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Office of the Chair

Remarks of Chair Lina M. Khan
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Good afternoon, everyone. Thank you to Barbara Van Allen and the whole Economic Club of New York team for hosting me today. It's great to be here. Thanks as well to Peter Orszag for moderating what I'm sure will be an engaging discussion. I'm looking forward to our conversation.

Today I'll discuss why, after decades of retreat, our nation's longstanding commitment to free and fair competition has come roaring back to the forefront of public policy and what we at the Federal Trade Commission are doing to advance it.

One of the first people to speak to the Economic Club of New York about the importance of open markets and fair competition was Louis Brandeis back in 1912. It was five years after the Club's founding—and four days before a presidential election that had catalyzed a national debate over how government should address monopolies and concentrated economic power.

In his remarks, Brandeis made the case for a new administrative board, or a commission of some kind, to enforce the nation's antimonopoly law and safeguard our system of free enterprise. The idea that Brandeis proposed at this very Club came to fruition two years later, when Congress passed and President Wilson signed the Federal Trade Commission Act. The statute outlawed "unfair methods of competition" and created the FTC to enforce this prohibition and to regularly study markets so it could keep pace with new trends and practices.

Much has changed in the century since, but the FTC's basic job has remained the same: to promote healthy competition and stop monopolistic tactics.[1] As Brandeis said in his speech:

> [A large part of the American people] realize that the maintenance of competition does not necessarily involve destructive and unrestricted competition, any more than the maintenance of liberty implies license or anarchy. We learned long ago that liberty could be preserved only by limiting in some way the freedom of action of individuals; that otherwise liberty would necessarily yield to absolutism; and in the same way we have learned that unless there be regulation of competition, its excesses will lead to the destruction of competition, and monopoly will take its place.[2]

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[1] In 1938, Congress amended the FTC Act to also prohibit unfair or deceptive practices, setting up the FTC to also serve as a consumer protection agency. 15 U.S.C. § 45(a).
[2] Louis Brandeis, *The Regulation of Competition Against the Regulation of Monopoly*, *in* THE CURSE OF BIGNESS: MISCELLANEOUS PAPERS OF LOUIS D. BRANDEIS 109 (Osmond K. Fraenkel ed., 1935).

This vision—of enforcing the rules to safeguard free enterprise and fair competition—has been a bedrock of America's dynamism and economic success. Open and competitive markets mean that the best ideas win. Businesses get ahead not through exploiting special privileges, but by competing on the merits.

This national policy in favor of competition over consolidation enabled America to become an economic powerhouse. It allowed our country to harness the ingenuity and hard work of our citizens and reap breakthrough innovations and remarkable technological feats.

Around forty years ago, however, we decided to experiment with a different approach. Policymakers bought into a set of assumptions: that markets tend to be perfectively competitive and self-correcting; that monopoly power is generally fleeting; and that a hands-off approach to antitrust and competition policy would deliver great efficiencies that would outweigh any costs.

Today it has become apparent that this approach delivered an economy that all too often has failed to benefit most Americans.

Consider some of the effects.

The U.S. spends more on health care per capita than any other country in the world, yet millions of Americans are left rationing or altogether skipping the medicines that they need.[3] A single storm or outbreak can suddenly trigger shortages of products ranging from IV bags to infant formula, leaving nurses and families to scramble. One technological glitch can ground tens of thousands of flights for a week, upending travel for millions. And as Taylor Swift fans can most recently attest, even buying a concert ticket is now rife with hidden mystery fees and risks of a system-wide meltdown.

Around a fifth of American workers are locked down by a noncompete clause, including fast food workers, hairdressers, emergency room doctors, and security guards.[4] The Treasury Department estimates that workers make 20 percent less due to labor market concentration, while also facing worse working conditions and unpredictable schedules.[5]

Small businesses across the country find themselves squeezed, not because customers don't like their products but because they're unfairly muscled out of markets by big players. At

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[3] Munira Z. Gunja, Evan D. Gumas & Reginald D. Williams II, *U.S. Health Care from a Global Perspective, 2022: Accelerating Spending, Worsening Outcomes*, THE COMMONWEALTH FUND (Jan. 31, 2023), https://www.commonwealthfund.org/publications/issue-briefs/2023/jan/us-health-care-global-perspective-2022; Katie Adams, *Rising Costs Force 39% of Americans to Skip Ration Meds, Survey Says,* BECKER'S HOSPITAL REV. (Mar. 22, 2021), https://www.beckershospitalreview.com/pharmacy/rising-costs-force-39-of-americans-to-skip-ration-meds-survey-says.html; Dan Witters, *In U.S., An Estimated 18 Million Can't Pay for Needed Drugs,* GALLUP (Sept. 21, 2021), https://news.gallup.com/poll/354833/estimated-million-pay-needed-drugs.aspx; Ken Alltucker, *More than 1.3M Americans Ration Life-saving Insulin Due to Cost. That's 'Very Worrisome' to Doctors.,*USA TODAY (Oct. 17, 2022), https://www.usatoday.com/story/news/health/2022/10/17/high-cost-insulin-prompts-1-3-million-americans-ration-drug/10498626002/.

