

# Startup Noncompetes in the Shadow of Acquihring

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# はじめに

*“Masters are always and everywhere in a sort of tacit, but constant and uniform combination, not to raise the wages of labor above their actual rate.”*

— Adam Smith, *The Wealth of Nations* (1776, p.67)

# 生産物市場における競争制限的行為

Whinston (2008) “Lectures on Antitrust Economics”

- Price Fixing
- Horizontal Mergers
- Exclusionary Vertical Contracts

# 労働市場における競争制限的行為

Whinston (2008) “Lectures on Antitrust Economics”

- Price Fixing — 引き抜き防止協定 (No-Poaching Agreements)
- Horizontal Mergers — アクイハイング (Acquihiring)
- Exclusionary Vertical Contracts — 競業避止条項 (Non-Compete Agreements)

# 引き抜き防止協定

- 企業間で互いの労働者を引き抜かない旨を定める協定
- e.g., 米ハイテク企業間の引き抜き防止協定
- 転職市場において競争を制限するという意味で、反競争的
- 2016 年に FTC と DOJ が発表した “Antitrust Guidance for Human Resource Professionals” において、“per se illegal” とされる
- 2018 年に公正取引委員会が発表した「人材と競争政策に関する検討会」報告書において、「独占禁止法上、原則として問題となる」とされる
- 2025 年 6 月にフランス競争委員会が引き抜き防止協定を締結した企業に対し制裁金を賦課

# 引き抜き防止協定

- Shy and Stenbacka (2019)

- ▶ 引き抜き防止協定は産業利潤を増加させるが、労働者の厚生を悪化させる
- ▶ 社会厚生への影響は労働者のスイッチング・コストと転職に伴う生産性変化の大きさに依存

# アクイハイアリング

- 人材の獲得を狙う企業が、他企業から個人やチームの引き抜きを行うのではなく、会社全体を買収する慣行
- 2012 年に Google がデザイナーチームの獲得を目的として Milk を買収
- 他にも 100 件を超える事例が存在 (Boyacıoğlu, Özdemir and Karim, 2024)
- *“Facebook has not once bought a company for the company itself. We buy companies to get excellent people.”* — Mark Zuckerberg
- 転職市場において競合する企業数を減らすという意味で、反競争的
- 2023 年に FTC と DOJ が発表した “Merger Guidelines” において、労働者をめぐる競争への影響について言及

# アクイハイアリング

- Bar-Isaac, Johnson and Nocke (2025)
  - ▶ アクイハイアリングは専門的な労働市場において需要独占力 (monopsony power) を増強する手段
  - ▶ アクイハイアリングによって労働者の配分の非効率性が発生する可能性
- Benkert, Letina and Liu (2025)
  - ▶ 競合する 2 社が別の市場で操業するスタートアップに対して順に買収オファー
  - ▶ 競合他社がアクイハイアリングによって競争優位を得ることを防止するため、先にオファーを提示する企業が非効率なアクイハイアリングを実施する可能性



# 競争禁止条項

- 労働者が企業にとって不利益となる行動をしない旨を定めた条項
  - ▶ 転職の制限
  - ▶ スピンオフ（新規企業の設立）の制限
- アメリカでは、労働者の約 18%、3000 万人が課されていると推定
- 転職市場において競争を制限するという意味で、反競争的
- 2024 年に FTC が発表した “Final Rule” において、“per se illegal” とされる
- FTC の委員 2 名は抗議文書を発表し、“rule of reason” とすべきと主張
  - ▶ exclusive contract との類似性
  - ▶ 人的資本投資や研究開発投資の促進

# 競業避止条項

- Shi (2023)

- ▶ ジョブ・サーチ・モデルを構築し、労働市場の摩擦を考慮
- ▶ 競業避止条項が付帯する動学的な賃金契約と企業による人的資本投資
- ▶ 競業避止条項を課すことで自社の労働者が離職する際に新たな雇用主から補償金を得てレントを回収
- ▶ このレントの回収は社会的に過剰で、競業避止条項の規制は効率性を改善
- ▶ 最適政策は定量的には禁止にかなり近いものとなることを実証的に示す

- Shy and Stenbacka (2024)

- ▶ 企業が若年労働者に対して人的資本投資
- ▶ 雇用されている労働者の厚生と総雇用量の間のトレードオフ

# 既存研究の課題

- ① 組織内の効率性向上などをもたらす、競争制限的行為が正当化され得る要素を取り入れていない
  - ▶ Battiston, Espinosa and Liu (2024)
  - ▶ Mukherjee and Vasconcelos (2018)
- ② 競争制限的行為の間の相互作用を考慮していないため、ウォーターベッド効果を見落としている可能性がある
  - ▶ NCA and NPA: Mukherjee and Vasconcelos (2012); Tsubuteishi (2025b)
  - ▶ NCA and Acqui hiring: Tsubuteishi (2025a)

