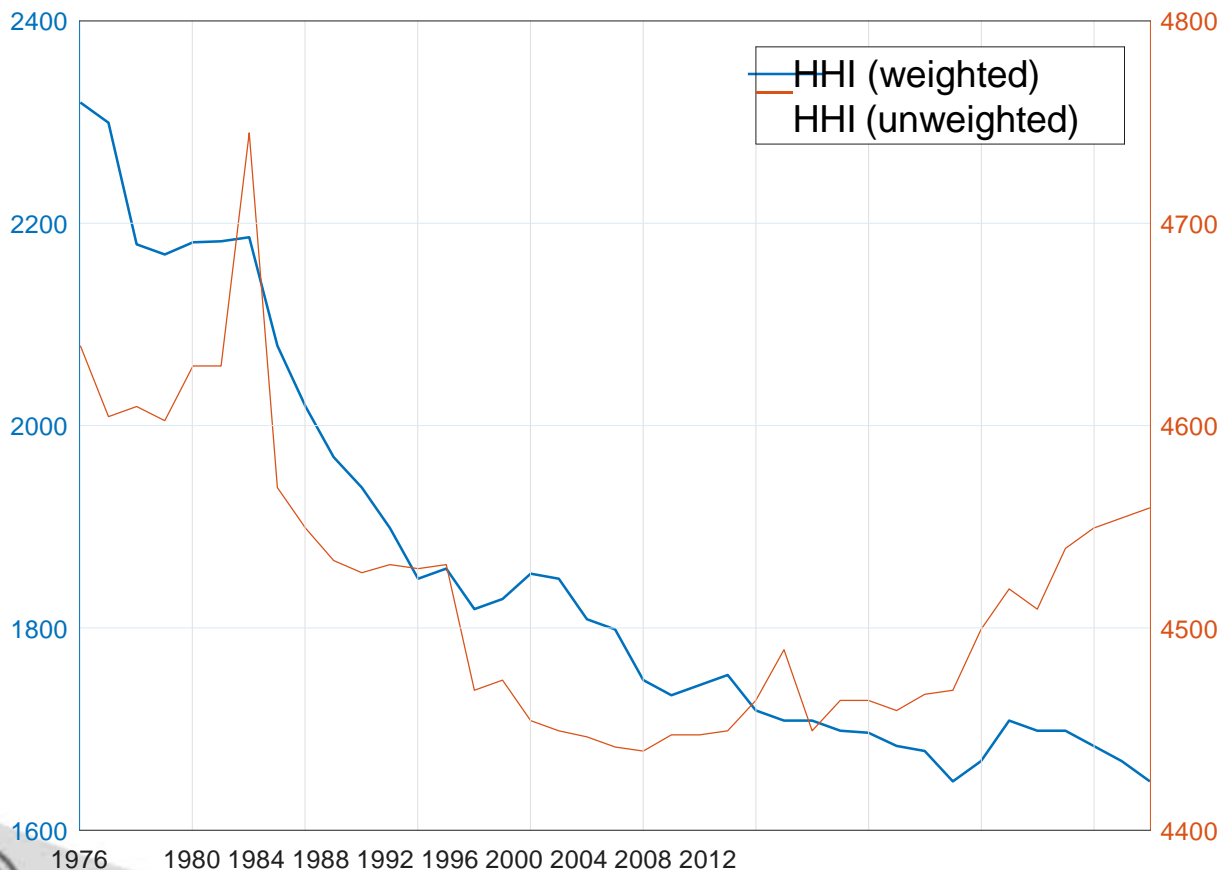


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- aggregated to firm level
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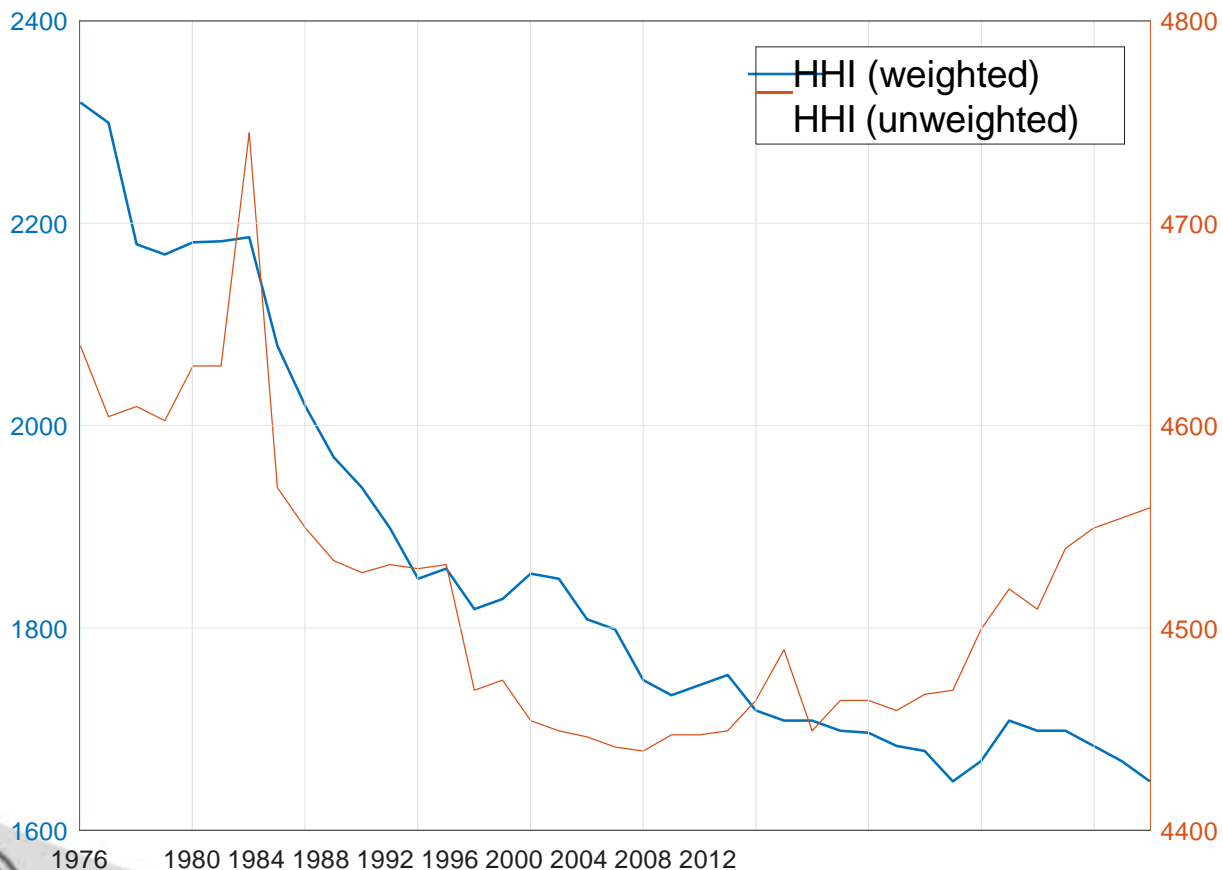
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- Questions:
 - What is a firm?
 - What is the relevant market?



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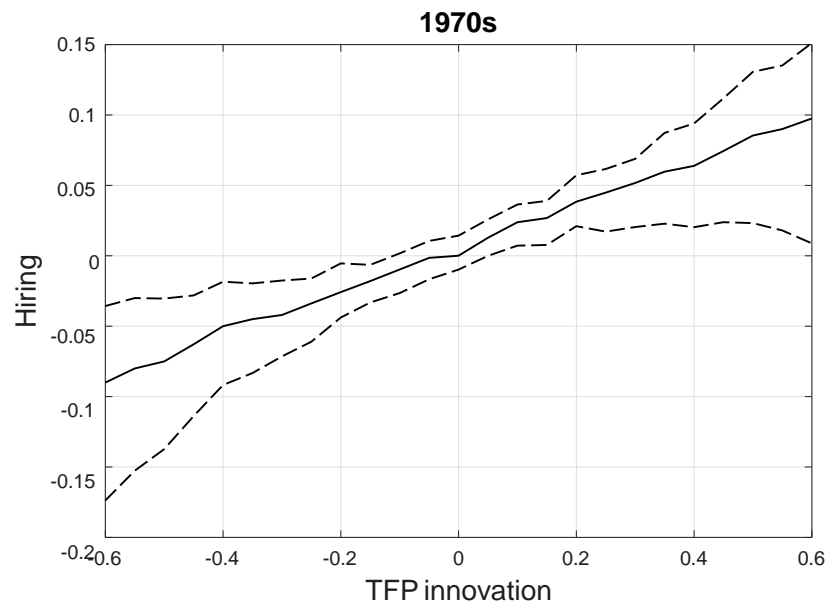
Figure 3: High-productivity establishments don't hire (any more)



