

CATHY McMORRIS RODGERS, WASHINGTON
CHAIR

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-3641
Minority (202) 225-2927

May 9, 2023

The Honorable Alvaro Bedoya
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Commissioner Bedoya:

Thank you for appearing before the Subcommittee on Innovation, Data, and Commerce on Tuesday, April 18, 2023, to testify at the hearing entitled "Fiscal Year 2024 Federal Trade Commission Budget."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Tuesday, May 23, 2023. Your responses should be mailed to Jessica Herron, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to (b)(6)@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Gus M. Bilirakis
Chair
Subcommittee on Innovation, Data, and Commerce

cc: Jan Schakowsky, Ranking Member, Subcommittee on Innovation, Data, and Commerce

Attachment

Attachment 1—Additional Questions for the Record

The Honorable Cathy McMorris Rodgers

1. Seven states (CA, CO, CT, IA, VA, UT, and IN) have already enacted broad consumer data privacy laws. Laws in two of those states (CA and VA) have already taken effect, and laws in three more states (CO, CT, and UT) are set to take effect later this year. How does this expanding legal patchwork impact small and medium-sized businesses and individual consumers?
 - a) What benefits would a broad federal consumer data privacy law have for legitimate businesses, especially small and medium-sized businesses, who will need to comply with multiple differing regimes, and individual consumers?
 - b) To what extent are you concerned with dormant commerce clause vacating state laws as they impact interstate commerce?
 - c) Relative to the state of California, if there were one state enforcement authority with which to confer on its state privacy law, who would that be?
2. In addition to the broad consumer data privacy laws, states have been considering (while some have passed laws including Washington and Illinois) and enacting sectoral legislation that ranges from quite narrow to quite broad and covers a variety of data, including health-related data, biometric data, and data pertaining to children's and teens' online activities.
 - a) What challenges does this state-level sectoral privacy patchwork pose to organizations and individuals?
 - b) How would enacting broad federal consumer data privacy legislation help address these challenges?

Given the global nature of the internet and the digital economy, enabling safe, secure, efficient, and privacy protective cross-border data flows is crucial.

- c) To what extent are you consulting with Secretary of Commerce Raimondo on the ramifications of balkanization of state laws and what it means for our international standing?
- d) How would federal consumer data privacy legislation help facilitate safe, secure, efficient, and privacy protective cross-border data flows?

The Honorable Gus M. Bilirakis

1. Who at the FTC has authority to initiate an investigation of a business?
1. Do commissioners have to vote to initiate an investigation of a business?
2. Do you know how many investigations of a business are currently underway?
3. Do you know how many investigations of a business have been initiated since the beginning of the year?
4. Is there a periodic list prepared to inform each commissioner of the specific investigations under way?
 - a) If not, why not?
5. How would a commissioner discover which businesses are under investigation?
6. Is there information controlled by a bureau that a commissioner may not review?
7. What types of information are not shared with commissioners?
8. Who at the FTC has authority to seek a court order against a business?
9. Do commissioners have to vote to seek a court order against a business?
10. Do you know how many court orders the FTC has sought against businesses in the past year?
11. Do you know how many court orders against businesses have been sought since the beginning of the year?
12. Is there a periodic list prepared to inform each commissioner of the specific court orders sought against businesses?
 - a) If not, why not?
13. In each instance when the FTC seeks a court order against a business, is there a public record of the court order, or are they sometimes granted under seal?
14. How would a commissioner discover which court orders the FTC has sought and the outcome of those requests?
15. Does the FTC ever seek to appoint a receiver for the assets of a business?
16. How does the FTC decide whom to appoint as a receiver?
17. Must commissioners approve the appointment of a receiver?

18. Is there an approved list of potential receivers at the FTC?
19. Please provide the Committee with a list of all receivers the FTC has appointed since January 2021.
20. Please provide the Committee with a list of all receivers the FTC has approved since January 2021.
21. Please provide the Committee with every contract used to retain a receiver since January 2021.
22. Please provide the Committee with the compensation received by each receiver as a result of its FTC approved receiver status since January 2021.
23. Please provide all FTC documents explaining how the FTC has statutory authority to seek in federal court disgorgements from businesses.
24. Please provide all FTC documents explaining how the FTC has statutory authority to seek in federal court disgorgements from a specific business without representation of that business in court.
25. Please provide all FTC documents explaining how the FTC has statutory authority to seek disgorgements from businesses under Section 19.
26. Please provide all FTC documents explaining how the FTC has statutory authority to seek disgorgements from businesses under Section 13.
27. Please provide all FTC documents explaining how the FTC has statutory authority to seek in federal court the appointment of a receiver for a business.
28. Please provide all FTC documents explaining how the FTC has statutory authority under Section 19 to seek in federal court the appointment of a receiver for a business.
29. Please provide all FTC documents explaining how the FTC has statutory authority under Section 19 to seek in federal court the appointment of a receiver for a business without representation of that business in court.
30. Please provide a list since January 2021 of each instance in which the FTC has employed Section 19 in federal court to seek the appointment of a receiver for a business.
31. Please provide a list since January 2021 of each instance in which the FTC has in federal court sought the appointment of a receiver for a business without reference to Section 19.
32. Please provide a list since January 2021 of each instance in which the FTC has employed Section 19 in federal court to seek the disgorgement of assets from a business.
33. Please provide a list since January 2021 of each instance in which the FTC has in federal court sought the disgorgement of assets from a business without reference to Section 19.

34. Please provide a list of each case in which Section 19 by the FTC was referenced in court cases from 2015-2020. Please indicate in which of those cases Section 19 was cited as the only basis for (a) appointment of a receiver for a business; and (b) for disgorgement of assets from a business.

35. Commissioner Bedoya, if conduct helps consumers by lowering prices but harms competitors, who prevails – consumers or competitors, and what specific factors do you use to balance these interests?

The Honorable Jeff Duncan

1. Are you aware of any DAEO recommendation to Chair Khan in the Meta-Within matter?
2. Were you aware that Commissioner Wilson made clear she should resign if you went forward and redacted her dissent? If so, approximately, when did Commissioner Wilson make you aware?
3. How do you justify silencing Commissioner Wilson to help Chair Khan avoid any embarrassment and scrutiny over her decision to not recuse herself?
4. Are you aware of any instance in the history of the FTC where a chair, commissioner, or FTC staff member chose to go against the recommendation of the DAEO?
5. Do you believe the Congress and the general public should know when a recommendation to recuse oneself is issued by the DAEO and then not followed? If not, why?
6. Given that all of this has become public, do you regret your decision to deeply undermine the bipartisan nature of the agency, engage in cover up to prevent Chair Khan from having to justify her own decisions, and push out Commissioner Wilson, a presidential appointed, Senate confirmed senior government official?
7. Do you support due process and procedure fairness obligations in trade agreements?

The Honorable Kelly Armstrong

1. The Commission has brought a minimal number of enforcement actions under the authority granted in the Better Online Ticket Sales (BOTS) Act. What circumstances have limited the Commission's enforcement actions related to the BOTS Act? Are there pending enforcement actions related to the BOTS Act? What additional enforcement authority would assist the Commission's enforcement of the BOTS Act?
2. News reports indicate that the Commission may bring first enforcement actions in decades under the Robinson Patman Act. Courts and the Commission have held the position that the Act should be interpreted and applied in a manner consistent with other antitrust laws when possible. What are the Commission's views on the Robinson Patman Act? What are the Commission's views how the Robinson Patman Act fits with other antitrust laws? Are there legislative changes to the Robinson Patman Act that would address inconsistencies with other antitrust laws?
3. The Commission's policy statement on Section 5 states that determining whether alleged conduct is an unfair method of competition "does not require a separate showing of market power or market definition," and that "the inquiry will not focus on the 'rule of reason' inquiries" to distinguish between procompetitive and anticompetitive conduct. How will the Commission decide what constitutes an unfair method of competition if it can avoid defining markets and showing actual market power, and if it is not guided by rule of reason analysis? How does the policy statement provide guidance to the business community when the standard does not require a separate showing of market power or market definition"?
4. What sources or documentation is the Commission relying on for claims that consumers will spend three fewer hour shopping for a vehicle if the Motor Vehicle Dealers Trade Regulation Rule is promulgated? Why did the Commission fail to identify any such sources or documentation in the Notice of Proposed Rulemaking (NPRM)?
5. Regarding the Motor Vehicle Dealers Trade Regulation Rule, the Commission states that there were 62.1 million vehicle transactions in 2019. It is true that this figure includes fleet sales (i.e., business-to-business sales) as well as private sales, both of which do not typically involve a motor vehicle dealer? If so, does that alter the Commission's estimates that the rule would save consumers \$31 billion annually?
6. Does the Commission's cost-savings analysis on the Motor Vehicle Dealers Trade Regulation Rule account for time and resources necessary to comply with the several disclosures required for "add on" products? Please provide an estimate of the additional time would be required for consumers to review and consider each disclosure.
7. Section 1.10 of the Commission's procedural rules states: "Prior to the commencement of any trade regulation rule proceeding, the Commission must publish in the Federal Register an advance notice of such proposed proceeding." Since the Motor Vehicle Dealers Trade Regulation Rule is a "trade regulation rule", why did the Commission fail to issue an Announced Notice of Proposed Rulemaking (ANPRM)? Please explain how the issuance of a Notice of Proposed Rulemaking (NRPM) is consistent with Section 1.10?

