

Lina Khan Selected as FTC Chair

WRITTEN BY

[Daniel N. Anziska](#) | [Barbara T. Sicalides](#) | [Robert A. Angle](#) | [Frank H. Griffin, IV](#)

On June 15, the U.S. Senate approved Lina Khan's nomination as a commissioner of the Federal Trade Commission (FTC) by a 69-28 vote. Her confirmation assured that the Democrats would hold a 3-2 majority of commissioners. Later that day, in a move that surprised many, President Biden selected Ms. Khan as the new FTC chair. At age 32, she is the youngest person ever to hold this office.

While still a Yale Law School student, Chair Khan made a name for herself in 2017 after [authoring a paper](#) critical of the concentration of technology companies that *The New York Times* described as "reframing decades of monopoly law." In that paper, Khan argued that the current method for evaluating anticompetitive harm — the impact on prices paid by consumers — missed wide swathes of antitrust behavior in the modern economy, such as a company using predatory pricing aimed at lowering consumer prices in the short term to quickly capture market share.

Khan, a Columbia University School of Law associate professor, became a central figure in last year's House Judiciary Subcommittee in an antitrust investigation of Apple, Facebook, Google, and at least one other technology company. During that investigation, she co-authored that [subcommittee's final report](#), recommending increased merger enforcement and the "rehabilitation" of monopolization law, in response to the growth of the "Dominant Online Platforms."

Although Chair Khan is often referred to as a "large tech critic," the foundations of her views apply widely to other aspects of the economy and competition. Specifically, her principal concern is the overconcentration of economic power in a market, even if such power results in market efficiencies or lower prices to consumers for a time. She has written that the agencies have contributed to underenforcement of the antitrust laws by interpreting and applying them too narrowly and "issuing guidelines that are highly permissive of market power or abuse." Further, Khan has previously [criticized the use of intellectual property to stifle competition](#); therefore, under her leadership, the FTC could attempt to crack down on patent rights and make it harder to enforce patents, particularly for nonpracticing entities.

Companies should expect Chair Khan to place a greater focus on smaller competitors and nonprice dimensions of competition. Taken together with recent proposed legislation to expand federal antitrust laws, nascent state antitrust legislation, and the potential for a similar proactive assistant attorney general for the Department of Justice – Antitrust Division (once that position is filled), U.S. antitrust enforcement is shaping up to be its most active in at least 50 years.

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