Prepared Statement of the Federal Trade Commission
Before the United States Senate Committee on the Judiciary
Subcommittee on Antitrust, Competition Policy and Consumer Rights
"Oversight of the Enforcement of the Antitrust Laws"
September 20, 2022

Chairwoman Klobuchar, Ranking Member Lee, and distinguished members of the Subcommittee, I am Lina Khan, Chair of the Federal Trade Commission, and I am pleased to testify today on behalf of the Commission.[1] I want to thank members of this Committee for the opportunity to discuss our current competition enforcement activities and priorities as well as for their support of our work.

Vigorous antitrust enforcement is critical to the growth and dynamism of our economy, as well as to our shared prosperity and liberty. Recent decades have vividly illustrated how Americans lose out when markets become more consolidated and less competitive. Prices rise, wages fall, and our markets become more fragile and less resilient. These effects have been on full display over the last year, as supply shocks stemming from the pandemic and contaminated products have led to severe shortages and steep price hikes.

Examples of these effects abound throughout the economy. We at the FTC have learned directly about some of them during recent public listening sessions convened to hear from people with first-hand experience regarding the effects of concentration in our markets.[2] For example, nurses described how hospitals, after merging, drastically reduced staffing, closed primary-care clinics, cut geriatric services, and eliminated essential programs like rural cancer care.[3] Diabetes patients explained that they have been forced to ration their insulin and jeopardize their health because scant competition among insulin producers has resulted in dramatic price increases for this essential product, despite no increase in manufacturing costs.[4] And family ranchers and small farmers told us about their struggles to get their products to market because of the anticompetitive practices of large supermarket chains and dominant agribusiness firms, including meat processors and dairy bottlers.[5]

These facts invite us to reassess how we can enforce the antitrust laws to ensure maximal efficacy. At the FTC, we are doing so by reactivating the full set of authorities that Congress granted us and by ensuring that we are being faithful to controlling law and precedent. We are also updating our tools to ensure they better correspond to new market realities.

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[1] This written statement presents the views of the Federal Trade Commission. The oral statement and responses to questions by Chair Khan do not necessarily reflect the views of the Commission or any other Commissioner.
[2] Press Release, Fed. Trade Comm'n, FTC and Justice Department Launch Listening Forums on Firsthand Effects of Mergers and Acquisitions (Mar. 17, 2022), http://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-justice-department-launch-listening-forums-firsthand-effects-mergers-acquisitions.
[3] FTC and Justice Department Listening Forum on Firsthand Effects of Mergers and Acquisitions: Health Care (Apr. 14, 2022) (transcript available at http://www.ftc.gov/system/files/ftc_gov/pdf/FTC-DOJ-Listening-Forum-%20Health-Care-Transcript.pdf) at 4.
[4] *Id.* at 8.
[5] FTC and DOJ Merger Guidelines Listening Forum (Mar. 28, 2022) (transcript available at http://www.ftc.gov/system/files/ftc_gov/pdf/FTC-DOJ%20Merger%20Guidelines%20Listening%20Forum_FTC_March%2028%202022.pdf) at 2-4.

In practice, this means reorienting our enforcement efforts to better capture harm from mergers involving firms at different levels of the supply chain (*i.e.*, non-horizontal mergers) and to better anticipate future competition concerns before markets are dominated by only a few firms, as contemplated by the Clayton Act's call to arrest monopolies "in their incipiency." It also requires a focus not only on the output side of markets, such as the goods and services offered to consumers, but on the input side as well. This means ensuring competitive markets for workers' labor, which help workers receive fair pay and better working conditions and benefits.

To maximize the efficacy of the agency's scarce resources, we are orienting our enforcement efforts around targeting root causes of competitive harm rather than looking at one-off effects. This means focusing on structural conditions and incentives that enable and motivate unlawful conduct—be it certain conflicts of interest, business models, or structural dominance—as well as looking upstream at the firms that are enabling and profiting from this conduct. To accomplish this, we are making greater use of technologists, computer scientists, and a broad range of methodological skillsets to enhance our understanding of new and emerging markets and next-generation technologies. Investing in this horizon-scanning work can enable timely intervention, allowing us to tackle problems at their incipiency, thereby limiting harms and saving resources over the long term.

As we undertake this work, the FTC is prioritizing clarity, administrability, and public participation. Notably, this effort includes issuing policy statements and other guidance to provide clear notice of FTC enforcement practices and priorities.[6] It has also included changing our rules of practice to make it easier for members of the public to petition the agency for new rules or changes to existing rules, opening up our processes to greater public input and scrutiny.[7] And since last summer the FTC has held monthly Commission meetings that are open to the public and where members of the public can sign up to share their views and perspectives directly with the Commission.

Finally, to maximize the impact of our efforts, we are focused on enhancing and deepening collaboration with other governmental institutions. This includes not only traditional partners, such as the DOJ, state attorneys general, and international enforcers, but also other federal agencies, such as the Departments of Defense and Agriculture and National Labor Relations Board ("NLRB")[8]. While the FTC is an independent agency, we very much recognize

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[6] *See, e.g.*, Policy Statement on Rebates and Fees in Exchange for Excluding Lower Cost Products (Jun. 16, 2022), http://www.ftc.gov/legal-library/browse/policy-statement-federal-trade-commission-rebates-fees-exchange-excluding-lower-cost-drug-products; Statement of the Commission on the Use of Prior Approval Provisions in Merger Orders (Oct. 25, 2021), https://www.ftc.gov/system/files/documents/public_statements/1597894/p859900priorapprovalstatement.pdf.

[7] Press Release, Fed. Trade Comm'n, FTC Opens Rulemaking Petition Process, Promoting Public Participation and Accountability (Sep. 15, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/09/ftc-opens-rulemaking-petition-process-promoting-public-participation-accountability.

[8] The FTC entered into a Memorandum of Understanding with the NRLB in July 2022, intended to increase collaboration on key issues such as labor market concentration, one-sided contract terms, and labor developments in the "gig economy." *See* 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 (Jul. 19, 2022), http://www.ftc.gov/news-events/news/press-releases/2022/07/federal-trade-commission-national-labor-relations-board-forge-new-partnership-protect-workers.

the benefits of a "whole-of-government" approach to competition. Collaborating with other federal agencies ensures we are benefiting from expertise across government, drawing on industry-specific knowledge, and in turn helping equip other agencies to diagnose and address competition problems more directly.

None of this work would be possible without our talented agency staff, whose diligence and dedication are second to none. Despite facing severe resource constraints and formidable defendants, our staff bring unmatched courage and commitment to protecting the American people from unlawful business practices and promoting fair competition.

