AMERICAN ECONOMIC LIBERTIES PROJECT

A New Era: A Stronger FTC to Defend Working Families and Honest Businesses

The Federal Trade Commission, led by Chair Lina Khan, has entered a new era of more effective, modern, and democratic enforcement to better protect consumers, workers, and independent businesses.

Chair Khan, while navigating a leadership transition during a pandemic, an historic merger wave, and unprecedented economic dominance driven by rampant concentration, steered the FTC to protect working families and honest businesses with stronger law enforcement. Under her leadership, the FTC has:

Update: In the first months of 2022, the FTC continued to take bold action.

FTC Chair Lina Khan: "Enforcers Are Not Going To Back Down."
In her first TV interview as FTC Chair, Lina Khan vowed that antitrust "enforcers are not going to back down because of these companies flexing some muscle or kind of trying to intimidate us." Chair Khan also debunked Big Tech's national champion arguments, the impact monopolies have on workers, and highlighted the connection between rising prices and market consolidation.

FTC, DOJ Open Merger Guidelines Review to Small Businesses, Consumers
In a joint effort to strengthen enforcement against illegal mergers that drive higher prices, lower wages and less innovation, the FTC and the Justice Department's Antitrust Division kicked off the new year by launching a public inquiry on modernized merger guidelines. As a reflection of the new era of democratization at the FTC, the commission is actively seeking public comments from small businesses, consumers, workers and entrepreneurs to hear directly from people who have experienced firsthand the effects of mega-mergers and acquisitions.

Successfully Blocked Illegal Lockheed - Aerojet Vertical Merger

In a 4-0 unanimous vote, the FTC sued to block Lockheed Martin, the world's largest defense contractor, from eliminating Aerojet, the last remaining independent missile supplier in the United States. Lockheed then abandoned their illegal acquisition. In addition, NVIDIA in January moved to abandon their $40 billion acquisition of Arm, a vertical merger that the FTC unanimously voted to sue to block in late 2021.

Protected Rhode Islanders from Higher Health Care Costs

The two largest hospital systems in Rhode Island abandoned their plans to form an even more powerful conglomerate after the FTC sued to block the merger. The successful 4-0 FTC vote to block the Lifespan – Care New England Health System merger prevented higher prices for patients and harder conditions for health care workers.

Promoted Lower Grocery Prices and Protected Competition in New York

As prices rise for families, the FTC finalized their action to maintain competition among New York grocery stores and help keep costs lower. The action was yet another 4-0 unanimous vote for the commission.

Secured $71 Million in Loan Cancellation for Defrauded DeVry Students

An FTC investigation led to the U.S. Department of Education in February forgiving $71.7 million in federal student loans for students deceived by the for-profit DeVry University.

Bombshell FTC Study Shows Online Scams Rocketed Up 198% in 2021

The FTC's new report on online scams found over 95,000 people reported $770 million in losses to fraud initiated on social media platforms in 2021, accounting for about 25% of all reported losses to fraud in 2021 and representing a stunning 198% increase from 2020 alone. The report came shortly after the FTC returned $3.7 million to consumers deceived by online lender Avant in January.

2021 Accomplishments

Challenged Monopolies and Rampant Consolidation

In a letter to FTC staff detailing the agency's strategic approach, Chair Lina Khan outlined how antitrust violations directly harm workers and independent small businesses in addition to consumers. After decades of rising monopoly power and amid an unprecedented merger wave, the FTC took action to address rampant consolidation, including steps to slow merger activity and votes to block anti-competitive mega-mergers and enforce the law against monopolization.

Notably, the FTC updated their antitrust suit against Facebook alleging an illegal buy-or-bury scheme and unanimously voted to sue to block the $40 billion NVIDIA-Arm vertical merger that would stifle semiconductor chip innovation. In addition, the FTC prevented Berkshire Hathaway Energy's $1.7 billion acquisition of competitor Questar Pipeline and the mega-merger of outdoors retailers Sportsman's Warehouse with Bass Pro Shops and Cabela's.

As supply chain disruptions continue, the FTC voted unanimously to launch an inquiry into whether consolidation and anti-competitive practices are contributing to supply chain snarls, requesting information from large retailers including Amazon, Walmart, Tyson, and Kroger.

The FTC also laid the groundwork to fully restore the agency's ability to address rampant consolidation by restricting future acquisitions for firms that attempted anticompetitive mergers previously, rescinding the 1995 prior approval merger policy that limited the agency's ability to deter problematic mega-mergers, withdrawing the unsound Vertical Merger Guidelines, and changing the Merger Review Process to make clear that 30 days without notice does not equate an approval for mergers.

