Memorandum of Understanding on Labor Issues in Merger Investigations
DOJ-Antitrust, FTC, DOL, NLRB

The Department of Justice Antitrust Division ("ATR") and the Federal Trade Commission ("FTC") (together, the "Antitrust Agencies") and the Department of Labor ("DOL") and the National Labor Relations Board ("NLRB") (together, the "Labor Agencies") share an interest in protecting American workers and promoting fair competition in labor markets.

To enhance the Antitrust Agencies' ability to enforce the antitrust laws, including the Hart-Scott-Rodino ("HSR") Act, the Antitrust Agencies and Labor Agencies enter into this Memorandum of Understanding ("MOU"), which supplements, and does not supersede, the already existing bilateral agreements between the agencies.[1]

I.   Labor Information Sharing Protocol

Investigating a proposed acquisition under the antitrust laws often involves examining whether the effect of a merger may be to substantially lessen competition for labor. The Antitrust Agencies may use various methods to investigate the potential impacts of mergers and acquisitions on labor markets, including:

1. Soliciting information from relevant worker stakeholders and organizations.
2. Seeking the production of information and data related to labor markets in voluntary access letters and Requests for Additional Information and Documentary Material (Second Requests) issued to filing entities.
3. Searching publicly available sources of information made available by the DOL, including worker and employer statistical data, as well as information on labor standards enforcement activity by the Wage and Hour Division ("WHD") and the Occupational Safety and Health Administration ("OSHA"). See Appendix A.

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[1] *Memorandum of Understanding Between the U.S. Department of Justice and U.S. Department of Labor* (March 10, 2022), https://www.justice.gov/media/1212071/dl?inline;
Memorandum of Understanding Between the U.S. Department of Justice and the National Labor Relations Board (July 26, 2023), https://www.justice.gov/media/1235251/dl?inline;
Memorandum of Understanding Between the U.S. Department of Labor and the Federal Trade Commission (Aug. 30, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/23-mou-146_oasp_and_ftc_mou_final_signed.pdf;
Memorandum of Understanding between the Federal Trade Commission (FTC) and the National Labor Relations Board (NLRB) Regarding Information Sharing, Cross-Agency Training, and Outreach in Areas of Common Regulatory Interest (July 19, 2022),
https://www.ftc.gov/system/files/ftc_gov/pdf/ftcnlrb%20mou%2071922.pdf.

4. Searching publicly available sources of information made available by the NLRB, including enforcement and representation cases involving the entities at issue, and/or others in the relevant labor markets. See Appendix B.

Under preexisting bilateral MOUs, the Antitrust Agencies may also contact the NLRB (Associate General Counsel of the General Counsel's Office) and the DOL (Assistant Secretary for Policy) to schedule consultations to discuss information sharing, as well as to seek technical assistance, as appropriate, on labor and employment law matters in merger review, including in the resolution of labor market merger investigations.

The Antitrust Agencies and the Labor Agencies are committed to working together to ensure all relevant and appropriate information and expertise can be used to facilitate the Antitrust Agencies' ability to assess the potential impacts of mergers and acquisitions on labor markets. To that end, the Labor Agencies agree to promptly meet with the respective Antitrust Agency upon request and provide technical assistance, as well as additional information and data, as appropriate.

II.   Training

The Labor Agencies also agree to provide training to appropriate personnel from the Antitrust Agencies, subject to agency resources and any applicable legal requirements. The DOL will train appropriate personnel from the Antitrust Agencies on the issues under their jurisdiction. The NLRB will train appropriate personnel from the Antitrust Agencies on the duty to bargain in good faith, successor bargaining obligations, and unfair labor practices, among other topics.

III.   Bi-Annual Coordination Meetings

The Antitrust Agencies and the Labor Agencies will endeavor to meet bi-annually to discuss implementation and coordination of the activities described in this MOU.

IV.   Previous Agreements

This MOU supplements, and does not supersede, the previously identified bilateral agreements between the Labor Agencies and Antitrust Agencies. All provisions related to the information sharing in those agreements, including but not limited to provisions on maintaining confidentiality and all privileges and protections, privacy and data security, and the continued application of all existing statutory, regulatory, and policy requirements governing the disclosure of nonpublic information, will be followed in connection with any information sharing pursuant to this agreement.

