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**Session I – Competition and Poverty**

**- Contribution from the United States -**

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The attached document from the United States is circulated to the Latin American and Caribbean Competition Forum FOR DISCUSSION under Session I at its forthcoming meeting to be held on 28-29 September 2023 to be held in Quito, Ecuador.

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## *Session I – Competition and Poverty*

### *- Contribution from the United States -*

#### 1. Introduction

1. Promoting robust and fair competition can benefit impoverished populations by contributing to higher wages and greater economic opportunity while also decreasing the costs for and increasing access to key goods and services. As enforcers of federal competition laws in the United States, the Federal Trade Commission (“FTC”) and the U.S. Department of Justice (“DOJ”) (collectively, “the Agencies”), are committed to vigorously employing their full range of competition authorities and tools to help improve the lives of the most economically disadvantaged.

2. When competition leads to lower prices for life’s basic necessities, the greatest benefits often go to the least well off, who typically spend a higher share of their limited income on essential goods and services.<sup>1</sup> By focusing on mergers and anticompetitive conduct that increase the costs of basic items essential to consumers, such as health care, food, education, and energy, competition agencies can directly improve the lives of residents most in need. Accordingly, competition policy and enforcement that leads to lower prices can be part of an overall strategy aimed at reducing the hardships associated with living in poverty.

3. Speaking broadly, the Agencies have also recently increased the emphasis they place on considerations that go beyond product prices as part of their competition analysis, including issues related to access to products, especially necessities such as groceries. For instance, commenters have asked how competition policy could be used to address food deserts in urban areas, improving options for consumers and expanding access in underserved communities more generally.<sup>2</sup>

4. Consistent with the intent of the US antitrust laws, this also includes a renewed focus on protecting workers by promoting competition in labor markets and the ability of small enterprises to fairly compete in markets that have become increasingly dominated by a few firms.<sup>3</sup> Market conditions supporting firm entry and survival tend to promote stronger economic growth and more dynamic, robust economies. This results in greater employment and start-up opportunities available to the economically disadvantaged, and more firms competing for the same pool of workers, leading to stronger wages and benefits and better employment conditions for workers. Expanding the competition analysis to consider

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<sup>1</sup> See Gregory Day, [The Necessity in Antitrust Law](#), 78 Wash. & Lee L. Rev. 1289, 1297 (2021), (arguing that antitrust law should consider the disparate effects on marginalized populations including people of color and women who suffer greater costs when firms monopolize or otherwise restrain trade in essential markets); Carlos M. Urzúa, [Distributive and Regional Effects of Monopoly Power](#), 22 ECON. MEX. NUEVA ÉPOCA 279 (2013); PEW CHARITABLE TR, [HOUSEHOLD EXPENDITURES AND INCOME: BALANCING FAMILY FINANCES IN TODAY’S ECONOMY](#), (2016).

<sup>2</sup> See Christopher Leslie, Food Deserts, [Racism, and Antitrust](#), 110 CAL.L.R. 1717 (2022).

<sup>3</sup> See Alvaro M. Bedoya, Cmm’r, Fed Tr. Comm’n., [Aiming at Dollars Not Men, Remarks at the Utah Project on Antitrust and Consumer Protection](#) (Apr. 10, 2023); Alvaro M. Bedoya, Cmm’r, Fed. Trade Comm’n., [Returning to Fairness](#), Remarks at the Midwestern Forum on Fair Markets (Sep. 22, 2022).

multiple goals addresses both sides of the poverty equation: it enables individuals and households to compete for better economic opportunities while also lowering the cost of the goods and services they purchase.

5. This submission opens by examining how the Agencies have reoriented their focus in recognition of the importance of protecting the ability of workers and smaller businesses to compete as a pathway out of poverty. It then turns to discussing how the Agencies use multiple tools to prioritize their enforcement and policy efforts in sectors for essential consumer goods and services.

## 2. Reorienting the agencies' focus to protect the ability of workers and small businesses to compete to increase economic opportunity

6. As part of their broader effort to ensure that consumers, workers, and small businesses all benefit from competition, the Agencies have broadened their focus to more fully address monopsonistic conduct and impediments that make it harder for workers and small businesses to compete.

### 2.1. Renewed Scrutiny of Buyer Power

7. While competition enforcement has historically targeted monopolistic practices (i.e., competition among sellers), the antitrust laws apply equally to conduct referred to as monopsonistic practices (i.e., competition among buyers). Instead of monopolization of output, where the issue generally is collusion or unilateral conduct to drive up the price of an output, buyer-side monopsonistic activity can involve collusion or unilateral conduct that drives down the cost of an input. Monopsonistic conduct can occur in all kinds of markets, including in labor markets, where, for example, large or a limited number of employers can leverage their power to suppress the wages of workers.<sup>4</sup> This can result in lower wages, reduced benefits, and substandard working conditions, as well as decreased incomes for small producers. These practices also harm competing businesses and their employees, which can exacerbate problems of poverty.

8. In his July 2021 Executive Order on competition, President Biden captured the significance of anticompetitive conduct and mergers that may depress worker compensation, noting: “The American promise of a broad and sustained prosperity depends on an open and competitive economy. For workers, a competitive marketplace creates more high-quality jobs and the economic freedom to switch jobs or negotiate a higher wage. [\* \* \*] Consolidation has increased the power of corporate employers, making it harder for workers to bargain for higher wages and better work conditions. Powerful companies require workers to sign non-compete agreements that restrict their ability to change jobs.”<sup>5</sup>

9. There is growing evidence that labor market abuses suppress wages and contribute to growth in restrictive employment arrangements, especially no-poach agreements and non-compete provisions.<sup>6</sup> Consequently, the Agencies have prioritized confronting

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<sup>4</sup> Market power allows a firm to decrease its compensation without losing its entire workforce, where compensation refers to not just wages, but also benefits, job quality and working conditions. U.S. DEP’T OF TREASURY, THE STATE OF LABOR MARKET COMPETITION at 3 (2022).

<sup>5</sup> Exec. Order No. 14,036, 86 Fed. Reg. 36,987 (July 9, 2021).

<sup>6</sup> DEP’T OF TREASURY *supra* note 4, at i-ii; at i-ii; FED. TRADE. COMM’N, FACT SHEET: [FTC PROPOSES RULE TO BAN NONCOMPETE CLAUSES, WHICH HURT WORKERS AND HARM COMPETITION](#) 3 (2023).

anticompetitive activity in labor markets. As discussed below, the Agencies have mobilized their full set of tools to address such conduct, including enforcement, incorporating a merger’s impact on labor into its merger review, and rulemaking.