# Battiston, Espinosa and Liu (2024)

- 集合住宅向けに警備サービスを提供する民間企業のデータを用いて分析
- 顧客特有の経験は労働者の生産性と引き抜かれる確率を高める
- 企業は、労働者が顧客特有の経験を蓄積することを妨げて引き抜かれるリスクを減らすために、非効率な配置転換を行っていた
- 引き抜きを禁止する政策変更の後、企業は配置転換の頻度を大幅に減少させ、労働者の生産性が向上

# Mukherjee and Vasconcelos (2018)

- promotion signaling (Waldman, 1984b)
  - ▶ 労働者の能力に関する情報の非対称性が存在する場合、昇進は他の企業に対して、労働者の能力が高いことを示唆するシグナルに
  - ▶ 労働者に対する他の企業の支払い意思額が増加し、引き抜きを防止するためには昇進に伴い賃金を十分引き上げることが必要
  - ▶ 少しでも労働者の生産性が向上する昇進は実施されることが社会的に望ましい
  - ▶ ただし、生産性の向上の幅が小さく、生産性の向上による収入の増加よりも賃金引き上げによる費用の増加の方が大きいならば、昇進は実施されない
  - ▶ 昇進は社会的に過少となり、人材配置の非効率性が発生する可能性
- 解約金条項が労働者の引き留めのために必要な賃金引き上げの幅を小さくし、昇進が実施されやすくなって、人材配置の非効率性を緩和する可能性

# Mukherjee and Vasconcelos (2012)

- 競業避止条項の enforceability を  $p \in [0, 1]$  とモデル化
- 競業避止条項が強制されるのであれば、引き抜き防止協定から逸脱して協定が消滅した後も自社の労働者をめぐる競争は発生しない
- enforceability が高いほど、逸脱後自社の労働者をめぐる競争が発生することによる期待損失が小さいため、逸脱するインセンティブが強くなる
- 競業避止条項を部分的に認めることで、引き抜き防止協定の維持が不可能となり、社会厚生及び労働者の厚生が改善する可能性がある
- 競業避止条項に対する規制が引き抜き防止協定を誘発して（ウォーターベッド効果）、かえって社会厚生及び労働者の厚生を低下させる可能性を示唆

# Tsubuteishi (2025b)

- 企業による人的資本投資を導入し、労働者の厚生観点から望ましい競業避止条項に対する規制のあり方を分析
- 人的資本投資の促進 vs. 転職市場における競争の制限
- 静学的環境では、生産技術における人的資本の重要性が高い産業ほど、競業避止条項に対する規制はより**寛容**であることが望ましい
  - ▶ 人的資本の重要性が高いほど、競業避止条項による人的資本投資の促進に伴って労働者の厚生が改善する効果が増幅
- 動学的環境では、生産技術における人的資本の重要性が高い産業ほど、競業避止条項に対する規制はより**厳格**であることが望ましい可能性がある
  - ▶ 人的資本の重要性が高いほど、引き抜きのインセンティブが高まる
  - ▶ 引き抜き防止協定を誘発せずに、競業避止条項のより厳格な規制が可能に

- 競業避止条項がアクイハイアリングの実現に与える影響を分析
- スタートアップにおいて競業避止条項がアクイハイアリングへの対抗策として機能
- 競業避止条項はアクイハイアリングを誘発または抑制し、その結果、労働者の配分や労働者の厚生を改善する可能性
- 競業避止条項の規制はスタートアップを弱体化させ、ビッグテック企業によるアクイハイアリングを促進し、市場支配力の増大につながる可能性を示唆



# Introduction

- In this article, I examine two potentially anticompetitive practices in labor markets:
  - ▶ non-compete agreements (NCAs, noncompetes)
  - ▶ acquihiring
- Anticompetitive practices in labor markets have been mostly analyzed separately.
- However, NCAs and acquihiring are interlinked.
  - ▶ Firms seeking to hire talent from other firms weigh direct hiring (poaching) against acquihiring (Chen, Gao and Ma, 2021; Chen, Hsieh and Zhang, 2024).
  - ▶ NCAs serve as a legal barrier to direct hiring.
- Explore how NCAs and acquihiring are interrelated to derive insights into NCA regulation in industries where acquihiring is widely observed.

# Introduction

- NCAs have been important for some industries, including the high-tech sector.
  - ▶ a legal mechanism to protect firms' explicit or tacit knowledge by restricting job mobility of employees with technical expertise (Kräkel and Sliwka, 2009).
- At the same time, however, NCAs are also seen as an anticompetitive practice that bolsters monopsony power over employees.