V.   Legal Effect

Nothing in this MOU is intended to diminish or otherwise affect the authority of any agency to implement its respective statutory functions, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person. Each agency is responsible for funding efforts to fulfill their
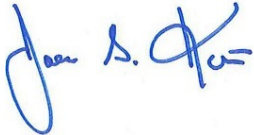
respective roles and responsibilities. This agreement does not itself authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the agencies to expend appropriations or enter into any contract or other obligations.

VI.   Amendment and Termination

This agreement will take effect immediately once signed by each of the agencies. This MOU will expire five (5) years from the effective date and does not modify the expiration dates for the previously identified bilateral agreements between the agencies. Renewal of this agreement may be accomplished by written agreement of each of the agencies. This agreement may be amended or modified upon written agreement by each of the agencies to the agreement. The agreement may be terminated upon ninety (90) days written notice by any agency.

This MOU is executed this 28th day of August, 2024.

U.S. DEPARTMENT OF JUSTICE

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APPENDIX A: Department of Labor Data

The following datasets are publicly available and are available to be used by teams conducting antitrust investigation into labor markets:

Department of Labor Worker and Employer Data

The DOL's Bureau of Labor Statistics (BLS) and Employment and Training Administration (ETA) collect vast sets of labor and employment data.

Name	Data Captured	Geography
Occupation Employment and Wage Statistics (OEWS)[2]	Employment figures; mean hourly wages; mean annual wages; and 10th, 25th, 50th, 75th, and 90th percentiles for hourly and annual wages.	Data is at the Metropolitan Statistical Area (MSA) level using six-digit Standard Occupational Classification (SOC) codes. OEWS produces employment and wage estimates annually for approximately 830 occupations. These estimates are available for the nation as a whole, for individual states, and for metropolitan and nonmetropolitan areas; national occupational estimates for specific industries are also available.
Quarterly Census of Employment and Wages (QCEW)[3]	Monthly employment counts; quarterly estimates of average weekly wages, number of establishments doing business, and total quarterly wages. Quarterly count of employment and wages reported by employers covering about 95 percent of U.S. jobs, available at the county, MSA, state and national levels by industry.	Data is available by county and at least four-digit North American Industry Classification System (NAICS) code.
O*NET[4]	Reports a variety of data about the skills and knowledge required for	Maintained by a regularly updated database of occupational

[2] U.S. BUR. OF LAB. STATS., *Occupational Employment and Wage Statistics*, https://www.bls.gov/oes/.
[3] U.S. BUR. OF LAB. STATS., *Quarterly Census of Employment and Wages*, https://www.bls.gov/qcew/.
[4] EMPLOYMENT & TRAINING ADMINISTRATION, *O'NET,* https://www.dol.gov/agencies/eta/onet.

Name	Data Captured	Geography
	various occupations; as well as the typical tasks and work activities performed. Occupations are broken down by SOC codes which are some cases broken into more detailed occupational categories (a total of over 900 titles).	characteristics and worker requirements information across the U.S. economy. It describes occupations in terms of the knowledge, skills, and abilities required as well as how the work is performed in terms of tasks, work activities, and other descriptors. O*NET describes occupations as they occur across industries and is national data, not by state or area.
State and Metro Area Employment, Hours, & Earnings (SAE)[5]	Reports number of employees, average weekly hours, average hourly earnings, and average weekly earnings by 2-digit NAICS code for MSAs and states.	Detailed industry estimates of employment, hours, and earnings of workers on nonfarm payrolls. SAE produces data for all 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and about 450 metropolitan areas and divisions. The Current Employment Statistics-National program produces estimates for the nation.
Job Openings and Labor Turnover Survey (JOLTS)[6]	Reports data on job openings, hires, and separations for a variety of different industries by most two-digit NAICS codes.	For the nation, estimates are available by most two-digit NAICS codes. Estimates at the total nonfarm employment level are available by state.
Business Employment Dynamics[7]	Reports quarterly data on private-sector gross job gains and gross job losses, further classified as opening, expanding, contracting, and closing establishments. Estimates are produced by 3-digits NAICS code and by state.	Data available by state and the entire nation.

