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January 15th, 2023

Dear Regina,

Welcome to BioMarketing Insight's monthly newsletter.

Happy New Year! Hope everyone had a enjoyable holiday and was able to take some time off to rejuvenate for the new year. While the market has been uncertain since the pandemic, there are two positive things that has happen since the end of 2022 and the start of the New Year:

- 1) New laws went into effect in California and Washington state requiring employers to post salary ranges on job listings, after similar legislation was enacted in Colorado and New York (Axios Market 1/3/23).
- 2) A minimum wage increase went into effect in 23 states and Washington, D.C. A growing number of states now have minimum wages of at least \$15 an hour,

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In this month's newsletter I will cover "Are Non-Competes Harmful or Beneficial in Promoting Greater Economic Opportunity and Competition?" You can find my article under the Table of Content and click on the link.

If you missed the last newsletter before the holiday, "How Our Gut Microbiome Is Link to Liver Conditions in People Who Don't Drink Excessive Amounts of Alcohol?", click on this [link](#) to read the article.

If you need a little inspiration or something to make us laugh to get us through this difficult time, click on the "[Inspiration](#)" link to give yourself a few minutes to relax and enjoy the music from the Berklee School of Music in their song "What the World Needs Now," other inspirations and ending with Celine Dion and Josh Groban with "The Prayer".

Please read on for other current news in the Table of Content below. The next newsletter will be February 15, 2023.

We encourage you to share this newsletter with your colleagues by using the social media icons below, or by simply forwarding this newsletter or use the link below. Should you or your colleagues want to join my mailing list, click on "join my email list" link below.

Please email [me](#), Regina Au, if you have any questions, comments, or suggestions.



Sincerely,
Regina Au
CEO, New Product Planning/Strategic Planning
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Developing a Product? Commercializing a Product?

If you are developing a product and have not conducted the business due diligence to determine commercial viability or success, contact [me](#) for an appointment. For successful commercial adoption of your product or looking to grow your business, contact [me](#) for an appointment.

For more information on our services, click on the links below:

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[Scenario Planning](#) - for more information, email [me](#).

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See Photos of the AAPI Heritage Festival - Saturday, May 7th, 2022

Asian American Pacific Islander (AAPI) Heritage month is a celebration of a diverse group of ethnic heritage within the Asian community who bring a wealth of enriched culture to our society. This celebration will endeavor to build awareness and educate our community on the various cultures and contributions these different Asian ethnic groups have brought to enrich our American Story.

History you may not know:

1. 20,000 Chinese men served in the military during WWII where 40% of the men served without American citizenship due to the "Chinese Exclusion Act". They were later honored in September 2021 with the Congressional Gold Medal for their acts of patriotism, loyalty, and courage for the US.
2. 110,000 Japanese American and Japanese were relocated to prison camps during the bombing of Pearl Harbor in 1941. In 1943, Japanese Americans were finally allowed to volunteer for the all-Japanese American 442nd Regiment that fought against the Japanese. These men were awarded the Congressional Gold Medal in 2010.

Theme: [Contributions Asian American Pacific Islands Have Made to American History](#)

A walk-through [exhibit](#) highlighting the contributions AAPI have made to American History was on display.

The Festival was a huge success with a full agenda of speakers, including State Senator Cindy Friedman and fireside chats with [Shirley Leung](#) from The Boston Globe. We also had a full agenda of performers throughout the festival. We had [Tibetan dancers](#), [Cambodian dancer](#), [Japanese dancers](#), [Lion dance](#), Kung Fu demonstration and many

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In addition, we had exhibitors from the various ethnic groups displaying items representing their history and culture that complemented the contributions that AAPI have made to American History.

This is AAPI Heritage month, be sure to enjoy all the activities in your area celebrating the diverse group of ethnic heritage within the AAPI community who bring a wealth of enriched culture to our society and American History. It may surprise you the tremendous amount of people who have contributed to our society and American History.

I would like to leave you with this **one thought** "while everyone is unique in their own way, it is important to celebrate our differences and our commonalities. Every person has a vital contribution to make to society - all races, all ethnicities, all religions and all genders together form one human race.

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General Guidelines to Launch and Build a Clinical Trial Using Microbiome Products in an Era of Personalized Medicine.