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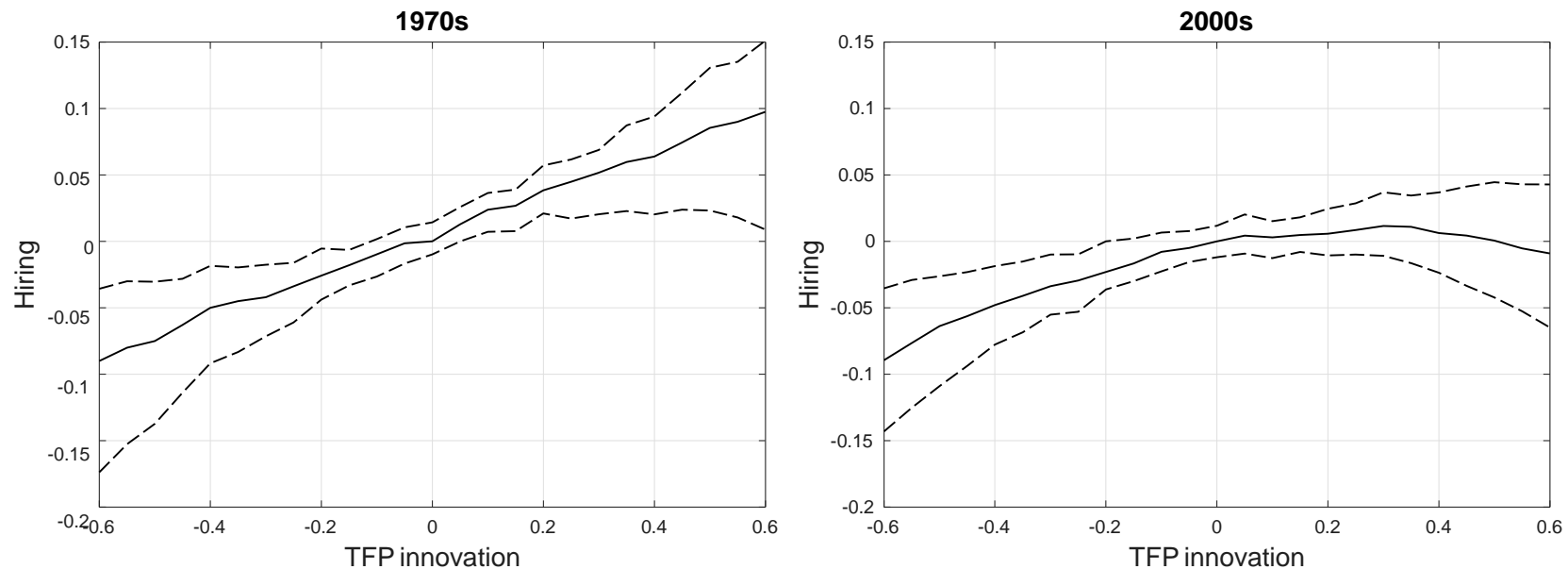
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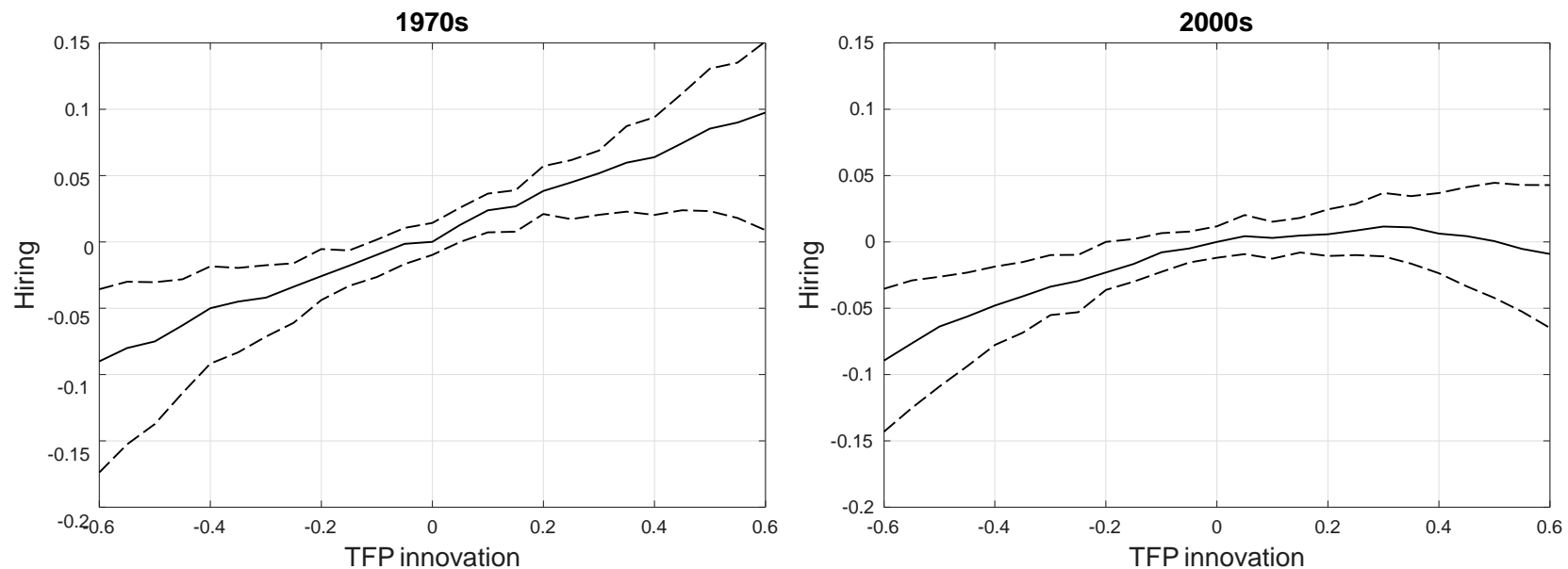
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- Gutiérrez/Philippon (2017) show the same for investment.

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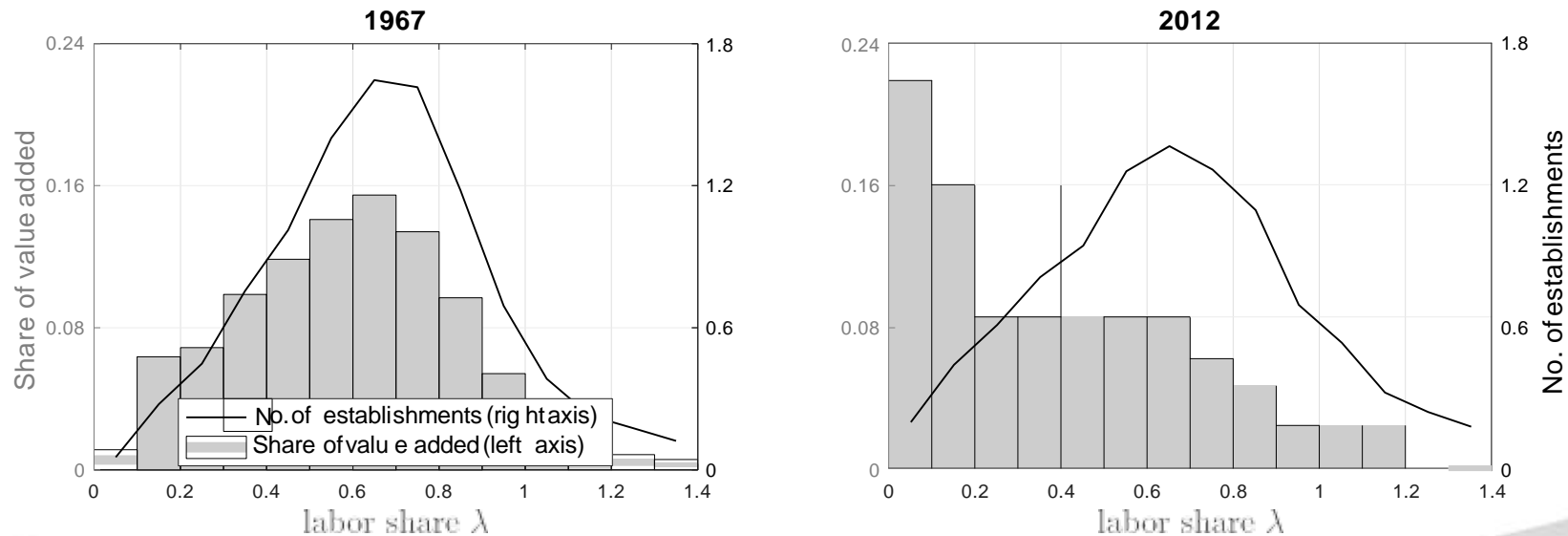
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Figure 4: Reallocation of value added to low-labor share firms



from Kehrig/Vincent (2018), Fig. 1.