8. Did any employee, Commissioner, or consultant engage or communicate with the Consumer Financial Protection Bureau on the Motor Vehicle Dealers Trade Regulation Rule prior to it being proposed on July 13, 2022? If so, please provide the dates.
9. In March 2022, Sen. Warren sent a letter urging the Commission to "immediately begin a review of the laws regulating automobile sales and begin the rulemaking process to improve consumer protections and pricing practices in this industry." Please provide a copy of the Commission's response to Sen. Warren's March letter and/or provide details regarding any briefing provided Sen. Warren's office for the record.

The Honorable Rick W. Allen

1. Cleaning products are essential to public health and quality of life and consumers have a right to know, understand, and trust the ingredients in the products they bring into their homes.
2. However, the lack of a federal labeling standard for cleaning products makes it challenging for consumers to access ingredient information important to their families.
3. How would a uniform labeling standard on cleaning product's ingredient communication benefit consumers in terms of the ability to access clear, reliable information regardless of where they live or how they purchase cleaning products?

The Honorable Diana Harshbarger

1. The financial survival of independent grocers and pharmacies is often tied to the health of rural communities, which often rely on family-owned grocers and pharmacies for basic necessities like food and medicine. What has the FTC studied, and concluded, in terms of allegations of conflicts of interest, anti-competitive conduct, and marketplace distortions, which disproportionately impact our constituents and these essential businesses in our rural communities?

The Honorable Yvette Clarke

1. Commissioners, the FTC announced a draft agreement with Mastercard on its refusal to deal fairly with competitors on debit card transactions. With the comment period now closed, can you provide us some perspective on what the FTC found regarding Mastercard's actions and when a final decree might be published in that matter?
2. There are similar concerns regarding Visa's actions to block debit card competition. It has been publicly reported that the Department of Justice was investigating Visa on antitrust grounds for those activities. Has the FTC looked into those claims or do you have plans to do so?
3. Commissioners, smart assistants, like Alexa and Google Home, are now common in our homes and can be integrated with third-party smart devices such as thermostats, light and audio, and home security systems. For example, a consumer may want to use Alexa to control their smart thermostat. However, consumers are often unaware of what information or even how much information may be shared by their third-party smart device with their voice assistant/smart home hub.
4. Would you agree that changing what data is required to be shared for integration without consumer consent unreasonably jeopardizes consumers' privacy and has the potential to be deemed an unfair or deceptive practice?



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

May 9, 2023

The Honorable Marsha Blackburn
United States Senate
Washington, D.C. 20510

Dear Senator Blackburn:

Thank you for your April 17, 2023 letter regarding federal antitrust oversight of mergers and acquisitions.

I fully agree that robust, faithful, and even-handed antitrust enforcement across all industries is critical to the growth and dynamism of our economy. Congress has outlawed mergers that may substantially lessen competition or tend to create a monopoly, and I am fully committed to ensuring the FTC is faithfully discharging its statutory obligation and enforcing the laws Congress has passed.

Accordingly, we pursue the Commission's merger enforcement work with the sole objective of fulfilling our statutory mandate and protecting Americans from unlawful mergers. We hew closely to the legal standards set by judicial precedent, and we are revising our merger guidelines to further ensure that our enforcement manual fully conforms to legal precedent. As the FTC continues to challenge mergers that may substantially lessen competition or tend to create a monopoly in any market, we take seriously the need for our investigations to be thorough, accurate, and as expeditious as our limited resources permit.

Thank you again for your letter. If you or your staff have any questions, please don't hesitate to contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in black ink that reads "Lina Khan".

Lina M. Khan
Chair, Federal Trade Commission



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

May 9, 2023

The Honorable Thom Tillis
United States Senate
Washington, D.C. 20510

Dear Senator Tillis:

Thank you for your April 17, 2023 letter regarding federal antitrust oversight of mergers and acquisitions.

I fully agree that robust, faithful, and even-handed antitrust enforcement across all industries is critical to the growth and dynamism of our economy. Congress has outlawed mergers that may substantially lessen competition or tend to create a monopoly, and I am fully committed to ensuring the FTC is faithfully discharging its statutory obligation and enforcing the laws Congress has passed.

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Thank you again for your letter. If you or your staff have any questions, please don't hesitate to contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in black ink that reads "Lina Khan".

Lina M. Khan
Chair, Federal Trade Commission



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

May 12, 2023

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Jordan:

I am writing in response to your letter of April 5, 2023, to the Federal Trade Commission (“FTC” or “Commission”) requesting information and documents regarding merger reviews and associated law enforcement approaches.

My responses to your requests follow:

1. ***A comprehensive list of each factor or consideration other than consumer welfare that the Biden FTC has used in any assessment of a proposed transaction since June 15, 2021.***

For every Commission enforcement action, the Commission issues a public statement that links to core documents—such as the complaint and (in the case of settlements) the analysis to aid public comment—that explain its reasoning for bringing a case.¹ Speaking for myself, when assessing whether any proposed transaction is likely to violate the antitrust laws, I consider all of the stakeholders who benefit from existing competition—including consumers, businesses, and workers—and whether any of them will be harmed by the reduction of competition caused by the merger. The Clayton Act prohibits any merger whose effect may be to substantially lessen competition or tend to create a monopoly in any line of business. I believe the FTC must faithfully enforce the law as written by Congress in order to promote the rule of law and ensure the democratic legitimacy of our work.²

2. ***For each factor or consideration listed in response to question one, please explain how the FTC evaluates a proposed transaction’s effects on consumers relative to any effects relating to other factors or considerations.***

Please see the response to Request Number 1 above.

¹ The press release section of our website is at <https://www.ftc.gov/news-events/news/press-releases>.

² See Remarks of Lina M. Khan, Fordham Annual Conference on International Antitrust Law & Policy (Sept. 16, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/KhanRemarksFordhamAntitrust20220916.pdf.

3. ***The date when the Biden FTC will issue new merger guidelines.***

The DOJ and the FTC are endeavoring to jointly propose updated merger guidelines for public comment as soon as possible. My goals are to ensure that the guidelines accurately reflect modern commercial realities, are faithful to statutory mandates, and are administrable and predictable.

4. ***All documents and communications referring or relating to the decision to withdraw the Trump Administration's 2020 vertical merger guidelines.***

Please find enclosed a production in response to your item #4, regarding the decision to withdraw the 2020 Vertical Merger Guidelines. In addition, we direct you to the statements that the Commission published in September 2021, when it voted to withdraw the 2020 Vertical Merger Guidelines.³

The initial document production enclosed here includes calendar entries of individuals who had a role in the decision. To aid the Committee's inquiry, the Commission has identified the specific calendar meetings relevant to your Request. We are continuing to work to identify possible additional responsive calendar entries for relevant custodians, as well as documents responsive to this request. While we do not believe the materials produced today implicate the deliberative process or other sensitive equities, we reserve the right to protect deliberative materials in future productions.

The Commission is devoting significant time and resources to respond to this request. In order to get you the information you seek in a timely manner, the Commission is submitting productions on a rolling basis as it collects and reviews responsive documents and information. The Commission requests that the Committee maintain the confidentiality of this production because it includes information that identifies career FTC staff who worked on the decision.

