



Office of Commissioner  
Rebecca Kelly Slaughter

WASHINGTON, D.C. 20580

## Remarks of Commissioner Rebecca Kelly Slaughter As Prepared for Delivery

GCR Interactive: Women in Antitrust  
November 17, 2020

Thank you for inviting me today. I appreciate GCR for having the vision to create and support this Women in Antitrust conference year after year. It is a delight to speak at a conference where all of the panel members and speakers are women, a welcome break from the all-too-common “manel.”

We are here on Zoom because our lives have been turned upside down by the COVID-19 pandemic. We know that women have been and continue to be disproportionately affected by the economic consequences of COVID, especially in the job market. The effect is so profound that this economic downturn has been deemed a “she-cession.” Women are leaving the workforce, both involuntarily and voluntarily, at shockingly high rates. This is largely explained by two key factors. First, women make up a significant proportion of workers in “contact intensive” sectors of the economy, such as hospitality, where many businesses have shuttered due to the pandemic. Second, as schools and daycare centers shut down, women have provided the majority of childcare, making it difficult to maintain jobs.<sup>2</sup>

The statistics are shocking. In September alone, 865,000 women dropped out of the workforce.<sup>3</sup> In all, only about half of all jobs lost this year have returned. The picture is even worse for women of color. White men and women have seen about 60% of lost jobs come back, but only 39% of job loss has been regained for Black women. A recent report found that one in four women are considering downsizing their careers or leaving the workforce as a result of the

---

<sup>1</sup> The views expressed in these remarks are my own and do not necessarily reflect the views of the Federal Trade Commission or any other commissioner.

<sup>2</sup> See, e.g. Titan Alon, Matthias Doepke, Jane Olmstead-Rumsey & Michèle Tertilt, *The shecession (shecession) of 2020: Causes and consequences*, VoxEU (Sept. 22, 2020), <https://voxeu.org/article/shecession-she-recession-2020-causes-and-consequences>; Nicole Bateman & Martha Ross, *Why has COVID-19 been especially harmful for working women?* Brookings Institution (Oct. 2020), <https://www.brookings.edu/essay/why-has-covid-19-been-especially-harmful-for-working-women/>; Julie Kashen, Sarah Jane Glynn & Amanda Novello, *How COVID-19 Sent Women’s Workforce Progress Backward*, Center for American Progress (Oct. 30, 2020), <https://www.americanprogress.org/issues/women/reports/2020/10/30/492582/covid-19-sent-womens-workforce-progress-backward/>.

<sup>3</sup> See Chabeli Carrazana, *865,000 women left the workforce last month*, USA Today (Oct. 11, 2020), <https://www.usatoday.com/story/news/politics/2020/10/11/865-000-women-were-laid-off-last-month/3609016001/>.

damage wrought by COVID-19, and it's the first time in six years that the study has found evidence of women intending to leave their jobs at higher rates than men.<sup>4</sup>

This isn't just statistics; it's personal. I'm sure what I just described resonates with many of you. It resonates for me personally. I had moments this past year, particularly in the spring, where I took a step back and thought, I don't know if I can do this. I have an amazing job that I love and I care about. I enjoy an unusual degree of flexibility in structuring my work schedule. I have a wonderful, supportive, and engaged partner. Nonetheless, the stress and anxiety of trying to do my work, manage our household, supervise distance learning, and keep our family safe felt like too much for me. I wondered if I should just step back and stop working to take care of my family. I have to think that if I am feeling this way—with all of the advantages and privileges that I have at my disposal—it has to be an even more profound feeling for so many other women. I am hanging on, but too many other women are not in the position to do so.

Vice President–Elect Harris has been outspoken on competition issues, especially in health care markets. When she was Attorney General of California, her office opened the investigation of market concentration and its effects on prices that was the basis for California’s 2018 case against Sutter Health.<sup>6</sup> We welcome her experience coming into the White House as we continue to think about where antitrust is and where it needs to go in the future.

The antitrust community as a whole has taken significant steps to recognize the importance of diversity and inclusion, including through professional development and substantive inclusivity. The antitrust community added to its efforts with the inaugural year for the Women.Connected and Diversity.Advanced initiatives supported by the Antitrust Section of the ABA. The two groups sponsored a 21-Day Racial Equity Habit-Building Challenge in August and inducted the first class of the brand new Hall of Fame-inism. This event honored four outstanding and trailblazing women: Deborah Majoras, Lisa Phelan, Bonny Sweeney, and Meg Guerin-Calvert. The OECD has taken a major step toward developing gender inclusive competition policy and has a call out for proposals to explore whether additional relevant features of markets, behaviors of consumers and firms, and more effective competition policy can help to address gender inequality.<sup>7</sup>

These are critical initiatives for advancing gender equity in the profession, but I am also very interested in how antitrust law itself can be used to promote racial inclusion and equity. More specifically, how might antitrust enforcers think creatively about using existing authority to combat systemic racism?

