



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

Office of Policy and Planning

**Keynote Remarks of Director Elizabeth Wilkins
Rethinking Antitrust**

**The Schwartz Center for Economic Policy Analysis
and the Communications Workers of America Event
Antitrust Policy and Workers**

March 30, 2023

Thanks so much for having me here to engage in this crucial conversation about the role of antitrust in labor markets, and in supporting worker power.

Today I'd like to do two things: First, describe the backdrop against which the FTC sees its work with respect to workers and labor markets; and second, discuss the work that Chair Khan and the FTC are doing to push in the direction of fair competition and fair dealing in labor markets.

The focus of the conference has been on examining the stakes of antitrust policy for workers. The stakes are high – both for where workers are now, and for the difference that the antitrust agencies can make with policy and law enforcement in the labor market space. We can make incredibly important advances if we do this together.

First, there are important aspects of the labor market that if left unchecked can have – and are having – serious consequences for workers. By any of a range of measures, worker power has declined starkly from the 1970s.¹ From wage stagnation – which has impacted our low wage workers most – to union membership rates,² workers are not doing well. These indicators should be – and are, for the people in this room – a clarion call to action on a broad range of fronts.

One of the contributing factors to declining worker power is labor market concentration. Workers are facing extremely concentrated markets for their labor. Nationally, labor market concentration has increased since the 1980s, and local labor markets remain stubbornly concentrated, spelling trouble for workers.³ Limited options for employment mean that employers don't have to compete for workers on wages and benefits, reducing the pay and

¹ Ioana Marinescu & Jake Rosenfeld, *Worker Power and Economic Mobility*, WorkRise, at 1 (2022), <https://www.workrisenetwork.org/sites/default/files/2022-08/correctedworker-power-economic-mobility-landscape-report.pdf>

² *Id.*; see also Madison Hoff, *This chart shows how union membership has declined over the years*, Bus. Insider (Sept. 5, 2022), <https://www.businessinsider.com/chart-union-membership-changes-decline-over-the-years-2022-9>.

³ U.S. Dep't of Treasury, *The State of Labor Market Competition*, at 25 (2022), <https://home.treasury.gov/system/files/136/State-of-Labor-Market-Competition-2022.pdf>.

quality of the jobs available to workers.⁴ And mergers that significantly increase labor market concentration have been shown to lead to lower wages and slower wage growth.⁵

We can see the consequences of labor concentration and declining worker power across industries. From depressed pay, to chaotic scheduling, to limited benefits and sometimes dangerous working conditions, workers are unable to gain the stable and sustaining work that form the basis of the American dream.

Because of their power, employers can profitably misclassify workers, limit their mobility, engage in rampant digital surveillance, and more. More broadly, monopsony power transfers wealth from labor to capital, broadening the wealth gap and creating a drag on the economy.⁶

Perhaps most obvious, the union density in this country has plummeted to a mere six percent in the private sector,⁷ meaning most workers no longer have a meaningful voice in their workplace. And this is despite the American approval rating of labor unions rising to 71%, its highest level since 1965.⁸ Something is seriously amiss.

Over the course of this decline, antitrust agencies have been absent, or worse. For forty years, the antitrust agencies didn't just ignore labor markets. The policymakers at the agencies, laser focused on efficiency, actively endorsed the benefits of 'cost cutting' and other efficiencies that squeezed workers.⁹ They ignored harms in labor markets in favor of perceived benefits in products and service markets, to the detriment of workers and worker power.¹⁰ And of course in cases like *FTC v. Superior Court Trial Association*¹¹ and the Seattle Uber drivers matter,¹² agency policymakers chose to use antitrust law to undermine organizing efforts by groups of workers looking to push back against their employer.

Now I want to be careful here: I'm talking about policymakers. Staff at the FTC have been thinking for years now about harms in labor markets, including the impacts of

⁴ Marinescu & Rosenfeld, *supra* note 1, at 1.

⁵ *Id.*; See, e.g., José A. Azar et al., Concentration in US Labor Markets 13 (Nat'l Bureau of Econ. Res., Working Paper No. 24395, 2018); Simcha Barkai, *Declining Labor and Capital Shares*, 75 J. Fin. 2421, 2422 - 45, 48 (2020); see, e.g., Elena Prager & Matt Schmitt, *Employer Consolidation and Wages: Evidence from Hospitals*, 111 Am. Econ. Rev. 397, 423-24; see also Remarks of Chair Lina M. Khan Regarding the Request for Information on Merger Enforcement, Docket No. 2022-0003, at 2 (Jan. 18, 2022), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-chair-lina-m-khan-regarding-request-information-merger-enforcement> (noting that "evidence suggests that many Americans historically have lost out, with diminished opportunity, higher prices, lower wages, and lagging innovation.").