[4] Non-Compete Clause Rule, 88 Fed. Reg. 3482 (Jan. 19, 2023).

[5] U.S. DEP'T OF TREASURY, THE STATE OF LABOR MARKET COMPETITION (2022), https://home.treasury.gov/system/files/136/State-of-Labor-Market-Competition-2022.pdf.

the FTC we routinely hear from businesses across sectors—from independent pharmacies to local grocers—about the arbitrary fees, discriminatory pricing, and coercive tactics they face at the hands of large firms.

Entrepreneurs watch as their ideas get appropriated by the gatekeepers on which they depend. Startups take on the risk of bringing a product to market—but all too often someone else reaps the reward. Less competition also means fewer paths to commercialization or exit, with valuations depressed.

Our country is more unequal and less safe. Regional inequality has soared, with mid-sized cities cut off from reliable air service and rural communities facing food deserts and shuttered hospitals.[6] The Defense Department has said that consolidation—with the defense industrial base having shrunk from 51 firms to 5—now poses a risk to national security.[7] Consolidation meant that after a Louisiana factory blew up, our military lost access to its only domestic source of an essential type of gunpowder—and, two years later, we still haven't gotten it back.[8]

Empirical research, too, has documented rising consolidation, declining competition, and a resulting assortment of economic ills and risks.[9] Jumpstarting some of this scholarship was a 2015 paper by leading economists and top Obama administration officials, Jason Furman and Peter Orszag, whose work advanced the idea that concentration was on the rise and that declines in competition could be playing a causal role in widening economic inequality.[10]

Given the growing empirical evidence and experience from lived reality, President Biden in 2021 announced a break with this experiment. "Forty years ago we chose the wrong path… and pulled back on enforcing laws to promote competition," he said. "I believe the experiment failed."[11]

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[6] Jed Kolko, *Geographic Inequality on the Rise in the U.S.*, U.S. DEP'T OF COMMERCE (June 15, 2023), https://www.commerce.gov/news/blog/2023/06/geographic-inequality-rise-us; Phillip Longman, *Why the Economic Fates of America's Cities Diverged*, THE ATLANTIC (Nov. 28, 2015), https://www.theatlantic.com/business/archive/2015/11/cities-economic-fates-diverge/417372/.

[7] U.S. DEP'T OF DEFENSE, OFF. OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT, STATE OF COMPETITION WITHIN THE DEFENSE INDUSTRIAL BASE (2022), https://media.defense.gov/2022/feb/15/2002939087/-1/-1/1/state-of-competition-within-the-defense-industrial-base.pdf.

[8] Gordon Lubold, *The U.S. Military Relies on One Louisiana Factory. It Blew Up.*, WALL ST. J. (Apr. 26, 2023), https://www.wsj.com/articles/the-u-s-military-has-an-explosive-problem-6e1a1049.

[9] *See, e.g.*, Jan De Loecker et al., *The Rise of Market Power and the Macroeconomic Implications*, 135 Q.J. ECON 561, 644 (2020); Germán Gutiérrez & Thomas Philippon, *Investmentless Growth: An Empirical Investigation*, BROOKINGS PAPERS ON ECON. ACTIVITY 89, 95–97 (2017); José Azar, Ioana Marinescu & Marshall Steinbaum, *Labor Market Concentration*, 57 J. HUMAN RES. S167 (2020).

[10] Jason Furman & Peter Orszag, *A Firm-Level Perspective on the Role of Rents in the Rise in Inequality*, *in* TOWARD A JUST SOCIETY 19 (Martin Guzman ed., 2018).

[11] President Joseph R. Biden, Remarks by President Biden At Signing of An Executive Order Promoting Competition in the American Economy (July 9, 2021), https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/09/remarks-by-president-biden-at-signing-of-an-executive-order-promoting-competition-in-the-american-economy/.

By signing his Executive Order on Promoting Competition, the President put fair, open, and competitive markets back at the center of our economic policy.[12]

The Executive Order reflects the best of America's longstanding antimonopoly tradition, renewed and updated for a modern economy. It builds on new economic learning, revising the overly simplistic theories of markets that had underpinned our prior approach. And it recognizes that questions of market structure and competition determine not just the price and quantity of goods, but also the trajectory of innovation, the shape of economic opportunity, the resiliency of our markets, and the strength of our democracy.