5. ***The date when the Biden FTC will reestablish the practice of early terminations. If the Biden FTC will not resume the practice of early terminations, please explain the FTC's rationale in detail, including for any types of transactions where the FTC routinely finds no anticompetitive effects.***

The Clayton Act, as amended by the HSR Act, requires that a party wishing to complete an acquisition must delay consummating the transaction for at least 30 days (15 days in the case of a pure cash tender offer) following the submission of a premerger notification to give the FTC and DOJ an opportunity to review the transaction and determine whether to investigate the transaction further. The statute gives the FTC and DOJ the ability to grant, in individual cases, exemptions from this statutorily defined waiting period. Specifically, the statute states that FTC

³ See Press Release, Fed. Trade Comm'n, FTC Withdraws Vertical Merger Guidelines and Commentary (Sept. 15, 2021), <https://www.ftc.gov/news-events/press-releases/2021/09/federal-trade-commission-withdraws-vertical-merger-guidelines>.

and DOJ have the option to grant early terminations “in their discretion.”⁴ Granting early termination consumes agency resources. Given our heavy workload, the FTC will continue to prioritize devoting resources to its statutory obligations over discretionary functions. We will consider reinstating early termination grants as agency resources permit.

6. *The number of proposed transactions since June 15, 2021, where the FTC:*

a. *has not granted an early termination;*

The most recent complete data (including both FTC and DOJ activity) is from fiscal year 2021.⁵ The agencies received filings related to 3,413 transactions for which a second request could have been issued. For 2,124 of these transactions, one or both of the parties requested early termination. The Agencies granted early termination for 417 such transactions, and did not grant an early termination regarding 1,707 transactions.⁶

b. *has not issued a second request;*

Because the agencies issued a total of 65 second requests in fiscal year 2021, an estimated 3,348 transactions did not involve a second request. That number is estimated due to a lag between when the filing is received and when a second request must issue.⁷ Consequently, the annual statistics for the number of transactions and the number of second requests do not involve the exact same set of filings.

c. *has issued a second request;*

Of the 65 second requests issued in fiscal year 2021, the FTC issued 42 and the DOJ issued 23.

d. *has told parties to a proposed transaction that the agency would challenge a proposed transaction; or*

⁴ 16 C.F.R. § 803.11(c) (HSR Act: “The Federal Trade Commission and the Assistant Attorney General *may, in their discretion*, terminate a waiting period upon the written request of any person filing notification or . . . sua sponte.”) (emphasis added); 15 U.S.C.A. § 18a(2) (Clayton Act: “The Federal Trade Commission and the Assistant Attorney General *may*, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Register a notice that neither intends to take any action within such period with respect to such acquisition.”) (emphasis added); see also “FTC, DOJ Temporarily Suspend Discretionary Practice of Early Termination,” Federal Trade Commission (Feb. 4, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/02/ftc-doj-temporarily-suspend-discretionary-practice-early-termination>; “HSR Early Termination After a Second Request Issues,” Federal Trade Commission (Mar. 12, 2021), <https://www.ftc.gov/enforcement/competition-matters/2021/03/hsr-early-termination-after-second-request-issues> (“Typically, when an investigation resolves competition concerns, the agencies *use their discretion* to grant early termination of the second waiting period, and the grant of ET allows the parties to close their transaction.”) (emphasis added).

⁵ See Press Release, Fed. Trade Comm’n, FTC, DOJ Issue Fiscal Year 2021 Hart Scott Rodino Premerger Notification Report (Feb. 10, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-doj-issue-fiscal-year-2021-hart-scott-rodino-premerger-notification-report>.

⁶ FTC & Dep’t of Justice Antitrust Division, Hart-Scott-Rodino Annual Report Fiscal Year 2021, Appendix A, https://www.ftc.gov/system/files/ftc_gov/pdf/p110014fy2021hsrannualreport.pdf.

⁷ The HSR Act allows the agencies to issue a second request within 30 days of the HSR filing.

e. has challenged a proposed transaction.

In seven transactions during fiscal year 2021, the parties abandoned their merger plans after FTC staff raised antitrust concerns during the investigation, and the FTC challenged an additional 11 transactions. Five of the 11 challenges were settled with Commission consent orders, and the FTC initiated administrative or federal court litigation in the other six matters.

7. All documents and communications, including any on personal devices and any communications with the Executive Office of the President or CFPB Director Rohit Chopra, relating to the FTC's policy concerning early terminations.

Please find enclosed a production in response to your item #7, regarding relating to the FTC's policy concerning early terminations.

The initial document production includes calendar entries of individuals who had a role in the policy. To aid the Committee's inquiry, the Commission has identified the specific calendar meetings relevant to your Request. We are continuing to work to identify possible additional responsive calendar entries for relevant custodians, as well as documents responsive to this request. While we do not believe the materials produced today implicate the deliberative process or other sensitive equities, we reserve the right to protect deliberative materials in future productions.

The Commission is devoting significant time and resources to respond to this request. In order to get you the information you seek in a timely manner, the Commission is submitting productions on a rolling basis as it collects and reviews responsive documents and information. The Commission requests that the Committee maintain the confidentiality of this production because it includes information that identifies career FTC staff who worked on the policy.

8. A precise description of how the FTC expects to spend its increased funding from December 2022 appropriations, and any merger fee revenues in 2023 in excess of appropriations, with respect to merger investigation and enforcement.

The FTC has finalized its fiscal year 2023 operating budget. The additional resources will primarily fund an increase of approximately 150 full-time employees across the Commission. In addition, the increase, compared to the December 2022 appropriations, will fund the fiscal year 2023 pay increase (4.6%). Moreover, the funding will pay for inflationary increases in contracts, including in the Commission's IT modernization efforts. We expect the merger fee revenue will be sent to the Treasury as an offsetting collection, as we do not expect that revenue to exceed our fiscal year 2023 appropriation amount.

Sincerely,



Lina M. Khan
Chair, Federal Trade Commission

cc: Jerrold Nadler
Ranking Member
Committee on the Judiciary

United States Senate

WASHINGTON, DC 20510

May 3, 2023

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

The Honorable Denis McDonough
Secretary
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

The Honorable Lloyd Austin
Secretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretaries Cardona, McDonough, and Austin:

We write to urge the Department of Education (ED), Department of Veterans Affairs (VA), and Department of Defense (DOD) to scrutinize the University of Phoenix's (Phoenix) participation in federal student aid programs, including ED's Title IV program, VA's GI Bill, and DOD's Tuition Assistance program.

Phoenix is an unscrupulous and predatory for-profit college that has long preyed on veterans, low-income students, and students of color. A recent report found that Phoenix has launched a national advertising campaign that has run misleading advertisements suggesting Phoenix is a public university.¹ These advertisements, including messages on its admissions website, tout statements such as "No out of state tuition" and "Some state universities charge higher tuition to out-of-state students – but not University of Phoenix." Prospective students easily could interpret these misleading statements to mean that Phoenix is an affordable public university, when in reality it is neither. According to the National Center for Education Statistics, Phoenix charged \$13,245 in the 2020-2021 academic year, which is well above the average cost of \$10,423 at a public university or college. Furthermore, Phoenix's dismal graduation rate of 14 percent at its main and largest campus is an obvious sign that this predatory college leaves students with significant student debt and no degree to show for it.

Phoenix's deceptive misrepresentations unfortunately are not new. In 2019, Phoenix reached a \$191 million settlement with the Federal Trade Commission (FTC) for running deceptive advertisements that gave the false impression that Phoenix partnered with major employers like the American Red Cross, AT&T, Microsoft, Twitter, and Yahoo. This was the largest financial settlement ever reached between the FTC and a for-profit college. The settlement also stipulated that Phoenix is banned permanently from running advertisements that

¹ <https://www.republicreport.org/2023/university-of-phoenix-seems-to-break-pledge-to-avoid-misleading-ads/>

promote a misleading benefit. Phoenix's most recent advertising campaign clearly defies this injunction.

We applaud ED's recent efforts to hold for-profit colleges accountable, including developing a low-financial-value programs list and providing borrower defense to repayment discharges for students who attended Corinthian Colleges, ITT Technical Institute, and Westwood. ED, VA, and DOD, however, can and must take additional steps to protect student borrowers and taxpayers by scrutinizing Phoenix's participation in federal student aid programs, especially after clear violations of its previous agreement with the FTC.

Thank you for your consideration, and we look forward to your response.

