

FTC Chair Khan Unveils Her Plans for the Agency...But Leaves a Lot Unsaid

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On Wednesday, FTC Chair Lina Khan sent a [memo](#) to FTC staff and Commissioners making her Acting Bureau Directors permanent and outlining her vision and priorities for the FTC. The memo provides much-anticipated guidance to both the FTC and the public regarding the direction she will take to running the agency and fulfilling its mission. It also hints at structural changes we may see in the coming months.

The memo calls for a fundamental shift in how the FTC approaches its work. Recognizing that the FTC has “navigated various periods of change and transformation” during its 107-year history, it states that “[a]t its best, the agency has focused on tackling urgent problems, learning from new evidence, and course-correcting where needed.” It expresses confidence that “American consumers, workers, and honest businesses [can] depend on the Commission to champion a fair and thriving economy for all,” but says that achieving these goals will require the FTC to adjust its approach and “focus on key strategic priorities and operational objectives.”

Although the memo is divided into multiple sections (Strategic Approach, Policy Priorities, and Operational Objectives), it boils down to these key takeaways:

- The FTC will take a “holistic” approach to competition and consumer protection, focusing on the greatest harms to consumers, workers, and businesses, moving away from existing “siloes” between Bureaus of Competition and Consumer Protection, and applying an integrated approach to cases, rules, research, and other efforts.
- The FTC will focus on the “root causes” of harm, including “gatekeepers” that use their critical market position to “hike fees, dictate terms, and protect and extend their market power,” contract terms (such as non-competes and repair restrictions) that perpetuate market abuses, and harms directed at marginalized communities. It will avoid a “one-off...whack-a-mole” approach that imposes “significant enforcement burden with few long term benefits.” Merger enforcement will be a major focus and is already drawing on resources from other parts of the agency.
- The agency will incorporate a “greater range of analytical tools and skillsets” into its work – focusing not just on enforcement but on research and rulemaking to understand the marketplace and target harmful practices before they occur. To accomplish this work, the agency will bring on additional technologists, data and financial analysts, and experts from “outside disciplines” (the suggestion being that there will be fewer attorneys, as well as perhaps more short-term employment arrangements).
- To “democratize” the agency and ensure that it is reaching communities across the country, the agency will “expand [its] regional footprint” and “fill out [its] ranks by “taking advantage of a

national pool of qualified candidates.” In other words, more personnel will be allocated to the agency’s existing regional offices (and potentially new ones).

The memo provides more detail as to the Chair’s ambitious agenda than anything she has said or written since her appointment in June. It also builds on themes – strategic use of resources, focus on “root causes” of harm, breaking down siloes – that have long been important priorities at the agency, given its small size and vast mission. But her plans and proposals leave many questions unanswered. For example:

- What does Khan think about the new \$1B privacy bureau that the House of Representatives just voted to create for the agency? The memo doesn’t even mention it, even as it mentions specific proposals related to mergers and contract terms.
- Her call for greater coordination between the Bureaus has been a refrain among agency leaders for decades, but it is difficult to fix this problem under the current agency structure. Is Khan planning to make any organizational and structural changes to break down the walls between the Bureaus?
- The memo suggests that Khan will significantly reshape the FTC’s workforce by allocating more staff to the regional offices and increasing the proportion of non-lawyers (technologists, analysts, outside experts) at the agency. Will she make these changes incrementally or through reassignments and buyouts, and how will this affect the agency’s expertise, morale, and productivity?
- In shifting more resources towards rulemaking and research, Khan seems to want to transform the FTC from an enforcement agency into a regulatory one. However, one major obstacle is that the FTC’s inherent rulemaking authority (so-called Magnuson-Moss rulemaking) is highly cumbersome, taking as long as nine years to produce rules. While the agency recently [amended](#) its rules to expedite certain steps, rulemakings under this process will still take years to complete. Will the FTC really be able to regulate effectively under these procedures?
- Finally, the memo contains some references that clearly have significance but are puzzling. For example, it refers to “the growing role of private equity and other investment vehicles” that may distort ordinary incentives and facilitate abuses that harm marginalized communities. Is private equity and investment really within the ambit of the FTC, and is Khan coordinating with SEC and other financial regulators? Also, her pointed reference to protecting “workers and independent businesses as well as consumers” requires more explanation than is given in the memo. In addition, it’s not clear what exactly she means by “one off...whack-a-mole” enforcement. If she means that the FTC should stop bringing cases against smaller entities as opposed to “gatekeepers,” that will leave consumers exposed to considerable fraud and deception.

We will closely watch FTC developments to see how these plans unfold. It could be a bumpy ride in the next few months with staff turnover, proposed rules and studies, and warning letters and civil investigative demands (CIDs) that raise new or different concerns. Keep your eye on this space for updates.