[5] U.S. BUR. OF LAB. STATS., *State and Metro Area Employment, Hours, & Earnings,* https://www.bls.gov/sae/.
[6] U.S. BUR. OF LAB. STATS., *Job Openings and Labor Turnover Survey,* https://www.bls.gov/jlt/.
[7] U.S. BUR. OF LAB. STATS., *Business Employment Dynamics,* https://www.bls.gov/bdm/.

An Antitrust Agency's investigating team may use the publicly available data to examine a number of aspects of the labor markets under investigation, including the following:

a. Employment: QCEW[8] (monthly data for industries by county), SAE[9] (numbers of employees in industry by state/MSA), or OEWS data[10] (annual estimates of hourly wages by industry, by six-digit SOC code at MSA level)

b. Wages and Earnings: OEWS[11] (annual estimates of hourly wages by industry, by six-digit SOC code at MSA level) or SAE data (earnings in industry by state/MSA)

c. Qualifications: O*NET[12] data (education, experience, and training needed for jobs by job zone and SOC code), knowledge and skills

d. Number of Employers: QCEW[13] data (monthly data for industries by county)

e. Firings, Quits, and Other Worker Separations: JOLTS[14] data (monthly national data of hiring, firing, quits, and other worker separations by NAICS code and state data at the total nonfarm employment level)

f. Hours Worked: SAE[15] data (numbers of employees in industry by state/MSA and NAICS code)

DOL Enforcement Information

The DOL reports enforcement information on its website. The DOL's searchable enforcement data website includes information about closed WHD investigations and OSHA inspection and citation information.[16] WHD enforces federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act and other worker protection laws and reports information about its enforcement actions related to these laws. OSHA ensures safe working conditions for workers by setting and enforcing workplace safety standards. OSHA collects work-related injury and illness data from employers by establishment, within specific industry and employment size specifications. OSHA posts data from this annual data collection, including establishment address and company name.[17]

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[8] U.S. BUR. OF LAB. STATS., *Quarterly Census of Employment and Wages,* https://www.bls.gov/qcew/.

[9] U.S. BUR. OF LAB. STATS., *State and Metro Area Employment, Hours, & Earnings,* https://www.bls.gov/sae/.

[10] U.S. BUR. OF LAB. STATS., *Occupational Employment and Wage Statistics,* https://www.bls.gov/oes/.

[11] U.S. BUR. OF LAB. STATS., *Occupational Employment and Wage Statistics,* https://www.bls.gov/oes/.

[12] EMPLOYMENT & TRAINING ADMINISTRATION, *O*Net,* https://www.dol.gov/agencies/eta/onet.

[13] U.S. BUR. OF LAB. STATS., *Quarterly Census of Employment and Wages,* https://www.bls.gov/qcew/.

[14] U.S. BUR. OF LAB. STATS., *Job Openings and Labor Turnover Survey,* https://www.bls.gov/jlt/.

[15] U.S BUR. OF LAB. STATS., *State and Metro Area Employment, Hours, & Earnings,* https://www.bls.gov/sae/.

[16] DEP'T OF LABOR, *Enforcement Data,* https://enforcedata.dol.gov/Enfdata/search.php. The database also captures enforcement data for the Employee Benefits Security Administration (EBSA), the Mine Safety and Health Administration (MSHA), as well as the Office of Federal Contract Compliance Programs (OFCCP).

[17] DEP'T OF LAB., *Occupational Safety and Health Administration, Establishment Specific Injury and Illness Data (Injury Tracking Application),* https://www.osha.gov/Establishment-Specific-Injury-and-Illness-Data.

APPENDIX B: National Labor Relations Board Data

The National Labor Relations Board (NLRB) makes certain documents related to its enforcement activities pursuant to its National Labor Relations Act (NLRA) authority available on its public website.[18] The information available is for all of the NLRB's cases starting in 2011, which includes enforcement relating to unfair labor practices as well as representation cases. Information on the NLRB's public dockets include: unfair labor practice charges, administrative law judge decisions, NLRB decisions, among other documents. Information not available through the NLRB's public website may be requested by the Antitrust Agencies under the respective MOUs.

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[18] NAT'L LAB. REL. BD., *Case Search,* https://www.nlrb.gov/search/case/.