New Yorkers for a Fair Economy

Why the 21st Century Antitrust Act is Critical for New York Workers

April 21, 2022

INTRODUCTION

New York workers are facing stagnant wages, deteriorating working conditions, and fewer options to change employers due to increasing corporate consolidation and unchecked monopoly power.

According to a recent report by the U.S. Treasury Department, corporate power is costing workers about 20 percent of their wages. The report highlights three key ways in which corporations have increased their power over workers: increased consolidation, meaning workers have fewer options for changing jobs; increasing use of restrictive contracts such as non-compete and no-poach agreements; and "fissuring" of the workplace, as more employers rely on contractors, many of whom are misclassified as "independent."

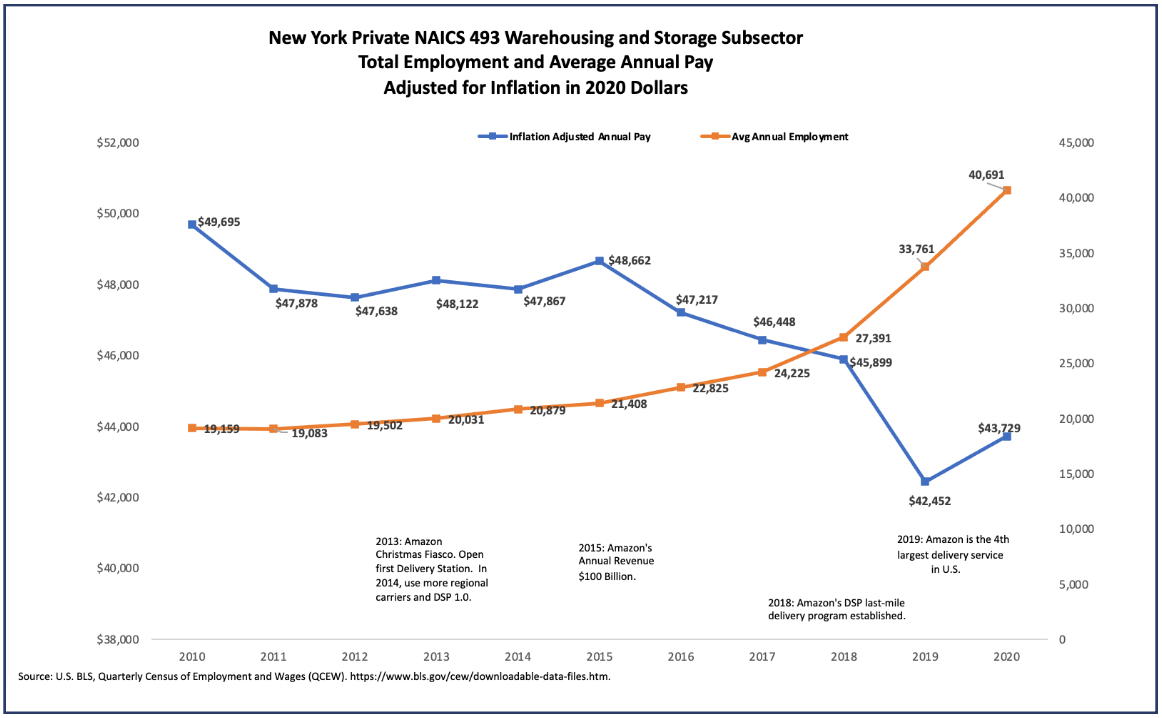
The report broadly fits within the growing body of research showing that as corporate concentration increases, workers are harmed, whether through wage cuts, degrading work conditions, wage theft or labor law violations. In fact, dominant employers have been shown to not only increase concentration across local labor markets, but to drive down the labor force participation rate, meaning some workers are pushed out of the labor market entirely due to corporate power.

Labor markets are more susceptible to corporate concentration because changing jobs is difficult and time-consuming, and many factors prevent workers from leaving a labor market, such as family obligations. Employers can therefore exert power over workers at much lower levels of concentration than current antitrust law takes into account.