10. *Law Enforcement:* In 2023, the FTC brought cases against two firms that it alleged had committed unfair methods of competition by imposing restrictions on employees that limited their ability to accept employment with competing firms.<sup>7</sup> According to the FTC complaints, each of the firms illegally imposed noncompete restrictions on workers in positions ranging from low-wage security guards to manufacturing workers to engineers that barred them from seeking or accepting work with another employer or operating a competing business after they left the companies. The cases were resolved by orders against the firms prohibiting them from enforcing, threatening to enforce, or imposing noncompete restrictions against employees, banning them from telling the employee or another employer that the employee is subject to a noncompete agreement, and other relief to vitiate the effects of existing agreements.

11. On July 25, 2022, the DOJ filed a civil antitrust complaint to stop three of the nation’s largest poultry companies—Cargill, Sanderson Farms, and Wayne Farms—and data consultant WMS & Co. and its president G. Jonathan Meng from suppressing the pay of hundreds of thousands of poultry processing plant workers and to stop Sanderson and Wayne Farms from engaging in deceptive practices regarding their contracts with poultry growers. According to the complaint, 21 competing chicken and turkey processors spent over 20 years collaborating and assisting each other in making compensation decisions, exchanging compensation information, and facilitating such collaborations and exchanges through industry consultants, and this agreement resulted in poultry processing plant workers receiving less compensation than they would have earned had the processors competed fairly for their labor. The complaint also alleges that the “tournament system” used to pay growers camouflages the true range of financial outcomes for growers and violates the Packers and Stockyard Act. Concurrent with the complaint, the Division filed a proposed settlement, pursuant to which defendants are prohibited from sharing or facilitating the sharing of competitively sensitive information among competitors and required them to cooperate with the United States’ ongoing investigation. Those defendants will also pay restitution to affected poultry processing workers. Further, the settlement with Sanderson and Wayne Farms changes the method by which those defendants compensate the growers that raise their poultry and requires them to comply with the USDA’s Agriculture Marketing Service’s June 8, 2022 proposed rule regarding “Transparency in Poultry Grower Contacting and Tournaments.”<sup>8</sup> The court entered the settlement in June 2023.

12. The DOJ has also criminally prosecuted individuals who enter into certain types of anticompetitive agreements, such as wage-fixing and no-poach agreements. For example, in *United States v. Jindal*, the DOJ charged the former owner and former clinical director of a physical therapist staffing company, alleging that the parties entered into a wage-fixing

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<sup>7</sup> See [Press Release, Fed. Trade Comm’n, \*FTC Cracks Down on Companies That Impose Harmful Noncompete Restrictions on Thousands of Workers\* \(Jan. 4, 2023\)](#), and [Press Release, Fed. Trade Comm’n, \*FTC Approves Final Orders Requiring Two Glass Container Manufacturers to Drop Noncompete Restrictions That They Imposed on Workers\* \(Feb. 23, 2023\)](#).

<sup>8</sup> , [Press Release, U.S. Dep’t of Just., \*Justice Department Files Proposed Amended Complaint and Consent Decree with Fourth Poultry Processor, Further Addressing Long-Running Conspiracy to Suppress Workers’ Compensation\* \(May 17, 2023\)](#).

agreement to lower wages paid to contracted therapists and assistants.<sup>9</sup> In *United States v. DaVita*, the DOJ charged a kidney dialysis company and its former CEO, alleging that they entered into a no-poach agreement to allocate employees through agreements with competitors not to recruit one another's employees.<sup>10</sup> While both cases ultimately ended in jury acquittals on the charged antitrust violations, the courts in each case acknowledged that these types of agreement, when proven, are subject to per se treatment under the U.S. antitrust laws, which means they are categorically unreasonable and deemed illegal without any injury into their competitive effects.

13. These policies and actions built upon prior efforts by the Agencies, who for years focused enforcement efforts on addressing horizontal agreements between firms that restricted competition for labor. For instance, in a 1992 order involving the business of nursing registries that supply short-term needs of nursing homes, the FTC prohibited nursing homes boycotting a nursing registry that raised its prices for short-term nursing assignments.<sup>11</sup> A 1995 FTC case involved the trade association representing most of the nation's best-known fashion designers and the organization that produces the two major fashion shows for the industry each year. They sought to fix modeling fees, and the FTC order prohibited such attempts.<sup>12</sup> DOJ has also repeatedly enforced the antitrust laws against anticompetitive practices in labor markets. For example, DOJ entered a settlement with Adobe Systems, Apple, Google, Intel, Intuit, and Pixar prohibiting the firms from agreeing not to solicit or poach competitors' employees.<sup>13</sup> Similarly, the DOJ alleged that Ebay and Intuit had restricted labor market competition by entering into agreements to not cold call one another's developers in *United States v. Ebay*. This case ended in a civil settlement forcing the company to stop the practice.<sup>14</sup> Most recently, in *United States v. Knorr-Bremse*, DOJ alleged that rail equipment suppliers had a long running pact to not compete for each other's employees. The parties ultimately reached a settlement with DOJ.<sup>15</sup>

14. These monopsony concerns apply not only to employment relationships, but also apply to workers in the so-called "gig economy," in which platforms can reduce competition in the market for contractors by, for example, engaging in anticompetitive wage fixing and/or other forms of coordination with other gig economy companies. In September 2022, the FTC issued a policy statement making it clear that established competition principles apply to gig economy firms.<sup>16</sup>

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<sup>9</sup> Press Release, U.S. Dep't of Just., [Former Owner of Health Care Staffing Company Indicted for Wage Fixing](#) (Dec. 10, 2020).

<sup>10</sup> Press Release, U.S. Dep't. of Just., [DaVita Inc. and Former CEO Indicted in Ongoing Investigation of Labor Market Collusion in Health Care Industry](#) (July 15, 2021).

<sup>11</sup> *In re Debes Corp.*, 115 F.T.C 701 (1992).

<sup>12</sup> See Press Release, Fed. Trade Comm'n, [Council of Fashion Designers of America](#) (June 9, 1995).

<sup>13</sup> See, [United States v. Adobe Systems, Inc.](#), No. 10-cv-01629 U.S. Dist. LEXIS 83756, at \*4-5 (D.D.C. Mar. 17, 2011).