Sincerely,



Richard J. Durbin
United States Senator



Richard Blumenthal
United States Senator



Jeffrey A. Merkley
United States Senator



Margaret Wood Hassan
United States Senator



Sherrod Brown
United States Senator



Elizabeth Warren
United States Senator

cc: Lina Khan, Chair, Federal Trade Commission

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

May 31, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Dear Chair Khan:

The Committee on the Judiciary is conducting oversight of the programs and operations of the Federal Trade Commission (FTC). On February 14, 2023, the Committee wrote to you requesting documents and information related to the FTC's proposed ban on voluntary non-compete clauses, including the manner in which the FTC developed the proposed rule, and how the FTC assessed its impact throughout the economy.¹ To date, the FTC's document production has included little more than non-substantive calendar invites and material already publicly available, along with a vague promise to "submit additional productions on a rolling basis as [the FTC] locate[s] responsive documents."² We have recently learned, however, that the FTC has deleted material likely responsive to the Committee's requests.

The Committee's requests seek, among other things, documents related to the litigation risks due to the rulemaking, economic analyses related to the rulemaking, and communications between the FTC and third parties about the rulemaking.³ In its initial response, the FTC stated that 47 employees, contractors, advisors or consultants worked on or contributed to the rulemaking.⁴ The FTC also identified eight individuals who are expected to play or have played a supervisory role related to the rulemaking.⁵ One such individual was a Consumer Financial Protection Bureau (CFPB) employee detailed to the Commission, who "led the team on a daily

¹ See Letter from Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al. to Hon. Lina M. Khan, Chair, FTC, et al. (Feb. 14, 2023) (*hereinafter* "Committee Feb. 14 Letter"). See also Non-Compete Clause Rule, 88 Fed. Reg. 3482, 3482-83 (Jan. 19, 2023) (to be codified at 16 C.F.R. pt. 910).

² See Letter from Hon. April J. Tabor, Secretary, FTC to Jim Jordan, Chairman, H. Comm. on the Judiciary (Feb. 28, 2023) (*hereinafter* "FTC Feb. 28 Letter")

³ See Committee Feb. 14 Letter at 3-4.

⁴ See FTC Feb. 28 Letter at 2.

⁵ *Id.*

basis,” “supervised the drafting of the [proposed rule],” ensured that drafts were circulated among Commission senior leadership, and “oversaw any legal research.”⁶

Only recently, on May 16, 2023—over three months after our first request—did FTC staff explain to the Committee that the FTC has already deleted materials that are likely responsive to the Committee’s request.⁷ Although FTC staff represented that these deletions occurred prior to the Committee’s February 14 letter, the FTC’s failure to maintain these records materially impedes the Committee’s oversight. Based on conversation with FTC staff, the Committee understands that the deleted materials included some of the files of the CFPB employee who you brought on to lead the FTC’s rulemaking, as well as some of the materials of several additional employees. The FTC’s approach to record retention is concerning, and the FTC may have violated federal record-keeping law by deleting these materials.⁸

To assist the Committee in its continued oversight of the FTC’s proposed ban on voluntary non-compete clauses, and to better understand the FTC’s practices with respect to records management, we request that you provide the following information:

1. All documents and communications referring or relating to the FTC’s record retention policy;
2. A full and complete explanation as to why any records responsive to the Committee’s February 14, 2023, letter have been deleted, including the identities of FTC employees responsible for the agency’s records management practices;
3. A list of any records or communications that have been deleted that would have been responsive to the Committee’s February 14, 2023, letter, including the FTC custodian(s) of these records; and
4. A description of the steps taken to recover any deleted responsive material, copies of which may be archived in different accounts or agency backup files.

Please produce all documents and information as soon as possible but no later than 5:00 p.m. on June 14, 2023.

The Committee on the Judiciary is authorized by Rule X of the Rules of the House of Representatives to conduct oversight of and legislate on matters relating to the “[p]rotection of trade and commerce against unlawful restraints and monopolies.”⁹ If you have any questions about this matter, please ask your staff to contact Committee staff at (202) 225-6906.

⁶ *Id.*

⁷ Meeting between House Judiciary Committee and FTC Staff (May 16, 2023).

⁸ *See, e.g.*, 44 U.S.C. § 31, *et seq.*; *see also* 5 U.S.C. § 552, *et. seq.*

⁹ Rules of the U.S. House of Representatives, R. X (2023).

The Honorable Lina M. Khan

May 31, 2023

Page 3

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is written in a cursive style with a large, stylized "J" and "D".

Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

United States Senate

SPECIAL COMMITTEE ON AGING

WASHINGTON, DC 20510-6400

(202) 224-5364

May 18, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Chair Khan:

As members of the Special Committee on Aging, we write to request information on your efforts to protect older Americans from increasing threats posed by artificial intelligence-related (AI) frauds and scams. Combatting frauds and scams has been a longstanding priority for the Committee across annual hearings, the Committee's fraud hotline, and its fraud book. You recently noted how "generative AI risks turbocharging fraud."¹ While AI contains significant promise as an innovative technology, it can also be manipulated by malicious actors targeting vulnerable populations, particularly older Americans.

Federal Trade Commission (FTC) warnings have noted that scammers can use AI-powered technology, including voice clones and chatbots, to create deceptive emails, phone calls, and images in order to take advantage of consumers and targeted populations.² Recent reports suggest that such scams are a growing problem. Voice-cloning technology in particular may facilitate imposter scams by allowing scammers to closely replicate an individual's voice using just a short audio sample. In one case, a scammer used this approach to convince an older couple that the scammer was their grandson in desperate need of money to make bail, and the couple almost lost \$9,400 before a bank official alerted them to the potential fraud.³ Similarly, in Arizona, a scammer posing as a kidnapper used voice-cloning technology to duplicate the sounds of a mother's crying daughter and demand ransom.⁴

Chatbots can also be used to mimic a writing style, find personal information, and generate more convincing fake documents, while "deep fake" videos and other AI-generated images can provide scammers with another avenue for upgraded impersonation. For older Americans, targeted by countless scams every year that result in multimillion-dollar financial losses, anxiety, and even anguish, this threat of powerful, newly enhanced fraud is acute.

As the FTC considers reasonable strategies to safeguard older Americans from frauds and scams, we request that you provide the following information by June 20th, 2023:

¹ Lina M. Khan, "We Must Regulate A.I. Here's How," *New York Times*. May 3, 2023.

² Michael Atleson, "Chatbots, deepfakes, and voice clones: AI deception for sale," *Federal Trade Commission*. March 20, 2023. <https://www.ftc.gov/business-guidance/blog/2023/03/chatbots-deepfakes-voice-clones-ai-deception-sale>.

³ Pranshu Verma, "They thought loved ones were calling for help. It was an AI scam," *Washington Post*. March 5, 2023.

⁴ Caroline Mimbs Nyce, "It's Time to Protect Yourself From AI Voice Scams," *The Atlantic*. April 27, 2023. <https://www.theatlantic.com/technology/archive/2023/04/ai-voice-cloning-imposter-scams/673879/>.

KIRSTEN E. GILLIBRAND, NEW YORK
RICHARD BLUMENTHAL, CONNECTICUT
ELIZABETH WARREN, MASSACHUSETTS
MARK KELLY, ARIZONA
RAPHAEL WARNOCK, GEORGIA
JOHN FETTERMAN, PENNSYLVANIA

TIM SCOTT, SOUTH CAROLINA
MARCO RUBIO, FLORIDA
RICK SCOTT, FLORIDA
J.D. VANCE, OHIO
PETE RICKETTS, NEBRASKA

United States Senate

SPECIAL COMMITTEE ON AGING

WASHINGTON, DC 20510-6400

(202) 224-5364

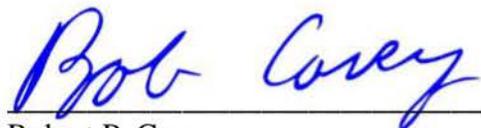
1. What is the FTC's understanding of recent developments in AI-related scams?
 - a. What, if any, analyses are available to help policymakers better respond to them?
 - b. How is the pace of innovation and improvements in AI technology likely to influence the incidence of these scams?
 - c. Are there any specific policy suggestions that FTC can highlight to protect older Americans from these scams?
2. What information and data does the FTC have on the prevalence of AI-related scams and accompanying risks?
 - a. How do these scams affect older Americans?
 - b. Are older Americans at higher risk of being targeted?
3. What steps is the FTC taking or preparing to protect older Americans from AI-related scams?
 - a. To what extent is the FTC working with other agencies and state and local governments to identify and combat the unique threat and challenge these scams pose to older Americans?
 - b. To what extent is the FTC partnering with private sector actors to develop options that could better protect older Americans from these scams?
4. Is the FTC preparing to update its counter-scam educational and awareness materials, including the "Pass It On" campaign's materials directly intended for older Americans, to account for the rising risks of AI-related scams?
 - a. What other resources can FTC make available on these scams to help inform and protect older Americans?