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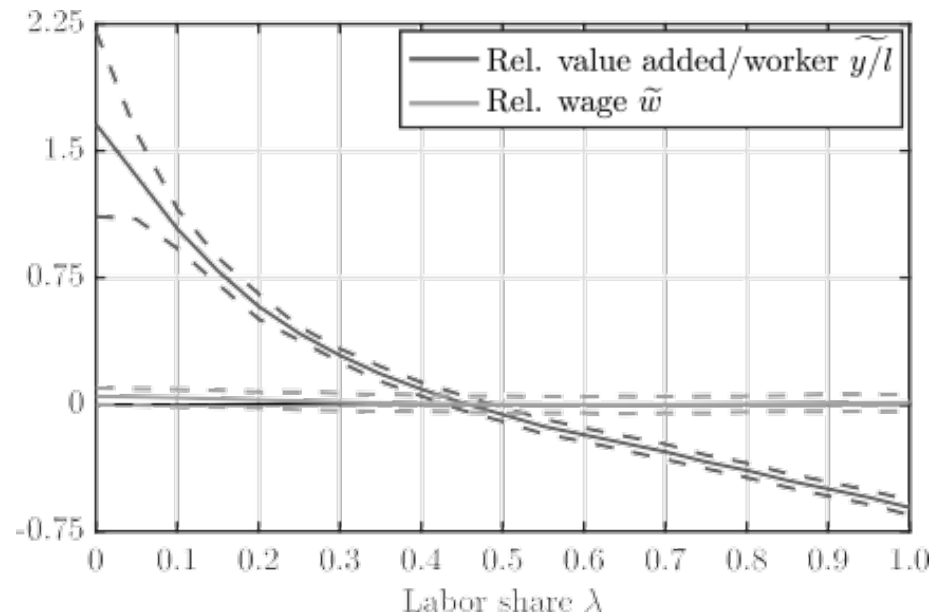
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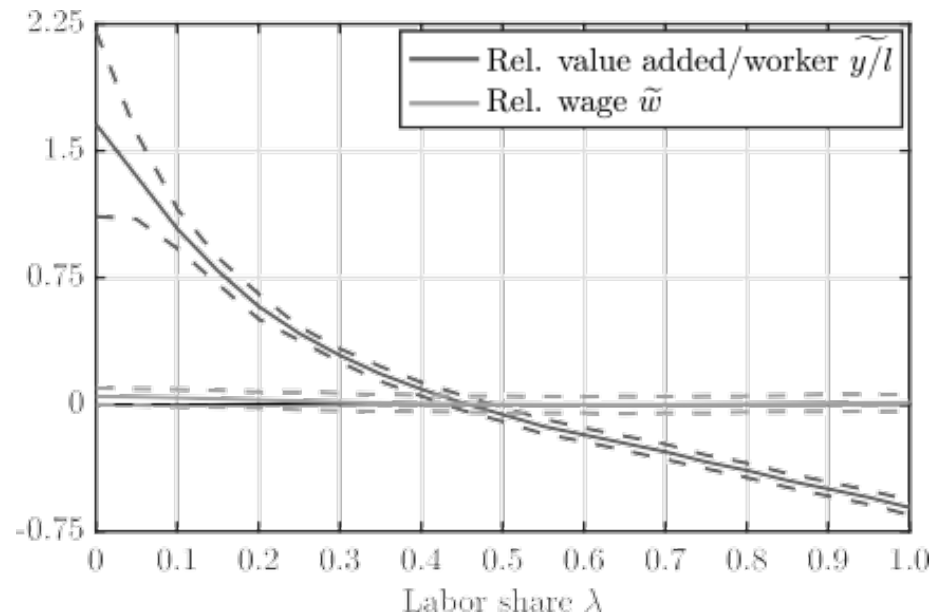
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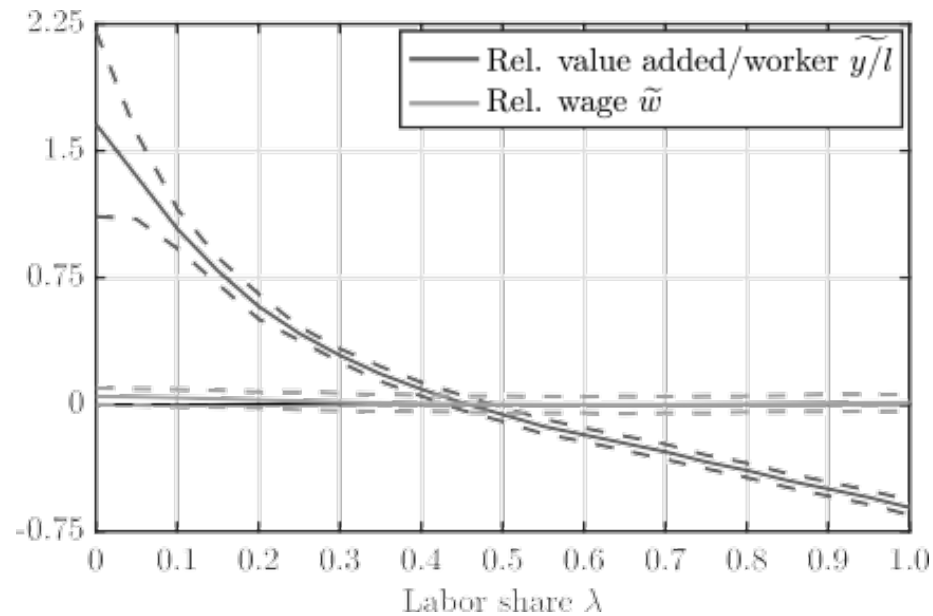
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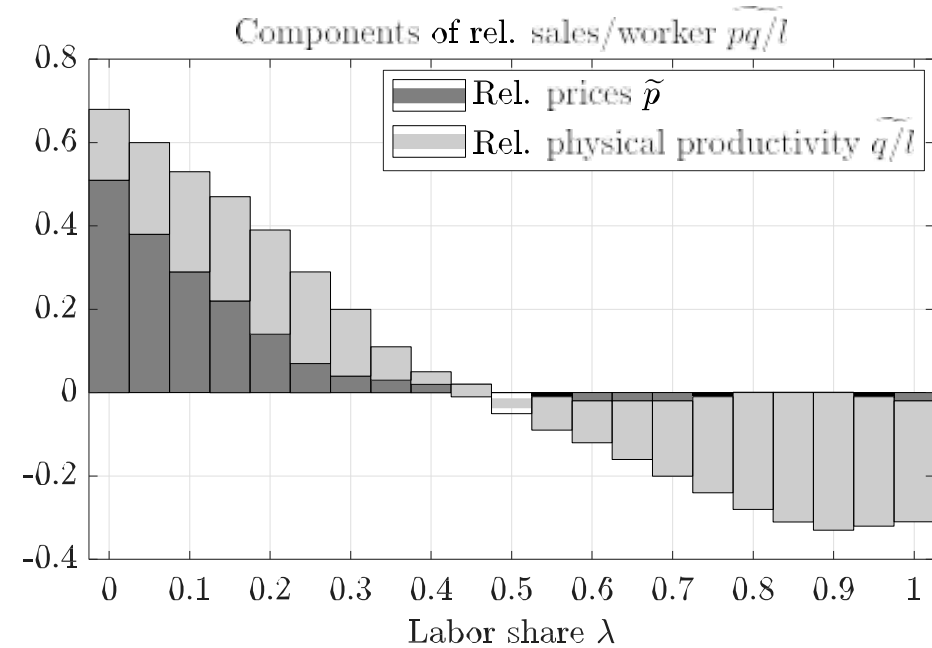
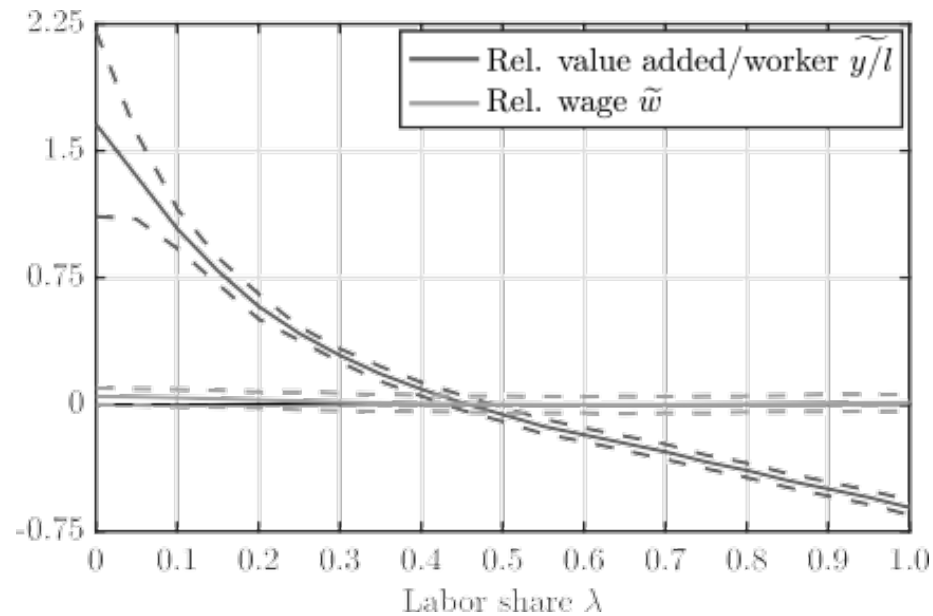


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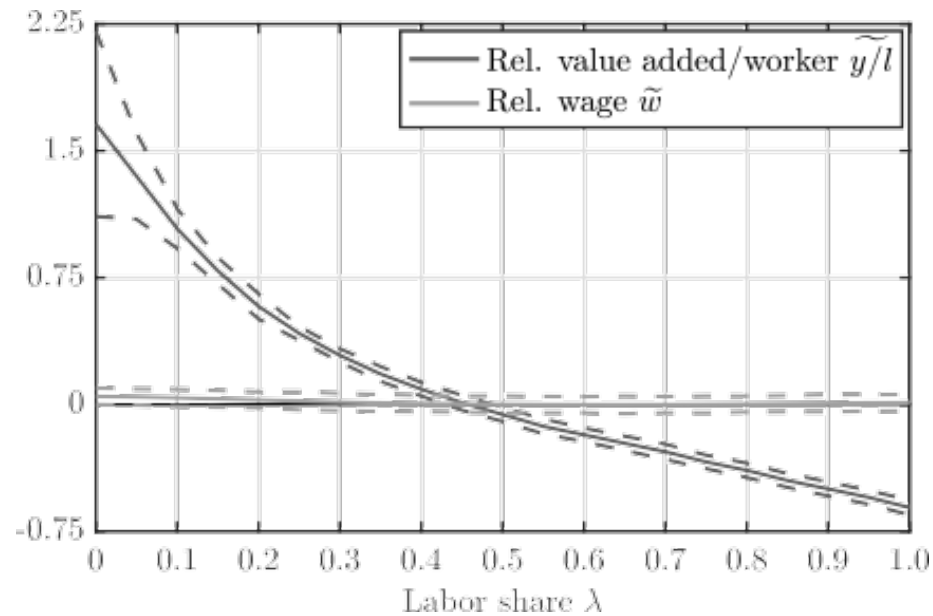
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- Prices do most of the heavy lifting,



