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Federal Trade Commission
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Office of the Chair

Remarks of Chair Lina M. Khan
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International Antitrust Law & Policy

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Good morning, everyone. Thanks so much for the introduction—it's great to be here.

Each year ~~the~~ conference does a terrific job of convening a vibrant group of enforcers, practitioners, and leading academic thinkers from across the international community. The opportunity for shared learning here is tremendous—especially as we in the United States are at the forefront of a broader reassessment of antitrust policy and enforcement.

One key area of reassessment has been our merger enforcement program.

Over the last decade, we've heard mounting concerns about inadequate competition across key markets in the U.S. economy. Evidence suggests that decades of mergers have been a key driver of weakened competition. As President Biden noted in his Executive Order on Promoting Competition, industry consolidation has "den[ie]d Americans the benefits of an open economy," with "workers, farmers, small businesses, and consumers paying the price." Evidence suggests that many Americans historically have lost out, with diminished opportunity, higher prices, lower wages, and lagging innovation. Lack of competition also appears to have left segments of our economy more brittle, as consolidated supply and reduced investment in capacity can render us less resilient in the face of shocks.

These facts have prompted us to assess how our merger policy tools can better equip us to discharge our statutory obligations and halt this trend.

¹ Promoting Competition in the American Economy, 86 Fed. Reg. 36987 (July 9, 2021). See also Fact Sheet Executive Order on Promoting Competition in the American Economy, The White House (July 9, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/> (noting that "economists find that as competition declines, productivity growth slows, business investment and innovation decline, and income, wealth, and racial inequality widen").

² See, e.g. José A. Azar et al., Concentration in US Labor Market Evidence From Online Vacancy Data 16 LAB. ECON. (2020); Simcha Barkai, Declining Labor and Capital Shares 35 J. FIN. 2421, 2422-245, 48 (2020); Jan De Loecker et al.,

For over a century, Congress has codified a policy in favor of competition over consolidation. In 1890, as industrial trusts captured the sugar, steel, oil, and railroad sectors lawmakers passed the Sherman Act, prohibiting, among other practices, monopolization, attempted monopolization, and conspiracies to monopolize.⁴ Once it became clear that this statute was failing to prevent monopolization through acquisition, Congress in 1914 passed the Clayton Act, prohibiting mergers whose effect “may be substantially to lessen competition, or to tend to create a monopoly.”⁵ When businesses began exploiting loopholes in the Clayton Act, Congress once again stepped in, passing the 1950 Celler-Kerley Antimerger Act to ensure the law captured vertical and conglomerate deals as well as acquisitions of assets leading up to the 1950 amendments made clear that lawmakers viewed protecting America from monopolies as critical to maintaining our system of free enterprise.

With each of these efforts, Congress redoubled its commitment to open markets and free and fair competition.

The durability and public legitimacy of our antitrust regime depends on the ability of enforcers and courts to adapt, remaining faithful to these legislative mandates even as markets and business practices shift and evolve.

Our proposed revisions of the Merger Guidelines are a core part of this effort. The draft guidelines we released in July were animated by two overarching goals. First, we wanted to ensure the guidelines faithfully reflect the full scope of the laws that Congress passed and prevailing legal precedent. And second, we sought to ensure the guidelines reflect the reality of how firms do business in the modern economy.

One of the first steps our team took was to chart key developments in the merger guidelines since 1968. Revisiting this history highlighted the extent to which the 1982 guidelines departed from controlling law and precedent—how deep and lasting the impact of the 1982 guidelines has been.

As is happening now, the publication of the 1982 guidelines was followed by extensive commentary from antitrust practitioners and academics. A striking theme across comments was a recognition of how sharply the guidelines had broken from the statutes Congress had passed and prevailing legal precedent

⁴ Sherman Antitrust Act, 15 U.S.C. § 1 seq (1890); see also *N. Pac. Ry. Co. v. United States*, 356 U.S. 1, 4 (1958) (“The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.”).

⁵ Clayton Act, 15 U.S.C. § 18 seq (1914). Con.8 (g (e)3.9 (9)8.8 (2)-2.2 2)0.5 (de)3. (n)6 (g)0. (1)-1 (2)0.144 1tn2 21se2n

For example, Professor

The proposed guidelines also take a functional approach to gauging competition. Rather than relying on a formalistic set of theories, they seek to understand the practical ways that firms compete and exert control over markets. Reflecting the multitude of ways that mergers can lessen competition or tend to create a monopoly, they identify several ways to analyze transactions. Key to the proposed revisions is the idea that no single method or tool has primacy, and that the specific context will determine which tools are most effective at assessing harm to competition.

We want the guidelines to incorporate new economic learning and accurately capture how businesses compete in today's economy. To that end, the proposed guidelines address blind spots and lay out a framework for policing mergers in labor markets, in platform and digital markets, and in markets characterized by serial acquisitions.

Public feedback has been a key input throughout our merger review process. Last year, we conducted a series of listening sessions and received over 5,000 comments in response to the initial request for comments. As of Monday, we had gotten over 3,000 public comments in response to the proposed draft. My review so far suggests these comments overwhelmingly support stronger merger enforcement. More significantly, these comments have underscored the high stakes of getting this right. Across sectors and professions, people have shared with us how unchecked consolidation has hurt their paycheck, their job opportunities, their health, their communities.

Take a few stories from people across healthcare. ER doctor told us about how mergers in his industry had hurt the ability of emergency physicians to provide quality care in life-or-death moments.¹¹ A healthcare startup told us that health care mergers have made it extremely difficult for patients living in rural areas to access critical services.¹² An organization representing more than 200,000 nurses told us that hospital consolidation had reduced options for employees, and that the resulting "bumping blacklisted from further hiring in a system that controls many of the hospitals in the area makes workers afraid to file complaints, organize their workplace, or leave before the end of a contract."¹³

Similarly, a writer explained to us that mergers across Hollywood have meant that compensation for scripts is a fraction of what it was 15 years ago for writers who produce major hits.¹⁴ Farmers shared an instance where even 15% of the market being foreclosed drove one of the country's largest dairy processor's to bankruptcy, suggesting, they wrote, that "the

¹¹ Comment Submitted by Mitchell Li, FTC and DOJ Host Listening Forum on Effects of Mergers in Health Care Industry (Apr. 14, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/FTCDOJ-ListeningForum%20HealthCareTranscript.pdf

¹² Comment Submitted by Shohini Gupta, Regulations.gov (July 25, 2023), <https://www.regulations.gov/comment/FTC-2023-0043-0435>

¹³ Nat'l Nurses United, Comment Letter to Fed. Trade Comm'n and Dep't of Justice Draft Merger Guidelines 2 (Sept. 18, 2023), <https://www.regulations.gov/comment/FTC-2023-0043-1485>

¹⁴ Comment Submitted by Jane Lee, Regulations.gov (July 26, 2023), <https://www.regulations.gov/comment/FTC-2023-0043-0477>.

We cannot predict the many ways that markets and business strategies will evolve. But we can commit to staying vigilant, updating our tools and frameworks when the facts call for it, and using the full scope of our authorities to safeguard free and fair competition for the American people.

Thank you.