I. Law Enforcement

Guided by the vigorous and faithful execution of the federal antitrust laws, the Commission is focusing its enforcement efforts and resources on targeting mergers and conduct that pose the greatest threats to open, competitive, and fair markets. Reestablishing deterrence is a key goal, and we are working to achieve this by redoubling our effort to pursue effective remedies and by providing clarity about how we will execute the law through both individual actions and broader guidance.

A. Promoting Rigorous Merger Enforcement

Together, the FTC and the DOJ represent the American people's front-line defense against unlawful consolidation, and the work we do to prevent that consolidation is critically important. Our staff has worked tirelessly to meet the enormous demand of enforcing the laws against unlawful mergers amid a historic surge: in 2021, global deal-making soared to $5.8 trillion, the highest level ever recorded.[9] A record 3,644 transactions were reported to the FTC and DOJ in FY 2021, which is 87% more than the average number of transactions reported over the past five years,[10] and they remain at historically high levels.[11] FTC staff continues to do an outstanding job during this challenging period of record dealmaking despite facing serious staffing and resource constraints.

Against this backdrop, the FTC remains committed to challenging unlawful deals. Over the past year we have moved to challenge major transactions in critical sectors of the economy, including semiconductors, defense, energy, healthcare, and digital markets.[12] This includes filing

[9] Kaye Wiggins et al., *Dealmaking Surges Past $5.8tn to Highest Levels on Record*, FIN. TIMES (Dec. 30, 2021), https://www.ft.com/content/6dfdd78a-e229-4524-a400-144396524eb6.

[10] *Premerger Notification Program*, FED. TRADE COMM'N, https://www.ftc.gov/enforcement/premerger-notification-program (last visited Sept. 14, 2022); FED. TRADE COMM'N & DEP'T OF JUSTICE, HART-SCOTT-RODINO ANNUAL REP. FISCAL YEAR 2020, Exh. A, Tbl. I, Tbl. IV (2021), https://www.ftc.gov/system/files/documents/reports/hart-scott-rodino-annual-report-fiscal-year-2020/fy2020_-_hsr_annual_report_-_final.pdf.

[11] FY 2022 only trails FY 2021 as the highest number of filings since merger notification thresholds were adjusted in 2000. *Premerger Notification Program*, FED. TRADE COMM'N, https://www.ftc.gov/enforcement/premerger-notification-program (last visited Sept. 14, 2022).

[12] Complete FY 2022 FTC enforcement numbers will be available at a later date on the FTC website at https://www.ftc.gov/policy/reports/annual-competition-reports.

suit to block six mergers outright so far in FY 2022,[13] and parties have abandoned several other anticompetitive mergers shortly before the Commission voted out a complaint to challenge them.[14]

Among these merger enforcement efforts is critical FTC work to prevent further consolidation in markets for hospital services. On the same day in June 2022, the Commission voted to block two proposed hospital mergers: HCA's acquisition of Steward Health Care System[15] and RWJBarnabas's acquisition of Saint Peter's Healthcare System.[16] Each of these mergers threatened to raise healthcare costs at a time when American families are still reeling from the health and financial challenges of the COVID pandemic. Healthcare experts have shown that competition among health systems—not consolidation—results in lower prices and improved health outcomes for patients,[17] as well as better wages and benefits for employees.[18] It

[13] Press Release, Fed. Trade Comm'n, FTC Seeks to Block Virtual Reality Giant Meta's Acquisition of Popular App Creator Within (July 27, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-seeks-block-virtual-reality-giant-metas-acquisition-popular-app-creator-within; Press Release, Fed. Trade Comm'n, FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System (Jun. 2, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-utah-healthcare-rivals-hca-healthcare-steward-health-care-system; Press Release, Fed. Trade Comm'n, FTC Sues to Block Merger Between New Jersey Healthcare Rivals RWJBarnabas Health and Saint Peter's Healthcare System (Jun. 2, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-new-jersey-healthcare-rivals-rwjbarnabas-health-saint-peters; Press Release, Fed. Trade Comm'n, FTC and Rhode Island Attorney General Step in to Block Merger of Rhode Island's Two Largest Healthcare Providers (Feb. 17, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-rhode-island-attorney-general-step-block-merger-rhode-islands-two-largest-healthcare-providers; Press Release, Fed. Trade Comm'n, FTC Sues to Block Lockheed Martin Corporation's Vertical Acquisition of Aerojet Rocketdyne Holdings Inc. (Feb. 15, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/01/ftc-sues-block-lockheed-martin-corporations-44-billion-vertical-acquisition-aerojet-rocketdyne; Press Release, Fed. Trade Comm'n, FTC Sues to Block $40 Billion Semiconductor Chip Merger (Dec. 2, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/12/ftc-sues-block-40-billion-semiconductor-chipmerger.

[14] *See, e.g.*, Press Release, Fed. Trade Comm'n, Expected Federal Trade Commission Opposition to Transaction Leads Great Outdoors Group, LLC and Rival Sportsman's Warehouse Holdings, Inc. to Abandon Plans for Proposed Merger (Dec. 3, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/12/expected-federal-trade-commission-opposition-transaction-leads-great-outdoors-group-llc-rival.

[15] Press Release, Fed. Trade Comm'n, FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System (Jun. 2, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-utah-healthcare-rivals-hca-healthcare-steward-health-care-system.

[16] Press Release, Fed. Trade Comm'n, FTC Sues to Block Merger Between New Jersey Healthcare Rivals RWJBarnabas Health and Saint Peter's Healthcare System (Jun. 2, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-new-jersey-healthcare-rivals-rwjbarnabas-health-saint-peters.

[17] *See, e.g.*, Zack Cooper et al., *The Price Ain't Right? Hospital Prices and Health Spending on the Privately Insured*, 134 Q.J. ECON. 51 (2019); Nancy Beaulieu et al., *Changes in Quality of Care after Hospital Mergers and Acquisitions*, 382 NEW ENG. J. MED. 51 (2020). For surveys of the research literature, *see, e.g.*, Martin Gaynor & Robert Town, *The Impact of Hospital Consolidation*, THE SYNTHESIS PROJECT, ROBERT WOOD JOHNSON FOUNDATION (June 2012), http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2012/rwjf73261; Martin Gaynor, Kate Ho & Robert Town, *The Industrial Organization of Health-Care Markets*, 53 J. ECON. LITERATURE 235 (2015).