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- Prices do most of the heavy lifting,
- both in cross section and dynamically



4. Remarkably high churn at top end of profitability distribution I

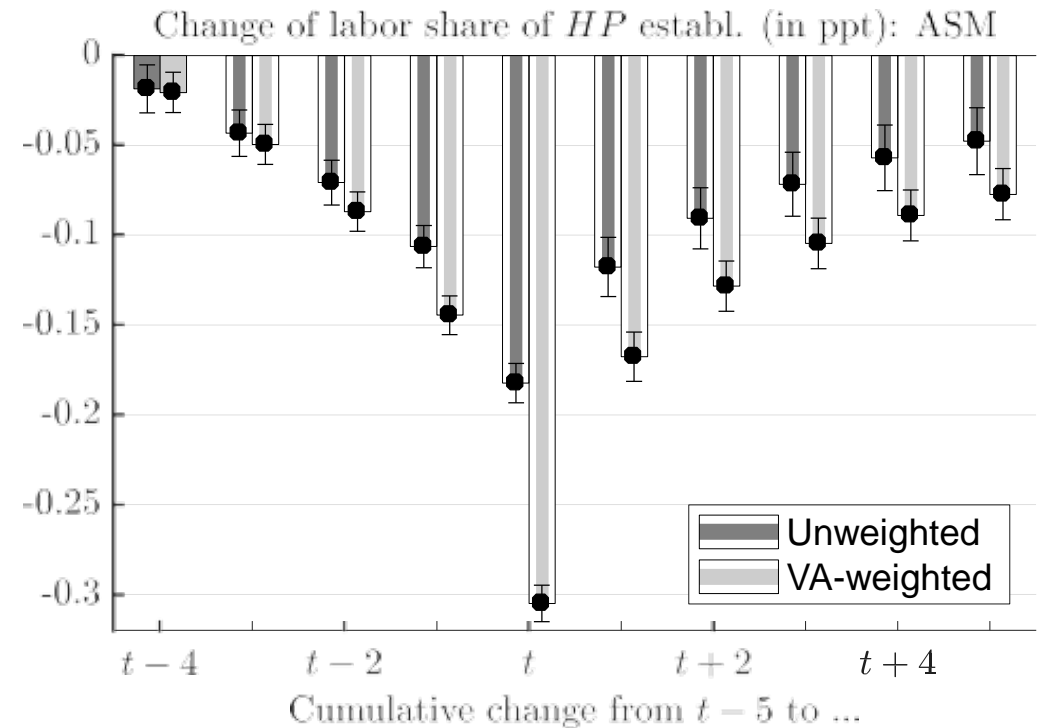
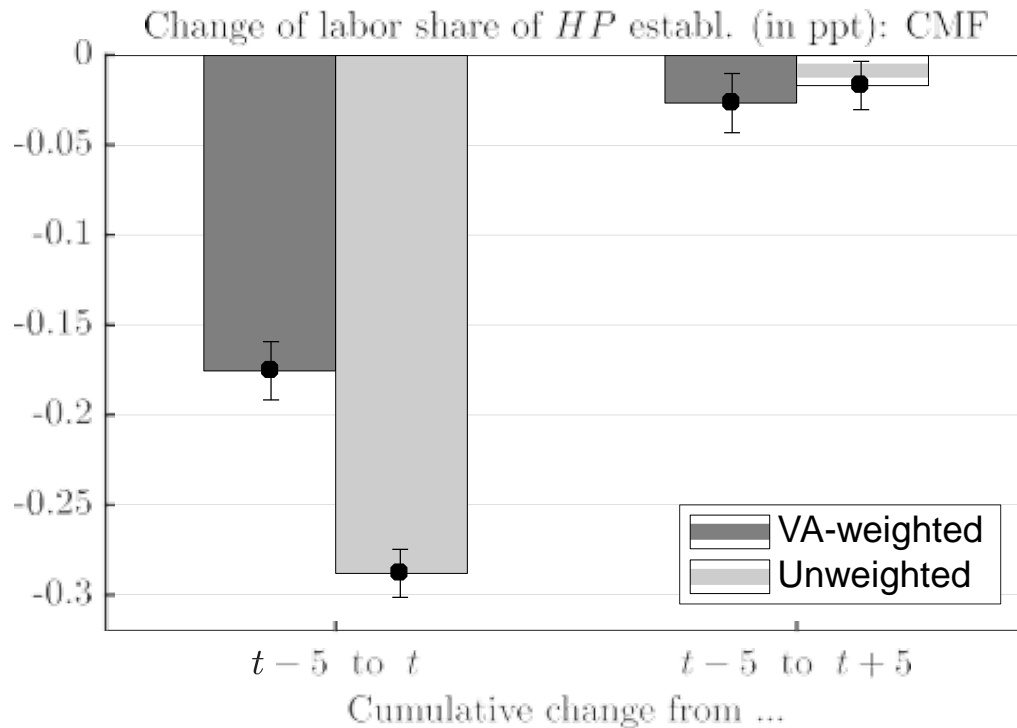
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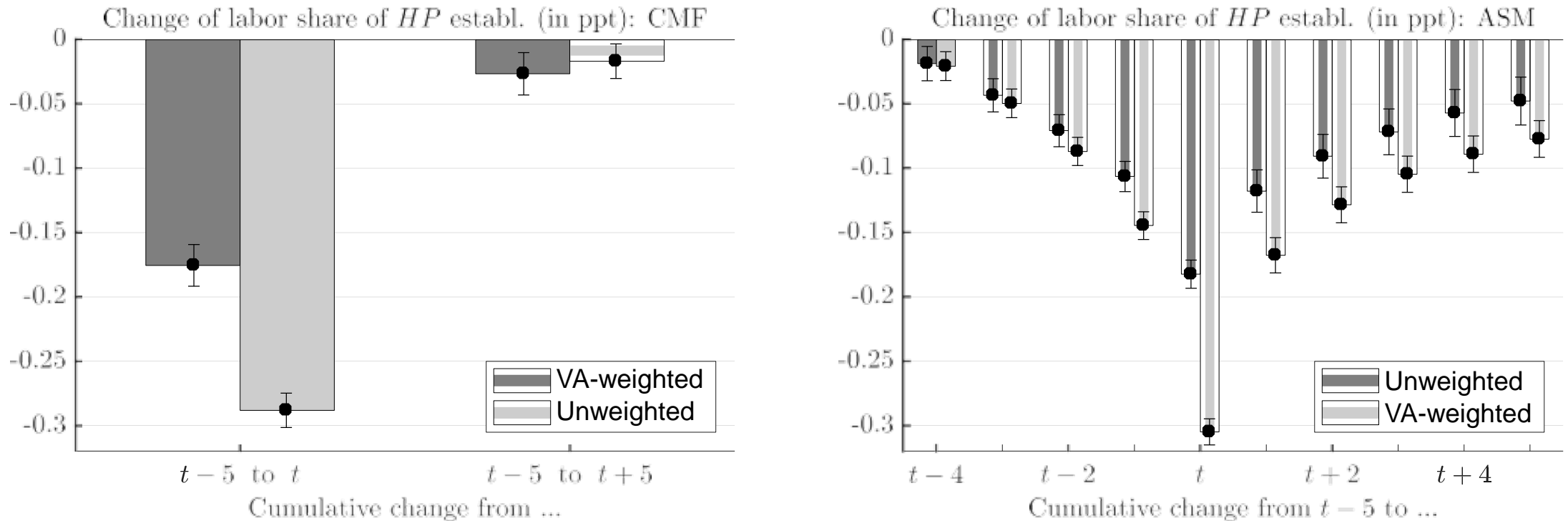
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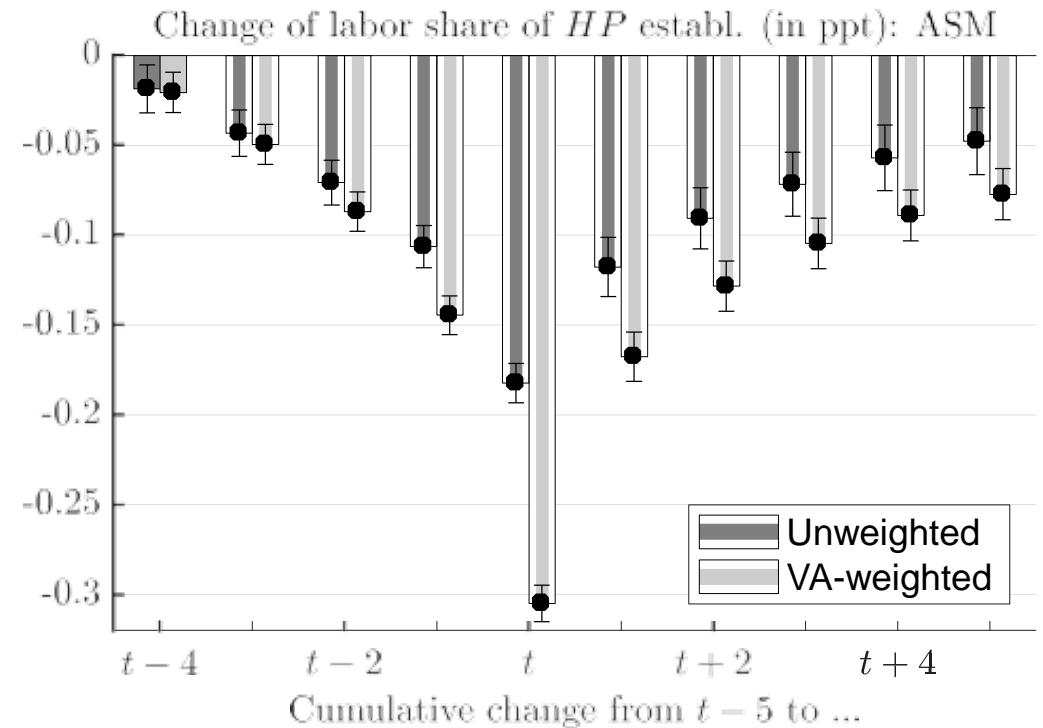
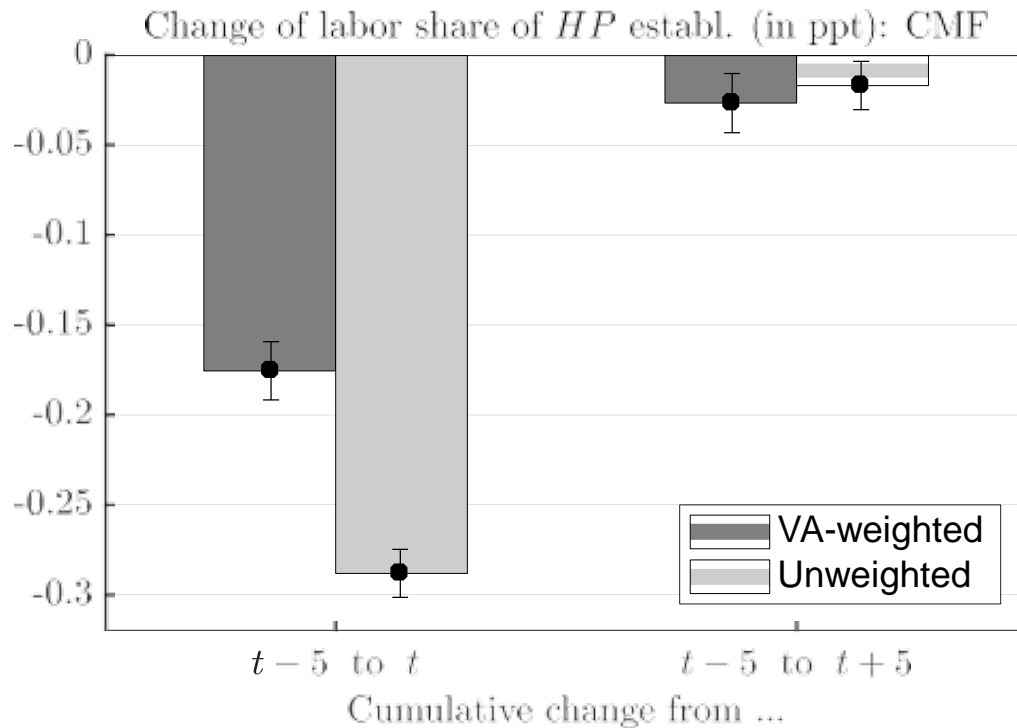


