



Office of the Chair

UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

**Remarks of Chair Lina M. Khan at the Joint Workshop  
of the Federal Trade Commission and the Department of Justice**

**Making Competition Work: Promoting Competition in Labor Markets**

**December 6, 2021**

Good morning everyone. I am thrilled to welcome you all to this joint FTC-DOJ event. I am delighted to be here with our new Assistant Attorney General, Jonathan Kanter; our steadfast colleagues from both the DOJ and FTC; and our distinguished panelists. I want to give deep thanks to the interagency team for their tireless work pulling together this event and making it possible in this virtual format.

Today's workshop comes at a pivotal moment. We've witnessed over the last few years a remarkable evolution in both the policy debate and broader public understanding of how declining levels of competition and the conduct it enables can hurt us not just as consumers—who buy products from a shrinking number of large firms—but also as workers, who are especially vulnerable when subject to the whims of a boss they can't easily or practically escape. Robust antitrust enforcement can help ensure that workers have the freedom to seek higher pay and better working conditions, and can help to promote economic opportunity and widespread prosperity for all.

Both this evolution in debate and discussion and today's event are a testament to the research, enforcement efforts, organizing, and advocacy of many people—a significant number of whom will be participating in these discussions over the next couple of days. Thank you for driving forward the conversation and getting us to a place where increasingly the key question is not *whether* antitrust law and competition policy can or should protect workers as well as consumers, but instead precisely *how* they can or should do so.

This is one of the key questions I hope the workshop will help us answer. Staff at both the FTC and the Antitrust Division have already been implementing an enforcement program that incorporates some of the key insights from this research, and I am excited about the ways we can continue to build on and expand this critical work.

At its best, antitrust enforcement adapts to match both new economic realities and new learning. While labor markets have long been characterized by inequalities in bargaining power between workers and employers, over the last few decades these asymmetries have tended to become more acute. Research suggests that heightened market power, fissuring of the workplace, and weakened legal protections have all contributed to a decline in labor's share of national income and to an increase in

work arrangements that are precarious and that deprive workers of what they are owed.<sup>1</sup> These asymmetric relationships can enable firms to impose take-it-or-leave-it contract terms, including, for example, noncompete clauses. Recent lawsuits have also surfaced extensive no-poach agreements among employers, which can further restrict workers and depress wages.<sup>2</sup>

As businesses continue to navigate the global pandemic, workers have been leaving their current jobs in record numbers—often citing low pay and poor working conditions.<sup>3</sup> Meanwhile, a boom in corporate deal-making—the highest in 20 years—could also potentially reshape markets and leave workers with fewer options over the long-term.<sup>4</sup> The expanded role of digital technologies in how work is structured has significantly enhanced opportunities, particularly during the pandemic—but it can also subject workers to increasingly invasive tracking and surveillance. As we focus on ensuring healthy competition, we must ensure our tools are keeping pace with the modern economy.

At the FTC, our congressional mandate is to root out unfair methods of competition and unfair or deceptive practices in the economy, a mission that protects all Americans, including workers. To recalibrate our work to protect workers, the agency is building on its existing efforts in several ways.

First, we are redoubling our commitment to investigating potentially unlawful transactions or anticompetitive conduct that harm workers. In particular, we must scrutinize mergers that may substantially lessen competition in labor markets, recognizing that the Clayton Act’s purview applies to product and labor markets alike. Recent scholarship and research—including by many of our panelists—has expanded our understanding of the scope of monopsony power in labor markets and the magnitude of its effects, insights that we are keen to incorporate into our work.

We have already included in merger settlements provisions curbing the exercise of non-compete clauses,<sup>5</sup> and we are reviewing our merger processes and data gathering to determine how to better effectuate labor market analysis as part of our merger investigations. Our work with the Justice

---

<sup>1</sup> See e.g., David Autor et al., *The Fall of the Labor Share and the Rise of Superstar Firms*, 135 Q. J. Econ 645 (2020); Jose Azar et al., *Labor Market Concentration*, J. HUM. RES. (2020); Gustavo Grullon, *Are US Industries Becoming More Concentrated?*, 23 REV. FIN. 697 (2019); Matthew S. Johnson et al., *The Labor Market Effects of Legal Restrictions on Worker Mobility* 1, 2-5 (2020).

<sup>2</sup> See, e.g., Press Release, Dept. of Just., *DaVita Inc. and Former CEO Indicted in Ongoing Investigation of Labor Market Collusion in Health Care Industry* (July 15, 2021), <https://www.justice.gov/opa/pr/davita-inc-and-former-ceo-indicted-ongoing-investigation-labor-market-collusion-health-care>.

<sup>3</sup> Ben Casselman, *Workers quitting their jobs hit a record in the U.S. in August*, N.Y. TIMES (Oct. 12, 2021), <https://www.nytimes.com/2021/10/12/business/economy/workers-quitting-august.html>; Eli Rosenberg, *A record number of workers are quitting their jobs, empowered by new leverage*, WAPO (Oct. 12, 2021), <https://www.washingtonpost.com/business/2021/10/12/jolts-workers-quitting-august-pandemic/> (noting “[t]he phenomenon is being driven in part by workers who are less willing to endure inconvenient hours and poor compensation, who are quitting instead to find better opportunities.”).

