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Office of the Commissioner
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Opening Remarks of
FTC Commissioner Rohit Chopra

Future of Work Roundtable
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Committee on Education & Labor

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Thank you for inviting me to join you for this important discussion. Today's topic isn't just about our economy, it's about our civil rights, our families, and our society. There is a very long list of challenges to tackle as we consider the future of work in this country.

But, today I want to talk about the role that competition – or lack thereof – plays in determining the kinds of jobs we have and the pay and benefits they offer. There are three specific competition issues that provide real cause for concern: (1) abuses in the growing "gig economy"; (2) illegal collusion on wages and compensation; and (3) one-sided clauses in non-negotiable employment contracts.

Today, more than one quarter of the American labor force is dependent on alternative work or "gigs" that are arranged by an increasingly small number of online firms. These digital platforms, staffing agencies, and other intermediaries make money by finding people to do discreet tasks for other people, such as giving a ride or assembling furniture. Gig-based firms can obtain considerable market power from the network effects of their user base, which they can exploit to reduce wages and compensation in the pursuit of maximizing their own profits.

Because gig workers may be dependent on these firms for their livelihood and consumers may have few other options, these companies can leverage their power by increasing their cut of any transaction or by making more demands of their workers. Take the complaints involving Instacart, the popular grocery delivery service. Last year, Instacart allegedly imposed a policy change that would sweep up customer tips, keeping them for itself, rather than giving it as a supplement to its workers above their guaranteed pay. If true, this wasn't just unfair to those working, Instacart may have deceived its customers, too.

Companies classify many gig workers as independent contractors, denying them the rights and benefits of employees even as they fill the same roles. For example, despite Instacart's claims that its "full-service shoppers" are not employees, the company usually requires workers to sign up for "shifts." Many who work on Instacart believe that you can only get lucrative shifts if you work close to full time. That sounds a lot like an employee to me, not an independent contractor.

Unlike employees who have the legal right to organize to collectively bargain, gig workers who are not classified as employees risk running afoul of antitrust law when banding together. Our country has long recognized that powerful firms can easily exploit individual workers. Over time, antitrust law was amended to ensure that employees could band together to bargain against these firms. Importantly, it was not only employees that received these protections. Congress also ensured that independent farmers could cooperate through a limited antitrust exemption.

A tailored extension of the labor antitrust exemption would complement other efforts to prevent abuses of gig workers. California recently enacted a measure requiring companies like Uber and Lyft to classify their workers as employees rather than contractors, setting the stage for collective bargaining. This is a step in the right direction. Congress should ensure that all workers, regardless of whether they are technically an employee, are the beneficiaries of the protections provided by antitrust law, not the victims of muddied legal loopholes.

Another way that companies use their market power against workers is by secretly colluding to fix wages or by agreeing not to solicit a competitor's employees. Collusion is illegal and can constitute criminal misconduct. But it's a problem that is only likely to get worse in the future, as employers have more and more tools to gain information that facilitates the collusion of wages. These tools include pervasive surveillance of employee communications and even geolocation, as well as greater availability for employers to purchase salary histories from companies like Equifax. In particular, digital platforms can fix compensation and terms on a wide range of services, including ride hailing and food delivery, and generate data that can facilitate algorithmic collusion or biased pricing.

Federal law enforcement should send a strong signal to the markets that illegally colluding to undermine fair competition will not be tolerated. We must pursue violators aggressively, including individual executives and business decision-makers, using both criminal and civil authorities. In addition, enforcers should investigate the use of big data for wage-setting purposes and should closely scrutinize operators of digital platforms that set wages and compensation.

The third way that employers restrict job prospects and earnings is by forcing prospective employees to agree to certain terms in a non-negotiable, take-it-or-leave-it contract. One such term is the non-compete covenant, which bans employees from leaving to work for a competitor. These clauses reduce, or even eliminate, the ability for employees to seek more lucrative or attractive employment. Non-compete covenants dry up opportunities for employees to find better jobs using their skills while simultaneously taking away their bargaining leverage in negotiations for advancement.

The number of people affected by non-compete agreements is extensive. Recent research shows that 18 percent of all workers – nearly 30 million people – are subject to a non-compete restriction. Yet less than half of workers who are bound by non-competes possess trade secrets, one of the primary purported justifications for non-competes.

Given the prevalence of forced arbitration provisions in many contractual agreements, private enforcement is almost non-existent with respect to these clauses and other restraints that may harm competition. That's why government action is so essential. The FTC has the authority to

define “unfair methods of competition” by rule and is uniquely positioned to take action. Earlier this year, the Commission received a petition for such a rulemaking on non-compete clauses, a petition worthy of public consideration.

In conclusion, we don’t want to live in a country where the only competition in labor is the race to the bottom on quality and pay. In a truly competitive market, businesses have to offer better jobs to employees and better products for customers. That makes us all better off. This requires tougher antitrust enforcement by the FTC and clear rules of the road to halt abuse. Thank you again for holding this roundtable.