⁶ Eric A. Posner & Cass R. Sunstein, *Antitrust and Inequality*, 2 Am. J. L. Equal. 193-194 (2022).

⁷ Marinescu & Rosenfeld, *supra* note 1, at 28.

⁸ Justin McCarthy, *U.S. Approval of Labor Unions at Highest Point Since 1965*, Gallup (Aug. 30, 2022), <https://news.gallup.com/poll/398303/approval-labor-unions-highest-point-1965.aspx>.

⁹ Ioana Marinescu & Eric Posner, *Why Has Antitrust Law Failed Workers?*, 105 Cornell L. Rev. 1343,1362-1375 (2020);

¹⁰ *Id.*; Sandeep Vaheesan, *Accommodating Capital and Policing Labor: Antitrust in the Two Gilded Ages*, 78 Md. L. Rev. 766, 767-771 (2019); Hiba Hafiz, *Labor Antitrust's Paradox*, 86 U. Chi. L. Rev. 381, 397 (2019).

¹¹ *Federal Trade Commission v. Superior Court Trial Ass'n*, 493 U.S. 411 (1990).

¹² Brief for the United States and the Federal Trade Commission as Amici Curiae Supporting Appellant, *Chamber of Commerce v. City of Seattle*, 890 F.3d 769 (9th Cir. 2018).

concentration on wages and benefits, especially in health care markets. And not only that, but thanks to the excellent work of labor economists, some of whom we have here today, staff now have a wealth of evidence to rely on in understanding labor monopsony and how our tools apply in these spaces.

We now have the burgeoning evidence, ongoing staff commitment, and most importantly, the will of policymakers who are asking not only how we can avoid doing harm,¹³ but what are our obligations to *promote* fair competition in labor markets, and how do we use our tools to empower workers to create and defend opportunities for themselves.

In other words, we want to show up, but we need to educate ourselves. As I said, there's a demonstrated willingness to learn. As far as we've come, there's still more we're eager to hear about when and how workers struggle in the face of harmful employer conduct.

For that matter, across our priorities, as we attempt to revive enforcement tools and update theories, there's a real need to think through what the right analytical tools and considerations should be for the markets we're concerned about – how to better match our theories to reality – and that goes for labor markets as well.¹⁴

That's why I'm so glad to be here with you all today, to engage in a two-way dialogue. We need you to be able to skill up and invigorate our analysis if we're going to effectively intervene in labor markets to promote fair competition and stop unfair and anticompetitive market practices. Moreover, as an enforcement agency, we act on *particular facts*, and we need your help in finding and developing those facts.

Now, with that backdrop, Chair Khan has made it a key priority to ensure that the FTC is doing our part to create a more inclusive economy with greater worker power. In her first vision and strategy memo to the agency, Chair Khan said that a priority of hers was to examine places where power asymmetries can enable illegal practices, and made it a point to single out “extractive business models that centralize control and profits while outsourcing risks, liabilities, and costs.”¹⁵ These principles have animated the agency's approach to labor market issues.

I want to take some time to walk through some of the major lines of work we have on both mergers and on conduct cases – both competition *and* consumer protection – to talk about how we're currently thinking about labor market regulation. And I want to emphasize that this is a start. We're looking to expand on this work as we move forward.

First, I want to talk a bit about how we think about mergers. This is a huge part of our work across the board. Concentration has increased dramatically across the economy. Evidence

¹³ See, e.g., Fed. Trade Comm'n, Policy Statement on Enforcement Related to Gig Work, Comm'n File No. P227600, at 14 n.68 (Sept. 15, 2022) (hereinafter “Gig Work Policy Statement”), <https://www.ftc.gov/legal-library/browse/policy-statement-enforcement-related-gig-work>.

¹⁴ Memorandum from Chair Lina M. Khan to Commission Staff and Commissioners Regarding Vision and Priorities for the FTC, at 4 (Sept. 22, 2021), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/memo-chair-lina-m-khan-commission-staff-commissioners-regarding-vision-priorities-ftc>.

