FTC Policy Statement on Enforcement Related to Gig Work

American workers deserve fair, honest, and competitive labor markets. Over the past decade, internet-enabled "gig" companies have grown exponentially, and gig work now composes a significant part of the United States economy.[1] One study suggests the gig economy will generate $455 billion in annual sales by 2023.[2] The rapid growth of the gig economy is made possible by the contributions of drivers, shoppers, cleaners, care workers, designers, freelancers, and other workers. Protecting these workers from unfair, deceptive, and anticompetitive practices is a priority, and the Federal Trade Commission ("FTC" or "Commission") will use its full authority to do so.[3] As the Commission's past work and current initiatives illustrate, the agency's broad-based jurisdiction and interdisciplinary approach to market harms make it well positioned to confront the challenges this model can pose to workers.[4]

[1] *See, e.g.*, Ben Zipperer et al., Econ. Pol'y Inst., National Survey of Gig Workers Paints a Picture of Poor Working Conditions, Low Pay, at 1 (June 1, 2022) ("While the concept of nontraditional, short-term, and contract work has been around since well before the digital age, it wasn't until the 2010s that digital platform companies like Uber, DoorDash, Instacart, and TaskRabbit began to rise to prominence and shape the way we define gig work today.").
[2] Mastercard & Kaiser Assocs., Mastercard Gig Economy Industry Outlook and Needs Assessment, at 2 (May 2019).
[3] While this Statement focuses on potential harms to gig workers and how the Commission might address them, misconduct against any consumer—customers who use services offered through the platform, workers who supply labor, and businesses on or off the platform—is prohibited. *See, e.g.*, Decision & Order, *In re Uber Techs., Inc.*, Dkt. No. C-4662 (FTC Oct. 25, 2018) (requiring Uber to implement a comprehensive privacy program to protect personal data collected from both riders and drivers); Decision & Order, *Amazon.com*, Dkt. No. C-4746 (FTC June 10, 2021) (requiring Amazon to refund Amazon Flex drivers $61.7 million in tips that Amazon promised drivers but failed to pay); Compl. ¶¶ 61–69, *In re HomeAdvisor, Inc.*, Dkt. No. 9407 (FTC Mar. 11, 2022) (FTC challenging a lead-generation platform's alleged misrepresentations to small businesses about the platform's effectiveness); *see also* Letter from Protect Our Rests. to Fed. Trade Comm'n (July 21, 2021) (explaining how various practices that result

I. Background on Gig Work

The gig economy touches nearly every aspect of American life, from food delivery to transportation to household services. Gig work involves activity where people earn income in the FTC's *Serving Communities of Color* report, gig workers are disproportionately people of color[11]: 30% of Latino adults, 20% of Black adults, and 19% of Asian adults report having engaged in gig work, compared to only 12% of White adults.[12] Many gig workers have lower incomes and, because they may not be covered by wage and hour laws, can earn less than the minimum wage.[13] More than half of American gig workeed

II. The Market for Gig Workers

As with any evolving sector of the economy, the Commission is attuned to gig work's promises and pitfalls. This Statement focuses on three market features that implicate the Commission's consumer protection and competition missions:

Control Without Responsibility. Companies frequently promote gig work as a flexible opportunity for people to set their own hours and work on their own terms.[18] These companies often categorize their workers as independent contractors. Yet in practice these firms may tightly prescribe and control their workers' tasks in ways that run counter to the promise of independence and an alternative to traditional jobs. This tension has contributed to litigation across the country over allegations that gig workers are being misclassified as independent contractors rather than employees.[19] When misclassification occurs, workers are often deprived of critical rights to which they are entitled under law (such as the right to organize, overtime pay, and health and safety protections), and saddled with inordinate risks (such as unclear and unstable pay, or responsibility for a vehicle, equipment, or supplies) and business expenses that employers commonly bear (such as insurance, gas, maintenance, and taxes).[20] At the same time,

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[18] *See, e.g.*, Cong. Rsch. Serv., *What Does the Gig Economy Mean for Workers?*, at i ("The apparent availability of gig jobs and the flexibility they seem to provide workers are frequently touted features of the gig economy.").

[19] *See, e.g.*, *Lawson v. Grubhub, Inc.*, 13 F.4th 908 (9th Cir. 2021); *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10 (1st Cir. 2020); *Razak v. Uber Techs., Inc.*¸ 951 F.3d 137 (3d Cir. 2020); *Hood v. Uber Techs., Inc.*, Case No. 1:16-CV-998, 2019 WL 93546 (M.D.N.C. Jan. 3, 2019).

[20] *See, e.g.*, National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.* (protecting, among other rights, employees' rights to act together to address working conditions); U.S. Dep't of the Treasu&alfe .,

exposed to harms from unfair, deceptive, and anticompetitive practices and is likely to amplify such harms when they occur.

