

FTC chief says tech advancements risk health care price fixing

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New technologies are making it easier for companies to fix prices and discriminate against individual consumers, the Biden administration's top

consumer watchdog said Tuesday.

Algorithms make it possible for companies to fix prices without explicitly coordinating with one another, posing a new test for regulators policing the market, said Lina Khan, chair of the Federal Trade Commission, during a media event hosted by KFF.

"I think we could be entering a somewhat novel era of pricing," Khan told reporters.

Khan is regarded as one of the most aggressive antitrust regulators in recent U.S. history, and she has paid particular attention to the harm that technological advances can pose to consumers. Antitrust regulators at the FTC and the Justice Department set a record for merger challenges in the [fiscal year](#) that ended Sept. 30, 2022, according to Bloomberg News.

Last year, the FTC successfully blocked biotech [company](#) Illumina's over \$7 billion acquisition of cancer-screening company Grail. The FTC, Justice Department, and Health and Human Services Department launched a website on April 18, [healthycompetition.gov](#), to make it easier for people to report suspected anticompetitive behavior in the [health care industry](#).

The American Hospital Association, the industry's largest trade group, has often criticized the Biden administration's approach to antitrust enforcement. In comments in September on proposed guidance the FTC and Justice Department published for companies, the AHA said that "the guidelines reflect a fundamental hostility to mergers."

Price fixing removes competition from the market and generally makes goods and services more expensive. The agency has argued in court filings that [price fixing](#) "is still illegal even if you are achieving it through an algorithm," Khan said. "There's no kind of algorithmic

exemption to the antitrust laws."

By simply using the same algorithms to set prices, companies can effectively charge the same "even if they're not, you know, getting in a back room and kind of shaking hands and setting a price," Khan said, using the example of residential property managers.

Khan said the commission is also scrutinizing the use of artificial intelligence and algorithms to set prices for individual consumers "based on all of this particular behavioral data about you: the websites you visited, you know, who you had lunch with, where you live."

And as health care companies change the way they structure their businesses to maximize profits, the FTC is changing the way it analyzes behavior that could hurt consumers, Khan said.

Hiring people who can "help us look under the hood" of some inscrutable algorithms was a priority, Khan said. She said it's already paid off in the form of legal actions "that are only possible because we had technologists on the team helping us figure out what are these algorithms doing."

Traditionally, the FTC has policed health care by challenging local or regional hospital mergers that have the potential to reduce competition and raise prices. But consolidation in health care has evolved, Khan said.

Mergers of systems that don't overlap geographically are increasing, she said. In addition, hospitals now often buy doctor practices, while pharmacy benefit managers start their own insurance companies or mail-order pharmacies—or vice versa—pursuing "vertical integration" that can hurt consumers, she said.

The FTC is hearing increasing complaints "about how these firms are

using their monopoly power" and "exercising it in ways that's resulting in higher prices for patients, less service, as well as worse conditions for [health care workers](#)," Khan said.

Policing noncompetes

Khan said she was surprised at how many health care workers responded to the commission's recent proposal to ban "noncompete" clauses—agreements that can prevent employees from moving to new jobs. The FTC issued its final rule banning the practice on Tuesday. She said the ban was aimed at low-wage industries like [fast food](#) but that many of the comments in favor of the FTC's plan came from health professions.

Health workers say noncompete agreements are "both personally devastating and also impeded [patient care](#)," Khan said.

In some cases, doctors wrote that their patients "got really upset because they wanted to stick with me, but my hospital was saying I couldn't," Khan said. Some doctors ended up commuting long distances to prevent the rest of their families from having to move after they changed jobs, she said.

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