<sup>14</sup> See Press Release, U.S. Dep't of Justice, [Justice Department Requires eBay to End Anticompetitive "No Poach" Hiring Agreements](#) (May 1, 2014).

<sup>15</sup> See [United States v. Knorr-Bremse AG](#), No.18-cv-00747 U.S. Dist.LEXIS 142125, at \*19-20 (D.D.C. July 11, 2018).

<sup>16</sup> FED. TRADE COMM'N, [FTC POLICY STATEMENT ON ENFORCEMENT RELATED TO GIG WORK](#) (2022).

15. To further address these issues, the DOJ and FTC both signed Memoranda of Understanding (MOUs) with the National Labor Relations Board in July 2022. The DOJ’s MOU aims to strengthen the partnership between DOJ and the NLRB “through greater coordination in information sharing, coordinated investigations and enforcement activity, training, education, and outreach.”<sup>17</sup> The FTC’s MOU is intended to increase collaboration on key issues such as labor market concentration, one-sided contract terms, and labor developments in the “gig economy.”<sup>18</sup> DOJ also entered into an MOU with the Department of Labor, which similarly provides for collaboration on shared goals with that agency.<sup>19</sup>

16. These MOUs serve as just one example of how the Agencies are taking a “whole-of-government” approach to addressing competition concerns. Collaborating with other government agencies ensures that the Agencies 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, all of which should benefit disadvantaged populations.

17. *Mergers:* In addition to addressing anticompetitive conduct that reduces wages to workers, the Agencies are actively incorporating labor market analysis into their merger reviews. In July 2023, the Agencies proposed new draft Merger Guidelines, which included for the first time, a section dedicated to the Agencies’ approach to labor markets and their unique features. The draft Guidelines state: “The same general concerns as in other markets apply to labor markets where employers are the buyers of labor and workers are the sellers. The Agencies will consider whether workers face a risk that the merger may substantially lessen competition for their labor.”<sup>20</sup> The draft Guidelines acknowledge that the Agencies will challenge a merger based on labor market impacts alone. Consistent with this focus, in June 2023, the Agencies initiated a rulemaking to update their merger notification form to include requests for information to aid the Agencies in assessing the potential impact of a merger on labor markets and workers.<sup>21</sup>

18. These initiatives reflect ongoing work at the Agencies to examine potential labor market impacts during merger review. For example, the DOJ recently challenged a merger between large publishers, Penguin Random House and Simon & Schuster, alleging that it would have given the merged entity monopsony power and resulted in anticompetitive labor practices. The DOJ specifically alleged harm to workers—here authors selling rights to their works.<sup>22</sup> After securing a permanent injunction blocking the deal, DOJ AAG Kanter

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<sup>17</sup> Dep’t of Justice & Nat’l Lab. Rels. Bd. [Memorandum of Understanding](#) (July 26, 2022).

<sup>18</sup> See 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).

<sup>19</sup> Press Release, Dep’t of Justice, [Departments of Justice and Labor Strengthen Partnership to Protect Workers](#) (Mar. 10, 2022).

<sup>20</sup> FED. TRADE. COMM’N & U.S. DEP’T OF JUST., [MERGER GUIDELINES](#) at 26 (July 19, 2023) (Draft for Public Comment).

<sup>21</sup> Press Release, Fed. Trade Comm’n, [FTC and DOJ Propose Changes to HSR Form for More Effective, Efficient Merger Review](#) (June 27, 2023).

<sup>22</sup> Press Release, U.S. Dep’t of Justice, [Justice Department Sues to Block Penguin Random House’s Acquisition of Rival Publisher Simon & Schuster](#) (Nov. 2, 2021).



said that the case “reaffirms that the antitrust laws protect competition for the acquisition of goods and services from workers.”<sup>23</sup>

19. The FTC has also signaled its support for considering the effect of healthcare mergers on labor markets. In a recent challenge to a proposed merger between two hospitals in Rhode Island, FTC Chair Khan and Commissioner Rebecca Slaughter indicated that in addition to alleging that the merger would have increased prices for purchasers of hospital services, they would have supported a case that included allegations that the merger would also have decreased competition in labor markets.<sup>24</sup> Earlier, in 2020, former Chairman Joseph Simons had noted, after the parties abandoned a proposed merger between two health care systems, concerns that the transaction would have had effects on markets for both nursing services and private duty nursing care.<sup>25</sup>

20. By addressing both anticompetitive conduct and market concentration that increases buyer power over labor, competition policy can be an effective tool to increase competition in labor markets. With more competition, workers will enjoy higher wages and greater benefits and more of the economic gains stemming from competition will be fairly distributed throughout society.

21. *Rulemaking:* In January 2023, the FTC issued a Notice of Proposed Rulemaking, pursuant to its authority under Section 6 of the FTC Act, that proposes a ban on employers’ use of employee noncompete clauses.<sup>26</sup> These are restrictions in labor contracts that prohibit workers from leaving the employer to work for competing firms. Economic studies have shown that noncompete clauses are widespread in the United States—nearly 1 out of 5 workers are covered by noncompete clauses—and that they even apply to low-wage workers, where justifications for such limitations are particularly dubious.<sup>27</sup> The FTC estimates that the proposed rule would increase American workers’ earnings by between \$250 billion and \$296 billion per year.<sup>28</sup> Hourly workers and low-income workers, many of whom are likely at or below the poverty line, would receive a significant portion of the increase.<sup>29</sup>

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<sup>23</sup> [Press Release, U.S. Dep’t of Justice, Justice Department Obtains Permanent Injunction Blocking Penguin Random House’s Proposed Acquisition of Simon & Schuster \(Oct. 31, 2022\).](#)

<sup>24</sup> [Concurring Statement of Lina Khan and Rebecca Kelly Slaughter Regarding FTC and State of Rhode Island v. Lifespan Corporation and Care New England Health System](#) at 1 (Feb. 17, 2022) (“Just as we want firms to compete with each other to sell goods and services to their customers, we want employers to compete with each other to attract and retain workers. Just as consumers are worse off when mergers diminish competition for goods and services based on price, quality, and innovation, workers suffer when mergers diminish competition for their labor and employers are insulated from competition driving improved wages, benefits, working conditions, and other terms of employment.”) The parties abandoned the merger after the FTC challenged it.