This reorientation on competition policy goes hand-in-hand with a broader set of policy changes currently underway. Across domains—trade, economics, national security—we are seeing the need to revisit one-dimensional, outdated assumptions about how markets work and update our approach to meet the challenges of today. Earlier this year, National Security Advisor Jake Sullivan, in a seminal speech, tied unchecked corporate concentration to the fraying of the socioeconomic foundations on which any strong and resilient democracy rests.[13] That was the very debate happening here at the Economic Club of New York more than a century ago—and America's decision then to recommit to competition helped establish the United States as the strongest economy and democracy the world has ever known.

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Against this backdrop, the FTC is firing on all cylinders, using all of our tools to promote free and fair competition in the modern economy.

First, we are tackling business practices that unlawfully muscle out rivals or impede fair competition. Last year, we sued two pesticide giants for schemes that blocked farmers from accessing lower-cost alternatives, resulting in farmers—and the food-eating public—being overcharged by billions of dollars.[14] We're also scrutinizing whether dominant middlemen in

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[12] Exec. Order on Promoting Competition in the American Economy, Exec. Order No. 14,036, 86 Fed. Reg. 36,987 (July 14, 2021) ("A fair, open, and competitive marketplace has long been a cornerstone of the American economy, while excessive market concentration threatens basic economic liberties, democratic accountability, and the welfare of workers, farmers, small businesses, startups, and consumers. The American promise of a broad and sustained prosperity depends on an open and competitive economy."). *See also* President Joseph R. Biden, Remarks by President Biden on Bidenomics (June 28, 2023), https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/06/28/remarks-by-president-biden-on-bidenomics-chicago-il/ (identifying competition as the third pillar of Bidenomics).

[13] Jake Sullivan, Remarks by National Security Advisor Jake Sullivan on Renewing American Economic Leadership at the Brookings Institution (Apr. 27, 2023), https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/04/27/remarks-by-national-security-advisor-jake-sullivan-on-renewing-american-economic-leadership-at-the-brookings-institution/.

[14] Press Release, Fed. Trade Comm'n, FTC and State Partners Sue Pesticide Giants Syngenta and Corteva for Using Illegal Pay-to-Block Scheme to Inflate Prices for Farmers (Sept. 29, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-state-partners-sue-pesticide-giants-syngenta-corteva-using-illegal-pay-block-scheme-inflate.

pharmaceutical markets are exercising their power in ways that hike drug prices for patients and squeeze independent pharmacies.[15]

In January, we proposed a rule that would eliminate noncompete clauses from employment contracts.[16] Our proposal follows extensive research showing that noncompetes harm competition in labor markets, creating mismatches between workers and firms and reducing wages even for workers not directly covered by noncompetes. These clauses also impede entrepreneurial growth, depriving new firms of access to talent and dampening competition in product and service markets. Our proposed rule estimates that banning noncompetes in employment contracts would raise worker wages by up to $300 billion—and cut healthcare spending by up to $150 billion.

Second, we are scrutinizing mergers and blocking deals that may threaten competition. Robust merger enforcement is our first line of defense against unlawful consolidation, as preventing markets from becoming illegally monopolized is more effective than later trying to address the symptoms and effects of monopoly power.

Shortly after I became Chair, we successfully blocked Nvidia's attempted acquisition of Arm—what would have been the biggest semiconductor chip merger in history.[17] Our investigation found that the deal would have risked stifling innovation and next-generation technologies, including in data centers and self-driving cars. The case also highlighted how competition policy can be a key component of industrial strategy, inducing productive investment and resilient markets.

Last year, the FTC also successfully challenged Lockheed's attempted acquisition of Aerojet—the first time in decades the agency had gone to court to stop consolidation in the defense industry. As we noted in our complaint, the deal would have taken out the last independent supplier of critical missile inputs—threatening to jack up the price that our government pays.[18]

Overall we've successfully blocked around 20 deals that would have impeded competition in critical sectors of the economy, including health care and energy.

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[15] Press Release, Fed. Trade Comm'n, FTC Launches Inquiry Into Prescription Drug Middlemen Industry (June 7, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-launches-inquiry-prescription-drug-middlemen-industry.

[16] Non-Compete Clause Rule, *supra* note 4.

[17] Press Release, Fed. Trade Comm'n, FTC Sues to Block $40 Billion Semiconductor Chip Merger (Dec. 2, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/12/ftc-sues-block-40-billion-semiconductor-chip-merger; Press Release, Fed. Trade Comm'n, Statement Regarding Termination of Nvidia Corp.'s Attempted Acquisition of Arm Ltd. (Feb. 14, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/02/statement-regarding-termination-nvidia-corps-attempted-acquisition-arm-ltd.

