



Office of the Chair

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

September 22, 2021

**MEMORANDUM**

**FROM:** Chair Lina M. Khan  
**TO:** Commission Staff and Commissioners  
**SUBJECT:** Vision and Priorities for the FTC

Thank you for the grace and patience you've displayed the last few months as my team and I have gotten up to speed on the agency's work and processes. Navigating a leadership transition during a pandemic has posed a host of challenges, and I am so grateful for the warm welcome and support from across the Commission. The past 18 months have involved significant hardship and loss for many of us, and I want to thank everyone for their hard work and dedication during these difficult times.

It's been great to meet and speak with many of you as I've dug deeper into the agency's workload. Reviewing the breadth of our work has underscored the enormity of the job Congress has given us and the critical role the Commission must play in policing unlawful conduct across markets. Using our full set of tools and authorities—including rulemaking and research in addition to adjudication—will be critical, especially post-*AMG*.

Over its 107 years, the Commission has navigated various periods of change and transformation. At its best, the agency has focused on tackling urgent problems, learning from new evidence, and course-correcting where needed. American consumers, workers, and honest businesses depend on the Commission to champion a fair and thriving economy for all, and I am confident that we can deliver.

Succeeding will require us to adjust our approach based on what we learn and to focus on key strategic priorities and operational objectives. I have offered below some thoughts on each of these prongs, and I look forward to engaging with you further as we dive into this work. I respect deeply the expertise and talent within the agency and fully recognize that the work ahead will require collective learning and engagement as we chart a path forward.

***Strategic Approach***

There are a few key principles that should animate the agency's approach across its work.

First, we need to take a holistic approach to identifying harms, recognizing that antitrust and consumer protection violations harm workers and independent businesses as well as consumers. Focusing on power

asymmetries and the unlawful practices those imbalances enable will help to ensure our efforts are geared towards tackling the most significant harms across markets, including those directed at marginalized communities. Broadening our frame can also help surface the macro effects of our policy decisions, such as the relationship between market structure and supply chain fragility, or data consolidation and security vulnerabilities.

Second, we need to orient our enforcement efforts around targeting root causes rather than looking at one-off effects. This means focusing on structural incentives that enable 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. Focusing enforcement efforts towards targeting and rectifying root causes can avoid a whack-a-mole approach that imposes significant enforcement burden with few long-term benefits.

Third, we need to invest in a more rigorous and empiricism-driven approach to understanding market behaviors and business practices. While enforcers routinely suffer from information asymmetries, adopting a more interdisciplinary approach can help mitigate blind spots and narrow the gap between theory and practice. To achieve this, we need to incorporate a greater range of analytical tools and skillsets into the agency’s work and foster greater collaboration among disciplines.

Fourth, we need to be forward-looking in anticipating problems and taking swift action. On both the competition and the consumer protection sides, this means being especially attentive to next-generation technologies, innovations, and nascent industries across sectors. Timely intervention—be it checking anticompetitive conduct that would lead markets to tip, or targeting unfair practices before they become widely adopted—can help us tackle problems at their inception, both limiting harms and saving resources over the long term.

Finally, we need to further democratize the agency. This means recognizing the agency as a public body whose work shapes the distribution of power and opportunity across our economy. It also means ensuring the Commission is in tune with the real problems that Americans are facing in their daily lives and using that understanding to inform our work.

### ***Policy Priorities***

In terms of the specific policy priorities that will harness our strategic approach, there are a few areas where I would like the agency to focus its work.

First, we need to address rampant consolidation and the dominance that it has enabled across markets. This will require both finding ways to strengthen our merger enforcement work as well as generally focusing our resources on scrutinizing dominant firms, where lack of competition makes unlawful conduct more likely.

Above all, we need to be intentional in how we direct our resources. Growing evidence suggests that market power now looks to be an increasingly systemic problem across the economy, so we should generally focus our resources on the most significant actors, where our enforcement actions can have the greatest impact on the everyday lives of Americans. Given the ongoing merger surge, there is a real risk that markets will become only more consolidated absent our vigilance and assertive posture. The current deal volume is imposing huge demands on our staff, and I’m very grateful to the merger shops for the heavy load they are carrying, as well as to the attorneys from OPP and OIA who have graciously stepped up to help.