# Introduction

- Why does a potential acquirer purchase the entire startup instead of individually hiring away talented employees?
- In the presence of NCAs, firms tend to choose acquihiring as an alternative strategy to circumvent the legal barriers imposed by NCAs (Boyacıoğlu et al., 2024; Chen et al., 2021; Chen et al., 2024).
- NCAs may be detrimental not only because they restrict labor mobility but also because they induce potentially anticompetitive acquihiring.
- However, in this article, I show that NCAs may prevent acquihiring, thereby improving worker allocation and enhancing worker welfare.

# Introduction

- This article contributes to the literature on the welfare impacts of NCAs.
- The novelty of the present article lies in exploring a model that captures the impact of NCA regulation on the realization of acquihiring within a single framework.
- I demonstrate that NCAs have not only negative effects but also positive effects on worker allocation and worker welfare by affecting the realization of acquihiring.
- The present article and Mukherjee and Vasconcelos (2012) differ in the focus although the qualitative implications for the welfare impacts of NCAs are similar.

# Introduction

- This article also contributes to the literature on startup acquisitions.
- It is most closely related to Bar-Isaac et al. (2025), which my model builds on.
- Another related paper is Benkert, Letina and Liu (2025).
- However, these papers do not consider the relationship between anticompetitive practices in labor markets explored in the present article.

# Model

- Players: a startup (firm  $s$ ), a potential acquirer (firm  $a$ ) and an employee.
  - ▶ The employee is initially hired by the startup.
- The employee generates a value of  $v_s$  for firm  $s$ .
- If she switches to firm  $a$ , she generates a value of  $v_a$  for that firm.
- When working for firm  $i \in \{a, s\}$ , she receives a wage payment  $w_i$ .

# Model

- All players are risk neutral.
- The employee's outside payoff is  $w^o$ .
  - ▶ the highest wage offer from competitive firms other than firm  $s$  and firm  $a$ .
- In the following, I assume that  $\min\{v_a, v_s\} > w^o$  to ensure that the employee chooses to work for one of the two firms in equilibrium.

# Model

- Firm  $s$  can offer an NCA to its employee (a take-it-or-leave-it offer).
- If the employee rejects the offer, she has no choice but to take the outside option.
- Even if she accepts the offer, the NCA is not necessarily enforced by a court.
- The probability of it being enforced is denoted by  $p \in [0, 1]$ .
  - ▶ the breadth of the legally recognized scope of NCAs
  - ▶ random court rulings (Baye and Wright, 2011; Eren and Mocan, 2018)



# 競業避止条項に関する仮定

- Starr, Prescott and Bishara (2021)

- ▶ 競業避止条項に関して交渉する労働者は 10% に過ぎない
- ▶ 約 1/3 の労働者はジョブ・オファーの受諾後に競業避止条項の提示を受ける
- ▶ 事前通知の場合労働者にとってより良い結果と関連するが、事後通知の場合相対的に不利な状況に置かれる

- Cowgill, Freiberg and Starr (2025)

- ▶ 労働者は高い賃金を求めて競業避止条項が課される仕事を選択しているという証拠は得られない
- ▶ 多くの労働者は雇用終了後に雇用者からなされる連絡以前に競業避止条項の存在を認識していない

# Model

- Firm  $a$  has two options to hire the employee: direct hiring and acquiring.
- If firm  $a$  chooses direct hiring, then the validity of the NCA, if any, is revealed.
- Firm  $a$  competes with firm  $s$  (wage-bidding) unless the NCA is valid.
  - ▶ Both firms simultaneously make wage offers  $w_a$  and  $w_s$  to the employee.
  - ▶ She chooses either to accept one of the offers or reject both.
- If the NCA is valid, firm  $a$  fails to directly hire the employee and cannot approach her afterward.
  - ▶ Only firm  $s$  makes a wage offer  $w_s$  to the employee.
  - ▶ She decides whether to accept it or not.

# Model

- If instead firm  $a$  chooses acquiring, acquisition bargaining takes place.
- The process is modeled as Nash bargaining.
- Firm  $a$  has bargaining power  $\alpha \in [0, 1]$ .
- If the bargaining succeeds,
  - ▶ only firm  $a$  makes a wage offer  $w_a$  to the employee, and
  - ▶ she decides whether to accept it or not.

# Model

- In the event that acquihiring fails, firm  $a$  attempts direct hiring with probability  $\delta$ .
  - ▶ delay and discounting
- If firm  $a$  cannot attempt direct hiring,
  - ▶ only firm  $s$  makes a wage offer  $w_s$  to the employee, and
  - ▶ she decides whether to accept it or not.
- If firm  $a$  can attempt direct hiring,
  - ▶ the game proceeds as in the case where the firm chooses direct hiring.
- Denote the outside payoff of firm  $a$  and firm  $s$  by  $t_a$  and  $t_s$ , respectively.

# Model

- Acquiring firm  $s$  itself does not confer any benefits on firm  $a$  over and above the value generated by the employee,  $v_a$ .
- Assume the tie-breaking rule that when firm  $a$  is indifferent between the two hiring strategies, the firm chooses direct hiring.