- Having a low labor share is a surprisingly transient phenomenon!

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- Having a low labor share is a surprisingly transient phenomenon!
- Most of the transience stems from temporarily high rel. prices, not other factors.

4. Remarkably high churn at top end of profitability distribution II

Table 1: The odds of becoming *HP* by previous *HP* status

Panel A. <i>HP</i> is raw lowest quintile of λ		
	Non- <i>HP</i> _{<i>t</i>}	<i>HP</i> _{<i>t</i>}
Non- <i>HP</i> _{<i>t-5</i>}	0.854	0.146
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Panel B. Value added per cell; $\tilde{H}P$ is lowest <i>Y</i> -weighted quintile of λ		
	Non- $\tilde{H}P$ _{<i>t</i>}	$\tilde{H}P$ _{<i>t</i>}
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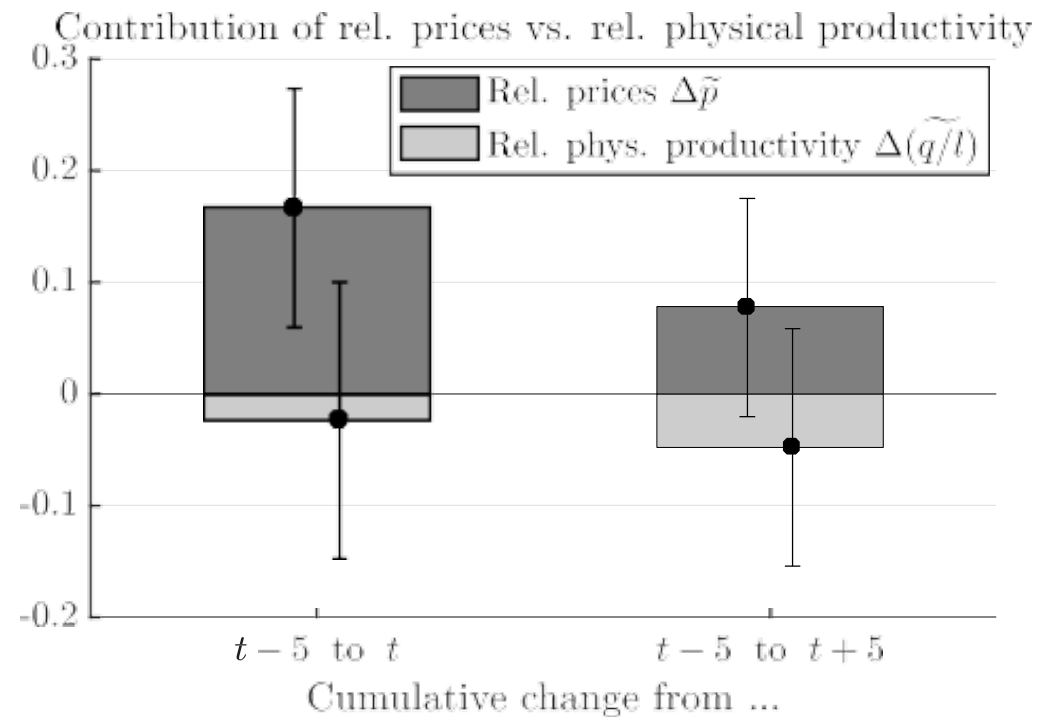
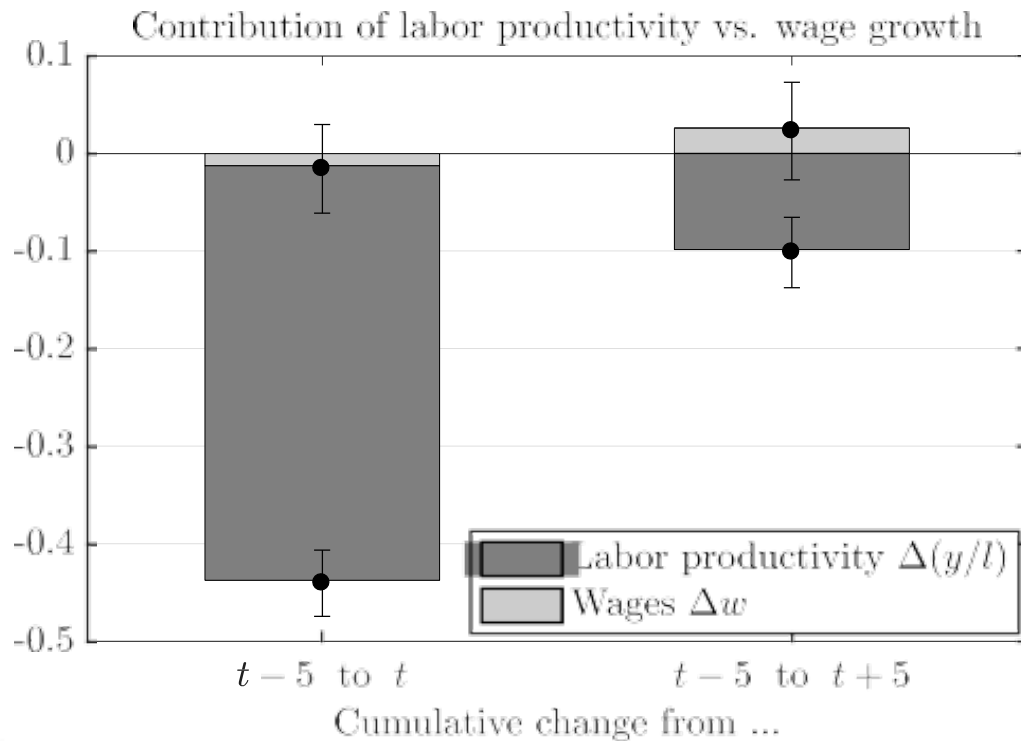
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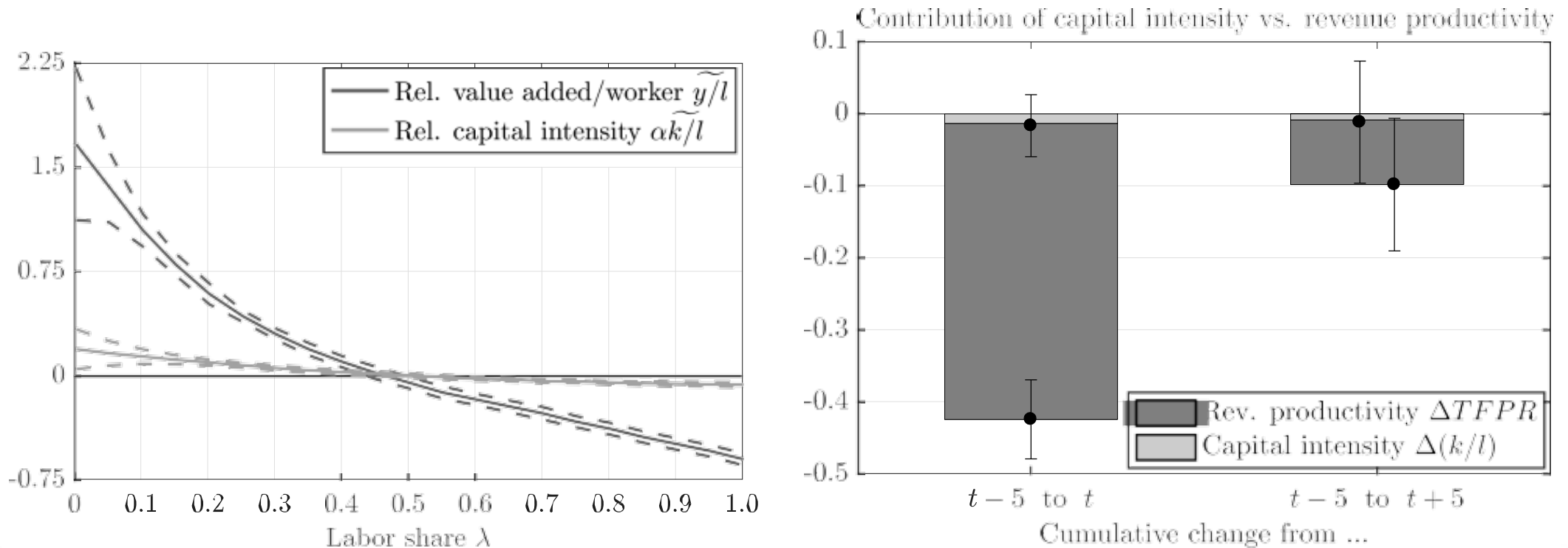
Dynamics of wages and relative prices