Concentrated Markets. Markets populated by businesses that run online platforms are often concentrated, resulting in reduced choice for workers, customers, and businesses. As a platform grows by attracting more users (e.g., riders), it can become more valuable to users on the other side of the platform (e.g., drivers) by generating so-called “network effects.” Because network effects can lock in a dominant player’s market position, these businesses can be incentivized to pursue tactics designed to quickly capture a large share of the market, leading the market to “tip” and raising significant barriers to entry. Gig companies in concentrated markets may be more likely to have and exert market power over gig workers or engage in anticompetitive unilateral or coordinated conduct. Such conduct may eliminate or further weaken competition among existing gig companies for workers’ services or prevent new gig companies from getting off the ground or being able to enter the market. The resulting loss in competition

The Commission has initiated rulemaking proceedings to strengthen its ability to detect and deter deceptive earnings claims and has sought comment on the prevalence of deceptive earning claims relating to gig work.

or the Business Opportunity Rule.[45] The Rules require accurate, upfront disclosures—including information about the franchise or business opportunity, other workers, and prior lawsuits—before consumers make any commitment.[46]

B. Combating Unlawful Practices and Unlawful Constraints Imposed on Gig Workers

Gig workers may lack key information about their working conditions, and can be subject to onerous contract terms and arbitrary evaluation requirements. Increasingly, gig workers are managed by algorithms, which use extensive data collected from workers and other consumers to make important management decisions using undisclosed criteria. Multiple laws enforced by the Commission may apply when these practices are deceptive, unfair, anticompetitive, or otherwise unlawful.

Unfair or Deceptive Practices by an Automated Boss. Section 5 of the FTC Act prohibits unfair or deceptive practices in any form, including practiing 7cMel transparency about how it impacts worker pay or performance evaluation.[48] Workers report unexpected drops in their performance ratings,[49] unexplained changes in their pay,[50] assignment of impossible or dangerous delivery routes,[51] or other arbitrary evaluations that could lead to wrongful terminations.[52] Companies are responsible for fulfilling their promises to their workers, even if they use automated management technologies.[53] Gig companies that employ algorithmic tools to govern their workforce should ensure that they do so legally.[54]

entry for new companies.[63] Such provisions may violate Section 1 of the Sherman Act[64] and the FTC Act's prohibition on unfair methods of competition.[65] The Commission will also investigate contractual limitations, such as liquidated damages clauses[66] or nondisclosure agreements,[67] that may be excessive or overbroad and effectively operate as non-compete provisions. Moreover, the Commission recognizes that comp.3 (rcomp.3 (rcomp.3 (rcomp. overbroab93 -3.12 0 0 12 493.92 70

lessen competition between or among gig companies.[72] The Commission will also investigate any exclusionary or predatory conduct by dominant firms that may unlawfully create or maintain a monopoly (a dominant seller) or a monopsony (a dominant buyer or employer), resulting in harm to customers or reduced compensation or poor working conditions for gig workers. Such conduct may include the use of exclusive contracting, predatory pricing, or other forms of monopolization, and may be subject to legal action by the Commission as a violation of Section 2 of the Sherman Act.[73]

IV. Policy, Partnerships, & Outreach

In addition to robust enforcement, the Commission addresses issues in the gig economy through policy work, outreach, and partnerships with other law enforcement agencies.

Governmental Collaboration. The FTC's Regional Offices have spearheaded the agency's efforts to identify law violations, develop policy, and collaborate with government partners in this space. The Commission is also partnering with other agencies on broad labor initiatives and individual enforcement actions. In December 2021, the FTC and DOJ hosted a workshop to promote competitive labor markets and worker mobility.[74] And in July 2022, the FTC and National Labor Relations Board signed a Memorandum of Understanding that deepens the agencies' collaboration around issues facing gig workers through sharing information, conducting cross-training for staff at each agency, and partnering on investigative efforts within each agency's authority.[75]

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[72] See Exec. Order No. 14,036, § 1, 86 Fed. Reg. at 36,988 (directing federal attention "to enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony—especially as these issues arise in labor markets").

[73] 15 U.S.C. § 2.

[74] Fed. Trade Comm'n, Making Competition Work: Promotion Competition in Labor Markets (Dec. 6–7, 2021).

[75] Memorandum of Understanding Between the Federal Trade Commission (FTC) and the National Labor Relations Board (NLRB) Regarding Information Sharing, Cross-Agency Training, and Outreach in Areas of Common Regulatory Interest (July 19, 2022).

Ensuring Equity. The FTC's Equity Action Plan reaffirms the Commission's commitment to protecting the public, including meaningfully addressing barriers that historically underserved communities face in participating in and benef

V. Conclusion

Successfully addressing the range of consumer protection and competition challenges associated with the gig economy requires innovative and collaborative approaches by governmental enforcers that are responsive to the public's concerns and input. The Commission will continue to capitalize on its broad jurisdiction and interdisciplinary expertise to combat unlawful practices that harm gig workers.