¹⁵ *Id.* at 3.

suggests that decades of mergers have been a key driver of consolidation across industries,¹⁶ and our merger review program is the first line of defense against this trend.

We're thinking about this both as we revise the Merger Guidelines and in real time as we assess and challenge the mergers coming through our doors. In terms of revising the Merger Guidelines, we've made clear that we're incorporating labor market effects analysis into merger review.¹⁷ We've brought on experts like Eric Posner, Ioanna Marinescu and Hiba Hafiz to help us with this understanding. And we've asked for public comment, and will do so again, to ensure that we're getting the best thinking on how to review mergers for labor market harms even as we're still in learning mode.¹⁸

Labor markets have unique characteristics that product markets lack, and the new Guidelines will need to be sensitive to that. The Guidelines will also need to clarify, with no ambiguity, that assessing the labor market effects of mergers are a core component of the agencies' merger review process, and those effects will not be ignored just because a merger might generate benefits in other markets. In revising the Guidelines, worker mobility and worker power will be at the forefront of merger policy.

While we're revising the merger guidelines, we're also reviewing mergers in real time in line with these goals, including being willing to challenge mergers that reduce labor market competition.

On merger review, take for example the Lifespan/Care New England merger in New Jersey this past year, which implicated a labor market.¹⁹ Our staff did a diligent job of understanding the labor market impacts for ourselves – again, something that's different from the product or service market analysis that we're more steeped in. The Commission split on whether to challenge the merger on labor market grounds. The Chair and Commissioner Slaughter made clear they were prepared to go forward with a challenge on the grounds of harm to labor market competition.²⁰ But potentially equally notable, all four commissioners confirmed the notion that

¹⁶ See, e.g., Simcha Barkai, *Declining Labor and Capital Shares*, 75 J. Fin. 2421, 2422 - 45, 48 (2020); 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 Paper on Econ. Activity, 89, 95–97 (2017); See generally JOHN KWOKA, *MERGERS, MERGER CONTROL, AND REMEDIES: A RETROSPECTIVE ANALYSIS OF U.S. POL'Y* (2014); see also Remarks of Chair Lina M. Khan Regarding the Request for Information on Merger Enforcement, Comm'n File No. FTC-2022-0003, 1-2 (Jan. 18, 2022), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-chair-lina-m-khan-regarding-request-information-merger-enforcement>.

¹⁷ U.S. Dep't of Just. & Fed. Trade Comm'n, Request for Information on Merger Enforcement, Docket No. 2022-0003, at 2, 5-7 (Jan. 18, 2022), <https://www.regulations.gov/docket/FTC-2022-0003>.

¹⁸ *Id.*; see also Press Release, Fed. Trade Comm'n, Federal Trade Commission and Justice Department Seek to Strengthen Enforcement Against Illegal Mergers (Jan. 18, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/01/federal-trade-commission-justice-department-seek-strengthen-enforcement-against-illegal-mergers>.

¹⁹ In the Matter of Lifespan Corp., Comm'n File No. 2110031 (2022).

²⁰ See generally Concurring Statement of Commissioner Slaughter and Chair Khan regarding FTC and State of Rhode Island v. Lifespan Corporation and Care New England Health System, Comm'n File No. 2110031 (Feb. 17, 2022), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/concurring-statement-commissioner-slaughter-chair-khan-regarding-ftc-state-rhode-island-v-lifespan>.

a merger that threatens competition for labor is a cognizable basis for Section 7 liability.²¹ Going forward, I would expect labor questions to feature in more FTC merger investigations.

We are also taking a critical eye toward how we think about merger remedies. Let me say first off that we are taking a fresh, skeptical eye toward merger remedies generally because the evidence shows they don't always work out as planned, and it's the public that bears the risk that an illegal deal is imperfectly remedied in a way that still leads to higher prices, lower wages, and the like. That said, as we do consider remedies, we have for a while now been, and are doubling down on, scrutinizing mergers for provisions like non-competes that impede talent mobility. For example:

- In November 2021, as part of the FTC's divestiture remedy to 7-Eleven, Inc.'s acquisition of Marathon's Speedway subsidiary, the FTC prohibited 7-Eleven from enforcing noncompete provisions for franchisees or employees working at or doing business with the divested assets.²²
- In January 2022, the Commission approved a final order imposing strict limits on future mergers by DaVita, a dialysis service provider with a history of fueling consolidation in life-saving health industries. As part of the order, DaVita was prohibited from entering into or enforcing noncompete agreements and other employee restrictions.²³

We are also beginning a dialogue on the ways in which divestitures and other remedial practices might have consequences for worker power, and how we can take that into account in our thinking. Last, let me say that across these activities – revising the guidelines, merger review, and merger remedies – we view unions as key stakeholders to engage in understanding the full scope of the market dynamics and consequences at play.