<sup>25</sup> Press Release, Fed. Trade Comm’n, [Statement of FTC Chairman Regarding Announcement that Aveanna Healthcare and Maxim Healthcare Services have Terminated Their Acquisition Agreement](#) (Jan. 30, 2020).

<sup>26</sup> [Non-Compete Clause Rule](#), 88 Fed. Reg. 3482 (Jan. 19, 2023).

<sup>27</sup> Non-Compete Clause Rule *supra* note 26 at 3484-85.

<sup>28</sup> Non-Compete Clause Rule *supra* note 26 at 3501.

<sup>29</sup> *Id.*

## 2.2. Protecting Economic Opportunities for Workers and Small Businesses

22. The Agencies are increasingly targeting anticompetitive business conduct that forecloses economic opportunities for low-income persons, decreases wages for workers, and undermines fair competition for smaller competitors. Additionally, the FTC has indicated a willingness to revive enforcement of the Robinson Patman Act, a law intended to provide a level playing field for small businesses, and both agencies have brought cases to lower input costs for small producers.

23. Small businesses account for nearly two-thirds of new jobs created in the United States<sup>30</sup> and are vital to local economies, helping to create employment and other economic opportunities. Moreover, small retail businesses are more likely to serve the most economically disadvantaged communities in rural or urban areas often avoided by large retailers.<sup>31</sup> However, because these smaller businesses often have to pay *more* to stock their shelves, the populations who rely on them for essential goods often pay higher prices for retail goods like groceries, exacerbating poverty issues.

24. Targeting conduct that raises input costs for these small competitors is another important element to ensure fair and competitive markets. The Agencies' actions in agriculture input markets illustrate how competition efforts can help address input costs.

25. Agriculture provides countless economic opportunities for workers who may otherwise be experiencing poverty. The ability to pay those workers is dependent, in part, on other input costs of the farm. The Agencies have taken actions to ensure that farmers benefit from competitive markets for the supplies they need. For example, the FTC and ten states recently sued pesticide manufacturers Syngenta Crop Protection and Corteva for allegedly paying distributors to block farmers' access to cheaper generic pesticides. The complaint alleges that through the use of "pay-to-block" schemes the manufacturers cut off competition, which allowed them to inflate their prices and force American farmers to pay millions more in input costs.<sup>32</sup>

26. In February 2022, DOJ and the U.S. Department of Agriculture signed an MOU providing both agencies with authority to initiate and pursue violations of the Packers & Stockyards Act. The Packers & Stockyards Act contains expansive prohibitions on a range of harmful, unfair, discriminatory, or anticompetitive practices and was signed into law in 1921, after a Congressional investigation found that the incumbent meat packers had "attained such a dominant position that they control at will the market in which they buy their supplies, the market in which they sell their products, and hold the fortunes of their competitors in their hands."<sup>33</sup> The DOJ and USDA also announced a "Farmer Fairness" online portal, allowing farmers and ranchers anonymously to report anticompetitive abuses

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<sup>30</sup> [KATHRYN KOBE & RICHARD SCHWINN, U.S. SMALL BUS. ADMIN., SMALL BUSINESS GDP 1998-2014 1, 4 \(2018\).](#)

<sup>31</sup> CLARE CHO & RICHARD VOLPE, ERS NO. 240, [INDEPENDENT GROCERY STORES IN THE CHANGING LANDSCAPE OF THE U.S. FOOD RETAIL INDUSTRY](#) 8 (U.S.D.A 2017).

<sup>32</sup> [Press Release, Fed. Trade Comm'n, FTC and State Partners Sue Pesticide Giants Syngenta and Corteva for Using Illegal Pay-to-Block Scheme to Inflate Prices for Farmers \(Sep. 29, 2022\).](#)

<sup>33</sup> [MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF AGRICULTURE AND THE U.S. DEPARTMENT OF JUSTICE REGARDING ENFORCEMENT OF THE PACKERS AND STOCKYARDS ACT \(2022\).](#)



and support cooperation among competition partners. Through actions like this, the Agencies can protect competition for crucial goods for farmers.<sup>34</sup>

27. Moreover, independent pharmacies—small businesses that often serve rural and vulnerable communities—have voiced concern that Pharmacy Benefit Managers (PBMs) negotiate and leverage contractual terms with smaller pharmacies that are confusing, unfair, arbitrary, and harmful to their businesses. The FTC is currently conducting a market study of PBM practices, including conduct that may disadvantage independent pharmacies that compete against affiliates of vertically integrated PBMs.<sup>35</sup>

28. As part of its reorientation, the Agencies are taking important steps to ensure that smaller businesses and producers have opportunities to compete. Part of that effort has included revisiting enforcement of the Robinson-Patman Act (“RPA”), a law enacted to provide a level playing field for all resellers by ensuring that smaller resellers pay the same price as larger resellers when buying from the same supplier.<sup>36</sup> Renewed price discrimination enforcement has the potential to provide additional opportunities for small business to compete, to the likely benefit of economically disadvantaged communities, and the FTC has recently indicated its interest in reviving RPA enforcement efforts.<sup>37</sup>

### 3. Prioritizing essential consumer-facing markets to address poverty

29. While economic opportunity is an important goal of competition policy, so too is lowering the price of goods for consumers. To help benefit low-income individuals and families, the Agencies can use their limited resources to address antitrust concerns arising in sectors for essential goods, such as healthcare, food, education, and energy.

30. *Prioritizing Competition in Healthcare Markets:* Concentrated healthcare markets and the skyrocketing prices of medical services and new pharmaceuticals take a toll on Americans experiencing poverty. To help address this fundamental problem in American markets, the Agencies have made fighting anticompetitive conduct in healthcare a priority.

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<sup>34</sup> Press Release, Dep’t of Justice & Dep’t of Agriculture, [Justice Department and U.S. Department of Agriculture Launch Online Tool Allowing Farmers, Ranchers to Report Anticompetitive Practices](#) (Feb. 3, 2022).

<sup>35</sup> Press Release, Fed. Trade Comm’n, [FTC Deepens Inquiry into Prescription Drug Middlemen](#) (May 17, 2023).

<sup>36</sup> See, e.g., *F.T.C. v. Henry Broch & Co.*, 363 U.S. 166, 168 (1960) (noting that the RPA was enacted to “curb and prohibit all devices by which large buyers gained discriminatory preferences over smaller ones by virtue of their greater purchasing power.”).

