



Office of Chair Lina M. Khan

**Statement of Chair Lina M. Khan
Joined by Commissioner Rebecca Kelly Slaughter
on Actions to Expedite Staff Investigations**

September 14, 2021

Today the Commission makes public that it has voted on omnibus resolutions designed to ensure that staff is able to expeditiously investigate potentially unlawful conduct across a host of areas. These omnibuses cover a range of business practices that harm Americans, and staff pursuing investigations into any of these practices will now be able to issue civil investigative demand and subpoenas without delays.

Specifically, the omnibuses will facilitate investigations into: (1) unlawful conduct directed at veterans and service members; (2) unlawful conduct directed at children; (3) bias in algorithms and biometrics; (4) dark patterns and deceptive conduct on the internet; (5) repair restrictions; (6) abuse of intellectual property; (7) common directors and officers and common ownership; and (8) monopolization offenses.

These resolutions focus on areas of serious public concern, with harmful conduct often directed at the most vulnerable. For example, a slew of unfair or deceptive practices targeting veterans and service members means that military families experience identify theft and financial distress at far higher rates.¹ “Dark patterns,” meanwhile, are being used to manipulate and lure users into making unwanted purchases,² and widespread adoption of black-box algorithms and biometrics is enabling discriminatory practices.³ Small businesses—including franchisees and start-ups—routinely report how market power abuses by dominant firms preclude them from being able to compete,⁴ while onerous repair restrictions are hurting users and independent repair shops alike.⁵ The omnibuses published today will enable staff to investigate all of these practices swiftly.

Omnibus resolutions have long been a mainstay of the agency’s investigative arsenal. Prior to my joining the Commission, the agency had 56 omnibuses already in place—resolutions that frequently garnered bipartisan support, including from my dissenting colleagues. Many of

¹ Press Release, Fed. Trade Comm’n, Active Duty Servicemembers are More Likely to Report Identity Theft than Other Adults, New FTC Data Shows (May 21, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/active-duty-servicemembers-are-more-likely-report-identity-theft>.

² Transcript of Bringing Dark Patterns to Light: An FTC Workshop, Fed. Trade Comm’n (Apr. 29, 2021), https://www.ftc.gov/system/files/documents/public_events/1586943/ftc_darkpatterns_workshop_transcript.pdf.

³ *Id.* at 3.

⁴ *Open Meetings*, FED. TRADE COMM’N, <https://www.ftc.gov/news-events/open-meetings> (last visited Sept. 14, 2021).

⁵ FED. TRADE COMM’N, NIXING THE FIX: AN FTC REPORT TO CONGRESS ON REPAIR RESTRICTIONS (May 2021), <https://www.ftc.gov/reports/nixing-fix-ftc-report-congress-repair-restrictions>.

the existing omnibus resolutions that preceded my tenure are broad; one, for example, covers any product or service sold to older Americans.

My dissenting colleagues suggest that the Commission's actions to expedite investigations removes Commission oversight of investigations. But these claims neglect the fact that a Commissioner must always sign off on any subpoena that staff seeks to issue. Commissioners can—and do—receive briefings on the state of investigations at the agency, and no enforcement action can proceed without support from a majority of the Commissioners.

Omnibus resolutions remove bureaucratic hurdles that slow down the agency staff's ability to expeditiously move matters along. Given the agency's severe resource constraints, finding ways to make our processes more efficient and streamlined is paramount.⁶ The current surge in merger filings, with record-setting levels of deal-making, is straining these scarce resources even further.⁷ Given these extenuating circumstances and the critical work before us, I am especially grateful that the Commission is empowering staff to act quickly to investigate harmful conduct and root out illegal practices.

⁶ Between 2010 and 2016, FTC and DOJ funding in nominal terms stagnated and, in real terms, effectively declined. In 2017 and 2018, the FTC's full-time employee headcount declined, and it remains about two thirds of what it was at the beginning of the Reagan Administration. Meanwhile the scope of investigation and litigation discovery has expanded exponentially over recent decades, with voluminous electronic submissions demanding substantial staff resources. See *FTC Premerger Notification Program*, FED. TRADE COMM'N, <https://www.ftc.gov/enforcement/premerger-notification-program> (last visited Sept. 10, 2021); see *FTC Appropriation and Full-Time Equivalent (FTE) History*, FED. TRADE COMM'N, <https://www.ftc.gov/about-ftc/bureaus-offices/office-executive-director/financial-management-office/ftc-appropriation> (last visited Sept. 10, 2021); *Appropriation Figures for the Antitrust Division*, DEP'T OF JUST., <https://www.justice.gov/atr/appropriation-figures-antitrust-division> (last visited Sept. 10, 2021); Michael Kades, Director of Markets and Competition Policy, Washington Center for Equitable Growth, Presentation to Congressional Antitrust Caucus on Merger Enforcement Statistics (Jan. 19, 2018), <https://equitablegrowth.org/presentation-merger-enforcement-statistics/>; see also Opening Statement of Acting Chairwoman Rebecca Kelly Slaughter Before the U.S. Senate Committee on Commerce, Sci., and Transp., Hearing on Strengthening the FTC's Authority to Protect Consumers, 2-3 (Apr. 20, 2021), <https://www.ftc.gov/public-statements/2021/04/prepared-statement-acting-chairwoman-rebecca-kelly-slaughter-strengthening>.

⁷ Mergers filed with the antitrust authorities have doubled from 2010 to 2020 to nearly 2,000 deals a year. As of the end of August, 2,436 acquisitions have already been filed with the agencies, meaning that *right now* these nine months have already seen more filings than most other *years*. At the current rate, the number of filings will pass 3,500 by years' end, an unprecedented wave not seen since current deal valuation thresholds were increased by Congress at the turn of the century. See *FTC Premerger Notification Program*, FED. TRADE COMM'N, <https://www.ftc.gov/enforcement/premerger-notification-program> (last visited Sept. 10, 2021).