Before I dive into talking about conduct cases – and related actions, like rulemakings – as applied to labor markets, let me note a few things about how we're thinking about our authorities more generally.

First, the agency has the charge to police both unfair methods of competition and unfair and deceptive acts and practices – that is, we have unfairness authority in both the competition and consumer protection realms.²⁴ It is a key focus of ours to further explore these unfairness authorities, which help us create clear rules of the road for fair competition and fair dealing.

²¹ *Id.*; see also Concurring Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson Regarding Lifespan Corporation and Care New England Health System, Comm'n File No. 2110031, at 1 (Feb. 17, 2022), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/concurring-statement-commissioners-noah-joshua-phillips-christine-s-wilson-regarding-lifespan>.

²² Press Release, Fed. Trade Comm'n, FTC Orders the Divestiture of Hundreds of Retail Stores Following 7-Eleven, Inc.'s Anticompetitive \$21 Billion Acquisition of the Speedway Retail Fuel Chain (June 25, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/06/ftc-orders-divestiture-hundreds-retail-stores-following-7-eleven-incs-anticompetitive-21-billion>.

²³ 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/news/press-releases/2021/10/ftc-imposes-strict-limits-davita-incs-future-mergers-following-proposed-acquisition-utah-dialysis>.

²⁴ Federal Trade Commission Act, ch. 311, § 5, 38 Stat. 717, 719 (1914) (codified as amended at 15 U.S.C. §

Already you see that in our noncompete clause rulemaking – a simple rule to effectively ban noncompete clauses in labor contracts.²⁵ You can also see it in some of the remedies we’ve achieved on the consumer protection side, like prohibition on certain data practices or practices aimed at children. These authorities allow us to move past a disclosure regime where appropriate and toward a place where prohibitions can help us attack the root cause of a problematic market structure.

Similarly, where appropriate, we’re using rules as opposed to case-by-case adjudication. Rulemaking can make sense where the evidence of harm is clear, the costs of adjudication are high, and so on. One of the key benefits of simple rules, especially where unsophisticated parties are the beneficiary, is the clarity it brings to the market. Less well-resourced market participants like workers are more easily protected where the rules are crystal clear.²⁶

Both general principles are applicable when we talk about labor markets and worker power. As a part of our effort to revive important enforcement tools consistent with Congress’s original intent for our mission, last fall we put out a policy statement describing our authority to police unfair methods of competition. There are a few points worth mentioning about that statement.

A crucial point about this exercise was to go back to the actual text of the statute to understand the scope of this prohibition. Importantly, the statute does not prohibit “inefficient” methods of competition; indeed, “efficiency” is nowhere in the antitrust laws. Rather it prohibits “unfair” methods of competition. In looking at the legislative history, it is clear Congress meant to prohibit forms of competition that were “oppressive.”²⁷ It was also clear that Congress contemplated workers to be among the market participants protected by this prohibition.²⁸

This is why our policy statement makes clear that conduct impeding the opportunities of workers may come within its ambit.²⁹ This is also why the policy statement makes clear that an understanding of coercion, exploitation, and power imbalances in economic relationships forms a key part of the legal analysis at play here.³⁰

Now how is that playing out? First, you can see a few places where we’ve started to apply this with respect to unilateral conduct by employers, where they are imposing vertical restraints on workers, including in fissured workplace structures. We have entered into four

45(a)(1)).

²⁵ Press Release, Fed. Trade Comm’n, FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition (Jan. 5, 2022), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-proposes-rule-ban-noncompete-clauses-which-hurt-workers-harm-competition>.

²⁶ Remarks of Director Elizabeth Wilkins at BYU Law: Past, Present and Future of FTC Rulemaking, 4-5 (Feb. 24, 2023), <https://www.ftc.gov/news-events/news/speeches/remarks-director-elizabeth-wilkins-prepared-delivery-byu-law-past-present-future-ftc-rulemaking>.