[18] *See, e.g.*, Elena Prager & Matt Schmitt, *Employer Consolidation and Wages: Evidence from Hospitals*, 111 AM. ECON. REV. 397 (2021); Daniel Arnold & Christopher Whaley, *Who Pays for Health Care Costs? The Effects of Health Care Prices on Wages* (RAND Health Care Working Paper, 2021), https://www.ehealthecon.org/pdfs/Whaley.pdf. The Commission laid out much of this empirical evidence in a recent

is imperative that the Commission continue to identify and challenge hospital mergers that threaten access to critical healthcare services.[19]

In addition to tackling anticompetitive deals involving direct competitors, the Commission is taking steps to better capture the full set of ways in which mergers can harm competition. Central to this effort is placing greater weight on assessing both non-horizontal and forward-looking competitive harm. This approach is being incorporated into FTC merger review generally and has been reflected in several recent merger challenges.

For example, in December 2021, the FTC sued to stop U.S. chip supplier Nvidia Corp.'s proposed $40 billion acquisition of U.K. chip design provider Arm Ltd.[20] When announced, this deal represented the largest semiconductor merger ever attempted. More than two months into its litigation with the FTC, Nvidia abandoned its acquisition of Arm—representing the first abandonment of a litigated vertical merger in many years. The proposed merger would have given one of the largest chip companies control over its rivals' designs for competing chips. By doing so, the FTC's complaint alleged that the combined firm would have had the means and incentive to stifle next-generation technologies, including those used to run datacenters and driver-assistance systems in cars. Blocking the deal preserved competition for key technologies and safeguarded future innovation while also preventing further disruption to an already distressed semiconductor supply chain. The FTC team did outstanding work on the investigation and litigation.

This effort also includes the Commission's February 2022 lawsuit to block Lockheed's proposed acquisition of Aerojet, a $4.4 billion defense merger that would have eliminated the country's only remaining independent supplier of key missile propulsion inputs and given Lockheed the ability to cut off its competitors' access to these critical components.[21] The FTC's investigation, conducted in close collaboration with the Department of Defense, determined that the deal would have resulted in higher prices and diminished quality and innovation for programs critical to our national security. This challenge dovetailed with a DoD report indicating that

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policy paper highlighting the pitfalls of Certificates of Public Advantage (COPAs), which are efforts by states to replace beneficial healthcare competition with state oversight, that have proven to be detrimental for patient costs, quality, and reduced employee wages. Press Release, Fed. Trade Comm'n, FTC Policy Paper Warns About Pitfalls of COPA Agreements for Patient Care and Healthcare Workers (Aug. 15, 2022), http://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-policy-paper-warns-about-pitfalls-copa-agreements-patient-care-healthcare-workers.

[19] In addition to the two challenges highlighted above, the two largest healthcare systems in Rhode Island, Lifespan Corp. and Care New England Health System, called off their merger after the FTC, in conjunction with the Rhode Island Attorney General, sought to block the merger. *See* Press Release, Fed. Trade Comm'n, Statement Regarding Termination of Attempted Merger of Rhode Island's Two Largest Healthcare Providers (Mar. 2, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/03/statement-regarding-termination-attempted-merger-rhode-islands-two-largest-healthcare-providers.

[20] Press Release, Fed. Trade Comm'n, FTC Sues to Block $40 Billion Semiconductor Chip Merger (Dec. 2, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/12/ftc-sues-block-40-billion-semiconductor-chipmerger.

[21] Press Release, Fed. Trade Comm'n, Statement Regarding Termination of Lockheed Martin Corporation's Attempted Acquisition of Aerojet Rocketdyne Holdings Inc. (Feb. 15, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/02/statement-regarding-termination-lockheed-martin-corporations-attempted-acquisition-aerojet.

consolidation within the defense-industrial base poses a risk to national defense and identifying strong merger enforcement as a key tool to address it.[22]

And, without commenting on the merits since the case is currently pending in an administrative proceeding, the Commission in March 2021 challenged Illumina's vertical acquisition of Grail.[23] The Commission's complaint alleges that the deal between Illumina, the only viable provider of DNA sequencing tools, and Grail, a maker of multi-cancer early detection tests, would lead to reduced innovation for these lifesaving tests.[24]

The FTC takes seriously its Congressional mandate to arrest monopolies in their incipiency. This is demonstrated, in particular, by its July 2022 challenge to Meta's proposed acquisition of Within Unlimited.[25] As noted in the complaint, social-media firm Meta has become the largest provider of virtual reality devices and a leading provider of related apps in the U.S., while Within is an independent virtual reality development studio that designed and built Supernatural, a popular app in the dedicated fitness virtual reality app market. The complaint contends that Meta is a potential entrant in the virtual reality dedicated fitness app market with the required resources and a reasonable probability of building its own virtual reality app to compete in the space. The complaint alleges that Meta's choice to buy Supernatural rather than entering independently will reduce consumer choice, innovation, and competition to attract the best employees. The complaint further alleges that the mere possibility of Meta's entry has likely influenced competition in the virtual reality dedicated fitness app market.

Importantly, the Commission has been reassessing the efficacy of its approach to merger remedies and identifying how to learn from lessons of the past. Specifically, we now strongly disfavor behavioral remedies and will not hesitate to reject proposed divestitures that cannot fully cure the underlying harm.

The Commission is also focused on including provisions in consent orders that will protect against future unlawful mergers, especially those that might not trigger a merger notification obligation and would otherwise move forward without agency review. Last summer the Commission withdrew the 1995 Policy Statement on Prior Approval and Prior Notice Provisions and reinstated the Commission's longstanding practice of requiring parties that proposed unlawful mergers to receive prior approval and give prior notice for future transactions. The FTC has already included prior approval provisions in a number of consent decrees, including, for example, imposing strict limits on future mergers by DaVita, Inc., a dialysis service provider with a history of fueling consolidation in life-saving health industries. DaVita

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[22] DEP'T OF DEFENSE, OFF. OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT, STATE OF COMPETITION WITHIN THE DEFENSE INDUSTRIAL BASE 4 (2022).

[23] Press Release, Fed. Trade Comm'n, FTC Challenges Illumina's Proposed Acquisition of Cancer Detection Test Maker Grail (Mar. 30, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/03/ftc-challenges-illuminas-proposed-acquisition-cancer-detection-test-maker-grail.

[24] Complaint, *In re Illumina, Inc.*, Docket No. 9401, https://www.ftc.gov/system/files/documents/cases/redacted_administrative_part_3_complaint_redacted.pdf.

[25] Press Release, Fed. Trade Comm'n, FTC Seeks to Block Virtual Reality Giant Meta's Acquisition of Popular App Creator Within (Jul. 27, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-seeks-block-virtual-reality-giant-metas-acquisition-popular-app-creator-within.

must obtain the FTC's approval before acquiring any new ownership interest in a dialysis clinic statewide for a period of ten years.