# Model

The timing of this game is summarized as follows.

- Stage 1: Given  $p$ , firm  $s$  decides whether to offer an NCA to its employee.
- Stage 2: Firm  $a$  chooses a hiring strategy.
  - ▶ Stage 2.1: Nash bargaining takes place.
  - ▶ Stage 2.2: Firm  $a$  attempts direct hiring with probability  $\delta$ .
- Stage 3: The validity of the NCA, if any, is revealed.
  - ▶ Stage 3.1: Wage-bidding takes place.

I use the Subgame Perfect Nash Equilibrium as the solution concept.

# Equilibrium characterization

- In my model, I do not take into account
  - ▶ the consideration for the NCA and
  - ▶ the process for firm  $s$  to hire the employee initially.
- Hence, it is always profitable for firm  $s$  to offer the NCA to its employee.
- In the following, I proceed with the analysis given that the NCA exists.
- I solve the model by backward induction.

# Equilibrium characterization

- First, consider the wage-bidding subgame.

## Lemma 1

Suppose wage-bidding takes place. Then, in the equilibrium of this subgame:

- if  $v_a > v_s$ , firm  $a$  hires the employee at a wage  $w_a = v_s$ ;
- if  $v_a < v_s$ , firm  $s$  retains the employee at a wage  $w_s = v_a$ .

The resulting outcome is efficient in that it maximizes social welfare (productive value).



# Equilibrium characterization

Suppose firm  $a$  has chosen direct hiring.

- With probability  $1 - p$ , the NCA is not valid.
  - ▶ The analysis is exactly as in the aforementioned wage-bidding subgame, and Lemma 1 applies.
- With probability  $p$ , the NCA is valid.
  - ▶ Firm  $s$  becomes a monopsonist over its employee, and thus she is retained by the firm at a monopsonistic wage of  $w^o$ .

# Equilibrium characterization

Now suppose instead that firm  $a$  has chosen acquiring.

- If firm  $a$  chooses acquiring but it does not succeed, then with probability  $\delta$ , the ensuing subgame involves wage-bidding unless the NCA is valid.
- With the remaining probability  $1 - \delta$ , the employee is retained by firm  $s$  at a wage of  $w^o$ .
- If bargaining over the acquisition price succeeds, this generates a joint payoff for the two firms of  $v_a - w^o$ .
- Nash bargaining implies that the acquisition occurs whenever the surplus  $v_a - w^o - [t_a + t_s]$  is positive and determines how this surplus is split.

# Equilibrium characterization

## Lemma 2

Suppose firm  $a$  chooses acquiring. Then, in the continuation equilibrium:

- Suppose that  $v_a > v_s$ . The acquisition occurs, and the employee is hired by firm  $a$  at a wage of  $w^o$ .
- Suppose that  $v_a < v_s$ . If  $v_s + \delta(1 - p)w^o > [1 + (1 - p)\delta]v_a$ , no acquisition occurs. Otherwise, the acquisition occurs, and the employee is hired by firm  $a$  at a wage of  $w^o$ .

# Equilibrium characterization

- To illustrate how acquihiring weakens competition most clearly, consider the case where  $v_a = v_s$ .
- If firm  $a$  chooses direct hiring, the firm's payoff is zero.
- If firm  $a$  chooses acquihiring, the acquisition succeeds and the firm earns a positive payoff.
- Hence, in equilibrium, firm  $a$  opts for acquihiring and successfully does so, leaving the employee's value unchanged while reducing worker welfare.

# Equilibrium characterization

Now consider firm  $a$ 's choice between acquiring and direct hiring.

- When  $p$  is high, firm  $a$  prefers acquiring because the firm will fail to directly hire the employee with high probability.
- When  $p$  is not too high, direct hiring may yield a higher expected payoff for firm  $a$ .

# Equilibrium characterization

- In this case, whether firm  $a$  chooses direct hiring over acquiring depends on  $v_a$ .
- If the NCA is not enforced, and firm  $a$  hires the employee through direct hiring, the firm pays a competitive wage, independent of  $v_a$ , to the employee.
  - ▶ Every unit increase in  $v_a$  results in an equivalent gain for firm  $a$ .
- Instead, if firm  $a$  hires the employee through acquiring, the firm pays a portion of  $v_a$  to firm  $s$  in the process of acquisition bargaining.
  - ▶ The gain from the increase in  $v_a$  is reduced.
- Therefore, when  $v_a$  is sufficiently high, firm  $a$  prefers direct hiring.

# Equilibrium characterization

- When the value of  $v_a$  is not high, firm  $a$  prefers acquiring.
- Hence, in such a case, firm  $a$  chooses acquiring whenever possible.
- The higher the value of  $v_a$ , the larger the joint payoff, which makes it easier to reach an agreement in acquisition bargaining.
- When  $v_a$  is low, acquiring is not feasible, in which case firm  $a$  chooses direct hiring from the tie-breaking assumption.
- Put together, firm  $a$  chooses acquiring when  $v_a$  takes an intermediate value.

