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ast enforcement is critical to the growth and dynamism of our economy, prosperity and liberty. Recent decades have vividly illustrated how en markets become more consolidated and less competitive. Prices rise, exets become more fragile and less resilient. These effects have been on it year, as supply shocks stemming from the pandemic and contaminated were 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. 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. 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,

Aea1(y r)3 (e)4004 Tc 0.004 Tw T[b)-fns -1 (e.)TJETJ0 Tc 0 Tw -34 meat processors and dairy bottlers.

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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.

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),

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.

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.

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.

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. 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, and they remain at historically high levels. 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

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-P g a l h a t t c l 3 .

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 tak

consolidation within the defense-

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

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 KellyTd(-)Tj0.002 Tc.04 0.48v 0 T (a)4.2 (t)TJ-

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 upant hederat (1976, t2 (c)4 T Tw 18.TO

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 created04 -0 0 gee

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 competitions in prescription routing and eligibility, leading to higher prices, reduced innovation, lower output, and no customer choice.

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.

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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 Act⁵⁰ 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.

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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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). FTC v. Abb

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

In June, the Commission authorized a 6(b) study of the contracting practices of Pharmacy Benefits Managers. After seeking and receiving public input from a wide variety of stakeholders, 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. 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.

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

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

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

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 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.