The FTC's antitrust actions led by Chair Khan have already made a positive impact on marketplace fairness. Recently, the FT noted "Mega takeovers in the US — deals north of $25 billion or $50 billion — plummeted in 2021, according to data from Refinitiv, as companies particularly in pharma and tech have shied away from taking regulatory risks."

Resurrected the Long-Dormant Penalty Offense Authority to Punish and Deter Corporate Wrongdoing

In the wake of court decisions that curbed the FTC's authority to claw back money for consumers from bad corporate actors, Chair Khan revived the dormant Penalty Offense Authority to ensure corporations that knowingly break the law are justly penalized. After decades without invoking the Penalty Offense Authority, the FTC can now again make sure corporate criminals pay a steep price when they break the law, instead of getting a slap on the wrist.

The revived Penalty Offense Authority allows the FTC to impose severe civil penalties of up to $43,792 per violation against a corporation that knowingly violates a previous FTC administrative order. The FTC first resurrected the authority in 2021 with unanimous votes to put on notice over 70 for-profit colleges for predatory behavior, over 700 companies for fake online reviews, over 1,000 businesses, including Amazon, Doordash, and Grubhub, for deceiving gig workers about potential earnings, and to initiate a rulemaking to hold scammers accountable for impersonating government or businesses.

Restored the Right to Repair with Unanimous Vote

For decades, consumers and businesses have been subject to one-sided contracts that restrict their ability to repair products and more. As the Right to Repair movement continues to build momentum, the FTC unanimously moved to protect consumers and honest businesses by enforcing the "Right to Repair" against corporations that make it difficult to repair their products.

The FTC's announcement of ramping up law enforcement against illegal repair restrictions was hailed by advocates and followed by Apple announcing new public access to parts and repair manuals, reversing decades of restrictive repair policies. In addition, the FTC launched an inquiry into repair terms surrounding McDonald's perpetually nonfunctioning ice cream machines and launched a public comment period to gather more information about a broader set of one-sided contract terms that may harm fair competition.

Cracked Down on Made in America Fraud Harming Ranchers and Consumers

American ranchers and manufacturers already face incredible challenges as they confront increasing consolidation, let alone rampant fraud in "Made In America" labeling. In 2021, the FTC defended American entrepreneurs by issuing a new rule that cracks down on false Made In USA labels often used by dominant meatpacking conglomerates. The agency's new rule protects and incentivizes U.S. production by requiring companies to prove their products are "all or virtually all" made in the United States if they are to use Made In America labels. The new rule especially benefits small businesses that rely on their Made in America labels, but lack the resources to defend themselves from imitators.

Ramped-Up Enforcement Against Subscription Tricks and Traps

In a bipartisan 3-to-1 vote, the FTC ramped-up enforcement against illegal subscription traps in response to a rising number of complaints about deceptive sign up tactics, unauthorized charges, and ongoing billing that is impossible to cancel. The new enforcement policy statement from the FTC made clear that deploying illegal "dark patterns" to trick consumers into signing up for subscription programs or trap them when they try to cancel is against the law, and subject to penalties.

Returned $135 Million to Working Americans

In an unprecedented year, the FTC stood up for working families by holding corporate criminals and scammers accountable. Working families across the country had over $135 million returned to them by the FTC after it was stolen, swindled, or scammed from them including $60 million in stolen wages returned to Amazon drivers, up to $40 million to patients defrauded by "Pharma Bro" Martin Shkreli after a unanimous FTC vote, and over $35 million in refunds to scam victims across the country. In addition to refunds, the FTC also pressed forward to hold bad actors accountable in court, including suing FleetCor and its CEO for fleecing small businesses with mystery fuel card fees.

Protected Privacy in the Digital Age

In addition to issuing a landmark report proving the leading internet service providers (ISPs) collect and sell more data than consumers know — including full browsing history, location data, sexual orientation and more — the FTC also took aggressive action to protect consumers in the digital era. The FTC strengthened the Safeguards Rule to require banks protect customer data following widespread data breaches that led to financial losses and identity theft, protected over 100 million app users by requiring sensitive health data is not shared with Facebook and Google without permission, and banned SpyFone and its CEO from the surveillance business and ordered them delete all secretly stolen data.

Modernized and Democratized the FTC

In a letter to Federal Trade Commission staff, Chair Lina Khan laid out a vision to "further democratize the agency" by "recognizing the agency as a public body whose work shapes the distribution of power and opportunity across our economy." The FTC ushered in a new era of transparency this year, holding the first open commission meetings in decades and building consensus to deliver multiple high-profile unanimous votes. See the factsheet on Strengthening Democracy at the FTC here.