I am pleased to announce that I was a speaker at the Westchester Biotech Project for Consortium on Translational Research in the Microbiome on November 11th, 2021. The Topic: General Guidelines to launch and build a clinical trial using microbiome products in an era of personalized medicine. My presentation was on " How to Launch and Market a Successful Microbiome Product: Five Major Considerations". For more information on this event, click [here](#). This webinar it will be available next month, so check back here.

For more information on Westchester Biotech Project and future webinars, click [here](#).

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Fresh Thinking in the Next Normal

I am pleased to announce that I was a speaker at the Institute of Management Consultants event on "What Will the "Next Normal" Be for Productivity, Motivation and Retention of Employees? Four Things Employers Need to Consider." on July 20th, 2021 at 2 pm. For more information and to register click [here](#).

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Enjoy the song "What the World Needs Now" virtually with the students from the Berklee School of Music.



We Will Get Through It Together



Let's End with Celine Dion & Josh Groban Singing "The Prayer"

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One Biotech Executive's View on the COVID-19 Vaccine

I am pleased to announce that my article on the COVID-19 Vaccine was published in Lioness Magazine. To read my article click on the link [here](#).

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Are Non-Competes Harmful or Beneficial in Promoting Greater Economic Opportunity and Competition?

[Lina Khan](#), commissioner of the Federal Trade Commission (FTC) proposed a ban on employers from requiring employees to sign non-compete agreements, which prevent workers from taking positions at competitors for a period of time after they leave a job at a

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The [FTC](#) estimates that [30 million](#) people, or one in five workers, would be impacted, and the rule could increase wages by nearly \$300 billion a year. This comes [more than a year](#) after the Biden administration issued an order directing the agency to curb the use of non-competes in order to increase competition across the economy.

The FTC's new [proposal](#) would make it illegal for an employer to enter into a non-compete with a worker, and would require companies to rescind existing agreements.

- The rule would also apply to independent contractors and "anyone who works for an employer, whether paid or unpaid," according to the agency's press release.
- This is just a proposal with the FTC is seeking public comment on the rule.

The reason: "The freedom to change jobs is core to economic liberty and to a competitive, thriving economy," said FTC chair [Lina M. Khan](#) in a statement. "Non-competes block workers from freely switching jobs, depriving them of higher wages and better working conditions, and depriving businesses of a talent pool that they need to build and expand."

Opposition: The proposal "represents a radical departure from hundreds of years of legal precedent," said FTC Commissioner Christine S. Wilson in a [statement](#) dissenting from the agency's decision.

- Wilson argues the FTC does not have the evidence to back its claim that non-competes harm competition, and that the rule is likely to be challenged — and possibly overturned in court.

The [Chamber of Commerce condemned](#) the rule as "blatantly unlawful."

- "Attempting to ban non-compete clauses in all employment circumstances overturns well-established state laws which have long governed their use and ignores the fact that," said Sean Heather, U.S. Chamber senior vice president for International Regulatory Affairs and Antitrust in a [statement](#). "[W]hen appropriately used, non-compete agreements are an important tool in fostering innovation and preserving competition."

Why is this Being Highlighted in the News?

Non-competes were once used mainly to keep high-paid executives from jumping ship and taking insider knowledge to rivals. But they have become more common.

The Federal Trade Commission has [taken legal action](#) against three companies and two individuals, forcing them to drop non-compete restrictions that they imposed on thousands of workers. Drawing from the FTC's substantial expertise in this space, these actions mark the first time that the agency has sued to halt unlawful non-compete restrictions.

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and prevent businesses from being able to compete,” said Chair [Lina M. Khan](#). “I’m grateful to our talented staff for their efforts to vigorously enforce the law to protect workers and fair competition.”

“The FTC is committed to ensuring that workers have the freedom to seek higher wages and better working conditions without unfair restrictions by employers,” said [Rahul Rao](#), Deputy Director of the FTC’s Bureau of Competition. “The FTC will continue to investigate, and where appropriate challenge, non-compete restrictions and other restrictive contractual terms that harm workers and competition.”