The Commission is concerned about the anticompetitive roll-up strategies of private equity firms, particularly when they buy up small firms in already concentrated markets. Earlier this year, the FTC entered into two separate consent decrees with JAB Consumer Partners, a private equity firm that has been acquiring specialty and emergency veterinary clinics around the country, many of which have fallen below the threshold requiring the parties to file merger notifications with the antitrust agencies.[26] In 2020, the Commission reviewed a prior JAB acquisition and required the divestiture of three clinics.[27] But this year, given the rapid pace of JAB's continuing acquisitions of veterinary clinics throughout the country and the ongoing consolidation in the industry,[28] more was needed to ensure that the agency has the opportunity to review any new JAB acquisitions in concentrated markets. The Commission's order includes forward-looking provisions that will curb the ability of JAB to engage in future anticompetitive dealmaking across the United States, including a first-of-its-kind nationwide remedy that serves as a notice to other companies contemplating unlawful transactions. The Commission will not hesitate to identify and impose broad relief to protect Americans and deter illegal activity now and in the future.

1. Key Initiatives to Strengthen Our Merger Enforcement Tools

Over the past year, we have been examining how we can better harness our tools to further strengthen our ability to detect, deter, and stop illegal mergers. In January 2022, together with the Department of Justice, we began the process of revising our merger guidelines.[29] This important guidance explains the analytical techniques, practices, and enforcement policies used by the federal antitrust agencies in reviewing mergers. It also informs our staff reviewing proposed mergers, market participants considering whether to pursue mergers, and courts adjudicating merger challenges. Unfortunately, empirical evidence shows that our approach has led to underenforcement and markets that are more concentrated and less dynamic. Our goal in pursuing the current revision of the merger guidelines is to ensure that our guidelines accurately

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[26] Press Release, Fed. Trade Comm'n, FTC Acts to Protect Pet Owners from Private Equity Firm's Anticompetitive Acquisition of Veterinary Services Clinics (Jun. 13, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-acts-protect-pet-owners-private-equity-firms-anticompetitive-acquisition-veterinary-services; Press Release, Fed. Trade Comm'n, FTC Takes Second Action Against JAB Consumer Partners to Protect Pet Owners from Private Equity Firm's Rollup of Veterinary Services Clinics (Jun. 29, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-takes-second-action-against-jab-consumer-partners-protect-pet-owners-private-equity-firms-rollup-of-veterinary-services-clinics.

[27] Press Release, Fed. Trade Comm'n, FTC Requires Veterinary Service Providers Compassion First and National Veterinary Associates to Divest Assets in Three Local Markets (Feb. 14, 2020), https://www.ftc.gov/news-events/news/press-releases/2020/02/ftc-requires-veterinary-service-providers-compassion-first-national-veterinary-associates-divest.

[28] Ross Kelly, *Pandemic Hastens Ongoing Trend in Veterinary Consolidation*, VINNEWS (Dec. 30, 2021) ("Frenetic merger activity among veterinary hospitals in 2021 has lifted the market share of corporate consolidators in the United States to close to 50% of all companion animal practice revenue by at least one estimate, as the pandemic spurs demand for pet-care services."), https://news.vin.com/default.aspx?pid=210&Id=10652228.

[29] 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.

reflect modern commercial realities, are faithful to our statutory mandate, and are administrable and predictable.

The FTC and DOJ are also working on ensuring that we can more readily detect potentially problematic deals. Pursuant to the Hart-Scott-Rodino Act of 1976, the federal antitrust agencies issue rules to ensure that we receive the information we need to be able to identify anticompetitive mergers. We periodically consider how the rules need to be updated to best facilitate that, and such an effort is now underway. We are currently engaged in a thorough review of the information that market participants currently submit to us and an assessment of the additional information we need to most effectively and efficiently identify transactions that warrant a deeper investigation. Once we have identified the set of information needed, we will initiate a Commission rulemaking requiring merging parties to submit upfront probative information about each proposed transaction, increasing the efficiency with which agency staff can determine whether a proposed deal is likely to prove unlawful.[30]

B. Targeting Anticompetitive Conduct for Maximum Impact

Despite a heavy merger workload, the FTC continues to maintain and develop a robust program to identify and stop anticompetitive activity outside of the merger context. Specifically, the FTC is orienting its limited enforcement resources around targeting and rectifying root causes to avoid a whack-a-mole approach that imposes significant enforcement burden with few long-term benefits. We are also ensuring that our work is tackling the most significant harms across markets, particularly by dominant firms whose business practices affect many Americans.

As part of this strategy, the FTC continues to scrutinize digital markets, recognizing that distinct features of digital technologies have ushered in new market dynamics and business strategies that require us to update our enforcement approach. As the Subcommittee is well aware, dominant digital platforms have captured control over key arteries of commerce and communications in ways that can undermine competition. The FTC's investigations in digital markets recognize the critical role of data, network externalities, moat building strategies, and other key factors to make sure that our enforcement is reflecting commercial realities.

Notably, last year the FTC successfully amended its complaint against Facebook (d/b/a Meta) in a lawsuit that, in addition to other forms of relief, seeks the divestment of Instagram and WhatsApp.[31] The amended complaint placed greater emphasis on the competitive importance of data and noted that privacy degradation can constitute an antitrust harm—a fact that the court

[30] Under current case law, the FTC is prevented from disclosing information filed pursuant to the HSR Act with state antitrust enforcers. *See Lieberman v. FTC*, 771 F.2d 32 (2d Cir. 1985); *Mattox v. FTC*, 752 F.2d 116 (5th Cir. 1985). This can create a meaningful barrier to cooperation with the states. Legislation adding a statutory exemption to the HSR Act that would specifically allow disclosure of relevant information to Attorney Generals could foster enhanced cooperation.