# Equilibrium characterization

## Proposition 1

Let  $\tilde{p}$  be the value of  $p$  such that  $(1 - \alpha)(1 - \delta)(1 - p) - \alpha p = 0$ .

- Suppose that  $p$  is sufficiently low such that  $0 \leq p < \tilde{p}$ . Firm  $a$  hires the employee through direct hiring if  $v_a > \bar{v}_a$ , where

$$\bar{v}_a(p) \equiv v_s + \frac{\alpha\delta(1-p)(v_s - w^o)}{(1-\alpha)(1-\delta)(1-p) - \alpha p} (\geq v_s),$$

and through acquihiring if  $\underline{v}_a < v_a < \bar{v}_a$ , where

$$\underline{v}_a(p) \equiv \frac{v_s + \delta(1-p)w^o}{1 + \delta(1-p)} (\leq v_s).$$

No hiring occurs if  $v_a < \underline{v}_a$ . The employee always prefers direct hiring.



# Equilibrium characterization

## Proposition 1 (Continued.)

- Suppose that  $p$  is sufficiently high such that  $\tilde{p} < p \leq 1$ . Firm  $a$  hires the employee through acquihiring if  $v_a > \underline{v}_a$ . No hiring occurs if  $v_a < \underline{v}_a$ . The employee always prefers direct hiring.

# Equilibrium characterization

The equilibrium worker allocation can be socially inefficient for two reasons.

- First, firm  $s$  and firm  $a$  do not internalize the employee's loss caused by the restriction of labor market competition resulting from acquisition.
  - ▶ socially undesirable acquihiring
- Second, firm  $s$  does not internalize firm  $a$ 's and the employee's losses caused by the NCA in determining whether firm  $s$  offers it.
  - ▶ socially undesirable employee retention

# Effects of NCAs

- As a benchmark, consider the case where  $p = 0$  (Bar-Isaac et al., 2025).
- The NCA has no effect on labor market competition, and firm  $a$  may profitably choose direct hiring.
- Recall that wage competition leads to the efficient worker allocation.
- Acquihring can only distort the worker allocation or leave it unchanged.
- Therefore, the worker allocation is efficient when firm  $a$  chooses direct hiring but may be inefficient when the firm chooses acquihiring.
- Regarding worker welfare, the employee receives a competitive wage when firm  $a$  chooses direct hiring but a monopsonistic wage when firm  $a$  chooses acquihiring.

# Effects of NCAs

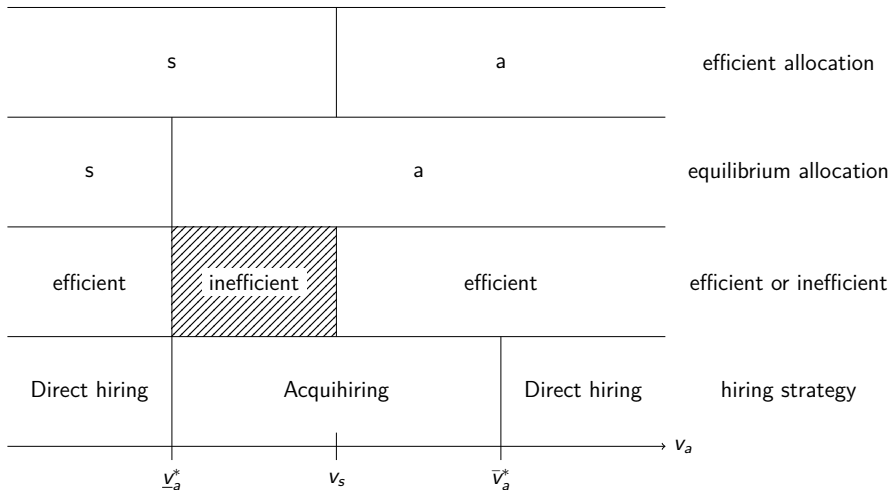


Figure 1:  $p = 0$

# Effects of NCAs

- Next, consider an opposite extreme case where  $p = 1$ .
- Firm  $a$  can never hire the employee through direct hiring due to the NCA.
- Without acquiring, firm  $s$  has monopsony power over the employee.
- Acquiring transfers the monopsony power from firm  $s$  to firm  $a$ .
- Therefore, acquiring occurs if and only if it is efficient.
- Consequently, complete acceptance of NCAs leads to the efficient worker allocation.
- The employee, by contrast, always receives a monopsonistic wage due to the complete lack of wage competition.