<sup>37</sup> For example, Commissioner Bedoya has advocated reviving Robinson-Patman enforcement. [FTC Commissioner Alvaro Bedoya Argues for Robinson-Patman Act Revitalization](#), THE CAP. F. (June 15, 2023). FTC Chair Khan has indicated actions will be coming “in short order.” [Feds Target Alcohol Pricing in New Antitrust Probe](#), POLITICO (Mar. 30, 2023). A recent FTC order addressing a third-party’s petition to limit an FTC request for information noted that the agency was investigating whether a large distributor of wine and spirits “may have engaged in discriminatory practices in violation of the [RPA].” [In re CID Issued to Retail Services & Systems, Inc., Order Denying Petition to Limit Civil Investigative Demand](#), File No. 211-0155 (FTC), May 19, 2023. In addition to the potential for RPA enforcement in the retail grocery industry, the FTC has already indicated that an anti-kickback provision of the law could be utilized to address anticompetitive conduct involving pharmacy benefit managers (“PBMs”). Policy Statement, [Fed. Trade Comm’n, Policy Statement of the Federal Trade Commission on Rebates and Fees in Exchange for Excluding Lower Cost Drug Products](#) at 5-6.

31. The Agencies have been very active in the healthcare sector bringing multiple actions to block hospital and other healthcare related mergers, as well as finding success in healthcare conduct cases.<sup>38</sup> The FTC also issued a policy statement outlining concerns about illegal rebating schemes and bribes paid to PBMs to block access to lower-cost drugs, including insulin.<sup>39</sup> Additionally, the FTC has commenced a market study looking into the practices of pharmaceutical middlemen known as PBMs that may be at least partially responsible for driving up the cost of prescription drugs.<sup>40</sup>

32. The FTC has had success in imposing personal consequences for those who have a hand in driving drug costs higher. Most notably, in 2020 the FTC and seven states sued Vyera Pharmaceuticals, alleging the company raised the price of arthritis drug Daraprim by more than 4,000 percent, and kept the price high through anticompetitive acts that deterred and prevented potential generic competitors from entering or attempting to enter the market. The complaint also named as defendants Martin Shkreli and Kevin Mulleady, who allegedly were directly responsible for orchestrating the scheme, as well as Phoenixus AG, Vyera's parent company. Through settlement, the FTC secured \$40 million in relief to consumers and obtained a lifetime ban from the pharmaceutical industry for Kevin Mulleady.<sup>41</sup> After trial, a federal court found Martin Shkreli liable for antitrust violations and ordered a lifetime ban along with \$64.6 million in disgorgement.<sup>42</sup>

33. So-called "pay-for-delay" patent settlement cases also exemplify the way the FTC seeks to combat high drug prices through competition enforcement. The FTC has challenged agreements between generic and patented drug manufacturers through which patented drug manufacturers settle patent infringement litigation by paying generic manufacturers to stay out of the market. These agreements effectively block all other generic drug competition for a growing number of branded drugs. According to an FTC study, pay-for-delay agreements cost consumers and taxpayers \$3.5 billion in higher drug costs every year.<sup>43</sup> The FTC has challenged a number of these agreements in court, and ultimately achieved a major victory in the U.S. Supreme Court.<sup>44</sup> The success has led to a sharp decline in pay-for-delay agreements.<sup>45</sup>

34. The FTC and DOJ are also focused on the cost of healthcare services, especially for those least able to afford them. For instance, in 2023 the FTC resolved a case against Surescripts in which the FTC alleged that the company employed illegal vertical and horizontal restraints in order to maintain its monopolies over two electronic prescribing, or

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<sup>38</sup> See also [Press Release, U.S. Dept. of Just., supra note 9.](#)

<sup>39</sup> [Press Release, Fed. Trade Comm'n., FTC to Ramp Up Enforcement Against Any Illegal Rebate Schemes, Bribes to Prescription Drug Middlemen That Block Cheaper Drugs \(June 16, 2022\).](#)

<sup>40</sup> [FTC, Press Release, FTC Launches Inquiry Into Prescription Drug Middlemen Industry \(Jun 7, 2022\).](#)

<sup>41</sup> [Press Release, Fed. Trade Comm'n., FTC, States to Recoup Millions in Relief for Victims Fleeced by 'Pharma Bro' Scheme to Illegally Monopolize Life-Saving Drug Daraprim \(Dec. 7, 2021\).](#)

<sup>42</sup> [Statement of Chair Lina M. Khan on the Ruling by Judge Denise L. Cote Federal Trade Commission et al v. Vyera Pharmaceuticals, LLC et al, \(Jan. 14, 2022\).](#)

<sup>43</sup> [Press Release, Fed. Trade Comm'n., FTC Study: In FY 2012, Branded Drug Firms Significantly Increased the Use of Potential Pay-for-Delay Settlements to Keep Generic Competitors off the Market, \(Jan. 17, 2013\).](#)

<sup>44</sup> See *FTC v. Actavis, Inc.* 570 U.S. 136 (2013).

<sup>45</sup> [Press Release, Fed. Trade Comm'n., FTC Staff Issues FY 2017 Report on Branded Drug Firms' Patent Settlements with Generic Competitors, \(Dec. 3, 2020\).](#)

“e-prescribing,” markets.<sup>46</sup> Earlier, the FTC took action against a state dental regulatory board which had sought to restrict the availability of dental services for low-income patients. In 2007, it settled a case against the South Carolina State Board of Dentistry, which had adopted a rule that required a dentist to examine every child before a dental hygienist could provide preventive care – such as cleanings – in a school setting where low-income students could receive care without visiting a dental office. The FTC alleged that the Board’s anticompetitive conduct led to fewer children receiving preventive dental care – particularly economically disadvantaged children.<sup>47</sup>

35. In June 2016, the DOJ filed a civil antitrust lawsuit against Atrium Health, the largest healthcare system in North Carolina and one of the largest not-for-profit healthcare systems in the United States. The DOJ alleged that Atrium used its market power to restrict health insurers from encouraging consumers to choose healthcare providers that offer better overall value. The restrictions also constrained insurers from providing consumers and employers with information regarding the cost and quality of alternative health benefit plans. The DOJ announced a settlement in November 2018. The settlement, in which DOJ was joined by the North Carolina Attorney General’s Office, prevents Atrium from enforcing steering restrictions in its contracts with health insurers or seeking contract terms or taking actions that would prohibit, prevent, or penalize steering by insurers in the future in contracts between health insurers and its providers in the Charlotte, North Carolina metropolitan area.<sup>48</sup>

36. In the merger space, the Agencies have been trying to reverse the tide of consolidation that has been responsible for skyrocketing healthcare costs.<sup>49</sup> For example, on August 5, 2020, the Division filed a civil antitrust lawsuit seeking to enjoin Geisinger Health’s partial acquisition of its close rival, Evangelical Community Hospital.<sup>50</sup> The complaint alleged that the hospitals compete for patients in a six-county area in central Pennsylvania. The partial acquisition would have created significant entanglements between Geisinger and Evangelical that would provide Geisinger influence and control over its rival, likely leading to higher prices, lower quality, and reduced access to high-quality inpatient hospital services for patients in central Pennsylvania. The parties ultimately entered into a consent decree, preserving competition for patient care in central Pennsylvania.