[31] Press Release, Fed. Trade Comm'n, FTC Alleges Facebook Resorted to Illegal Buy-or-Bury Scheme to Crush Competition After String of Failed Attempts to Innovate (Aug. 19, 2021), https://www.ftc.gov/newsevents/news/press-releases/2021/08/ftc-alleges-facebook-resorted-illegal-buy-or-bury-scheme-crush-competitionafter-string-failed.

also acknowledged. In January of this year, the federal court denied Facebook's motion to dismiss the FTC's case and the lawsuit is ongoing.[32]

The Commission is also prioritizing action against business practices that unlawfully restrict consumers' ability to repair their products, costing them more over the long term. In July 2021, the FTC unanimously voted to issue a statement signaling our intent to ramp up law enforcement against unlawful repair restrictions that prevent small businesses, workers, consumers, and even government entities from fixing their own products.[33] As detailed in the Commission's report to Congress, there is scant evidence to support manufacturers' justifications for repair restrictions.[34] While efforts by dominant firms to restrict repair markets are not new, changes in technology and more prevalent use of software have created fresh opportunities for companies to limit independent repair. The policy statement encourages reporting of violations of the Magnuson-Moss Warranty Act, which prohibits, among other things, tying a consumer's product warranty to the use of a specific service provider or product, unless the FTC has issued a waiver or the service or product is provided free of charge.[35] Further, the policy statement noted that the Commission will target repair restrictions that violate the antitrust laws or the FTC Act's prohibitions on unfair or deceptive acts or practices. This multi-pronged approach allows the FTC to use the full range of its expertise when seeking to enforce the law. Since issuing the statement, a number of large tech firms have amended their repair policies[36] and the FTC has pursued enforcement action against several major companies that had imposed restrictive repair policies.[37]

The FTC continues to prioritize deterring and stopping anticompetitive conduct in the health care sector, and a recent case underscores the FTC's willingness to seek individual liability for antitrust violations when appropriate. In January 2020, the FTC and the New York Attorney General sued "Pharma Bro" Martin Shkreli, his company, Vyera Pharmaceuticals, and others alleging that the company and its leaders raised the price of a life-saving drug by more

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[32] *FTC v. Facebook, Inc.*, 581 F. Supp. 3d 34 (D.D.C. 2022).

[33] Press Release, Fed. Trade Comm'n, FTC to Ramp Up Law Enforcement Against Illegal Repair Restrictions (Jul. 21, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-ramp-law-enforcement-against-illegal-repair-restrictions.

[34] Press Release, Fed. Trade Comm'n, FTC Report to Congress Examines Anti-Competitive Repair Restrictions, Recommends Ways to Expand Consumers' Repair Options (May 6, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/05/ftc-report-congress-examines-anti-competitive-repair-restrictions-recommends-ways-expand-consumers.

[35] Magnuson-Moss Warranty Act, 15 U.S.C. 50 §§ 2301-2312.

[36] *See, e.g.*, Press Release, Apple, Apple Announces Self Service Repair (Nov. 17, 2021), https://www.apple.com/newsroom/2021/11/apple-announces-self-service-repair/; Press Release, Samsung Electronics Am., Samsung Expands Customer-First Care Experience with New Self-Repair Program (Mar. 31, 2022), https://news.samsung.com/us/samsung-self-repair-program-ifixit-customer-first-care-experience/; Ana Corrales, *Coming Soon: More Ways to Repair Your Pixel Phone*, Google Sustainability Blog (Apr. 8, 2022), https://blog.google/outreach-initiatives/sustainability/pixel-phone-repairs/.

[37] Press Release, Fed. Trade Comm'n, FTC Takes Action Against Harley-Davidson and Westinghouse for Illegally Restricting Customers' Right to Repair (Jun. 23, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-takes-action-against-harley-davidson-westinghouse-illegally-restricting-customers-right-repair-0; Press Release, Fed. Trade Comm'n, FTC Takes Action Against Weber for Illegally Restricting Customers' Right to Repair (Jul. 7, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-takes-action-against-weber-illegally-restricting-customers-right-repair.

than 4000% and then engaged in unlawful conduct to maintain that revenue.[38] In January 2022, the federal court held Shkreli liable for antitrust claims brought by the FTC and seven state enforcers. Finding that Shkreli's conduct was egregious, deliberate, repetitive, long-running, and ultimately dangerous, the Court imposed a lifetime ban on Shkreli from participating in the pharmaceutical industry and found him liable for $64.6 million in disgorgement.[39] The federal court's decision to ban Shkreli for life from the pharmaceutical industry is a victory for Americans and should signal to corporate executives that they may be held personally liable for antitrust violations that they direct and may be banned for life from certain industries.

Additionally, the FTC's litigation against Surescripts, an e-prescription giant, remains ongoing.[40] The FTC alleges that Surescripts intentionally kept e-prescription customers from using additional platforms (a practice known as multi-homing) through their use of anticompetitive exclusivity agreements, threats, and other exclusionary tactics. That conduct resulted in the exclusion of all meaningful competition in prescription routing and eligibility, leading to higher prices, reduced innovation, lower output, and no customer choice.

C. Preventing Harm to Workers

The Commission has a legal obligation to ensure that we are using our tools and authorities to tackle unfair methods of competition that affect workers. Last December, the FTC and DOJ hosted a two-day workshop to explore a wide range of competition issues affecting labor markets and the welfare of workers.[41] In March, the Treasury Department issued a report on the state of labor market competition, highlighting several ways in which either market concentration or unfair methods of competition is hurting workers.[42] The report notes that many labor markets in America display very high levels of concentration, and mergers can make this concentration even worse, further lowering wages, reducing benefits, and degrading working conditions.[43] As part of our initiative to revise the merger guidelines, the FTC and DOJ solicited

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[38] Press Release, Fed. Trade Comm'n, FTC and NY Attorney General Charge Vyera Pharmaceuticals, Martin Shkreli, and Other Defendants with Anticompetitive Scheme to Protect a List-Price Increase of More than 4,000 Percent for Life-Saving Drug Daraprim (Jan. 27, 2020), https://www.ftc.gov/news-events/news/press-releases/2020/01/ftc-ny-attorney-general-charge-vyerapharmaceuticals-martin-shkreli-other-defendants-anticompetitive.

[39] Statement of Chair Lina M. Khan on the Ruling by Judge Denise L. Cote in Federal Trade Commission et al. v. Vyera Pharms., LLC et al. (Jan. 14, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/01/statement-chair-lina-m-khan-ruling-judge-denise-l-cote-federal-trade-commission-et-al-v-vyera.

[40] Complaint, *FTC v. Surescripts, Inc.*, No. 1:19-cv-01080 (D.D.C., Apr. 24, 2019), https://www.ftc.gov/system/files/documents/cases/surescripts_redacted_complaint_4-24-19.pdf.

[41] Press Release, Fed. Trade Comm'n, FTC and DOJ Announce Agenda for Dec. 6 and 7 Workshop, Making Competition Work: Promoting Competition in Labor Markets (Dec. 1, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/12/ftc-doj-announce-agenda-dec-6-7-workshop-making-competition-work-promoting-competition-labor-markets.

[42] 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.

[43] In the Commission's recent challenge of a hospital merger in Rhode Island, Chair Khan and Commissioner Slaughter would have supported a Clayton Act claim regarding the potential effect of the proposed transaction on competition in the relevant labor markets. 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-khanregarding-ftc-state.

comments on whether our current enforcement approach is fully accounting for relevant harms to workers and labor market competition.[44]

Notably, the Commission is closely scrutinizing the growing use of non-compete clauses throughout the economy. For example, we have already taken action against the use of non-compete clauses found in merger agreements that would operate as barriers to entry against future competitors. The Commission's order against DaVita, Inc., a large provider of dialysis services, prevents the company from entering into agreements with physicians that would restrict their ability to work for a competitor.[45] The FTC is also exploring the use of its rulemaking authority to limit non-compete clauses that restrict workers' post-employment choices.