# Effects of NCAs

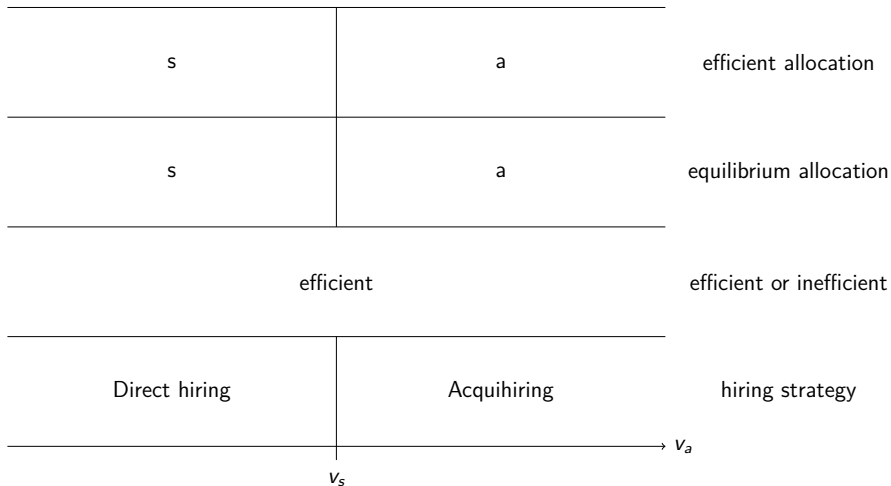


Figure 2:  $p = 1$

# Effects of NCAs

- A shift from no enforcement of NCAs to the full enforcement introduces a tension between social welfare and worker welfare.
  - ▶ Such a shift may improve social welfare but may decrease worker welfare.
- In what follows, I examine the partial relaxation of restrictions on NCAs and show that an increase in their enforceability may improve worker welfare.

## Proposition 2

The relaxation of restrictions on NCAs may have either of the following effects:

- preventing inefficient acquihiring, that is,  $\frac{\partial \bar{v}_a}{\partial p} > 0$  for all  $p \in (0, 1)$ ; or
- inducing efficient acquihiring, that is,  $\frac{\partial \bar{v}_a}{\partial p} > 0$  for all  $p \in (0, \tilde{p})$ .