The companies named in the FTC complaints are:

[Prudential Security, Inc. and Prudential Command Inc.](#) In its complaint, the FTC said the two affiliated Michigan-based companies and their owners, Greg Wier and Matthew Keywell, exploited their superior bargaining power against low-wage security guards, requiring them to sign contracts containing restrictions that prohibited them from working for a competing business within a 100-mile radius of their job site with Prudential for two years after leaving Prudential. And required employees to pay \$100,000 as a penalty for any alleged violations of the clause.

[O-I Glass, Inc. and Ardagh Group S.A.](#), the two largest manufacturers of glass food and beverage containers in the United States imposed non-compete restrictions on employees across a variety of positions. These restrictions typically banned workers, for one year after leaving O-I Glass, from working for, owning, or being involved in any other way with any business in the United States selling similar products and/or services without the prior, written consent of O-I Glass.

At the outset of the Commission’s investigation, more than 1,000 employees of O-I Glass were subject to such non-compete restrictions, including salaried employees who work with the glass plants’ furnaces and forming equipment and in other glass production, engineering, and quality assurance roles.

This non-compete made it difficult for new competitors to enter the market in part because of the need to find and hire people who are skilled and experienced in glass container manufacturing.

But the practices of sandwich shop Jimmy John’s is what caught the attention of The Huffington Post back in 2014. Jimmy John’s, the agreement apparently applies to low-wage sandwich makers and delivery drivers.

The terms of employment at [Jimmy John’s](#) are worker agrees not to work at one of the sandwich chain’s competitors for a period of two years following employment at Jimmy

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and that derives a mere 10 percent of its revenue from sandwiches.

Nothing is ever black and white. Another perspective is how this new proposal is going to affect mergers and acquisitions according to Dan Primack (DP), from Axios. The proposed ban would exempt any seller with at least a 25% ownership stake in the acquired asset, and also would be retroactive.

Since a lot of corporate acquisitions, particularly in the small-cap and midmarket space, acquire companies not only for their products but also for their talent. If the ban on non-compete goes into effect, acquirers would need to employ different retention tools such as a golden handcuffs, or including installment payouts for the acquisition itself according to DP.

It could create nightmares for buyers on already-completed deals, and huge financial opportunity for sellers, given the proposal's retroactivity. Can key employees be securely retained with this ban? Only time will tell.

Read on for my closing thoughts.

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Closing Thoughts

Today, non-competes are being used beyond its original intended use which is keeping high-paid executives from jumping ship and taking insider knowledge to rivals. But some say this is still unfair especially when it interferes with someone's livelihood. This is

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expertise. Or, the non-compete is so broad, the employee can't work for any company whether it be a direct competitor or in that industry, and should not be allowed.

In [Massachusetts](#), the non-compete states "A covenant not to compete contained in a contract for personal services will be enforced if it is reasonable, based on all the circumstances." and some professions are banned from non-competes such as physicians, broadcasting industry and lawyers. There has been many battles in court over non-competes.

When it comes to minimum wage jobs or entry level positions that clearly has no threat to "trade secrets", IP or insider knowledge as in the examples given that the FTC is now pursuing, a non-compete should not exist. In order to curb this type of business practice among companies who obviously wants to keep any competition out, they should be penalized for "unfair" practice now and in the future. This will deter other companies from implementing this type of "unfair" practice.

How it affects sellers and buyers, this is not my area of expertise but I can understand the pros and cons from the sellers and buyers perspective that has been presented so far. Since this proposal is open for comments, I'm sure there will be a lot of feedback from a lot of different perspectives including some that one would not ever think of in affecting various parties. Business seems to have a domino effect.

Things need to be hashed out and I think there will be a ban but it will be very specific to the various scenarios that encroach on unfair practices. For other perspective, there might be a lot of exceptions to the rule because one size does not fit all. If the [plan proposed](#) is now 216 pages, it will be even more once everyone has weighed in with their comments.

Comments can be posted at this [link](#) at the bottom of the page. The comment period is open through **Mar 10, 2023**. Stay tuned as there will be a lot of discussion on this topic.

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Should you have any questions or need of assistance with your business due diligence, determining your product's value proposition, target product profile and economic value of your product for reimbursement, feel free to contact me at 781-935-1462 or regina@biomarketinginsight.com.

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