²⁷ Fed. Trade Comm’n, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act, Comm’n File No. P221202, at 3-4 (Nov. 10, 2022) (hereinafter “Section 5 Policy Statement”), https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf.

²⁸ *Id.* at 4 n.18; *see also* Remarks of Director Elizabeth Wilkins, *supra* note 26, at 1.

²⁹ Section 5 Policy Statement, *supra* note 27, at 8-9.

³⁰ *Id.*

noncompete consents and have proposed a rule banning noncompete clauses in employment contracts.³¹ These actions constitute our first applications of our policy statement in an employment context. We recognize in these actions not only that non-competes have significant harms in labor markets, but also that they're coercive and exploitative of employees with less bargaining power. Notably, the proposed rule includes independent contractors in its definition of worker. We're concerned here with labor market effects, not technical definitions of employment, and independent contractors appear to be similarly situated to employees in terms of effects on wages and benefits.

These actions are of huge significance to working Americans. As proposed, we find that the rule would significantly boost workers wages – to the tune of \$250-300 billion per year – based on their greater ability to exercise their exit option.³²

As another example, we recently announced a request for information on how franchisors exert control over franchisees and their workers.³³ We explicitly noted a range of authorities – including unfair methods of competition and the Robinson Patman Act – that might apply to concerning contractual terms and other practices that allow for extreme levels of control.

Second, we're thinking about horizontal conduct by employers, where they work with competitors to engage in anticompetitive behavior – of particular concern where labor markets are highly concentrated.³⁴ Our unfair methods of competition policy statement calls out tacit coordination as one possible violation of the statute,³⁵ which means in some circumstances we may not need to prove agreement if for example there is tacit collusion between employers around wages or benefits. This is an area of interest for us.

One thing we will emphatically *not* do is use antitrust law as a sword against worker collective action. We were heartened to see the recent First Circuit case, *Confederación Hípica de Puerto Rico, Inc. v. Confederación de Jinetes Puertorriqueños, Inc.*, which found that the collective activity of these horseracing jockeys, though independent contractors, fell within the labor exemption for antitrust because they were agitating for better pay.³⁶

We're also looking at unfair and deceptive acts and practices against workers. It may seem obvious, but we made a big step forward this past fall in our policy statement about gig

³¹ Press Release, Fed. Trade Comm'n, *FTC Cracks Down on Companies That Impose Harmful Noncompete Restrictions on Thousands of Workers* (Jan. 4, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-cracks-down-companies-impose-harmful-noncompete-restrictions-thousands-workers>; In the Matter of Prudential Security et al., Comm'n File No. 2210026 (2023); In the Matter of O-I Glass, Inc., Comm'n File No. 2110182 (2023); In the Matter of Ardagh Group, S.A et al., Comm'n File No. 2110182 (Feb. 21, 2023).

³² Press Release, Fed. Trade Comm'n, *FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition* (Jan. 5, 2022), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-proposes-rule-ban-noncompete-clauses-which-hurt-workers-harm-competition>.

³³ Press Release, Fed. Trade Comm'n, *FTC Seeks Public Comment on Franchisors Exerting Control Over Franchisees and Workers* (Mar. 10, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-seeks-public-comment-franchisors-exerting-control-over-franchisees-workers>.

³⁴ Jonathan S. Masur & Eric A. Posner, *Horizontal Collusion and Parallel Wage Setting in Labor Markets*, 90 U. Chi. L. Rev. 545, 551 (2023).

³⁵ Section 5 Policy Statement, *supra* note 27, at 13.

³⁶ 30 F.4th 306 (1st Cir.), *cert denied* S. Ct., 22-327 (2023).

work when we made clear that workers are consumers too, and can be protected under a wide range of our consumer protection authorities.³⁷

Reinforcing gig workers' rights matters not only for our cases, but also for cases by state Attorneys General, many of whom enforce state versions of our Unfair, Deceptive, Or Abusive Acts Or Practices (UDAP) law that explicitly require the state law to be interpreted in line with federal law. States have used their UDAP statutes to go after employers for using unenforceable non-competes, for deceptive tipping practices, deceptive earnings claims, and more.

Our Amazon Flex settlement is a good proof point for this, where we reached a \$60 million settlement for misleading practices with respect to pay.³⁸ We see this as a rampant problem in particular in the gig economy, and we're making clear that if employers are going to treat their workers like independent contractors, then they have to abide by a range of protections like being clear about earnings up front or pay heavy penalties.