II. Resource Constraints and Legal Challenges

Despite the many successes highlighted above, it is worth highlighting a couple of significant headwinds the Commission faces. First, as our work illustrates, Congress has charged the FTC with policing unlawful conduct across a broad swath of the U.S. economy—in sectors ranging from technology, energy, and retail to pharmaceuticals and health care. Although we are at the front lines of many of the most pressing issues Americans face today, the number of full-time employees at the FTC is about two-thirds of what it was at the beginning of 1980, while the nation's GDP has increased six-fold. Demands on the Commission continue to grow as we receive more consumer complaints,[46] review more corporate mergers,[47] conduct more complex and expensive litigation, and respond to burgeoning requests for research and investigation of various economic sectors. While we constantly strive to enforce the law to the best of our capabilities, there is no doubt that—despite the increased appropriations Congress has provided in recent years—we continue to lack sufficient funding. We seek to work with Congress to ensure that the Commission has the resources and tools it needs to vigorously protect the American people from unlawful mergers and conduct.[48]

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[44] Request for Information on Merger Enforcement, FTC-2022-0003, https://www.regulations.gov/docket/FTC-2022-0003 (last visited Sep. 9, 2022).

[45] 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/newsevents/press-releases/2021/10/ftc-imposesstrict-limits-davita-incs-future-mergers-following. Although not arising in the employment context, the Commission also prohibited fuel supply company GPM from enforcing overly broad non-compete provisions contained in its merger agreement to acquire fuel stations from Corrigan. Those provisions went far beyond those necessary to protect any goodwill GPM might hope to acquire with the Corrigan stations. In particular, they applied to areas much broader than the local markets served by the purchased assets, effectively serving as an illegal market allocation agreement between potential competitors. To ensure robust competition in the affected markets for fuel in Michigan, the Commission's order prohibits GPM from enforcing the non-compete restrictions. Press Release, Fed. Trade Comm'n, FTC Approves Final Order Restoring Competitive Markets for Gasoline and Diesel in Michigan and Ohio (Aug. 9, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-approves-final-order-restoring-competitive-markets-gasoline-diesel-michigan-ohio.

[46] For example, over the past five years, annual consumer complaints we receive has increased from 2.9 to 5.7 million. Consumer fraud reports alone increased from 1.3 to 2.8 million and reported consumer fraud losses exploded from $1.1 billion in 2017 to over $5 billion in 2021.

[47] As noted above, merger filings are at or near all-time highs, stretching our ability to screen the filings for problematic deals.

[48] *See, e.g.*, Concurring Statement of Commissioner Rebecca Kelly Slaughter, Joined by Chair Lina M. Khan Regarding the 2022 Revised Clayton Act Thresholds (Jan. 24, 2022),

Second, the FTC faces several significant legal challenges to statutory authorities that have been important tools in executing our dual competition and consumer protection missions. The Supreme Court issued its decision in *AMG Capital Management v. FTC* in April 2021,[49] upending decades of lower court rulings that had held that Section 13(b) of the FTC Act[50] enabled the FTC to pursue equitable monetary relief in federal court. Practically, *AMG* ended the FTC's ability to seek monetary relief for consumers in competition matters. Most concretely, this has already affected our work in the pharmaceutical industry. In the sham patent litigation case the FTC brought against AbbVie, the district court awarded $493 million in monetary relief to consumers harmed by inflated drug prices resulting from AbbVie's illegal conduct.[51] Previewing what the Supreme Court would ultimately make final in *AMG*, the Third Circuit held that the district court lacked authority under Section 13(b) to grant monetary relief to consumers.[52] Defendants were able to keep their nearly $500 million in illegal proceeds, and consumers received nothing.[53] In consumer protection cases, while Section 19 of the FTC Act authorizes the Commission to seek monetary relief for some consumers in federal court after an administrative proceeding, legal challenges to agency administrative processes have made it more difficult for the Commission to use this mechanism for returning money to consumers harmed by illegal conduct. And in competition cases, the Commission cannot use Section 19 at all, wholly foreclosing the ability of the Commission to obtain monetary relief for violations of the antitrust laws. To enable the Commission to continue to execute on its mission, all current Commissioners have repeatedly called on Congress to address this situation and restore the FTC's full authority to return money to injured consumers.

III. Policy Development and Research Agenda

Alongside enforcement, the Commission is making long-term investments to maximize the impact of our policy and research work. To tackle the pressing issues of today and tomorrow, we are broadening our institutional skillsets to ensure we are fully grasping market realities, especially as the economy becomes increasingly digitized. For example, as part of the

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https://www.ftc.gov/system/files/documents/public_statements/1600207/p859910hsrthresholdskhanslaughterstatement_0.pdf.

[49] *AMG Capital Mgmt., LLC v. FTC*, 141 S.Ct. 1341 (2021).

[50] 15 U.S.C. § 53(b).

[51] *FTC v. AbbVie Inc.*, 107 F. Supp. 3d 428 (E.D. Pa. 2015).

[52] *FTC v. AbbVie Inc.*, 976 F.3d 327, 379 (3d Cir. 2020).

[53] In addition to litigated cases, the FTC's ability to obtain monetary relief has yielded substantial disgorgement in connection with settlements as well. For example, in 2015, the Commission recovered $1.2 billion in ill-gotten gains from Teva Pharmaceuticals, Inc. as part of a settlement resolving the Commission's antitrust suit charging Teva subsidiary Cephalon with illegally blocking generic competition to its blockbuster sleep-disorder drug Provigil. Press Release, Fed. Trade Comm'n, FTC Settlement of Cephalon Pay for Delay Case Ensures $1.2 Billion in Ill-Gotten Gains Relinquished; Refunds Will Go To Purchasers Affected By Anticompetitive Tactic (May 28, 2015), https://www.ftc.gov/news-events/news/press-releases/2015/05/ftc-settlement-cephalon-pay-delay-case-ensures-12-billion-ill-gotten-gains-relinquished-refunds-will. The FTC also obtained $100 million in disgorgement from drugmaker Mallinckrodt to settle FTC charges that Mallinckrodt made a killer acquisition after buying the rights to a drug that threatened its monopoly in the U.S. market for adrenocorticotropic hormone (ACTH) drugs that treat seriously ill infants. Press Release, Fed. Trade Comm'n, Mallinckrodt Will Pay $100 Million to Settle FTC, State Charges It Illegally Maintained its Monopoly of Specialty Drug Used to Treat Infants (Jan. 18, 2017), https://www.ftc.gov/news-events/news/press-releases/2017/01/mallinckrodt-will-pay-100-million-settle-ftc-state-charges-it-illegally-maintained-its-monopoly.