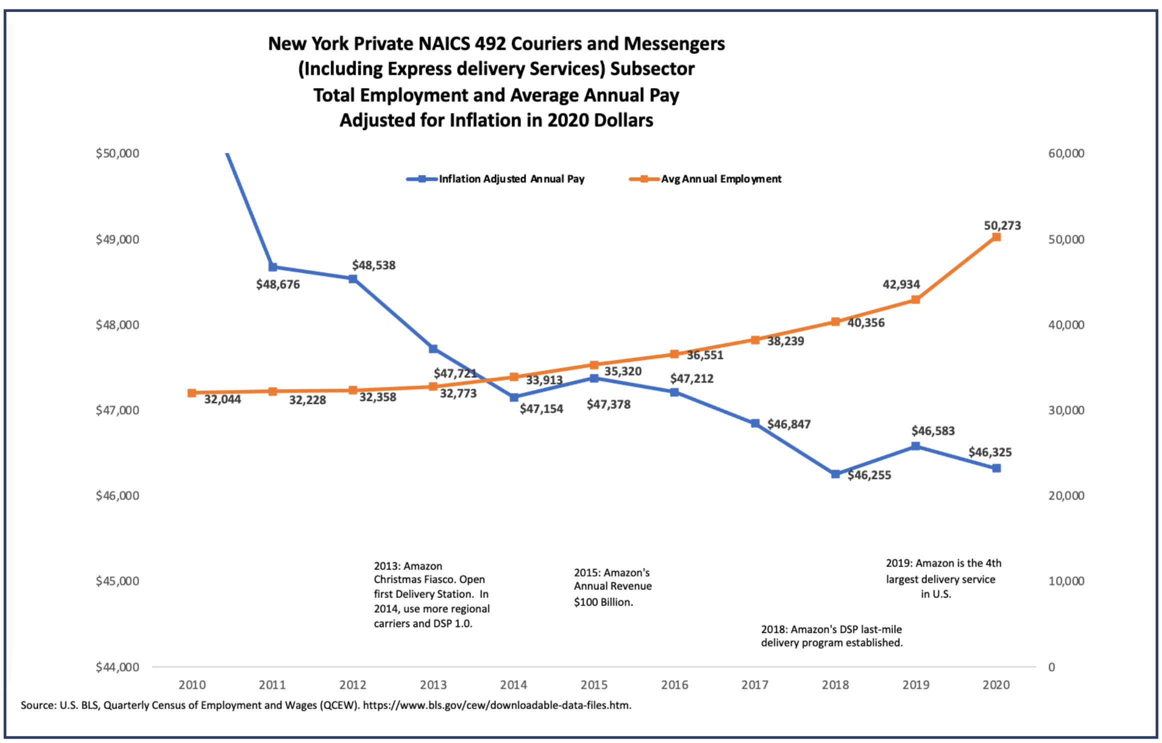
New York legislators can begin to rein in corporate power and give workers vital new protections and powers to challenge abusive corporations by passing the 21st Century Antitrust Act (S933A/A1812A). This legislation will ban restrictions on workers' ability to change jobs and hold dominant corporations accountable for anti-competitive practices that undermine wages and working conditions.

HOW LABOR DOMINANCE HARMS NEW YORKERS

New Yorkers have experienced these effects first-hand. New analysis of Bureau of Labor Statistics data by New Yorkers for a Fair Economy finds that the entrance of dominant firm Amazon into the market for both warehouse workers and delivery drivers lowered pay substantially in those industries. The growth of e-commerce—led by Amazon—has doubled employment in the warehouse industry. For warehouse workers, who have long benefited from strong wages in a heavily unionized industry, average annual pay (adjusted for inflation in 2020 dollars) fell by more than $6,000 as Amazon expanded between 2010 and 2020.



For drivers, the drop between 2010 and 2020 was nearly $5,000.



But wages are not the only thing pushed down by dominant corporations. Working conditions, too, suffer, as dominant firms can impose conditions such as longer working hours without facing competitive pressures to increase compensation.

Anthony Rosario, Teamsters Local 804 driver at UPS:
This used to be a job where you earned a middle-class wage and could spend your evenings and weekends with your family. Amazon is changing that. When a corporation grows this powerful, they can set wages and working conditions for the entire industry.

