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New FTC memo calls for a focus on 'structural dominance' from big companies

New FTC Chair Lina Khan laid out her priorities for the agency

By [Kim Lyons](#) | [@SocialKimLy](#) | Sep 23, 2021, 4:39pm EDT

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In a memo to staff, Federal Trade Commission Chair Lina Khan outlined issues she wants to prioritize at the agency | Getty Images

In a memo to staff this week, FTC Chair Lina Khan outlined her new priorities for the agency: to focus on power imbalance, reduce harms to consumers, and address “rampant consolidation.” Khan wrote that the agency should focus its efforts and adjust its strategic approach to deal with the issues created by “next-generation technologies, innovations, and nascent industries across sectors.”

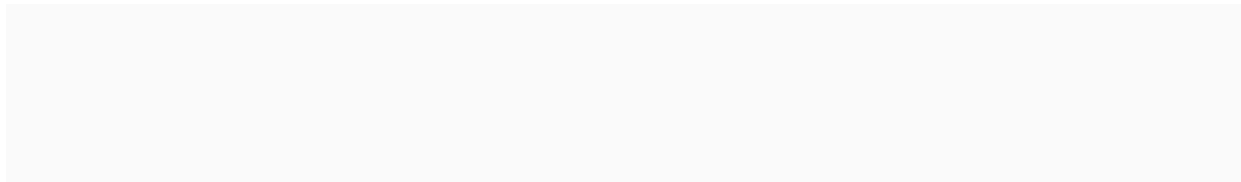
And without mentioning Amazon, Apple, or Facebook by name, Khan's list of priorities for the FTC signals that the tech giants are likely to face much closer scrutiny from the agency.

First, Khan said, the FTC should take a "holistic" approach to how it considers antitrust violations, which can prove harmful to independent businesses and workers as well as consumers. "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," Khan wrote.

Khan wants the agency's enforcement efforts focused on root causes of and incentives for unlawful conduct, such as "conflicts of interest, business models, or structural dominance."

The concept of structural dominance is a familiar theme for Khan. She wrote about it while she was a student at Yale Law School, [in a now-famous paper where she argued](#) that Amazon had managed to skirt monopoly laws to the point that its structural power gives it vast influence across the economy. In that paper, Khan also excoriated the way investors "are willing to fund predatory growth," citing Uber as an example of a company whose investors braced to endure significant losses with the belief that they would one day recover their losses and then some.

Khan's memo this week echoes her earlier argument, calling out "the growing role of private equity and other investment vehicles" in ways that "may distort ordinary incentives" and fuel unfair competition. "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," she writes, adding that "deeply asymmetric relationships between the controlling firm and dependent entities can be ripe for abuse."



In addition, Khan wants to find ways for the FTC to strengthen its merger enforcement, "to address rampant consolidation and the dominance that it has enabled across markets," and examine how contracts can perpetuate "unfair methods of competition or unfair or deceptive practices."

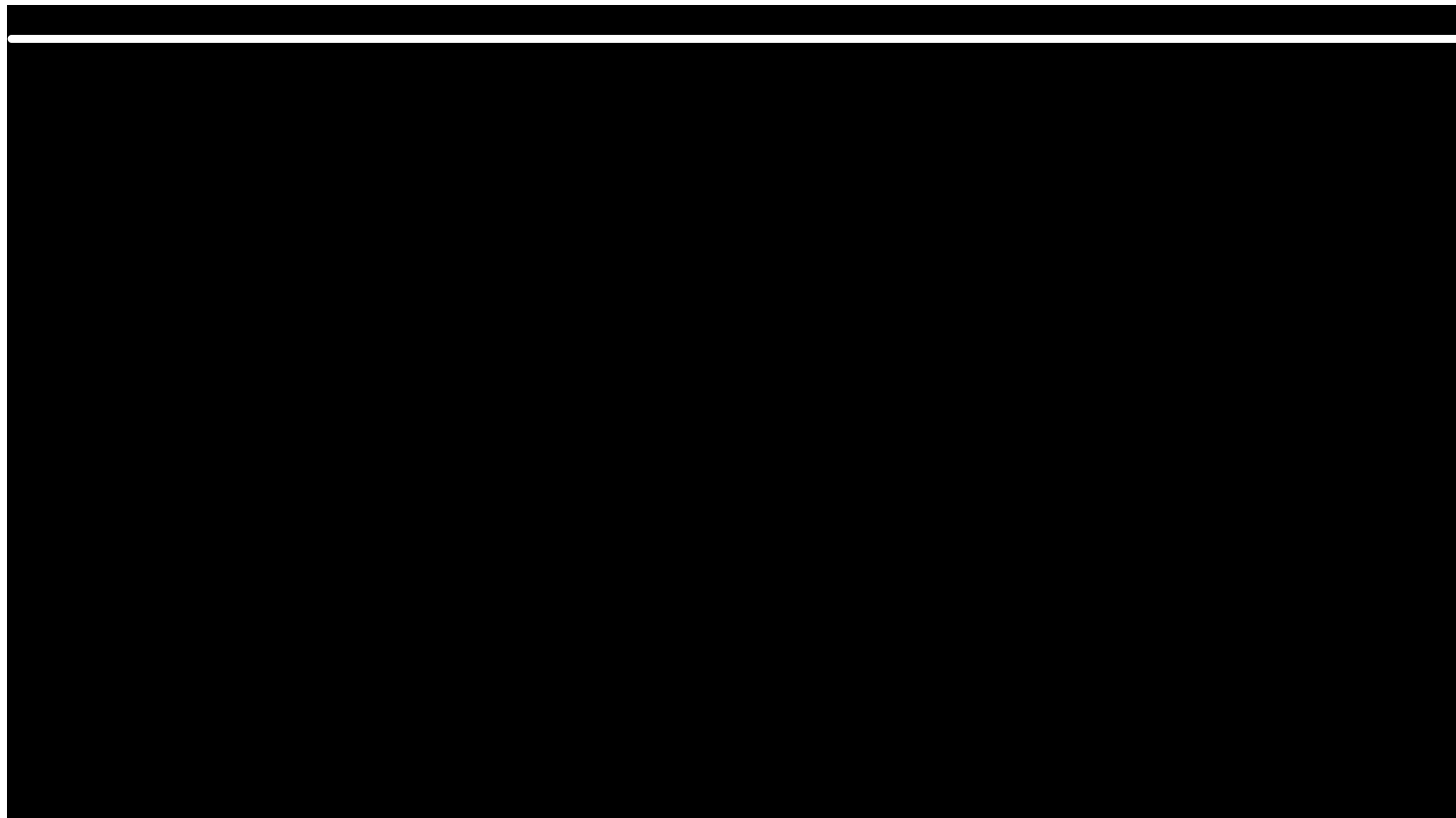
She also named noncompete agreements that can restrict workers from which jobs they can