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<sup>46</sup> Press Release, Fed. Trade Comm’n, [FTC Reaches Proposed Settlement with Surescripts in Illegal Monopolization Case](#) (July 27, 2023).

<sup>47</sup> Press Release, Fed. Trade Comm’n, [South Carolina Board of Dentistry Settles Charges That it Restrained Competition in the Provision of Preventive Care by Dental Hygienists](#) (June 20, 2007).

<sup>48</sup> See Press Release, U.S. Dep’t of Just., [Atrium Health Agrees to Settle Antitrust Lawsuit and Eliminate Anticompetitive Steering Restrictions](#) (Nov. 15, 2018)

<sup>49</sup> MEDICARE PAYMENT ADVISORY COMMISSION, MARCH 2020 REPORT TO THE CONGRESS: MEDICARE PAYMENT POLICY (Mar. 13, 2020). See generally [Examining the Impact of Health Care Consolidation Before the Subcomm. on Oversight and Investigations of the H. Comm. of Energy, 115th Cong.](#) (2018) (statement of Martin Gaynor, E.J. Barone University Professor of Economics and Health Policy Heinz College Carnegie Mellon University).

<sup>50</sup> See Press Release, U.S. Dep’t of Just., [Justice Department Resolves Antitrust Case Against Leading Central Pennsylvania Health Care Providers](#) (March 3, 2021).

37. Since 2021, the FTC has successfully blocked hospital mergers in New York,<sup>51</sup> New Jersey,<sup>52</sup> Rhode Island,<sup>53</sup> Utah,<sup>54</sup> and Georgia.<sup>55</sup> Although ultimately unsuccessful, the DOJ brought a rare vertical merger challenge in an attempt to block UnitedHealth Group's acquisition of Change Healthcare, which the DOJ claimed would give one of the largest entities in healthcare "control of a critical data highway through which about half of all Americans' health insurance claims pass each year."<sup>56</sup>

38. DOJ also has a deep record of protecting competition in Medicaid markets,<sup>57</sup> which are government programs that help cover medical costs for people with limited income, and in Medicare Advantage markets, which are very important for seniors, many of whom are on fixed incomes. For example, in 2015, Aetna sought to acquire Humana in a deal valued at \$37 billion. The DOJ filed suit to block the transaction, alleging that the deal would harm competition in two distinct product areas: Medicare Advantage sold to individual seniors in 364 counties across the United States, and commercial health insurance sold to individuals and families on the public exchanges created by the Affordable Care Act in 17 counties in Florida, Georgia, and Missouri. Following a 13-day trial in December 2016 and the court ruling in DOJ's favor, Aetna and Humana abandoned their proposed transaction on February 14, 2017.<sup>58</sup>

39. The Agencies also hosted a joint workshop on pharmaceutical mergers, with a view toward rethinking enforcers approach to analyzing mergers in the industry,<sup>59</sup> and the FTC recently challenged Amgen's \$27.8 billion acquisition of Horizon Therapeutics over

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<sup>51</sup> [Press Release, Fed. Trade Comm'n, Statement of Elizabeth Wilkins, Director of the FTC's Office of Policy Planning, on the Decision of SUNY Upstate Medical University and Crouse Health System, Inc. to Drop Their Proposed Merger \(Feb. 16, 2023\).](#)

<sup>52</sup> [Press Release, Fed. Trade Comm'n, In re RWJ Barnabas Health/Saint Peter's Healthcare System \(July 6, 2022\), https://www.ftc.gov/legal-library/browse/cases-proceedings/2010145-rwj-barnabas-healthsaint-peters-healthcare-system-matter](#); [Press Release, Fed. Trade Comm'n, Statement of Federal Trade Commission Bureau of Competition Deputy Director John M. Newman on Federal Appeals Court Ruling Affirming Preliminary Injunction to Halt Merger of New Jersey Hospital Networks \(Mar. 22, 2022\).](#)

<sup>53</sup> [Press Release, Fed. Trade Comm'n, Statement Regarding Termination of Attempted Merger of Rhode Island's Two Largest Healthcare Providers \(Mar. 2, 2022\).](#) See also *Concurring Statement of Lina Khan and Rebecca Kelly Slaughter*, *supra* note 24.

<sup>54</sup> [Press Release, Fed. Trade Comm'n, Statement of Bureau of Competition Director Holly Vedova Regarding the Decision of Utah Healthcare Competitors HCA Healthcare and Steward Health Care System to Abandon Their Proposed Merger \(June 16, 2022\).](#)

<sup>55</sup> [Press Release, Fed. Trade Comm'n, Following Federal Trade Commission Staff Recommendation to Challenge Transaction, Two Health Care Systems in Central Georgia Abandon Proposed Merger \(Mar. 3, 2021\).](#)

<sup>56</sup> [Press Release, U.S. Dep't of Just., Justice Department Sues to Block UnitedHealth Group's Acquisition of Change Healthcare \(Feb. 24, 2022\).](#)

<sup>57</sup> [Press Release, U.S. Dep't of Just., Amerigroup Corp.'s Divestiture of Its Virginia Operations Addresses Department of Justice's Concerns with Wellpoint Inc.'s Proposed Acquisition of Amerigroup \(Nov. 28, 2012\).](#)

<sup>58</sup> [Press Release, U.S. Dep't of Just., U.S. District Court Blocks Aetna's Acquisition of Humana \(Jan. 23, 2017\).](#)