I am a Teamster. Amazon pays workers half as much as we make to do the same jobs. Amazon has increased quotas and started weekend deliveries. That has already trickled down to other companies and it is affecting my family. I am working longer hours and missing my kids' karate matches. It hurts to have to tell them I won't be there because I am working. How long can union companies hold out before either losing business or coming down to Amazon's level?

While dominating labor markets is technically illegal under current antitrust law, it is hardly ever prosecuted, and current antitrust precedent sets the bar for determining dominance in a market far too high, leaving too many workers subject to the powers of dominant employers.

New York workers have also been harmed by mega-mergers in the past, which have concentrated power in the hands of corporate executives in several sectors of the economy, allowing them to harm workers' rights with impunity.

The 2016 merger between Charter Communications Inc. and Time Warner Cable was illustrative of this dynamic. This merger created the second-largest cable company in the country and the largest in New York State. It was allowed after Charter made several promises to regulators at the Federal Communications Commission, including a promise not to place data caps on customers for seven years – in other words agreeing not to "*charge customers more if their internet use*" exceeded certain levels until mid-2023. The company went on to request that those conditions be dropped two years early.

Shortly after the merger, the company also began an attempt to "replace its union health insurance and pension plans with a company-run 401(k) pension account and health plan," and proceeded to crackdown on its unionized workforce represented by IBEW Local 3. IBEW Local 3 members went on the *longest strike* in U.S. history to oppose these efforts.

HOW THE 21ST CENTURY ANTITRUST ACT HELPS WORKERS

The 21st Century Antitrust Act would put workers back at the heart of antitrust law where they belong, by explicitly pointing to labor market dominance as worthy of antitrust scrutiny and prohibiting practices that corporations use to prevent workers from finding a better job or pushing for better working conditions.

First, the Act bans certain restrictive contracts – such as non-compete agreements – that harm worker mobility, freeing them to search for new employment if their pay or working conditions fall, in line with wider national efforts to restrict the power corporations have to prevent worker mobility.

It also says that any employer with a 30 percent market share can be held accountable by public antitrust enforcers or private actors for driving down wages and working standards. For example, if a dominant employer is able to use its power to degrade working conditions by extending hours without increasing compensation, they may face antitrust scrutiny.

These measures are in line with research showing that corporations exercising monopsony – or buyer – power over markets, including labor markets, can do so at much lower levels of concentration than current antitrust precedent takes into consideration.

Finally, the bill institutes a state-level merger review in New York, giving the attorney general critical powers to assess mergers and potentially block them if they will result in harms to workers, including layoffs. Too many mergers in recent years, in New York and across the country, have been approved based on the vague and often illusory promise of consumer benefits, while workers pay the very real price of seeing their jobs eliminated in the name of "efficiency." As mentioned in the earlier example, the harmful effects of the Charter-Time Warner merger could have been avoided.

New York would be the first state to so explicitly put labor protections into its antitrust law, setting a new standard for other states to follow. The Act also closes a critical loophole in New York antitrust law by allowing the prosecution of single-firm conduct.

WHY NOW?

The pandemic and subsequent supply shocks have laid bare the power that corporations have over the economy. The shuttering of small businesses and price increases that will disproportionately harm smaller firms will both lead to more power concentrating in the hands of dominant corporations. Now is the time to ensure that workers have the necessary laws at their disposal to ensure that they are treated fairly and that labor markets are competitive, enabling them to earn a fair wage for their labor.

About New Yorkers for a Fair Economy

[*New Yorkers for a Fair Economy*](#) (NYFE) is a coalition of labor organizations, small businesses, and immigrant and community organizations uniting to safeguard our communities from abusive practices of big corporations and achieve an economy that works for all New Yorkers. This coalition includes the frontline workers who care and provide for our communities, the small businesses that provide essential services that we need, the community organizations that protect the environment and the dignity of Black, brown, immigrant and gender-oppressed communities that make up our diverse state. NYFE is led by ALIGN (Alliance for a Greater New York) and joined by labor unions Teamsters Joint Council 16, Retail Wholesale, and Department Store Union, UAW Region 9A; community groups New York Communities for Change, Make the Road New York, and Restaurant Opportunities Center New York; and national research and advocacy organizations Institute for Local Self Reliance, American Economic Liberties Project, and Strategic Organizing Center.