More broadly, our gig work policy statement identified the myriad ways in which these market structures centralize control while outsourcing risk, liability, and costs.³⁹ We're thinking creatively across our consumer protection and competition authorities about how to remedy that.

The last point I want to make is that FTC is part of a whole-of-government approach to competition and worker power. It is, frankly, amazing that we have a President who has signed executive orders requiring coordination on *both of these issues* and has put real emphasis and muscle behind it.

Specifically: The President has mobilized the government's "full authority" to both "encourage worker organizing and collective bargaining and ... promote equality of bargaining power between employers and employees,"⁴⁰ and to create a "competitive marketplace" for workers with "more high-quality jobs and the economic freedom to switch jobs or negotiate a higher wage."⁴¹

This effort is especially urgent where worker power is at the crisis level that it is, and where employers are using every strategy in the book to evade traditional economic regulation. We need to be thoughtful about the range of regulation that touches on these relationships and how they should relate to each other.

³⁷ Gig Work Policy Statement, *supra* note 13, at 7 n. 28 (noting that "traditional legal principles of consumer protection and competition apply" to gig workers, and that "[t]he use of the word 'consumer'" in the FTC Act "is to be read in its broadest sense.") (quoting S. Rep. No. 93-151, at 27 (1973)).

³⁸ Press Release, Fed. Trade Comm'n, FTC Returns Nearly \$60 Million to Drivers Whose Tips Were Illegally Withheld by Amazon (Nov. 2, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/11/ftc-returns-nearly-60-million-drivers-whose-tips-were-illegally-withheld-amazon>; In the Matter of Amazon.com, Inc., FTC File No. 1923123 (2021).

³⁹ Gig Work Policy Statement, *supra* note 13, at 7.

⁴⁰ Exec. Order No. 14,025, Worker Organizing and Empowerment § 1, 86 Fed. Reg. 22829 (Apr. 26, 2021).

⁴¹ Exec. Order No. 14,036, Promoting Competition in the American Economy § 1, 86 Fed. Reg. 36987 (July 14, 2021).

As folks here surely know, the FTC has signed an MOU with National Labor Relations Board (NLRB), and Department of Justice has done so with both NLRB and the Department of Labor.⁴² People often ask me what this means.

First, perhaps not terribly sexy but definitely terribly important: we're learning from each other through training and technical assistance.⁴³ Second, we are providing key technical assistance to each other both in case matters and in policy matters like statements and rulemakings. This helps us ensure that our work is sensitive to dynamics and power asymmetries that are unique to labor markets. And third, we are sharing information to support our investigation work, to the degree that evidence of lawbreaking for one of us can be relevant evidence for the other of us.

Last, though the focus has been on collaboration across the federal government, I would be remiss if I didn't mention our close collaboration with state counterparts. They're also often keenly interested in how mergers affect their constituents. Given that a lot of labor effects are local, state AGs can have a deep interest in those effects and can be important partners in investigating them.

So, that's a lot. Chair Khan has challenged us to think not in terms of competition or consumer protection, but in terms of the market structures that directly affect peoples' lives and the tools we have to address them. With its dual mandates, the FTC is uniquely placed to establish and clarify fair rules of labor market governance.

We are also uniquely able to facilitate greater democratic participation and engagement in this endeavor. Again I'm grateful to be here today to engage together in our shared project to engender greater economic liberty and opportunity for all working people. Thank you.

⁴² Press Release, Fed. Trade Comm'n, Federal Trade Commission, National Labor Relations Board Forge New Partnership to Protect Workers from Anticompetitive, Unfair, and Deceptive Practices (July 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/07/federal-trade-commission-national-labor-relations-board-forge-new-partnership-protect-workers>; Press Release, Dep't of Just., Departments of Justice and Labor Strengthen Partnership to Protect Workers (Mar. 10, 2022), <https://www.justice.gov/opa/pr/departments-justice-and-labor-strengthen-partnership-protect-workers>.

⁴³ In recent months, FTC staff did a training for NLRB staff on our authorities and how we believe they can be used in worker context and more than 300 NLRB staff turned up. In the other direction, just this month the NLRB did a training for 40 FTC staff across our competition and consumer protection missions who are currently, actively grappling with labor market issues that might touch on NLRB's mission. That's the level of interest and excitement for collaboration.