[18] Press Release, Fed. Trade Comm'n, FTC Sues to Block Lockheed Martin Corporation's $4.4 Billion Vertical Acquisition of Aerojet Rocketdyne Holdings Inc. (Jan. 25, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/01/ftc-sues-block-lockheed-martin-corporations-44-billion-vertical-acquisition-aerojet-rocketdyne; Press Release, Fed. Trade Comm'n, Statement Regarding Termination of Lockheed Martin Corporation's Attempted Acquisition of Aerojet Rocketdyne Holdings Inc. (Feb. 15, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/02/statement-regarding-termination-lockheed-martin-corporations-attempted-acquisition-aerojet.

Where needed, we are also updating our tools and frameworks. Last week, we published a draft revision of our merger guidelines, the enforcement manual that the FTC and Justice Department use to analyze deals.[19] Informed by over 5,000 public comments and several listening sessions with market participants across the country, the updates are designed to reflect the realities of how businesses grow and compete in today's economy.

Lastly, we are working to tackle unfair and deceptive practices—the kinds of daily indignities that waste people's time, undermine their privacy, and siphon away their money. For example, we are taking on dark patterns and other manipulative design tactics that firms use to trick people into making a purchase or handing over their data. We have proposed a rule that would require companies to make it as easy to cancel a subscription as it is to sign up for one.[20] And we are scrutinizing "junk fees," the unnecessary, unavoidable, or surprise charges that appear, for example, when buying a hotel room or sports ticket.[21]

Taking on unfair or deceptive practices encourages a race to the top rather than a race to the bottom. Permitting firms to compete through lying about their prices or privacy policies, for example, end up disadvantaging honest businesses. Setting baseline rules about the practices that are or aren't fair game can instead help ensure that firms compete on the dimensions we want to promote—like enhancing data security rather than degrading it. In this way, our consumer protection work is a key complement to our work promoting healthy competition.

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As artificial intelligence tools become more widely adopted, we again hear from some that the time has come to embrace consolidation over competition. Especially as other nations directly prop up national champions, it can be tempting to adopt the view that we're entering a new global arms race where success requires protecting and promoting domestic monopolies.[22]

Our history, once again, can prove instructive.

During the Cold War, as antitrust enforcers investigated IBM and AT&T for anticompetitive tactics, they faced arguments that we should instead shield these firms from competition in order to win globally. But enforcers were not persuaded that protecting

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[19] Press Release, Fed. Trade Comm'n, FTC and DOJ Seek Comment on Draft Merger Guidelines (July 19, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/07/ftc-doj-seek-comment-draft-merger-guidelines.
[20] Press Release, Fed. Trade Comm'n, FTC Proposes Rule Provision Making it Easier for Consumers to "Click to Cancel" Recurring Subscriptions and Memberships (Mar. 23, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/03/federal-trade-commission-proposes-rule-provision-making-it-easier-consumers-click-cancel-recurring.
[21] Press Release, Fed. Trade Comm'n, FTC Explores Rule Cracking Down on Junk Fees (Oct. 20, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/10/federal-trade-commission-explores-rule-cracking-down-junk-fees; Press Release, Fed. Trade Comm'n, FTC Proposes Rule to Ban Junk Fees, Bait-and-Switch Tactics Plaguing Car Buyers (June 23, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-proposes-rule-ban-junk-fees-bait-switch-tactics-plaguing-car-buyers.
[22] *But see* Exec. Order on Promoting Competition in the American Economy, *supra* note 12 ("This order reasserts as United States policy that the answer to the rising power of foreign monopolies and cartels is not the tolerance of domestic monopolization, but rather the promotion of competition and innovation by firms small and large, at home and worldwide.").

monopolies was the path to long-term success. They correctly trusted that sticking with America's system of free and fair competition would out-innovate a centralized system of state-run monopolies.

Facing antitrust scrutiny in the 1960s, IBM unbundled software from its hardware systems, catalyzing the rise of the American software industry and creating trillions of dollars of growth. Antitrust action requiring AT&T to open up its patent vault similarly unleashed decades of innovation, spurring the expansion of countless young firms.[23] And antitrust action against Microsoft stopped the personal computing giant from leveraging its market power to centralize control over the internet and block competition—allowing scrappy startups like Google and Amazon to grow.

The strength of America has long been its combination of democratic government and open, competitive markets that offer opportunity and upward mobility. From our founding, this political economy set us apart from more centralized systems. And our history shows that enforcing the rules to protect open, fair, and competitive markets has been a key ingredient in our economic and democratic success.

The FTC is currently at the forefront of the whole-of-government effort to put free and fair competition back at the center of public policy. And, if we succeed, the American economy can emerge more innovative and more prosperous—with our democracy stronger and more resilient.

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[23] Martin Watzinger et al., *How Antitrust Enforcement Can Spur Innovation: Bell Labs and the 1956 Consent Decree*, 12 AM. ECON. J. 328 (2020).