Thank you for your attention to this important issue. We look forward to your response.

Sincerely,



Mike Braun
United States Senator
Ranking Member, Special Committee on Aging



Robert P. Casey
United States Senator
Chairman, Special Committee on Aging

KIRSTEN E. GILLIBRAND, NEW YORK
RICHARD BLUMENTHAL, CONNECTICUT
ELIZABETH WARREN, MASSACHUSETTS
MARK KELLY, ARIZONA
RAPHAEL WARNOCK, GEORGIA
JOHN FETTERMAN, PENNSYLVANIA

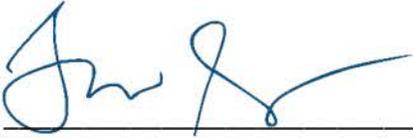
TIM SCOTT, SOUTH CAROLINA
MARCO RUBIO, FLORIDA
RICK SCOTT, FLORIDA
J.D. VANCE, OHIO
PETE RICKETTS, NEBRASKA

United States Senate

SPECIAL COMMITTEE ON AGING

WASHINGTON, DC 20510-6400

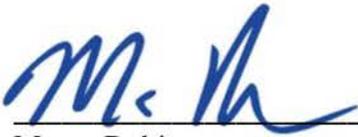
(202) 224-5364



Tim Scott
United States Senator
Special Committee on Aging



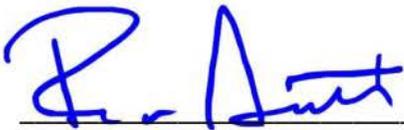
Kristen Gillibrand
United States Senator
Special Committee on Aging



Marco Rubio
United States Senator
Special Committee on Aging



Richard Blumenthal
United States Senator
Special Committee on Aging



Rick Scott
United States Senator
Special Committee on Aging



Elizabeth Warren
United States Senator
Special Committee on Aging



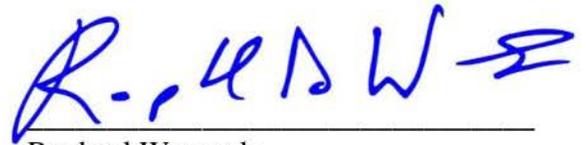
JD Vance
United States Senator
Special Committee on Aging



Mark Kelly
United States Senator
Special Committee on Aging



Pete Ricketts
United States Senator
Special Committee on Aging



Raphael Warnock
United States Senator
Special Committee on Aging



John Fetterman
United States Senator
Special Committee on Aging

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6515

May 15, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Ms. Khan:

The House Committee on Small Business (the Committee) writes to inquire about the recent rule change to the Ophthalmic Practice Rules (Eyeglass Rule). The rule requires optometrists and ophthalmologists to provide patients with a signed copy and acknowledgement of their eyeglass prescription and concurrently, requires that the acknowledgements be kept by the practice for at least three years.¹ The Committee fears that this rule will have a disproportionate impact on small businesses by adding redundant requirements to already understaffed practices.² It appears that the Federal Trade Commission (FTC) may not have properly considered small entities during this rulemaking process.

It is important for agencies to properly consider small businesses interests, which make up 99.9 percent of all businesses in the United States, when passing any new rule. America's small businesses deserve to have their voices heard and considered. We therefore request the following information as soon as possible but no later than May 29th, 2023.

1. What are your statutory requirements to examine this rule's impact on small businesses?
2. How many small businesses will be impacted by this rule?
3. What additional compliance costs on small businesses are associated with this new rule?
4. Where can small businesses go to examine your analysis on the impacts this rule will have on their operations?
5. What alternatives have been considered to lessen the impacts on small businesses?

¹ Ophthalmic Practice Rules (Eyeglass Rule), 16 C.F.R. 456 (2023).

² *AOA makes robust rebuttal to FTC over proposed changes to Eyeglass Rule*, AM. OPTOMETRIC ASSOC. (Mar. 16, 2023).

The Honorable Lina M. Khan

May 15, 2023

Page 2 of 2

To schedule the delivery of your response or ask any related follow-up questions, please contact Committee on Small Business Majority Staff at (202) 225-5821. The Committee on Small Business has broad authority to investigate “problems of all types of small business” under House Rule X. Thank you in advance for your cooperation with this inquiry.”

Sincerely,

A handwritten signature in black ink that reads "Roger Williams". The signature is written in a cursive style with a large, stylized "S" at the end.

Roger Williams
Chairman
Committee on Small Business

cc: The Honorable Nydia M. Velasquez, Ranking Member
Committee on Small Business

CATHY McMORRIS RODGERS, WASHINGTON
CHAIR

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-3641
Minority (202) 225-2927

May 24, 2023

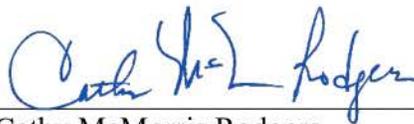
The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, D.C. 20580

Dear Chair Khan:

I write to request a confidential briefing from Federal Trade Commission staff to Committee staff regarding the Commission's work and investigations of (b)(7)(A) (b)(7)(A) I hope to set up a briefing and review at your earliest possible convenience.

Please contact the majority Committee staff at (202) 225-3641 to set up a briefing at your earliest possible convenience. Thank you for your assistance in this matter.

Sincerely,



Cathy McMorris Rodgers
Chair

CATHY McMORRIS RODGERS, WASHINGTON
CHAIR

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-3641
Minority (202) 225-2927

May 3, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Dear Chair Khan:

Pursuant to Rules X and XI of the U.S. House of Representatives, we request information and documents from the Federal Trade Commission (FTC) regarding a letter Representative Duncan referenced during the Innovation, Data, and Commerce Subcommittee's hearing on April 18, 2023, entitled "Fiscal Year 2024 Federal Trade Commission Budget." The letter was sent from you and Department of Justice Assistant Attorney General Jonathan Kanter to U.S. Trade Representative Katherine Tai regarding competition provisions in the Indo-Pacific Economic Framework. Please provide a copy of that letter to the Committee by close of business on May 5, 2023.

Please contact Tim Kurth or Teddy Tanzer of the Committee on Energy and Commerce staff at 202-225-3641 if you have any questions.

Sincerely,



Cathy Morris Rodgers
Chair
Committee on Energy and Commerce

United States Senate

WASHINGTON, DC 20510-2405

COMMITTEE ON
APPROPRIATIONS

COMMITTEE ON
AGRICULTURE, NUTRITION,
AND FORESTRY

COMMITTEE ON
ENERGY AND
NATURAL RESOURCES

COMMITTEE ON
RULES AND
ADMINISTRATION

May 22, 2023

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Chair Khan,

I am writing in reference to language included in the joint explanatory statement for the Financial Services and General Government Appropriations Act, 2023, addressing the Federal Trade Commission (FTC). Specifically, concerning providing the agency with \$430,000,000 for salaries and expenses of the FTC, the Explanatory Statement included the following guidance:

Imported Shrimp.—The FTC is strongly encouraged to continue to enforce its Section 5 reviews of deceptive practices tied to country-of-origin labeling for imported shrimp. Imported shrimp account for more than 90 percent of the shrimp consumed in the United States, yet there is widespread use of illegal veterinary drugs and overuse of antibiotics by foreign bad actors. The FTC is urged to coordinate its enforcement and proper origin requirements for the benefit of U.S. consumers with Customs and Border Protection, the Department of Agriculture, and the Food and Drug Administration to close any country-of-origin labeling gaps and prevent deceptive practices for imported shrimp.

Further, it is my understanding that the U.S. shrimp industry – including shrimpers, fish houses, and processors from the state of Mississippi – has alerted the agency to concerns regarding the deceptive marketing of imported shrimp in television advertising, in menu labeling, and in other promotional materials. In conjunction with its issuance of the final “Made in USA Labeling Rule,” the FTC responded to some of these complaints by observing: “The FTC notes deceptive claims on restaurant menus appear to be largely a regional issue, and therefore are being addressed through state legislation . . . FTC staff will continue to monitor this issue.”¹

I am concerned that the agency is not committing meaningful time or resources to issues of grave importance to an iconic Mississippi industry. Deceptive practices regarding the marketing of imported shrimp are a nationwide, not merely regional, concern. Restaurants and other food service establishments often market imported shrimp through allusions to Mississippi’s robust and well-managed commercial shrimp fishery, with photos or drawings of shrimp boats working

¹ Made in USA Labeling Rule, 86 FR 37,022, 37,030 n.103 (Federal Trade Commission July 14, 2021)

off the coast or references to "Gulf" shrimp on their menus. These marketing practices are adopted without an understanding of how seriously they undermine the ability of our local shrimpers to bring wholesome, sustainable, U.S. wild-caught shrimp to American consumers, and how these practices unintentionally expose American consumers to health risks that they would otherwise avoid by choosing to purchase domestic shrimp.