A key project will be revising the merger guidelines, an effort we will undertake in conjunction with DOJ. Prior guidelines have represented a somewhat narrow and outdated framework for assessing mergers, and revising the guidelines is an opportunity to close gaps between theory and practice, setting the foundation for more effective and empirically grounded enforcement work. I know many at the agency have given significant thought to the current deficiencies, and our review process will benefit greatly from tapping into that expertise.

More broadly, we need to find ways to deter unlawful transactions. The rate at which firms propose facially illegal deals heavily strains agency resources and compromises our ability to investigate significant mergers, raising the risk of false negatives. Identifying ways to reduce the agency resources and burden associated with investigating and filing lawsuits against unlawful mergers will be important as we look for ways to turn the page.

The second area I'd like us to prioritize addressing is dominant intermediaries and extractive business models. Research documents how gatekeepers and dominant middlemen across the economy have been able to use their critical market position to hike fees, dictate terms, and protect and extend their market power. Business models that centralize control and profits while outsourcing risk, liability, and costs also warrant particular scrutiny, given that deeply asymmetric relationships between the controlling firm and dependent entities can be ripe for abuse. Meanwhile, the growing role of private equity and other investment vehicles invites us to examine how these business models may distort ordinary incentives in ways that strip productive capacity and may facilitate unfair methods of competition and consumer protection violations. Evidence suggests that many of these abuses target marginalized communities, and combatting practices that prey on these communities will be a key priority.

The third area centers on taking aim at the ways in which certain contract terms, particularly those that are imposed in take-it-or-leave-it contracts, constitute unfair methods of competition or unfair or deceptive practices. We have seen how market power abuses and consumer protection concerns can emerge when one-sided contract provisions are imposed by dominant firms. Non-competes, repair restrictions, and exclusionary clauses are just some of the terms we have heard about in our public comments. Consumers, workers, franchisees, and other market participants are at a significant disadvantage when they are unable to negotiate freely over terms and conditions. Focusing on contractual provisions in these contexts should help surface the types of restrictions or requirements that hamper a free and fair economy.

### ***Operational Objectives***

Tackling this robust agenda will require us to update the ways in which we carry out our work, building on our successes and learning from our challenges. To that end, I would like the agency to prioritize a few core operational objectives.

First, we should move away from seeing our work in consumer protection and competition siloes, and instead apply an integrated approach to our cases, rules, research, and other policy tools. Improving cross-Bureau coordination and creating more cross-training opportunities can help to maximize agency oversight over particular sectors, surface interconnections between the conditions that give rise to antitrust and consumer protection violations, and promote staff exposure to a broader variety of work. We have already seen greater coordination between BC and BCP pay dividends, and I'm excited for us to continue this effort.

Second, it is critical that we are connected to the communities that we serve and that we reflect America's broad diversity in the talent we recruit. To do this, I would like us to expand our regional footprint. This should allow us to fill out our ranks by taking advantage of a national pool of qualified candidates. It also

helps grow our understanding of and expertise in industries that might be more specific to certain local economies. Finally, it means that we will have more staff who live in and are connected to the many different places where our work has significant impact.

Third, we should broaden our institutional skillsets to ensure we are fully grasping market realities, especially as the economy becomes increasingly digitized. Bringing on additional technologists, data analysts, financial analysts, and experts from outside disciplines will build on our existing talent and position us to analyze conduct, assess remedies, and pursue market studies with greater rigor. I admire the interdisciplinary approach adopted by some of our international counterparts and am eager for us to learn from their experience and execute on best practices.

To help us accomplish these priorities, I am happy to share that I will be moving to name Holly Vedova as Director of the Bureau of Competition and Samuel Levine as Director of the Bureau of Consumer Protection. Both Holly and Sam are longtime public servants who bring great talents and expertise to their respective positions, and I'm so grateful for the dedication that each of them brings to their role.

I'm so appreciative of the work many teams have already done to begin executing on key priorities, and I look forward to engaging with and hearing from you as we build out this work together. It's an honor to be your colleague and to serve with you at this moment of tremendous need and opportunity.

\*\*\*