Figure 6: Dynamics of wages and relative prices: *HP* vs. Non-*HP* firms



Contribution of capital intensity

Figure 7: Relative capital intensity in the cross section and over time: *HP* vs. Non-*HP* firms



Economic Evidence of Labor Market Monopsony: The Role of Antitrust

Ioana Marinescu

University of Pennsylvania
School of Social Policy & Practice

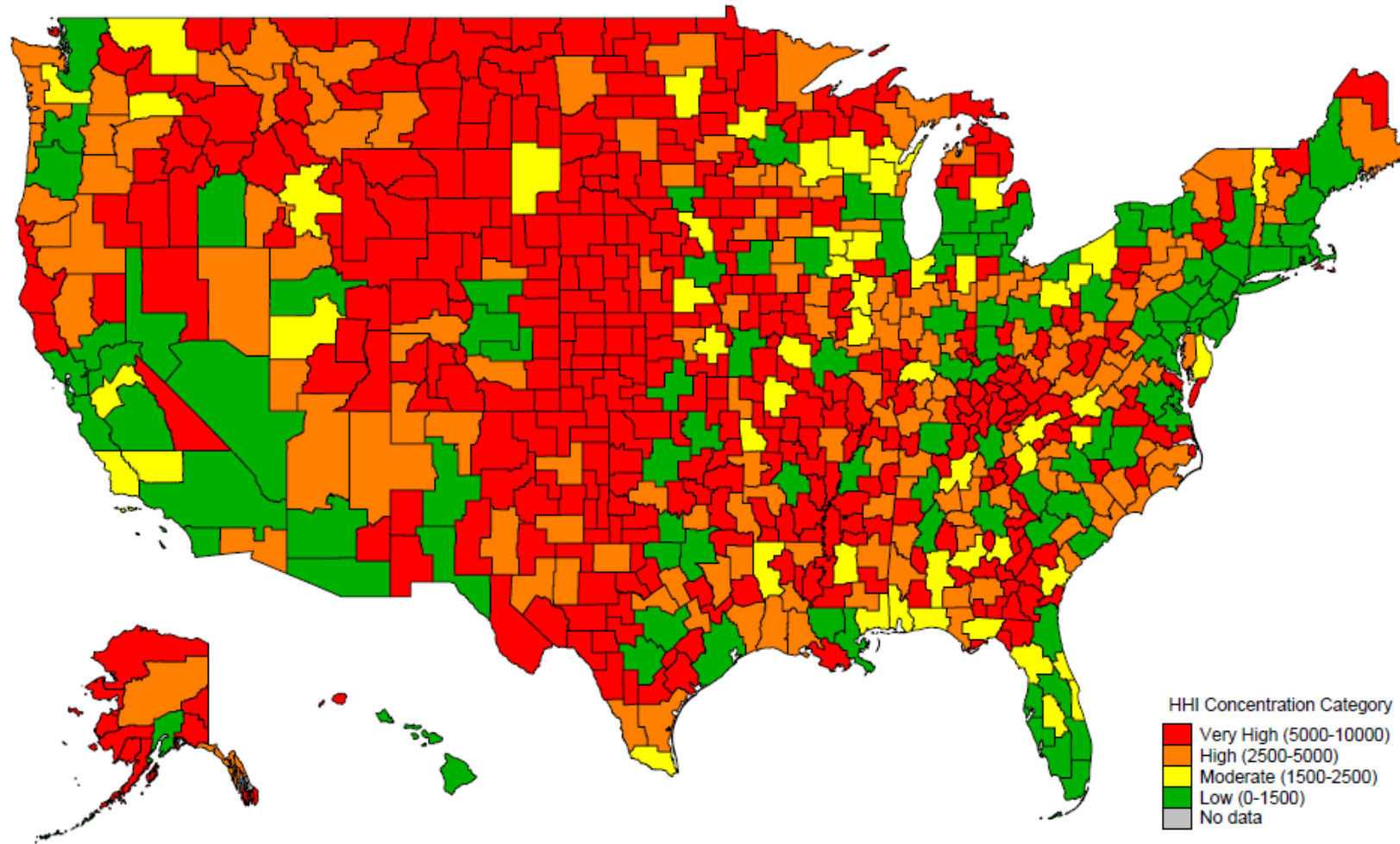


Legal significance of labor market concentration

- The same HHI threshold applies to seller and buyer power (Horizontal Merger Guidelines, 2010).
- Labor market: buyer power.
- Define a labor market by a combination of occupation (SOC-6), commuting zone and quarter: e.g. job vacancies for registered nurses in Washington DC in the first quarter of 2016.



60% of US labor markets are highly concentrated



- Average HHI by commuting zone from Azar, Marinescu, Steinbaum and Taska (2018), using 2016 vacancy data from Burning Glass Technologies. Labor market defined by CZ-quarter-SOC6.



Higher concentration is associated with lower wages

- Using panel data from CareerBuilder.com: we find that a 10% higher HHI is associated with 0.4% to 1.5% lower posted wages (Azar, Marinescu, and Steinbaum, 2017).
- Negative association between wages and concentration confirmed in two independent studies with different data & market definitions: Benmelech et al. (2018), Rinz (2018).



Issue 1: how sure can we be that concentration decreases wages?

- HHI is only a proxy for labor market power, & HHI can be correlated with other factors that lower wages.
- The negative coefficient of HHI on wages is robust to:
 - controlling for the state of the labor market as measured by labor market tightness (vacancies / applications) in Azar et al. (2017)
 - Instrumenting HHI (Azar et al., 2017; Rinz, 2018)
 - Controlling for firm productivity (Benmelech et al., 2018)
- Not perfect experiments but evidence is consistent.



Issue 2: how sure can we be that market definition is appropriate?

- Empirically, 3 studies quoted above use very different market definitions (occupation vs. industry, county vs. commuting zone, etc.) and find consistent negative associations between wages and HHI.
- We can use labor market version of the SSNIP test: if the elasticity of labor supply is below critical elasticity, the market is well defined, & otherwise it is too broad.
 - Labor supply elasticity to the individual firm is typically below 2 (Manning, 2011), & experiments in online environments show an elasticity of only 0.1 (Dube et al. 2018).
 - Low labor supply elasticity is strong evidence for imperfect competition (monopsony). It means individual firm can be a market in itself, so SOC6 by CZ by quarter market definition is likely to be conservative



Merger analysis

- Sales-based HHI & labor market HHI are distinct, so a separate labor market analysis is needed:
 - e.g. a firm that sells in a national market can have little *product* market power, but a lot of *labor* market power in local areas where it hires most workers in a given occupation.
- Hovenkamp and Marinescu (2018) discuss how labor market effects can be incorporated in a merger review using HHI thresholds from the Horizontal Merger Guidelines 2010.
 - Anti-poaching & non-competition agreements should also be taken into account.