I know that even broaching the subject departs from the way many of us have been trained to think about antitrust law, and that it could generate strong reactions. So, earlier this fall, during the height of the renewed conversation about race and America’s reckoning with racism, I chose to dive into this conversation on that bastion of thoughtful reflection and respectful engagement: Twitter.<sup>8</sup>

My proposal is simple: Antitrust can and should be deployed in the fight against racism. As anticipated, I have received lots of questions and critical feedback. I appreciate and very much welcome that engagement. To me, the objections I have heard start with what I view to be a faulty premise: that antitrust can and should be value-neutral, and therefore social problems like racism do not have a role in antitrust enforcement.

I have two problems with this premise. First, why should antitrust be a value-neutral area of the law when no other area of law enforcement is expected to be value-neutral? We are entirely comfortable with criminal prosecutors explicitly setting out values-based priorities, such as a focus on white-collar crime or violent crime. This is true in civil law enforcement too. At the FTC, within our consumer-protection mission, we have focused on predatory lending as well as discrimination in auto financing—two areas that we know disproportionately harm Black

---

<sup>6</sup> See Reed Abelson, Kamala Harris and the Push to Cut Hospital Bills California, N.Y. Times (Nov. 9, 2020), <https://www.nytimes.com/2020/10/06/health/kamala-harris-health-care.html> #it

communities. Yet for some reason we seem to expect antitrust to be the one value-free zone in law enforcement.

The second problem I have with the premise that antitrust should be uniquely value-neutral is that I do not believe antitrust **can** be value-neutral. The concept of value-neutral antitrust enforcement is at best aspirational, not unlike the idea of “race blindness” as a way to eliminate racial discrimination. Antitrust enforcement necessarily addresses fundamental economic and market structures. In the United States, these economic and market structures are historically and presently inequitable. So, when we make decisions about whether and where to enforce the law or how to deploy our enforcement resources, we are making decisions that will have an effect on structural equity or inequity. Our decisions can either reinforce existing structural inequities or work to break them down. I would prefer we choose the latter, and either way, that we make our choice on an informed basis and with open eyes.

I am not suggesting that we pretend that U.S. antitrust law explicitly considers race or racism. I am simply suggesting that we begin to think strategically about using antitrust as a tool for combatting structural racism—a system built on a social construct that favors incumbents. We need to be asking how we can use our enforcement tools to ensure that markets are competitive and inuring to the benefit of historically underrepresented and economically disadvantaged consumers rather than incumbents. We can focus on markets and anticompetitive practices where harm disproportionately falls on people of color. Some examples that are getting increasing attention include the pervasive use of non-compete clauses to limit worker mobility and the lack of access to capital as an entry barrier for Black- and minority-owned business as an entry barrier.<sup>9</sup>

We should start these efforts with data. We should make a concerted effort to collect demographic data where possible in our investigations so that we can understand where and how communities of color are affected. I am confident there are ways to incorporate the questions into our analysis of the competitive effects of mergers and acquisitions as well as conduct matters.

### Countering Market Power and Building Back Deterrence

In addition to prioritizing cases that specifically help reduce racial inequity, we can generally

reaches far beyond tech. We have all felt the impact of market power in our daily lives, from cellphones and broadband to healthcare and pharmaceuticals to the food in our refrigerators. Workers also feel the squeeze from concentrated labor markets and conditions that allow employers to impose anticompetitive restrictions on employees and to skirt labor laws by misclassifying their workers as independent contractors rather than as employees.<sup>11</sup>

Congressional intervention is an essential input to reinvigorating antitrust law. First, Congress should fix bad case law, but, most urgently, I would like to see Congress increase the FTC's funding levels. It is indisputabl Tc 0 Tw ( )Tj- theorr thecw ( )Tj-0.4 (e)-2 ( Fo)3 (r)-2 (i)-2 (c)1 ( )5 (i)-2 (m)8.a



providers in North Dakota.<sup>17</sup> These mergers are only a few of the many data points that suggest a breakdown in the deterrent effect of antitrust enforcement.

Firms may also calculate that they have little to lose by engaging in anticompetitive conduct. These cases are critical, but they tend to be fewer and farther between, more time-consuming, and very fact-specific; sporadic enforcement may limit the deterrent effect. The one exception to this may be the Commission's decades of effort devoted to stopping anticompetitive pay-for-delay settlement agreements.<sup>18</sup> But, even in that area, it took a very long time get from the early challenges to a resolution. Knowing that, some firms may still determine it is worth the risk.

Let me be clear: I am extraordinarily proud of the work the FTC has done to bring a record-breaking number of cases this past year. Our staff has been working non-stop, night and day, throughout the pandemic, conducting investigations and litigating both merger and conduct cases. I cannot give them enough credit for the way they have adapted to the circumstances and

~~continued to work in front of the agency, as many of the more juggling of daily operations (continued)~~