Commission's prioritization of digital markets, in the last year we onboarded a number of renowned technologists to provide additional expertise to our staff in cutting-edge litigation and horizon-scanning efforts, as well as in pursuit of a robust research agenda.

Even amid the tidal wave of merger filings and scorched-earth tactics used by highly resourced parties during investigations and in litigation, we have continued to prioritize making substantial investments to remain faithful to our mandate to engage in policy and research development pursuant to Section 6 of the FTC Act. Through Section 6(b) of the FTC Act, Congress gave the agency broad investigative powers to conduct market-wide inquiries and keep pace with new business practices and market trends.

From its inception, the FTC has used its 6(b) authority to shed light on problems in major sectors, such as the massive study of public utility holding companies in the 1930s that exposed rampant financial fraud and led to the creation of the Securities and Exchange Commission,[54] or to provide a factual foundation to revamp merger analysis and target unlawful conduct in pharmaceutical markets.[55] More recently, the FTC issued a report on non-reportable acquisitions by the nation's five largest technology companies.[56] The report captures the extent to which these firms have devoted tremendous resources to acquiring start-ups, patent portfolios, and entire teams of technologists, largely outside the purview of federal enforcers. The report highlighted ways in which the existing HSR reporting thresholds, by using deal size as a rough proxy for the potential competitive significance of an acquisition, may provide an incomplete and inadequate mechanism for checking unlawful deals in digital markets.

The Commission is working to complete a report from its 6(b) study of ongoing supply chain disruptions.[57] As the recent shortage of baby formula illustrates, in industries dominated by a few large suppliers, a single plant closure can have ripple effects throughout the supply chain, leaving some Americans struggling to find essential products. Last November, the Commission used its 6(b) authority to order nine large retailers, wholesalers, and consumer goods suppliers to provide detailed information needed to better understand both the factors that have contributed to supply chain disruptions and how they may have contributed to bottlenecks, shortages, anticompetitive practices, or rising consumer prices. We are endeavoring to complete this timely study as quickly as possible.

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[54] Kelly Signs, FTC Milestones: Making the Case for Reform of Public Utility Holding Company Laws, FTC COMPETITION MATTERS BLOG (Nov. 18, 2014), https://www.ftc.gov/enforcement/competition-matters/2014/11/ftc-milestones-making-case-reform-public-utility-holding-company-laws.

[55] *See* Prepared Remarks of Jonathan Nuechterlein, General Counsel, Fed. Trade Comm'n: How the FTC Works: Lessons from the Commission's Supreme Court Trifecta (Mar. 20, 2015) (discussing the impact of 6(b) studies on the rulings of the Supreme Court), https://www.ftc.gov/system/files/documents/public_statements/632081/150320adminlawreview.pdf.

[56] Press Release, Fed. Trade Comm'n, FTC Staff Presents Report on Nearly a Decade of Unreported Acquisitions by the Biggest Technology Companies (Sep. 15, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/09/ftc-staff-presents-report-nearly-decade-unreported-acquisitions-biggest-technology-companies.

[57] Press Release, Fed. Trade Comm'n, FTC Launches Inquiry into Supply Chain Disruptions (Nov. 29, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/11/ftc-launches-inquiry-supply-chain-disruptions.

In June, the Commission authorized a 6(b) study of the contracting practices of Pharmacy Benefits Managers.[58] After seeking and receiving public input from a wide variety of stakeholders,[59] the Commission has issued orders to the largest PBMs to obtain nonpublic information about their operations, including negotiations with manufacturers over formulary design and rebates, as well as fees paid to and by pharmacies who contract with PBMs to provide dispensing services. This comprehensive study will shine a light on the opaque operations of these large pharmacy middlemen who can dictate the pricing and access to life-saving drugs for so many Americans. In addition to these studies, the Commission has several other 6(b) studies underway.[60] These studies help guide FTC enforcement efforts as well as fulfill its unique mission as an expert agency that studies market trends and recommends solutions for policymakers.[61]

IV. Democratizing the Agency

In addition to the substantive reforms highlighted above, the Commission is also changing how it interfaces with the public by providing greater insight into the Commission's work and greater opportunity for public participation.

Since July 2021, the Commission has held twelve open meetings, providing a platform for Commissioners to hear directly from a broad range of stakeholders, including individuals directly affected by the decisions we make. Anyone can sign up to speak, and they need not be represented by a lawyer. These meetings also provide the public with an opportunity to see the

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[58] Press Release, Fed. Trade Comm'n, FTC Launches Inquiry Into Prescription Drug Middlemen Industry (Jun. 7, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-launches-inquiry-prescription-drug-middlemen-industry. Consistent with the competition concerns that prompted the PBM study, the Commission issued a "Policy Statement on Rebates and Fees in Exchange for Excluding Lower Cost Products," putting the drug industry on notice that paying rebates and fees to exclude competition from formularies violates the antitrust laws. Press Release, Fed. Trade Comm'n, FTC to Ramp Up Enforcement Against Any Illegal Rebate Schemes, Bribes to Prescription Drug Middlemen that Block Cheaper Drugs (Jun. 16, 2022), http://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-ramp-up-enforcement-against-illegal-rebate-schemes.

[59] Press Release, Fed. Trade Comm'n, FTC Requests Public Comments on the Impact of Pharmacy Benefit Managers' Practices, (Feb. 24, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-requests-public-comments-impact-pharmacy-benefit-managers-practices.

[60] Press Release, Fed. Trade Comm'n, FTC Issues Orders to Nine Social Media and Video Streaming Services Seeking Data About How They Collect, Use, and Present Information (Dec. 14, 2020), https://www.ftc.gov/news-events/news/press-releases/2020/12/ftc-issues-orders-nine-social-media-video-streaming-services-seeking-data-about-how-they-collect-use; Press Release, Fed. Trade Comm'n, FTC to Study the Impact of Physician Group and Healthcare Facility Mergers (Jan. 14, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/01/ftc-study-impact-physician-group-healthcare-facility-mergers; Press Release, Fed. Trade Comm'n, FTC to Study the Impact of COPAs (Oct. 21, 2019), https://www.ftc.gov/news-events/news/press-releases/2019/10/ftc-study-impact-copas.