Conclusion

- The majority of US labor markets are highly concentrated.
- Labor market concentration is associated with lower wages.
- Antitrust enforcement can use this evidence & readily take into account anticompetitive effects in the labor market by adapting existing tools.



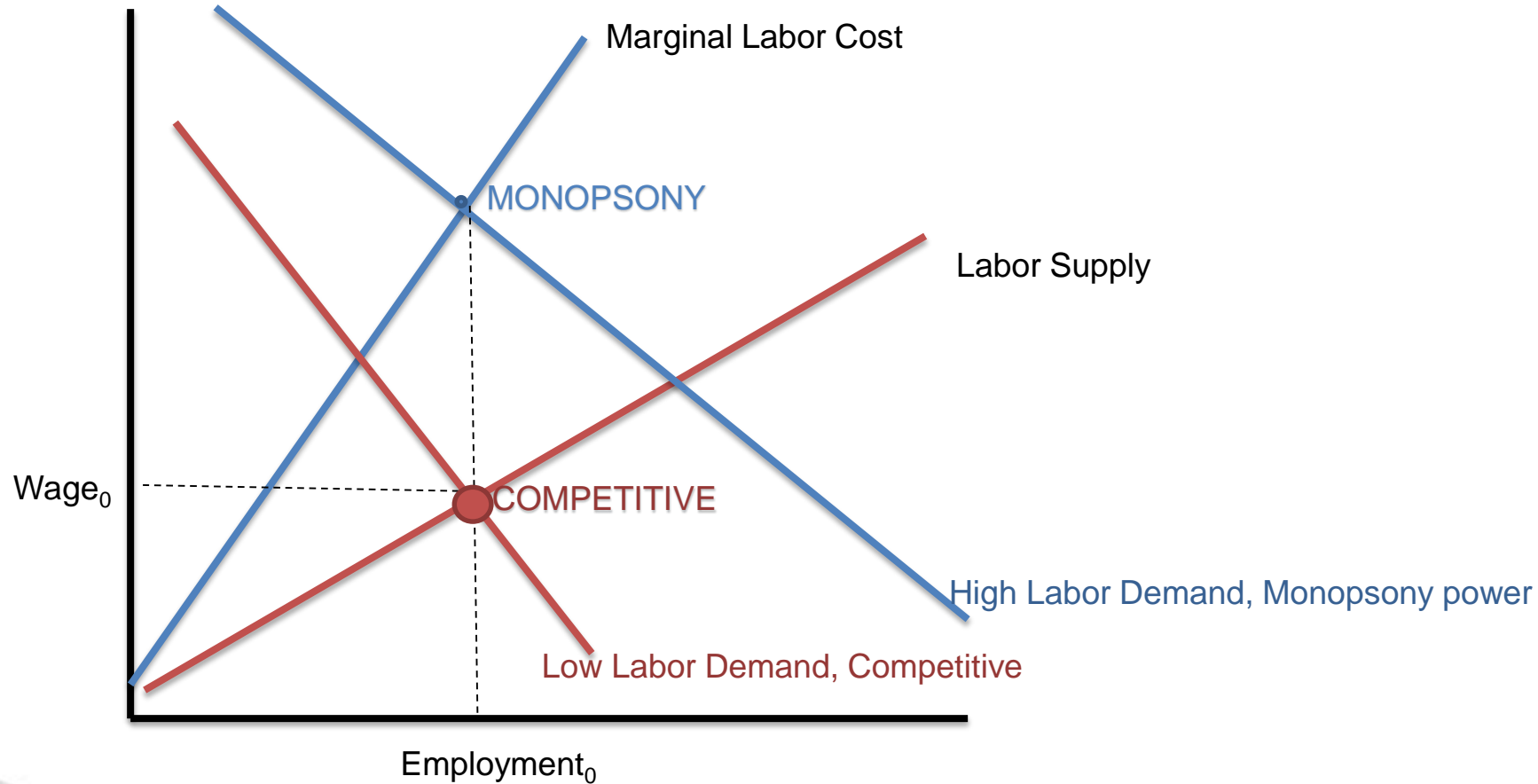
Economic Evidence of Labor Market Monopsony: Discussion of the Evidence

Nancy L. Rose

Massachusetts Institute of Technology
Department of Economics



Do Lower Wages Reflect Lower Demand for Labor or Monopsony Power?



Economic Evidence of Labor Market Monopsony

Robert Topel

University of Chicago

Booth School of Business

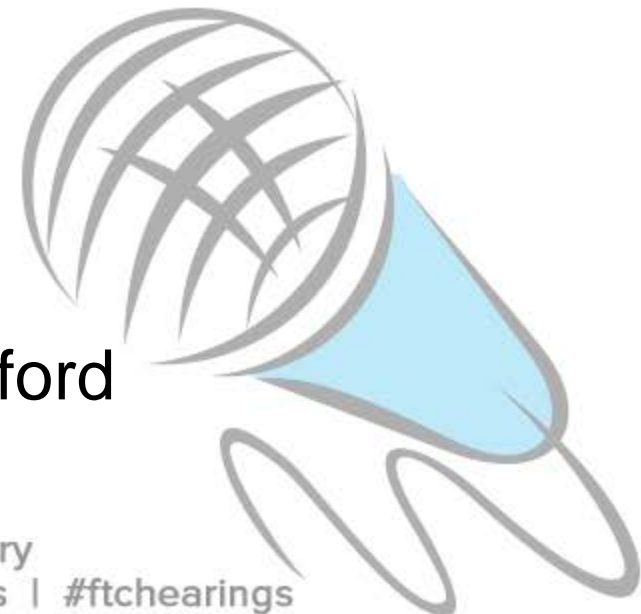


Economic Evidence of Labor Market Monopsony

Panel Discussion

Matthias Kehrig, Alan Krueger,
Ioana Marinescu, Nancy Rose,
Robert Topel

Moderators: Devesh Raval & Jeremy Sandford



Break

11:25-11:35 am



Labor Markets and Antitrust Policy

Session moderated by:

Derek W. Moore

Federal Trade Commission
Office of Policy Planning



Labor Markets and Antitrust Policy

Martin Gaynor

Carnegie Mellon University

Heinz College



Overview

- There is a lot of concern about slow wage growth and worker earnings in the US, particularly for low wage workers
 - The causes for this are not well understood
 - Growing monopsony power in labor markets is one possibility
- There is some evidence of monopsony power in US labor markets
 - Recent aggregate studies of labor market concentration and wages do not provide much evidence on this one way or another
 - Nonetheless, quite a few other studies have found evidence of monopsony power
 - Fast food workers, nurses, teachers, ...
 - Recent evidence of extensive use of no-poach agreements in some industries, wage fixing, non-competes
 - Declining labor market dynamism, unionization weaken restraints on employer monopsony power



Policy

- We do not have much evidence on whether monopsony power is growing
- We do not have evidence on whether monopsony power is an antitrust problem in the aggregate
 - Even if monopsony power in labor markets is pervasive, we don't know what led to it
 - Specifically, was the monopsony power acquired by firms succeeding naturally, or via anticompetitive mergers or practices?
 - Recent evidence on hospital mergers
- Antitrust is not the only policy lever to address issues in labor markets



What should antitrust agencies consider doing? Generate evidence

- Merger retrospectives looking at labor markets
 - To what extent did sell side concerns address the buy side as well? To what extent did they not (e.g., Grifols/Biotest; Ebay/Intuit)?
 - Are there changes over time? Does labor market monopsony via merger appear to be more of an issue now than in the past?
 - Has antitrust been underenforced against mergers based on labor market issues?
- Merger prospectives
 - Add analysis of labor market impacts to selected merger reviews
 - Examine if/how this affects enforcement
- Labor market studies
 - In-depth, careful studies of key labor markets (analogous to sell side industry studies)
 - To what extent is monopsony power present in specific labor markets?
 - In what ways does monopsony power manifest itself?
 - What are the static effects (wages, other compensation, work effort,...)?
 - What are the dynamic effects (reduced investment in human capital, movement of high skill workers,...)?
 - How long lasting is monopsony power?
 - What are the key sources of monopsony power? Key threats to monopsony power?