I respectfully request that your agency provide a written response describing what efforts have been undertaken by the FTC to enforce its Section 5 reviews of deceptive practices tied to country-of-origin labeling for imported shrimp. I further request that you provide a written description of any and all activities undertaken by the agency's national and regional offices to monitor deceptive claims regarding the country-of-origin of shrimp on restaurant menus. Finally, I ask that you also provide a more complete explanation for the agency's conclusion that "deceptive claims on restaurant menus appear to be largely a regional issue."

Thank you for your attention to these important matters.

Sincerely,



CINDY HYDE-SMITH

United States Senate

WASHINGTON, DC 20510

May 2, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave NW
Washington, DC 20580

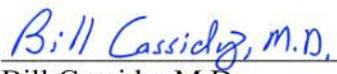
Dear Chair Khan:

We write to request a staff briefing on the preparations being made and steps taken by the Federal Trade Commission to implement the INFORM Consumers Act, which became law as Section 301 of the Consolidated Appropriations Act, 2023 on December 29, 2022. As you know, the INFORM Consumers Act takes effect 180 days after the Act's enactment. We hope to set up a briefing and review at your earliest possible convenience.

Thank you for your assistance in this matter.

Sincerely,


Richard J. Durbin
United States Senator


Bill Cassidy, M.D.
United States Senator



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

May 5, 2023

The Honorable Tammy Baldwin
United States Senate
Washington, D.C. 20510

Dear Senator Baldwin:

Thank you for your letter regarding the effects of Energizer's 2018 acquisition of Spectrum Brands Holdings Inc. on workers and consumers in Wisconsin.¹ It is critical that the FTC vigorously enforce the statutes it is charged with administering.² That includes bringing enforcement actions against unlawful mergers, whether consummated or not.

Reports suggesting that a consummated merger resulted in a lessening of competition, an unfair method of competition, or monopolization warrant attention, as appropriate and as the agency's limited resources allow. A decision not to take enforcement action against a proposed merger does not constitute an "approval" or "clearance" of the deal. The FTC always has the right to challenge a consummated deal as the public interest may require, regardless of whether it was initially investigated.

As President Biden stated in his Executive Order on Promoting Competition, industry consolidation and weakened competition have "den[ied] Americans the benefits of an open economy," with "workers, farmers, small businesses, and consumers paying the price." This reinvigorated focus on competition policy and antitrust enforcement comes against the backdrop of a broader reassessment of the effects of mergers across the U.S. economy, not only on consumer prices but also on labor markets, local and regional economic dynamism, and resilience.

At the beginning of my tenure, I reaffirmed the agency's commitment to vigorously scrutinizing mergers that may substantially lessen competition, including in labor markets. As part of this effort, the FTC is working with the Department of Justice to update the agencies' merger guidelines. As part of the revision process, we are considering potential updates to directly address labor markets and non-price elements of competition. We have also invited members of the public to identify specific examples of mergers that have harmed competition, including through worsening outcomes for workers, customers, or suppliers.

Demands on the Commission continue to grow as we review corporate mergers, conduct more complex and expensive litigation, and respond to ongoing requests for research and investigation of various economic sectors, among other activities. In particular, high waves of

¹ As my staff discussed with your team, longstanding Commission policy strictly limits what we can share via public letter regarding any nonpublic and deliberative material related to Energizer-Spectrum.

² See *Oversight of the Enforcement of Antitrust Laws: Hearing Before the Comm. on the Judiciary, Subcomm. On Antitrust, Competition Policy and Consumer Rights* (Sept. 20, 2022) (Prepared Statement of the Fed. Trade Comm'n), https://www.ftc.gov/system/files/ftc_gov/pdf/P210100SenateAntitrustTestimony09202022.pdf.

merger filings have further strained the agency's capacity to investigate deals ahead of statutory deadlines.

While Congress has charged the Commission with a critical mission, our resources have failed to keep pace. We currently employ fewer staffers than we did in the early 1980s, even though our nation's GDP has increased six-fold over the same period. Additional resources would better equip the Commission to fully pursue its mandate. I also recommend that Congress revisit and extend the statutory timelines imposed by the Hart-Scott-Rodino Act so that enforcers have greater ability to investigate potentially unlawful mergers pre-consummation.³

Thank you again for bringing this issue to my attention, and for your vigilance in promoting fair competition. If you or your staff have any questions, please contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

Sincerely,



Lina M. Khan
Chair, Federal Trade Commission

³ Fed. Trade Comm'n & Dep't of Justice, Hart-Scott-Rodino Annual Rep., Fiscal Year 2022 (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/p110014fy2021hsrannualreport.pdf; Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter Regarding the FY 2020 Hart-Scott-Rodino Annual Report for Transmittal to Congress (Nov. 8, 2021), https://www.ftc.gov/system/files/documents/public_statements/1598131/statement_of_chair_lina_m_khan_joined_by_rks_regarding_fy_2020_hsr_rep_p110014_-_20211101_final_0.pdf.

MICHAEL C. BURGESS, M.D.
26TH DISTRICT, TEXAS



2161 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-7772
(202) 225-2919 FAX

COMMITTEE ON ENERGY AND COMMERCE
HEALTH
ENERGY
OVERSIGHT AND INVESTIGATIONS

2000 SOUTH STEMMONS FREEWAY
SUITE 200
LAKE DALLAS, TX 75065
(940) 497-5031
(940) 497-5067 FAX

COMMITTEE ON RULES
COMMITTEE ON BUDGET

Congress of the United States
House of Representatives

www.house.gov/burgess

May 15th, 2023

The Honorable Lina Khan
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Chair Khan,

I write to you today to raise the grave concerns I have regarding the Federal Trade Commission's "Motor Vehicle Dealers Trade Regulation Rule." In addition to the concerns I have regarding the negative effects that the proposed rulemaking would have on small businesses and dealerships across our nation, the process the Federal Trade Commission pursued in promulgating this rulemaking has been seriously and fundamentally flawed since its inception. The process could be significantly improved if the relevant stakeholders are solicited for their expertise as to how consumers and dealerships could be adversely impacted from a rulemaking that is unconcerned with successful implementation. Consumers, dealerships, and small businesses would be better served if the Federal Trade Commission were to rescind the proposed rule and instead issue a Request for Information ("RFI") or an Advanced Notice of Proposed Rulemaking ("ANPRM").

I fear that the Federal Trade Commission's Proposed Rule would make the car purchasing process more opaque, more redundant, and strand consumers at dealerships for extended periods of time. The Federal Trade Commission has not demonstrated empirically that this Proposed Rule would, in fact, be beneficial to consumers. Moreover, it has come to my attention that the Federal Trade Commission has not undertaken comprehensive consumer testing of any kind to discern whether these additional regulations would improve a consumer's car purchasing experience. It has been my impression that the Biden Administration has stated repeatedly that any executive action would be guided by scientific data and empirical evidence. It is bewildering that this proposed Rule Making was pursued without either.

MICHAEL C. BURGESS, M.D.
26TH DISTRICT, TEXAS



2161 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-7772
(202) 225-2919 FAX

COMMITTEE ON ENERGY AND COMMERCE
HEALTH
ENERGY
OVERSIGHT AND INVESTIGATIONS

2000 SOUTH STEMMONS FREEWAY
SUITE 200
LAKE DALLAS, TX 75065
(940) 497-5031
(940) 497-5067 FAX

COMMITTEE ON RULES
COMMITTEE ON BUDGET

Congress of the United States
House of Representatives

www.house.gov/burgess

It is standard protocol for any Executive Agency to solicit the expertise and comments from affected parties before a Rule Making is drafted, it is a dereliction of duty that the Federal Trade Commission undertook neither for this proposed rule which will have a significant adverse impact on consumers and the American economy.

It is my hope that the Federal Trade Commission will undertake a more collaborative approach to this Proposed Rule Making by issuing an RFI or ANPRM that would allow both consumers and dealerships to improve the Rule Making by highlighting unworkable provisions and addressing issues that the FTC has overlooked.

I appreciate your prompt attention to this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael C. Burgess" with a stylized flourish at the end.