[61] Press Release, Fed. Trade Comm'n, The Federal Trade Commission's First Report on E-Cigarette Sales and Advertising Reveals Disturbing Trends Affecting the Health of Young Americans (Mar. 17, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/03/federal-trade-commissions-first-report-e-cigarette-sales-advertising-reveals-disturbing-trends; Press Release, Fed. Trade Comm'n, FTC Staff Report Finds Many Internet Service Providers Collect Troves of Personal Data, Users Have Few Options to Restrict Use (Oct. 21, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-staff-report-finds-many-internet-service-providers-collect-troves-personal-data-users-have-few; Press Release, Fed. Trade Comm'n, New FTC Staff Report Outlines Impact of Fraud on Communities of Color (Oct. 15, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/10/new-ftc-staff-report-outlines-impact-fraud-communities-color.

Commission deliberate on pressing issues affecting their daily lives, ranging from the Commission's policy on privacy breaches involving healthcare information to our work to halt Made-in-USA fraud.[62]

We have also issued Requests for Information to seek the public's help in identifying contracting practices that undermine open and fair competition,[63] new ideas for analyzing pharmaceutical mergers,[64] and the impact of non-compete clauses on workers.[65] Together with the Antitrust Division's AAG Kanter, we hosted public listening sessions in conjunction with our merger guidelines revision project to hear directly from those affected by mergers in critical sectors, such as food and agriculture, healthcare, media and entertainment, and technology.[66] The goal is to ensure that we receive input from those with direct experience with the markets we cover so that their first-hand understanding can help guide our policies and priorities as we enforce the law.

V. Collaboration Across Government to Promote Fair Competition

The FTC recognizes the value and importance of deepening our collaboration and partnerships with other government entities. These relationships act as force multipliers to promote fair competition throughout our economy.

In July 2021, the President underscored the importance of government's role in promoting competition throughout the economy when he issued an Executive Order on Competition,[67] proposing that the FTC and DOJ partner with agencies across the federal government in pursuit of a whole-of-government approach to competition policy. Consistent with that Order, the antitrust agencies provided input to two Treasury reports, one addressing competition issues related to the sale and distribution of alcohol[68] and another on labor market competition. Ongoing work with the USDA, Department of Commerce, and other agencies will result in other public reports this year. In July, the FTC entered into an agreement with the National Labor Relations Board that lays out how the two agencies will work together on key issues such as labor market concentration, one-sided contract terms, and labor developments in

[62] For summaries of the Commission's open meetings, see https://www.ftc.gov/news-events/events/open-meetings.
[63] *See* Request for Public Comment Regarding Contract Terms That May Harm Fair Competition, FTC-2021-0036, https://www.regulations.gov/docket/FTC-2021-0036 (last accessed Sep. 9, 2022).
[64] *See* Press Release, Fed. Trade Comm'n, Multilateral Pharmaceutical Merger Task Force Seeks Public Input (May 11, 2021), http://www.ftc.gov/system/files/attachments/press-releases/multilateral-pharmaceutical-merger-task-force-seeks-public-input/final_ftc_notice_for_multilateral_pharmaceutical_merger_task_force.pdf.
[65] *See* Making Competition Work: Promoting Competition in Labor Markets, FTC-2021-0057, https://www.regulations.gov/docket/FTC-2021-0057 (last accessed Sep. 9, 2022).
[66] Press Release, Fed. Trade. Comm'n, FTC and Justice Department Launch Listening Forums on Firsthand Effects of Mergers and Acquisitions (Mar. 17, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-justice-department-launch-listening-forums-firsthand-effects-mergers-acquisitions.
[67] Exec. Order No. 14,036, 86 Fed. Reg. 36,987 (July 14, 2021). *See also* Fact Sheet: Executive Order on Promoting Competition in the American Economy, THE WHITE HOUSE (Jul. 9, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-orderonpromoting-competition-in-the-american-economy.
[68] DEP'T OF TREASURY, COMPETITION IN THE MARKETS FOR BEER, WINE, AND SPIRITS (Feb. 2022), https://home.treasury.gov/system/files/136/Competition-Report.pdf.

the "gig economy."[69] Overall, these collaborations have deepened our relationships with sector regulators, providing a basis for future coordination and cooperation.

Other opportunities for deepening our partnerships lie with both the state attorneys general and in the international arena. We regularly engage with our state and international enforcement partners on both policy initiatives as well as enforcement matters. This includes filing cases jointly with state attorneys general[70] as well as cooperation on many matters with foreign antitrust agencies.[71] The course-correction we are on has made these partnerships even more critical as we learn and benefit from the experience of our domestic and overseas counterpart agencies. Reflecting the importance of this shared learning, we and the DOJ convened an Enforcers Summit earlier this year to collect ideas from our state and international peers related to our merger guidelines revision project.[72]

VI. Conclusion

Thank you for this opportunity to share highlights of the progress the Commission has made as we continue to work to ensure that our approach to competition enforcement and policy best positions us to tackle the many competition challenges we currently face. The Commission looks forward to continuing to work with the Subcommittee and Congress to ensure that the FTC is best positioned to faithfully discharge its statutory obligations and fully deliver on its mission.

[69] 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 (Jul. 19, 2022), http://www.ftc.gov/news-events/news/press-releases/2022/07/federal-trade-commission-national-labor-relations-board-forge-new-partnership-protect-workers.

[70] *See, e.g.*, Press Release, Fed. Trade Comm'n, FTC and Rhode Island Attorney General Step in to Block Merger of Rhode Island's Two Largest Healthcare Providers (Feb. 17, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-rhode-island-attorney-general-step-block-merger-rhode-islands-two-largest-healthcare-providers; Press Release, Fed. Trade Comm'n, FTC and NY Attorney General Charge Vyera Pharmaceuticals, Martin Shkreli, and Other Defendants with Anticompetitive Scheme to Protect a List-Price Increase of More than 4,000 Percent for Life-Saving Drug Daraprim (Jan. 27, 2020), https://www.ftc.gov/news-events/news/press-releases/2020/01/ftc-ny-attorney-general-charge-vyerapharmaceuticals-martin-shkreli-other-defendants-anticompetitive.

[71] This includes our review of the now abandoned merger between Nvidia and Arm, where we cooperated closely with agencies in many jurisdictions, including the European Union, Japan, South Korea, and the United Kingdom. Press Release, Fed. Trade Comm'n, FTC Sues to Block $40 Billion Semiconductor Chip Merger (Dec. 2, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/12/ftc-sues-block-40-billion-semiconductor-chipmerger

[72] Press Release, Fed. Trade Comm'n, Federal Trade Commission and Justice Department to Hold Joint Spring Enforcers Summit (Mar. 10, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/03/federal-trade-commission-justice-department-hold-joint-spring-enforcers-summit.