<sup>59</sup> [FED. TRADE COMM'N & DEP'T OF JUSTICE, THE FUTURE OF PHARMACEUTICALS: EXAMINING THE ANALYSIS OF PHARMACEUTICAL MERGERS FTC-DOJ WORKSHOP SUMMARY \(June 1, 2023\).](#)

concerns that the combined entity could leverage its portfolio of blockbuster drugs to entrench the monopoly positions of Horizon medications used to treat serious conditions.<sup>60</sup>

40. The Agencies' steadfast approach to labor competition enforcement in the health care space is also exemplified through participation in private cases. For example, the DOJ filed a Statement of Interest in a case involving non-competes for anesthesiologists in Reno, Nevada.<sup>61</sup>

41. The FTC has also focused its competition advocacy on proposed state-level changes to statutes and rules governing the "scope of practice" of various healthcare professionals, including advanced practice registered nurses ("APRNs"). APRNs play a critical role in alleviating provider shortages and expanding access to health care services for medically underserved populations.<sup>62</sup> Because APRNs and other practitioners, including physicians, may be trained and licensed to provide many of the same health care services, scope of practice restrictions can limit the supply of those primary health care services, as well as competition between different types of practitioners. FTC staff competition advocacy comments have addressed various limitations, including physician supervision requirements, imposed on APRNs urging states to allow these nurses and others to practice to the full extent of their training and only erect limitations necessary to protect patient health and safety. Physician supervision requirements may raise competition concerns because they effectively give one group of health care professionals the ability to restrict access to the market by another competing group of health care professionals, thereby denying healthcare consumers the benefits of greater competition and decreasing access to healthcare services.

42. *Prioritizing Competition in Food Markets:* Food is a necessity for all, regardless of income levels, but when grocery prices are high, low-income consumers spend more of their limited household budget on food and other necessities. US food distribution and retail markets have become increasingly concentrated, with the top four companies controlling more than 60% of markets for pork, coffee, cookies, and bread; more than 70% of markets for yogurt, beer, and soybean seeds; and more than 80% of markets for beef processing, corn seeds, soybean processing, baby food, pasta, cereal, and more.<sup>63</sup> The result has been increased food prices and increased profit margins for companies involved in the food industry.

43. The Agencies are committed to addressing the concentration issues in food distribution and retail and taking action as appropriate. This focus has resulted in successful and unsuccessful challenges to food mergers and anticompetitive conduct as well as a significant market study and changes in policy approaches.

44. DOJ has taken multiple actions to ensure competition in food markets. Between 2017 and 2020, the DOJ secured guilty pleas from BumbleBee and Starkist Tuna

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<sup>60</sup> Press Release, Fed. Trade Comm'n, [FTC Sues to Block Biopharmaceutical Giant Amgen from Acquisition That Would Entrench Monopoly Drugs Used to Treat Two Serious Illnesses](#) (May 16, 2023).

<sup>61</sup> Statement of Interest of the United States at 6, *Beck. v. Pickert Medical Group*, CV21-02092 (Nev. 2d J. D. Feb. 25, 2022).

<sup>62</sup> DANIEL J. GILMAN ET AL., FED. TRADE COMM'N, [POLICY PERSPECTIVES: COMPETITION AND THE REGULATION OF ADVANCED PRACTICE NURSES \(2014\)](#).

<sup>63</sup> [Consolidation in America's Food Supply Chains: A Key Factor in Price Gouging, Shortages, and Inequality](#). *Before the Subcomm. on Antitrust, Com., and Admin. L. of the H. Comm. on the Judiciary* 117th Cong. 2 (statement of Claire Kelloway, Manager of the Fair Food and Farming Systems Program, Open Markets Institute).



companies for fixing prices of canned tuna, and also secured guilty pleas of three company executives and the conviction of one executive, who was sentenced to 40 months in prison.<sup>64</sup> In 2021, DOJ also secured a guilty plea from Pilgrim's Pride for its role in a conspiracy to fix prices and rig bids in the broiler chicken industry.<sup>65</sup> Although ultimately unsuccessful, the DOJ also sued to block U.S. Sugar's acquisition of Imperial Sugar.<sup>66</sup>

45. On November 10, 2021, DOJ filed a civil antitrust lawsuit to block B.S.A. S.A.'s (Lactalis) \$3.2 billion acquisition of The Kraft Heinz Company's natural cheese business in the United States.<sup>67</sup> Lactalis's U.S. subsidiary, Lactalis American Group Inc., and Kraft Heinz have been the two largest suppliers of feta cheese—sold under their respective Président and Athenos brands—to grocery stores and other retailers in the United States. They also have been the two largest suppliers of ricotta cheese—sold under their respective Galbani and Polly-O brands—to grocery stores and other retailers in the New York City metropolitan area and four metropolitan areas in Florida: Miami/Ft. Lauderdale, Tampa/St. Petersburg, Orlando, and Jacksonville. The complaint alleged that the transaction, as originally proposed, would have led to higher-priced and lower quality feta and ricotta cheeses in the United States. To address these concerns, DOJ filed a settlement that required Lactalis and Kraft Heinz to divest Kraft Heinz's Athenos business and Polly-O business. The divestitures, including the worldwide rights to the entire Athenos and Polly-O portfolios, will place the divestiture buyers in the position to market and promote all the cheeses sold under these brands. The court entered the settlement on March 15, 2022.

46. The FTC has also been active in promoting competition in the food distribution and retail markets. In November of 2021, the FTC launched a market study into supply chain distributions impacting grocery and other retail markets in the US.<sup>68</sup> With information demands to the largest food retailers and wholesalers as well as solicitations for public comments, the market study is intended to shed light on market concentration and conduct as factors driving shortages and high food prices. In 2022, the FTC secured divestitures of a dozen stores in its review of the merger of two grocery chains in the Northeast, the latest among many enforcement actions the agency has taken to ensure that mergers among food retailers do not undermine competition among supermarkets.<sup>69</sup>

47. *Prioritizing Competition in Education Markets*: Competition among educational institutions is crucial for ensuring access to affordable higher education. On July 7, 2022, the Division filed a Statement of Interest in the pending class action lawsuit of *Henry et al. v. Brown University et al.*<sup>70</sup> This case pertains to higher education institutions within the

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<sup>64</sup> Press Release, U.S. Dep't of Just., [Former Bumble Bee CEO Sentenced To Prison For Fixing Prices of Canned Tuna](#) (June 16, 2020).