What should antitrust agencies consider doing? Enforcement

- Monopsony causes harm to competition
 - Harm to competition/“Trading partner welfare” standard
- No brainers
 - Collusion
 - Wage fixing (e.g., Your Therapy Source LLC; Todd v. Exxon; US v Adobe; US v Arizona Hospital)
 - No-poaching agreements (e.g., In re High-Tech; Law v NCAA)
 - Agencies already taking action
- Not as straightforward
 - Non-beneficial non-competes (e.g. low skilled workers)
 - No obvious efficiencies
 - But, have to show harm
- Mergers
 - Revisit Horizontal Merger Guidelines re monopsony power
 - Add analysis of labor market impacts to merger analysis
 - Examine to what extent that affects how mergers are treated
- Consider whether FTC rulemaking authority might be productively applied



Competition policy

- A constellation of actors and policies
 - Federal antitrust agencies
 - Enforcement
 - Research
 - Policy analysis
 - Communication, coordination
 - Other Federal agencies, Congress, States, Market participants
 - State attorneys general
 - Antitrust
 - Broader authority than antitrust (e.g., is a noncompete stricter than necessary)
 - Federal, state agencies
 - Monitoring, oversight, regulation
 - Federal, state legislatures
 - Monitoring, legislation



Summary

- There are undoubtedly issues with monopsony power in labor markets
 - How extensive these are, and whether they've been growing, is not clear
- What to do?
 - Generate more evidence
 - Retrospectives
 - Labor market studies
 - Prospectives
 - Enforcement
 - Stop obviously bad stuff
 - Examine and learn about labor market issues in mergers
 - Consider rulemaking
 - Competition policy
 - Broad set of actors; need to communicate and coordinate
 - Policy toward labor markets more broadly
 - Antitrust a piece of the puzzle
 - Not the only piece



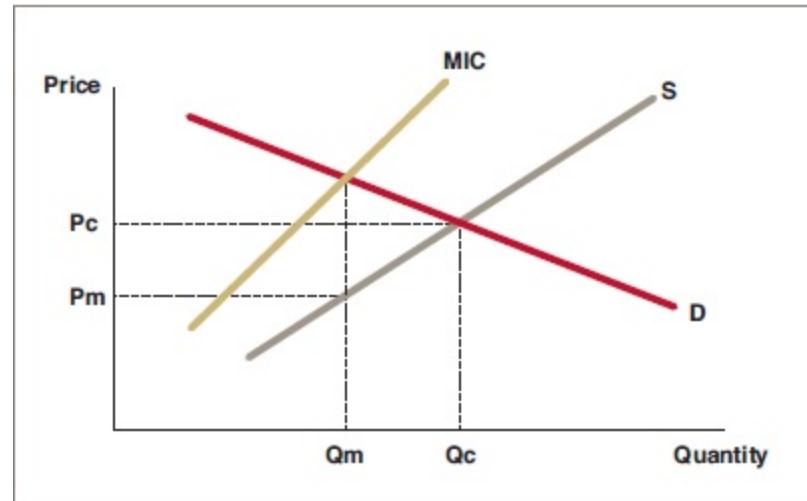
Labor Markets and Antitrust Policy: Labor Monopsony and the Consumer Welfare Standard

Jonathan M. Jacobson

Wilson Sonsini Goodrich & Rosati



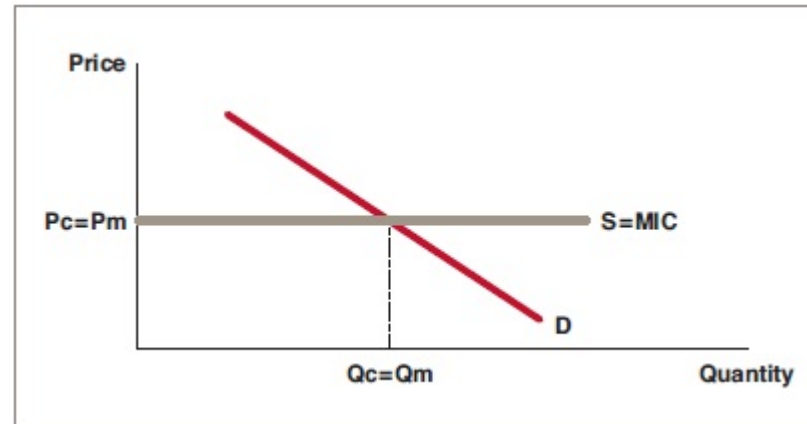
Monopsony requires an upward-sloping supply curve



- A rational monopsonist profits by decreasing the quantity purchased.
 - Quantity is reduced to Q_m , the point where industry demand and the monopsonist's marginal input cost intersect.
 - Because the supply curve (and marginal input cost curve) slope upwards, this lowers price to P_m , and creates a deadweight loss.



Monopsony requires an upward-sloping supply curve



- If the supply curve is flat (as in the diagram), or is downward sloping, lowering the price by reducing quantity does not work.
- Many traditional industrial markets enjoy significant economies of scale; that translates to a flat or downward-sloping supply curve at relevant output levels.
 - Reducing the quantity purchased can reduce or eliminate cost savings from scale economies, raising prices.
- That is not the case in labor markets, which almost invariably have upward-sloping supply as the best (and lowest cost) workers are hired first and, at the margin, more must be paid to secure the relevant talent.
- So monopsony can be a real problem in labor markets.

Is labor monopsony a competition problem?

- Literature seems unanimous that labor's share of GNP has been declining and that wages have largely stagnated notwithstanding the post-2008 recovery.
- Several analyses attribute this to increased concentration in labor markets.
- The underlying analyses are a good deal more robust, but they also bring back echoes of the SCP paradigm that was the almost-unanimous economic consensus throughout the 50s and 60s and into the early 70s.
- But the work of Demsetz, Manne, Alchian and others put the SCP paradigm into significant doubt, and its importance in competition analysis has now dwindled close to zero.
- Do the new analyses simply revive the SCP construct in labor markets? Or have they overcome the defects in the original Bain-inspired studies?
 - And if concentration matters in buy-side labor markets, what are the implications for sell-side markets?



Is labor monopsony a competition problem?

- Anecdotal evidence seems inconsistent with attributing labor wage insufficiency to market concentration.
- Consider:
 - Silicon Valley, the subject of many if not most of the accusations of increased concentration, is where wages are generally the highest.
 - Of course, the no poaching cases suggest that, even there, wages could be higher.
 - Fox is suing Netflix for poaching employees.
 - Amazon just increased its minimum wage to \$15.
 - Wage stagnation seems worse in more traditional industrial markets, where there is some but much less discussion of increases in concentration.



Where labor monopsony is a competition problem, the consumer welfare standard is not well suited to address it

- The consumer welfare standard works well in generating good antitrust outcomes in the vast majority of cases.
- But not monopsony.
- Why?
 - The consumer welfare standard is based on the assumption that lower consumer prices are the goal to be achieved.
 - But a labor monopsonist will (by definition) reduce its costs by paying less for labor. Unless it reduces sell-side output as well, those lower costs will result in lower prices for consumers.
 - Typically lower input quantities will mean lower sell-side output as well, but if wages are simply lowered and the payroll headcount remains unchanged, sell-side output may not be affected.
 - If sell-side output is restricted, then consumer prices will rise and the CW standard will appropriately condemn the effect.
 - So rote application of the CW standard to labor cases is complicated and risks generating confusing and possibly bad results.



Where labor monopsony is a competition problem, the consumer welfare standard is not well suited to address it

- Is there a better standard?
- Yes. We should focus on market output (or quantity).
- Labor monopsony reduces labor output.
- No poach agreements reduce labor output.
- As do antitrust problems on the selling side.
 - See *Another Take on the Relevant Welfare Standard for Antitrust*, Antitrust Source, Aug. 2015.



Where labor monopsony is a competition problem, the consumer welfare standard is not well suited to address it

- Antitrust has some tools to address labor wages.
 - Pursuing truly naked no poach cases;
 - More prominent consideration in merger reviews.
 - Including closer scrutiny of efficiency claims arising from planned firing of employees.
- But the search for an antitrust solution should not detract from non-competition solutions.
 - Banning some employee covenants not to compete;
 - Banning franchise no poach arrangements irrespective of competitive effect;
 - Requiring greater wage transparency.



Labor Markets and Antitrust Policy

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Labor Markets and Antitrust Policy

Panel Discussion

Martin Gaynor, Renata Hesse,
Jonathan Jacobson, Eric Posner,
Evan Starr

Moderator: Derek Moore



Lunch Break

1:00-2:00 pm



What Can *U.S. v. Microsoft* Teach About Antitrust and Multi-Sided Platforms?

Session moderated by:

William F. Adkinson, Jr.
Federal Trade Commission
Office of Policy Planning



What Can *U.S. v. Microsoft* Teach About Antitrust and Multi-Sided Platforms?

Daniel L. Rubinfeld

New York University School of Law

University of California, Berkeley

School of Law



What Can *U.S. v. Microsoft* Teach About Antitrust and Multi-Sided Platforms?

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What Can *U.S. v. Microsoft* Teach About Antitrust and Multi-Sided Platforms?

Randal C. Picker

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Leah Brannon

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What Can *U.S. v. Microsoft* Teach About Antitrust and Multi-Sided Platforms?

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Panel Discussion

Leah Brannon, Susan A. Creighton,
Douglas Melamed, Randal C. Picker,
Daniel L. Rubinfeld, Timothy Wu

Moderator: William F. Adkinson, Jr.



Break

3:45-4:00 pm



Do the U.S. and Europe Treat Competition Cases Involving Platforms Differently?

Session moderated by:

Maria Coppola

Federal Trade Commission
Office of International Affairs



Do the U.S. and Europe Treat Competition Cases Involving Platforms Differently?

Simon Constantine

Competition & Markets Authority (UK)



Do the U.S. and Europe Treat Competition Cases Involving Platforms Differently?

Nicolas Petit

University of Liège School of Law



Do the U.S. and Europe Treat Competition Cases Involving Platforms Differently?

Nicholas Economides
New York University
Stern School of Business



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Joshua Wright

George Mason University
Antonin Scalia Law School



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Charles River Associates



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Panel Discussion

Cristina Caffarra, Simon Constantine,
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