Michael C. Burgess, M.D.

Member of Congress

MARIA CANTWELL, WASHINGTON, CHAIR

AMY KLOBUCHAR, MINNESOTA
RICHARD BLUMENTHAL, CONNECTICUT
BRIAN SCHATZ, HAWAII
EDWARD MARKEY, MASSACHUSETTS
GARY PETERS, MICHIGAN
TAMMY BALDWIN, WISCONSIN
TAMMY DUCKWORTH, ILLINOIS
JON TESTER, MONTANA
KYRSTEN SINEMA, ARIZONA
JACKY ROSEN, NEVADA
BEN RAY LUJAN, NEW MEXICO
JOHN HICKENLOOPER, COLORADO
RAPHAEL WARNOCK, GEORGIA

ROGER WICKER, MISSISSIPPI
JOHN THUNE, SOUTH DAKOTA
ROY BLUNT, MISSOURI
TED CRUZ, TEXAS
DEB FISCHER, NEBRASKA
JERRY MORAN, KANSAS
DAN SULLIVAN, ALASKA
MARSHA BLACKBURN, TENNESSEE
TODD YOUNG, INDIANA
MIKE LEE, UTAH
RON JOHNSON, WISCONSIN
SHELLEY MOORE CAPITO, WEST VIRGINIA
RICK SCOTT, FLORIDA
CYNTHIA LUMMIS, WYOMING

DAVID STRICKLAND, STAFF DIRECTOR
JOHN KEAST, REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <https://commerce.senate.gov>

May 23, 2023

Chairwoman Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave NW
Washington, DC 20580

Dear Chairwoman Khan:

I write to request a confidential briefing on the Federal Trade Commission's 2018 approval of Energizer Holding, Inc.'s acquisition of Spectrum Brands Holding Inc.'s battery and lighting products business. I understand the sensitivity of discussing such matters and my staff, any other Senate staff attending the briefing, and I will not disclose any non-public information that your staff provides during the briefing.

Sincerely,



MARIA CANTWELL
Chair

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

May 25, 2023

The Honorable Lina Khan
Chairwoman
Federal Trade Commission
1401 Constitution Ave., NW
Washington, DC 20230

Dear Chair Khan:

I write to request approval for Mr. Stephen Santulli, Staff Attorney in the Bureau of Competition (Mergers II) of the Federal Trade Commission, to be detailed to the Democratic staff of the House Committee on the Judiciary. The detail would be for a period of one year, beginning June 1, 2023, with the option for renewal.

The purpose of this detail is to assist the Committee's Democratic staff with legislative and oversight matters within its jurisdiction. Additionally, the detail would be non-reimbursable with all salary, benefits, and travel costs borne by the FTC.

If you have any questions, please have your staff contact Kingsley Animley with the Democratic staff at (202) 225-3951 or David Brewer or Kiley Bidelman with the Republican staff at (202) 225-6906. Thank you for your consideration of this request.

Sincerely,



Jim Jordan
Chairman

United States Senate

WASHINGTON, DC 20510

May 2, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave NW
Washington, DC 20580

Dear Chair Khan:

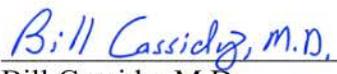
We write to request a staff briefing on the preparations being made and steps taken by the Federal Trade Commission to implement the INFORM Consumers Act, which became law as Section 301 of the Consolidated Appropriations Act, 2023 on December 29, 2022. As you know, the INFORM Consumers Act takes effect 180 days after the Act's enactment. We hope to set up a briefing and review at your earliest possible convenience.

Thank you for your assistance in this matter.

Sincerely,



Richard J. Durbin
United States Senator



Bill Cassidy, M.D.
United States Senator

CATHY McMORRIS RODGERS, WASHINGTON
CHAIR

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-3641
Minority (202) 225-2927

May 9, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Chair Khan:

Thank you for appearing before the Subcommittee on Innovation, Data, and Commerce on Tuesday, April 18, 2023, to testify at the hearing entitled "Fiscal Year 2024 Federal Trade Commission Budget."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. Also attached are Member requests made during the hearing.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Tuesday, May 23, 2023. Your responses should be mailed to Jessica Herron, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to (b)(6)@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Gus M. Bilirakis
Chair
Subcommittee on Innovation, Data, and Commerce

cc: Jan Schakowsky, Ranking Member, Subcommittee on Innovation, Data, and Commerce

Attachments

Attachment 1—Additional Questions for the Record

The Honorable Cathy McMorris Rodgers

1. Recently, a large retailer settled a class action lawsuit over sheet thread count marketing claims. We also know that the Texas Agricultural Commissioner has referred multiple cases to the FTC, and there have also been class action lawsuits against retailers, claiming that marketing related to thread count is false and deceptive. It is important that consumers are getting the items they are thinking they are, especially when such claims are made.
 - a) Has the FTC examined thread count claims in circumstances referenced above?
 - b) What actions has the FTC taken to date regarding such thread count claims?
 - c) Are any staff and resources being pulled away from false and deceptive marketing claims to focus on competition orders before the FTC?
2. Has your level of inquiry been consistent with previous Twitter CEOs, and the current one, on enforcement of the consent decree related to questions, breadth of questions, document and communications requests?
 - a) Please specify which CEO it was addressed to, the number of inquiries, and the substance of each inquiry related to the consent decree.
 - b) What personnel and resources are currently being used to focus on this inquiry as opposed to previous leadership of Twitter? Please specify week by week since becoming chair of the FTC.
 - c) What consumer protection fraud matters were deprioritized to allow commissioners and staff to work on this activity?
 - d) What external guidance did the FTC solicit to focus on this matter? Please specify subject matter experts and meeting dates.
 - e) What external guidance did the FTC receive to focus on this matter? Please specify subject matter experts and meeting dates.
3. How would the FTC standardize fee disclosure obligations across the accommodations sector?
 - a) Would entities like Online Travel Agencies (OTAs) receive timely, complete, and accurate fee information from accommodations so they are able to comply with such disclosure obligations?
4. In March 2022, Sen. Elizabeth Warren (D-Mass.) sent you a letter urging the FTC to "immediately begin a review of the laws regulating automobile sales and begin the rulemaking process to improve consumer protections and pricing practices in this

industry.” Is the Motor Vehicle Dealers Trade Regulation Rule in response to the Senator’s request?

- a) What personnel and resources are being drawn away from the work of the consumer protection bureau to focus on this activity?
 - b) What consumer protection matters were deprioritized to allow staff to work on this activity?
5. Please provide a copy of the FTC’s response to Sen. Warren’s March letter and/or provide details regarding any briefing you provided Sen. Warren’s office for the record.
6. The FTC estimates that the Motor Vehicle Dealers Trade Regulation Rule will cost \$1.4 billion. Some of these costs will be borne by business, and some will be passed along to consumers in the form of higher prices for a new vehicle. While the regulatory costs are real, as discussed during the hearing, the benefits from this rule might be entirely illusory, as they are based on consumers saving 3 hours in shopping time. This “3 hour” figure, however, is not supported by any data or documentation.
- a) The Commission cites a report from Cox Automotive to support the assertion that the average consumer spends a total 15 hours to shop for a car, but the Cox study provides no support for the assumption that the proposed rule would reduce shopping time by 3 hours. The text of the proposed rule states that the Commission has just assumed three hours of savings. Please provide to the committee no later than May 16, 2023, all empirical data in support of this assumption.
 - b) How much will the FTC’s Motor Vehicle Dealers Trade Regulation Rule increase the price of a new vehicle to consumers?
 - c) How many working Americans will the Motor Vehicle Dealers Trade Regulation Rule price entirely out of the new car market because some consumers will no longer qualify for an auto loan?
7. How much of the proposed increase that is being requested by the Commission in its Fiscal Year 2024 budget will be devoted to merger review and enforcement?
- a) Do you view the resources allocated from Congress as fungible to use across commission activities?
8. Chair Khan, you have stated publicly that merger cases that are likely to lose in court are still worth pursuing because they send a signal.
- a) Are you saying that forcing merging parties to court when the law and the facts are not on your side would translate as Congress needing to change current law?
 - b) Given the FTC is barred from lobbying Congress, is this a cause of concern it could be interpreted as such an action?