# Effects of NCAs

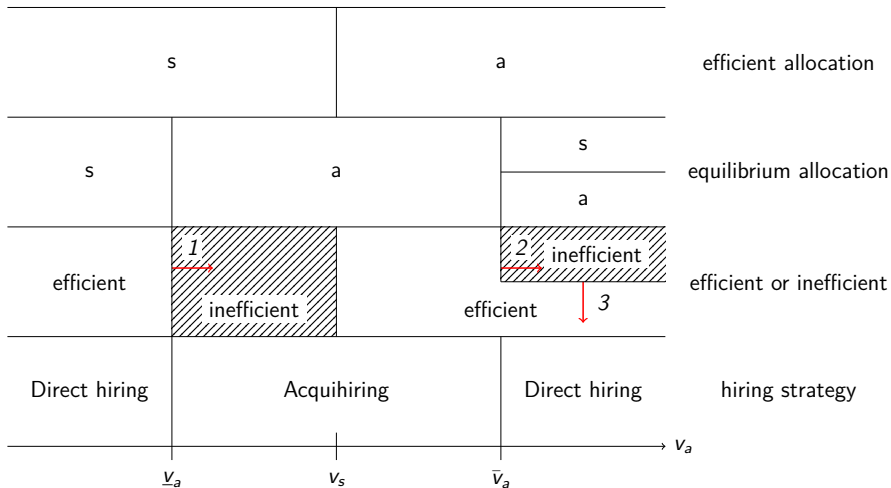


Figure 3:  $0 < p < \tilde{p}$



# Effects of NCAs

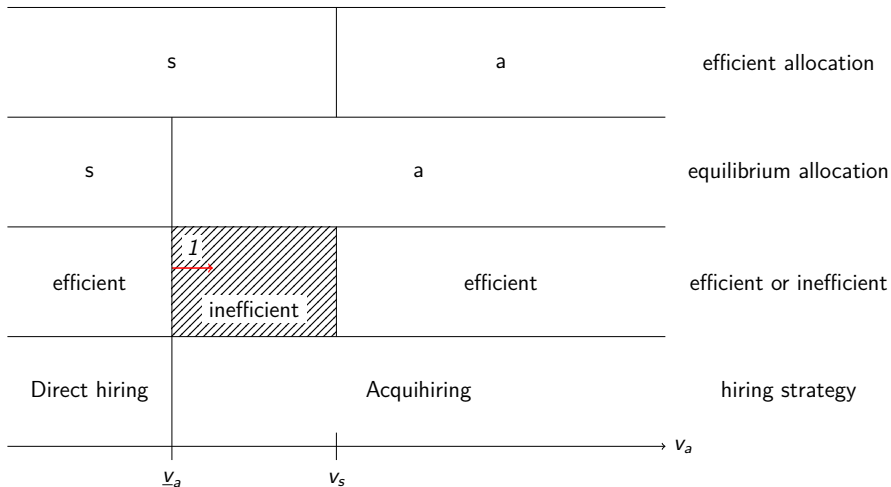


Figure 4:  $\tilde{p} < p < 1$

# Effects of NCAs

- First, consider the case where  $\underline{v}_a < v_a < v_s$ .
- The increase in the enforceability of NCAs raises the probability that firm  $s$  will become a monopsonist over the employee.
  - ▶ firm  $s$ 's outside payoff in acquisition bargaining  $\uparrow$
- Hence, it makes acquiring harder and thus may prevent inefficient acquiring.
- In this way, higher enforceability of NCAs may improve worker allocation.
- Furthermore, preventing acquiring promotes labor market competition and, consequently, enhances worker welfare.

# Effects of NCAs

- Second, consider the case where  $v_a > \bar{v}_a$  and the NCA is enforced.
- The increase in the enforceability of NCAs raises the probability that firm  $a$  will fail to hire directly.
  - ▶ make acquiring a more attractive strategy
- This may induce acquiring and thus prevent inefficient employee retention.
- In this way, higher enforceability of NCAs may improve worker allocation.
- However, inducing acquiring impedes labor market competition and thus reduces worker welfare.

# Effects of NCAs

- When firm  $a$  still chooses direct hiring even after the increase in the enforceability of NCAs, the higher enforceability reduces the likelihood of direct hiring.
- Hence, it distorts the worker allocation if  $v_a > \bar{v}_a$  and decreases worker welfare if  $v_a < \underline{v}_a$  or  $v_a > \bar{v}_a$ .
- In the case where  $v_s < v_a < \bar{v}_a$ , the enforceability of NCAs has no effect on the worker allocation or worker welfare.
  - ▶ However, it affects firms' outside payoffs in acquisition bargaining and, consequently, the acquisition price.

# Effects of NCAs

- Summarize the effects of NCAs on startups' profitability.
- In equilibrium of the model, the acquisition price increases with the enforceability.
- NCAs may not only enable startups to earn monopsony profits but also increase acquisition prices.

# Effects of NCAs

- In the literature, NCAs are noted as providing startups with several benefits:
  - ▶ wage suppression (US-Treasury, 2016; Starr, 2019; Balasubramanian, Chang, Sakakibara, Sivadasan and Starr, 2022)
  - ▶ securing returns on investments (Klein, 1998; US-Treasury, 2016)
  - ▶ the protection of intellectual property (Marx, Strumsky and Fleming, 2009; Coyle and Polsky, 2013)
- For startups facing the threat of acquihiring, NCAs may serve as a potential countermeasure to acquihiring.
  - ▶ By granting startups monopsony power, NCAs increase their outside payoffs in acquisition bargaining, which enables the firms to bargain on more favorable terms.

# Optimal NCA regulation

- Examine a worker-welfare-maximizing competition authority.

## Proposition 3

A worker-welfare-maximizing competition authority prefers a partial allowance of NCAs when  $v_a$  is within a moderate range, specifically  $\underline{v}_a^* < v_a < v_s$ , where

$$\underline{v}_a^* \equiv \frac{v_s + \delta w^o}{1 + \delta}.$$

Then, it prefers the lowest enforcement level that can still prevent acquihiring,  $p^*$  such that  $v_a = \underline{v}_a(p^*)$ .

# Optimal NCA regulation

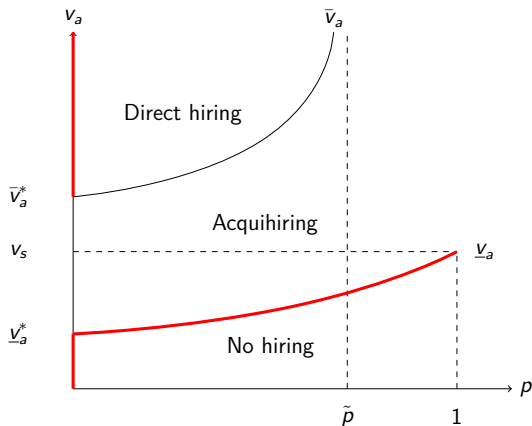


Figure 5: Worker-welfare-maximizing regulation



# Optimal NCA regulation

- Consider the case where a partial allowance of NCAs constitutes the optimal regulation.
- If  $\underline{v}_a^* < v_a < v_s$ , the increase in the enforceability of NCAs makes acquiring harder.
- Hence, the allowance of NCAs may enhance worker welfare by preventing acquiring.
- However, at the same time, higher enforceability of NCAs may lead to restricted job mobility and, consequently, reduce worker welfare.
- Therefore, the competition authority prefers the lowest enforcement level that can still prevent acquiring.