<sup>4</sup> James Fontanella-Khan, *Global dealmaking set to break records after frenzied summer*, FIN. TIMES (Sept. 5, 2021), <https://www.ft.com/content/4b955a75-55a4-4e13-b785-638b88bbfb0b>.

<sup>5</sup> Press Release, Fed. Trade Comm’n, *FTC Imposes Strict Limits on DaVita, Inc.’s Future Mergers Following Proposed Acquisition of Utah Dialysis Clinics* (Oct. 25, 2021), <https://www.ftc.gov/news-events/press-releases/2021/10/ftc-imposes-strict-limits-davita-incs-future-mergers-following>.

Department to review the merger guidelines also offers an opportunity to clarify and update how we assess a merger's potential effects on labor markets.<sup>6</sup> I hope the discussion over the next two days can serve as a contribution to that effort.

Second, the FTC is scrutinizing whether certain terms in employment contracts, particularly in take-it-or-leave-it contexts, may violate the law. At the Commission's open meetings, some workers have shared concerns about noncompete clauses, and the agency recently opened a docket to solicit public comment on the prevalence and effects of contracts that may constitute unfair methods of competition.<sup>7</sup> Later today we will hear panelists discuss new research on the effects of employers' expanded use of certain contractual terms, including noncompete clauses and non-disclosure agreements, and we will also learn about state-level efforts to limit the use of noncompetes.<sup>8</sup> As we consider the evidence, I am committed to considering the Commission's full range of tools, including enforcement and rulemaking.

Third, as part of our efforts to approach our competition and consumer protection work in an integrated manner, we are also scrutinizing unfair or deceptive practices that may harm workers. Experience has shown that some firms may have established their dominance or gained a competitive edge in part through engaging in unfair or deceptive practices. Especially in digital markets where quickly achieving scale and amassing data is paramount, firms may determine that pursuing unfair or deceptive tactics is worth the cost of business, given that even an early lead can result in a long-term advantage. As part of our work to crack down on these types of tactics, we recently put over 1,000 firms on notice for misleading money-making claims, recognizing that workers can be victim to deceptive claims that may entrench a firm's market power.<sup>9</sup> Action by the FTC earlier this year to hold Amazon accountable for misleading its Flex drivers should serve as a reminder that employers cannot make false claims about wages in hopes that workers—and the FTC—will not notice.<sup>10</sup>

As we continue to build and expand this work, our close partnership and collaboration with enforcement partners at both the federal and state level will be essential. The “whole of government approach” envisioned in the President's Executive Order on competition underscores the significant

---

<sup>6</sup> Statement of Chair Lina M. Khan, Commissioner Rohit Chopra, and Commissioner Rebecca Kelly Slaughter on the Withdrawal of the Vertical Merger Guidelines, File No. P810034 (Sept. 15, 2021), <https://www.ftc.gov/public-statements/2021/09/statement-chair-lina-m-khan-commissioner-rohit-chopra-commissioner-rebecca>.

<sup>7</sup> Request for Public Comment Regarding Contract Terms That May Harm Fair Competition, Docket No. FTC-2021-0036, <https://www.regulations.gov/docket/FTC-2021-0036/document> (last visited Nov. 16, 2021).

<sup>8</sup> Press Release, Fed. Trade Comm'n, FTC and DOJ to Hold Virtual Public Workshop Exploring Competition in Labor Markets (Oct. 27, 2021), <https://www.ftc.gov/news-events/press-releases/2021/10/ftc-doj-hold-virtual-public-workshop-exploring-competition-labor>.

<sup>9</sup> Lesley Fair, *One for the money: Latest Notice of Penalty Offenses takes on deceptive money-making claims*, FED. TRADE COMM'N (Oct. 26, 2021), <https://www.ftc.gov/news-events/blogs/business-blog/2021/10/one-money-latest-notice-penalty-offenses-takes-deceptive>.

<sup>10</sup> Press Release, Fed. Trade Comm'n, Amazon To Pay \$61.7 Million to Settle FTC Charges It Withheld Some Customer Tips from Amazon Flex Drivers (Feb. 2, 2021), <https://www.ftc.gov/news-events/press-releases/2021/02/amazon-pay-617-million-settle-ftc-charges-it-withheld-some>.

opportunities we have to strengthen our collective efforts through close coordination, and I am eager for the FTC to partner up and follow through on this vision.<sup>11</sup>

Our partnership with the Justice Department will be especially critical. When charging both the DOJ and the FTC with enforcement of the antitrust laws, Congress sought for our agencies to play a complementary role. Lawmakers granted each agency a unique (albeit occasionally overlapping) set of tools and authorities, and it's important for us to boost our collective impact through coordinating and making use of our respective areas of institutional and comparative advantage. I'm excited to have a like-minded partner in Assistant Attorney General Kanter and look forward to our close collaboration in the months and years ahead.

In closing, my deep thanks again to the DOJ and FTC Staff for the efforts to pull together this terrific program, and to the distinguished panelists and participants for lending us their time. I'm looking forward to the upcoming panels and the insights they will provide in guiding our critically important efforts to ensure that workers—like consumers—benefit from healthy competition. Thank you.

\* \* \*

---

<sup>11</sup> Exec. Order No. 14036, 86 Fed. Reg. 36989 (July 14, 2021).