



Office of the Chair

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

**Remarks of Chair Lina M. Khan
White House Roundtable on the State of Labor
Market Competition in the U.S. Economy**

March 7, 2022

Good afternoon everyone. I'd like to thank our partners at the Treasury Department, the Department of Labor, the Department of Justice, and the White House for all the work that has gone into the report issued today.¹ This report on a lack of competition in labor markets highlights deep asymmetries in power between firms and their workers and explains how these asymmetries can enable firms to disfavor and disempower workers, including through lowering wages, reducing benefits, and perpetuating precarious or exploitative working conditions. Importantly, it also identifies steps that government can take to address these challenges. I'd also like to thank the workers who have shared their perspectives with us today, underscoring the real-world effects of how labor markets are structured and the business practices that the law permits or prohibits.

The report Treasury has issued today highlights several ways in which a lack of fair competition is hurting workers. A priority of mine at the Federal Trade Commission has been to ensure that we are using our tools and authorities to tackle unfair methods of competition that affect workers, and I'd like to share some of the ways in which the agency is advancing this objective.²

The report highlights that many labor markets in America today display extremely high levels of concentration. Mergers can make this concentration even worse, further lowering wages, reducing benefits, and degrading working conditions. One of my top areas of focus at the FTC is ensuring that we consider labor markets when investigating potentially illegal mergers. The laws prohibiting mergers that may substantially lessen competition or tend to create a monopoly apply equally to labor markets, and one of my

¹ U.S. DEP'T OF TREASURY, THE STATE OF LABOR MARKET COMPETITION (Mar. 2022), <https://home.treasury.gov/system/files/136/State-of-Labor-Market-Competition-2022.pdf> [hereinafter "Labor Market Report"].

² Memorandum from Chair Lina M. Khan to Commission Staff and Commissioners Regarding Vision and Priorities for the FTC, at 3 (Sept. 22, 2021), https://www.ftc.gov/system/files/documents/public_statements/1596664/agency_priorities_memo_from_chair_lina_m_khan_9-22-21.pdf.

priorities is investigating whether deals may harm workers in ways that prove unlawful.³ The FTC and DOJ also recently launched a joint initiative to revise the merger guidelines, a key goal of which is to ensure our merger investigations are fully accounting for relevant harms to workers and labor market competition.⁴

The report also highlights that millions of workers are subjected to a slew of contractual provisions, including in take-it-or-leave-it contexts, that can further undermine their rights and freedoms.⁵ Non-compete clauses, for example, block workers from working for certain other corporations or starting their own business even after they leave their current employer. As the report notes, non-compete clauses can reduce worker wages and benefits and keep workers trapped, preventing them from taking better jobs.⁶ These non-compete clauses may also keep entrepreneurs from starting their own business or impede the ability of competitors to hire certain workers, holding back new business formation and making our economy less dynamic. Contractual terms that may harm fair competition are a major area of focus for the FTC, and we are carefully reviewing non-compete clauses in particular.⁷ One of the FTC's recent merger settlements prohibited a firm from entering into or enforcing non-compete agreements and other restrictive contracts,⁸ and we are actively considering additional ways that we can address the unlawful use of non-compete clauses, including through enforcement and rulemaking.

Finally, the report notes how a firm's market power may both enable and be fortified by additional business practices that harm workers.⁹ Misclassification of workers, for example, can let firms both cut employment costs in ways that may yield a competitive advantage and also limit workers' ability to organize and act collectively.¹⁰

³ In the Commission's recent challenge of a hospital merger in Rhode Island, I would have supported a Clayton Act claim regarding the potential effect of the proposed transaction on competition in the relevant labor markets. *See* Concurring Statement of Commissioner Slaughter and Chair Khan regarding FTC and State of Rhode Island v. Lifespan Corporation and Care New England, at 1-2 (Feb. 17, 2022), <https://www.ftc.gov/public-statements/2022/02/concurring-statement-commissioner-slaughter-chair-khan-regarding-ftc-state>.

⁴ Press Release, 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>.

⁵ Labor Market Report, at 7.

⁶ *Id.*

⁷ Request for Public Comment Regarding Contract Terms That May Harm Fair Competition, FTC-2021-0036, <https://www.regulations.gov/docket/FTC-2021-0036> (last visited Mar. 11, 2022).

⁸ 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>.

⁹ Labor Market Report, at 8-9.

¹⁰ Letter from FTC Chair Lina M. Khan to Chair Cicilline and Ranking Member Buck Regarding "Reviving Competition, Part 4: 21st Century Antitrust Reforms and the American Worker", at 2 (Sept. 28, 2021), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/letter-ftc-chair-lina-m-khan-chair-cicilline-ranking-member-buck-regarding-reviving-competition-part> (noting that collective organizing by workers misclassified as non-employees is currently susceptible to antitrust prosecution and noting that lawmakers could clarify that labor organizing by non-employee workers regarding the terms and condition of their work is outside the scope of federal antitrust laws, removing the threat of antitrust liability resulting from such coordination)

The FTC is also cracking down on unfair or deceptive practices that harm workers, including instances in which firms present workers with a misleading picture of how much they can expect to earn, what their working conditions will be like, or how their pay will be calculated.¹¹ The agency has put more than one thousand companies on notice that deceptive money-making claims are illegal,¹² and last month we initiated a rulemaking proceeding to further bolster these efforts.¹³

In closing, my thanks again to the Treasury Department team for producing this important report and highlighting the critical work needed to ensure that American workers can benefit from fair competition.¹⁴ I look forward to working with our partners across government in this shared effort.

¹¹ Press Release, FTC Puts Businesses on Notice that False Money-Making Claims Could Lead to Big Penalties (Oct. 26, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-puts-businesses-notice-false-money-making-claims-could-lead-big-penalties>; Advance Notice of Proposed Rulemaking, Trade Regulation Rule on the Use of Earnings Claims (Feb. 17, 2022) (to be codified at 16 CFR pr. 461). *See also*, 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-millionsettle-ftc-charges-it-withheld-some>.

¹² Press Release, FTC Puts Businesses on Notice that False Money-Making Claims Could Lead to Big Penalties (Oct. 26, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-puts-businesses-notice-false-money-making-claims-could-lead-big-penalties>.

¹³ Press Release, FTC Takes Action to Combat Bogus Money-Making Claims Used to Lure People into Dead-end Debt Traps (Feb. 17, 2022), <https://www.ftc.gov/news-events/press-releases/2022/02/ftc-takes-action-combat-bogus-money-making-claims-used-lure>.

¹⁴ *See also* Sanjukta Paul, *Charting the Reform Path*, 120 MICH. L. REV. (forthcoming 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3931868 (noting that antitrust law makes decisions about the terms on which competition is permitted and what types of coordination are allowed, and encouraging more explicit discussion of what constitutes “fair” competition).