

FTC and DOJ Hold Workshop On Non-Compete Agreements

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As we [reported](#) this past summer, President Biden signed an [Executive Order](#) titled “Promoting Competition in the American Economy.” At the time, President Biden urged the chair of the Federal Trade Commission (the “FTC”) to “curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility.” Since the Order’s publication, speculation and uncertainty have percolated around what the Biden Administration intends to do with regard to restricting non-compete agreements.

In connection with the Biden Administration’s increased scrutiny in this area, on December 6 and 7, the FTC and Department of Justice (the “DOJ”) [held a two-day workshop](#) titled “Making Competition Work: Promoting Competition in Labor Markets” with the goal of “explor[ing] recent developments at the intersection of antitrust and labor, as well as implications for efforts to protect and empower workers through competition enforcement and rulemaking.”

During the opening remarks, representatives of the FTC and DOJ Antitrust Division focused on what is perceived to be a lack of competition in the labor markets, which can have adverse impacts on workers. These representatives echoed President Biden’s stated goal of pursuing conduct that harms labor market competition through criminal and civil litigation. Of note, Lina Khan, FTC Chair, outlined specific agency goals for the FTC, including scrutinizing non-compete and non-disclosure provisions in employment agreements through the use of rulemaking and enforcement, or putting firms that allegedly conduct unfair or deceptive practices that may harm their workers “on notice.” The keynote address given by Tim Wu, special advisor to the President, however, did not mention non-compete agreements, and focused instead on the Administration’s other commitments to promoting competition in the labor market.

Although the workshop ended without any firm guidance on the President's or the agencies' plans, a number of panelists called on the FTC and DOJ to follow [the states' leads](#) and limit the use of non-competes in employment agreements, particularly among low-wage workers. Notably though, these calls were not firmly echoed by members of the Administration, who appeared focused on other measures, like regulating worker misclassification. However, what is clear from the panelists' remarks and questions by FTC and DOJ attorneys and economists is that, at a minimum, re-thinking how non-compete agreements impact competition in the labor market remains a top priority of the Biden Administration.

We will continue to monitor and report on further developments in this area.

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- **Guy Brenner**

Partner