# Policy implications

- The relaxation of restrictions on NCAs hampers job mobility, leading to inefficient employee retention.
- However, at the same time, the relaxation can improve worker allocation:
  - ▶ prevent inefficient acquiring caused by the negative externality in the bargaining
  - ▶ prevent inefficient employee retention caused by NCAs
- Because of these two effects, NCA regulation could distort worker allocation.

# Policy implications

- The relaxation of restrictions on NCAs can reduce worker welfare:
  - ▶ impede labor market competition for employed workers
  - ▶ induce acquiring
- However, at the same time, the relaxation can prevent acquiring, promote labor market competition (though imperfectly), and improve worker welfare.
- In other words, NCA regulation aimed at protecting workers' right to change jobs could induce acquiring (waterbed effect), and ultimately harm workers.

# Policy implications

- Partial NCAs may create a win-win outcome for both even if the employees have no bargaining power in negotiations on NCAs.
- Startups benefit from NCAs because they restrict competition for their employees, which enables the firms to set lower wages.
- At the same time, the employees benefit from NCAs because they may prevent acquihiring, which protects labor market competition (though imperfectly).

# Policy implications

- NCAs have been argued to be especially harmful to low-wage workers.
- Krueger and Posner (2018)
  - ▶ Point out that low-wage workers do not know their rights, cannot afford lawyers, receive little training, and are susceptible to threats from their former employers.
  - ▶ Propose that state governments should ban NCAs that bind such workers.
- Indeed, several U.S. states have banned NCAs for low-wage workers.
  - ▶ specific wage thresholds (Washington, Oregon and several other states)
  - ▶ the ban for hourly employees (Nevada)
- Lipsitz and Starr (2022) find that banning NCAs for hourly workers increased hourly wages by 2%-3% on average (exploiting the 2008 Oregon ban).

# Policy implications

- Low-skilled (low-wage) workers would be less likely to motivate acquiring.
- Even if they could be a target of acquiring, the analysis in this article provides a rationale for regulating NCAs applied to such workers.
- Suppose that an employee's value  $v_i$  is given by  $v + m_i \times h_i$ .
  - ▶  $v$ : a component independent of the firm-worker match
  - ▶  $m_i$ : the match quality with firm  $i$
  - ▶  $h_i$ : the skill level at firm  $i$

# Policy implications

- Then, if the employee is low-skilled and has few firm-specific (i.e., non-portable) skills, her value does not vary substantially across firms.
- Even if strengthening the enforceability of NCAs can prevent acquiring, doing so would require very high enforceability (see Figure 5).
- The adverse effect of NCA regulation in inducing acquiring on worker welfare is limited.
- In low-skilled industries where acquiring is not prevalent, NCA regulation is likely to improve worker welfare because the waterbed effect would be minimal.

# Policy implications

- Finally, I discuss the relationship between NCA regulation and merger regulation.
- NCA regulation reduces startups' profitability, making it easier for Big Tech firms to acquire them, which could ultimately lead to an increase in their market power.
- Therefore, the appropriateness of NCA regulation in industries with high acquisition potential depends on whether effective merger policies are in place.
  - ▶ Startup acquisitions have rarely been challenged (Bryan and Hovenkamp, 2020).
- If competition authorities were able to effectively regulate acquirhiring, the positive effects of NCAs explored in this article would not arise.
- Instead, if resource constraints or other factors prevent the effective regulation of acquirhiring, NCA regulation in such industries should be carefully considered.



# Policy implications

- In many countries, NCA regulation and merger regulation are carried out independently by different authorities governing distinct legal areas.
  - ▶ coordination issues between the two regulatory frameworks
- In this regard, the FTC's recent proactive engagement with labor markets could contribute to addressing issues arising from the dichotomy.
- Such an approach by the FTC is desirable in that it increases the likelihood of appropriate regulation of NCAs in labor markets with the possibility of acquiring.

# Discussion

- In Bar-Isaac et al. (2025) and the present article, if acquiring occurs, the acquirer shuts down the target firm's project and proceeds with its own.
- This may be natural in a particular context of acquiring.
- In general, however, it may be more natural to assume that the acquirer proceeds with more productive project.

# Discussion

- What would happen if the acquirer instead chose the project that generates greater productive value, which may be the target firm's project?
- In this case, efficient worker allocation is always achieved, and thus the positive effects of NCAs on worker allocation disappear.
- Nevertheless, the positive effect of NCAs on worker welfare still exists.

# Key takeaways

- NCAs grant startups monopsony power over their employees and thus enable the firms to gain favorable positions in acquisition bargaining.
- As a result, NCAs may actually prevent acquirhiring, thereby improving worker allocation and worker welfare.
- In other words, NCA regulation could distort worker allocation and/or, contrary to its intent to protect workers, could reduce worker welfare.
- A worker-welfare-maximizing competition authority prefers the lowest enforcement level that can still prevent acquirhiring.
- Increased regulation of NCAs could weaken startups, facilitate acquirhiring by Big Tech firms, and ultimately reinforce their market power.