<sup>65</sup> Press Release, U.S. Dep't of Just., [One of the Nation's Largest Chicken Producers Pleads Guilty to Price Fixing and is Sentenced to a \\$107 Million Criminal Fine](#) (Feb. 23, 2021).

<sup>66</sup> Press Release, U.S. Dep't of Just., [Justice Department Sues to Block U.S. Sugar's Proposed Acquisition of Imperial Sugar](#) (Nov. 23, 2021).

<sup>67</sup> Press Release, U.S. Dep't of Just., [Justice Department Requires Divestitures in Lactalis's Acquisition of Kraft Heinz's Natural Cheese Business in the United States](#) (Nov. 10, 2021).

<sup>68</sup> Press Release, Fed. Trade Comm'n, [FTC Launches Inquiry into Supply Chain Disruptions](#) (Nov. 29, 2021).

<sup>69</sup> Press Release, Fed. Trade Comm'n, [FTC Approves Final Order Requiring Northeast Supermarkets Price Chopper and Tops Market Corp. to Sell 12 Stores as a Condition of Merger](#) (Jan. 24, 2022).

<sup>70</sup> Statement of Interest, U.S. Dep't of Just., [Henry, et al. v. Brown University, et al.](#) CV-00125 (N.D. Ill. July 7, 2022).



“568 Presidents Group,” which is a group of non-profit universities that agreed to follow a “Consensus Methodology” for calculating a prospective student’s expected family contribution in the context of need-based financial aid awards. The 568 Presidents Group engaged in this practice pursuant to the statutory 568 Exemption from Sherman Act liability, which allowed agreements among certain schools “to use common principles of professional judgment for determining need.”<sup>71</sup> The plaintiffs allege that the schools’ agreement to follow this Consensus Methodology effectively eliminated competition between these defendant institutions over need-based financial aid awards, amounting to a price-fixing conspiracy in violation of Section 1 of the Sherman Act. On April 15, 2022, the defendants moved to dismiss the Amended Complaint. The DOJ submitted a Statement of Interest to address two issues: (1) the scope of the 568 Exemption and (2) the application of the per se rule to this case. On August 15, 2002, the court denied the motion to dismiss the suit. On September 30, 2022, the 568 Exemption expired without renewal by Congress.

48. *Prioritizing Competition in Energy Markets:* Energy costs also take a significant bite out of household budgets, whether through heating and cooling or transportation costs. These costs stretch family budgets, particularly for those families and individuals experiencing poverty. When gas prices are high, the increased costs of transportation can limit the economic opportunities for those seeking a job or better employment and may even jeopardize current employment. The Agencies have made protecting competition in energy markets a priority with numerous actions involving retail gas mergers as well as in related markets.<sup>72</sup> For instance, in 2021, the FTC demonstrated its willingness to block energy-related mergers when Berkshire Hathaway Energy abandoned its proposed acquisition of natural gas competitor Dominion Energy Inc’s Questar Pipeline, after an intensive agency review.<sup>73</sup> In 2022, the FTC required divestitures as part of a private equity fund’s acquisition of an oil and natural gas production company because of the potential to raise prices of crude oil to Salt Lake City refiners.<sup>74</sup> In retail gasoline markets, the FTC has brought a number of enforcement actions to preserve competition.<sup>75</sup> After 7-Eleven announced its acquisition of Speedway stores from Marathon, the FTC required divestitures in 292 local markets across 20 states. Additionally, the consent order prohibited 7-Eleven from enforcing any noncompete provisions against any franchisees or employees working at or doing business with the divested assets.<sup>76</sup> The agency also required

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<sup>71</sup> H. Rept. 105-144 - NEED-BASED EDUCATIONAL AID ANTITRUST PROTECTION ACT OF 1997, H.Rept.105-144, 105th Cong. (1997), <https://www.congress.gov/congressional-report/105th-congress/house-report/144/1>.

<sup>72</sup> FTC enforcement efforts in oil and gas markets are discussed at <https://www.ftc.gov/news-events/topics/competition-enforcement/oil-gas>.

<sup>73</sup> [Press Release, Fed. Trade Comm’n, Statement Regarding Berkshire Hathaway Energy’s Termination of Acquisition of Dominion Energy, Inc.’s Questar Pipeline in Central Utah \(July 13, 2021\)](#).

<sup>74</sup> Press Release, Fed. Trade Comm’n, [FTC Approves Final Order Requiring EnCap to Sell Off EP Energy Corp’s. Entire Utah Oil Business](#) (Sept. 14, 2022).

<sup>75</sup> See supra note 75.

<sup>76</sup> Press Release, Fed. Trade Comm’n, [FTC Approves Final Order Requiring Divestitures of Hundreds of Retail Gas and Diesel Fuel Stations Owned by 7-Eleven, Inc](#) (Nov. 10, 2021).

divestitures in retail gas and distribution acquisitions in the states of Iowa and Nebraska,<sup>77</sup> Michigan and Ohio,<sup>78</sup> Alabama and South Carolina,<sup>79</sup> and Connecticut.<sup>80</sup>

#### 4. Conclusion

49. Competition enforcement and policy can help address poverty by keeping prices low, which helps low-income consumers stretch their household earnings. The Agencies also look for ways to promote economic opportunities for individuals in society and provide better opportunities for smaller competitors. Doing so has the potential to increase incomes for those living at or below the poverty line. This increases the ability of competition policy to address poverty in society and ensure all members have access to free, fair, and competitive markets.

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<sup>77</sup> Press Release, Fed. Trade Comm'n, *FTC Approves Final Order Imposing Conditions on Casey's General Stores, Inc.'s Acquisition of Buck's Intermediate Holdings, LLC*. (June 9, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/06/ftc-approves-final-order-imposing-conditions-caseys-general-stores-incs-acquisition-bucks>.

<sup>78</sup> Press Release, Fed. Trade Comm'n, [FTC Approves Final Order Restoring Competitive Markets for Gasoline and Diesel in Michigan and Ohio](#) (Aug 9, 2022).

<sup>79</sup> Press Release, Fed. Trade Comm'n, [FTC Approves Final Order to Protect South Carolina and Alabama Markets from Anticompetitive Gasoline Terminal Deal](#) (Aug. 9, 2022).

<sup>80</sup> Press Release, Fed. Trade Comm'n, [FTC Approves Final Order Imposing Divestitures and Protecting Retail Fuel Customers following Global Partners LP's Acquisition of Wheels](#) (Mar. 3, 2022).