take, and right-to-repair restrictions as examples of unfair contracts. [Apple in particular has been criticized](#) for the way it limits how much users can repair Apple devices they own, and the [FTC said earlier this year](#) that it would fight such restrictions. “Consumers, workers, franchisees, and other market participants are at a significant disadvantage when they are unable to negotiate freely over terms and conditions,” Khan wrote in the memo.



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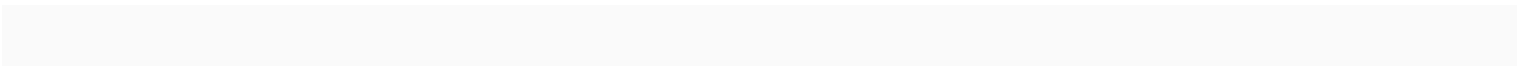
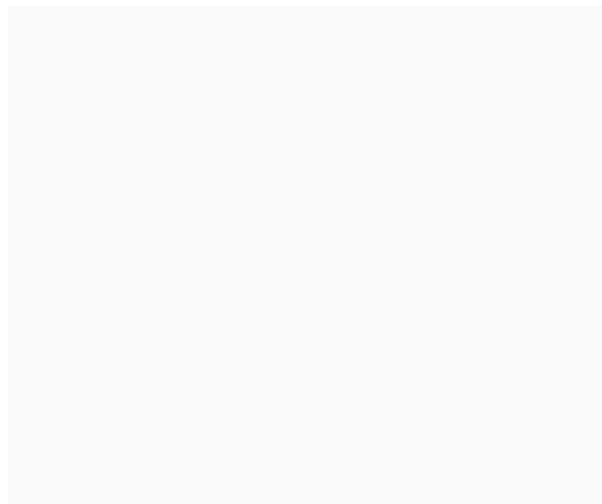
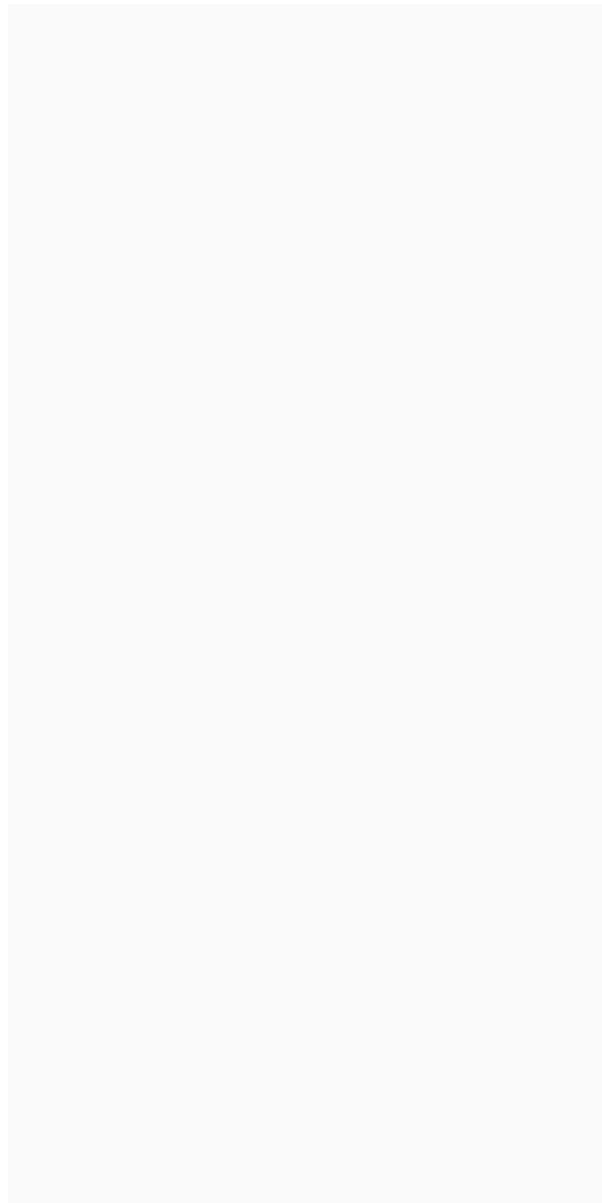
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