- c) What personnel and resources are being drawn away from the work of the consumer protection bureau to focus on this activity?
 - d) What consumer protection matters were deprioritized to allow staff to work on this activity?
9. We understand the Commission no longer grants early terminations to small, competitively inconsequential mergers, forcing them to wait at least thirty days before closing. And even after that waiting period has expired, we understand the Commission in some cases has taken the step of informing merging parties that they are still under investigation—effectively telling the merging parties they can close at their own risk, even if there is no apparent basis for the merger to be unlawful. This would seem to be a resource drain for both the Commission and the merging parties.
- a) What is the rationale for no longer opting for early termination in cases that are more than likely to not be unlawful?
 - b) Can you assure us that as a matter of good government, and to prevent unnecessary resource drain within the FTC, it is the policy of the FTC to clear non-problematic mergers as quickly and efficiently as possible?
 - c) What personnel and resources are being drawn away from the work of the consumer protection bureau to focus on this activity?
 - d) What consumer protection matters were deprioritized to allow staff to work on this activity?
10. We have seen the time taken to review transactions under a Second Request almost double from roughly 6 months to almost a year. In some cases, we have seen it extend to 16 months. What are the reasons for this?
- a) What personnel and resources are being drawn away from the work of the consumer protection bureau to focus on this activity?
 - b) What consumer protection matters were deprioritized to allow staff to work on this activity?
11. We have heard reports that the Commission has issued extensive, burdensome, second requests in cases where the antitrust issues are more limited. And that the FTC staff has been instructed not to negotiate these requests back unless parties agree to waive rights provided by statute. Can you assure us that this will no longer be the case going forward?
- a) What personnel and resources are being drawn away from the work of the consumer protection bureau to focus on this activity?
 - b) What consumer protection matters were deprioritized to allow staff to work on this activity?

12. A recent study from the U.S. Chamber of Commerce found “a strong and statistically significant relationship between merger activity and industry-level innovative activity.” The report found that “over a three- to four-year cycle, a given merger is associated with an average increase in industry-level R&D expenditure of between \$299 million and \$436 million in R&D intensive industries.”
 - a) Does the Commission’s abandonment of principled enforcement risk undermining U.S. innovation at a time when American competitiveness and leadership in the global marketplace has never been more important?

13. The FTC has abandoned the consumer welfare standard and failed to release new merger review guidelines.
 - a) Could you outline the factors and/or metrics that are being considered by the Commission when reviewing a proposed transaction?
 - b) Could you highlight which factors and/or metrics would best serve the interests of consumers, advance investments in innovation, and promote competitiveness? What personnel and resources are being drawn away from the work of the consumer protection bureau to focus on this activity to supplement merger reviews?
 - c) What consumer protection matters were deprioritized to allow staff to work on this activity?

14. Seven states (CA, CO, CT, IA, VA, UT, and IN) have already enacted broad consumer data privacy laws. Laws in two of those states (CA and VA) have already taken effect, and laws in three more states (CO, CT, and UT) are set to take effect later this year. How does this expanding legal patchwork impact small and medium-sized businesses and individual consumers?
 - a) What benefits would a broad federal consumer data privacy law have for legitimate businesses, especially small and medium-sized businesses, who will need to comply with multiple differing regimes, and individual consumers?
 - b) To what extent are you concerned with dormant commerce clause vacating state laws as they impact interstate commerce?
 - c) Relative to the state of California, if there were one state enforcement authority with which to confer on its state privacy law, who would that be?

15. In addition to the broad consumer data privacy laws, states have been considering (while some have passed laws including Washington and Illinois) and enacting sectoral legislation that ranges from quite narrow to quite broad and covers a variety of data, including health-related data, biometric data, and data pertaining to children’s and teens’ online activities.
 - a) What challenges does this state-level sectoral privacy patchwork pose to organizations and individuals?

- b) How would enacting broad federal consumer data privacy legislation help address these challenges?

Given the global nature of the internet and the digital economy, enabling safe, secure, efficient, and privacy protective cross-border data flows is crucial.

- c) To what extent are you consulting with Secretary of Commerce Raimondo on the ramifications of balkanization of state laws and what it means for our international standing?
- d) How would federal consumer data privacy legislation help facilitate safe, secure, efficient, and privacy protective cross-border data flows?

16. Chair Khan, in July of last year the FTC issued a proposed rulemaking that would dramatically change the ways motor vehicles are sold. The rule was proposed without any prior notice or opportunity for public engagement.

- a) Why did the FTC violate its own rulemaking procedures and go straight to proposing the vehicle shopping rule without first soliciting public comment or input through an RFI or ANPR?

17. Last year, a bipartisan letter led by Rep. Chris Pappas (D-N.H.) that was signed by 29 House members was sent to you requesting that the 60-day comment period be reopened for an additional 60 to 90 days. The Small Business Administration's Office of Small Business Advocacy supported extending the comment period. This request was denied.

- a) Can you provide the subcommittee with a list of all the rulemakings where the comment period was extended and another list of all the rules where extending the comment period was denied and designating whether they were ANPRMs or NPRMs during your tenure?

18. The FTC's proposed rulemaking purports to help consumers, yet none of the new paperwork requirements it foists on car buyers have been tested. Basic due diligence would suggest that when a federal agency is going to mandate marketplace changes that affect consumers, the agency would beta test those changes to ensure that they are beneficial. For example, the FTC was part of a multiagency, multiyear effort that concluded in 2009 to create model privacy disclosures under Gramm-Leach-Bliley. That effort involved quantitative testing of consumers. Additionally, in 2008, the Federal Reserve Board conducted extensive consumer testing to review the effectiveness of consumer disclosures about mortgage broker fees.

- a) Wouldn't it have been prudent to consumer test the FTC's proposed paperwork requirements on consumers before proposing them, to see if they work as intended?

19. What consultations, communications, or other coordination did FTC employees or its consultants have with the Consumer Financial Protection Bureau related to the Motor Vehicle Dealers Trade Regulation Rule before it was proposed on July 13, 2022? And if so, please provide the dates of such consultations.

The Honorable Gus M. Bilirakis

1. Who at the FTC has authority to initiate an investigation of a business?
2. Do commissioners have to vote to initiate an investigation of a business?
3. Do you know how many investigations of a business are currently underway?
4. Do you know how many investigations of a business have been initiated since the beginning of the year?
5. Is there a periodic list prepared to inform each commissioner of the specific investigations under way? If not, why not?
6. How would a commissioner discover which businesses are under investigation?
7. Is there information controlled by a bureau that a commissioner may not review?
8. What types of information are not shared with commissioners?
9. Who at the FTC has authority to seek a court order against a business?
10. Do commissioners have to vote to seek a court order against a business?
11. Do you know how many court orders the FTC has sought against businesses in the past year?
12. Do you know how many court orders against businesses have been sought since the beginning of the year?
13. Is there a periodic list prepared to inform each commissioner of the specific court orders sought against businesses? If not, why not?
14. In each instance when the FTC seeks a court order against a business, is there a public record of the court order, or are they sometimes granted under seal?
15. How would a commissioner discover which court orders the FTC has sought and the outcome of those requests?
16. Does the FTC ever seek to appoint a receiver for the assets of a business?
17. How does the FTC decide whom to appoint as a receiver?
18. Must commissioners approve the appointment of a receiver?
19. Is there an approved list of potential receivers at the FTC?
20. Please provide all FTC documents explaining how the FTC has statutory authority to seek in federal court disgorgements from businesses.

21. Please provide all FTC documents explaining how the FTC has statutory authority to seek in federal court disgorgements from a specific business without representation of that business in court.
22. Please provide all FTC documents explaining how the FTC has statutory authority to seek disgorgements from businesses under Section 19.
23. Please provide all FTC documents explaining how the FTC has statutory authority to seek disgorgements from businesses under Section 13.
24. Please provide all FTC documents explaining how the FTC has statutory authority to seek in federal court the appointment of a receiver for a business.
25. Please provide all FTC documents explaining how the FTC has statutory authority under Section 19 to seek in federal court the appointment of a receiver for a business.
26. Please provide all FTC documents explaining how the FTC has statutory authority under Section 19 to seek in federal court the appointment of a receiver for a business without representation of that business in court.
27. Please provide a list since January 2021 of each instance in which the FTC has invoked Section 19 in federal court to seek the appointment of a receiver for a business.
28. Please provide a list since January 2021 of each instance in which the FTC has in federal court sought the appointment of a receiver for a business without reference to Section 19.
29. Please provide a list since January 2021 of each instance in which the FTC has invoked Section 19 in federal court to seek the disgorgement of assets from a business.
30. Please provide a list since January 2021 of each instance in which the FTC has in federal court sought the disgorgement of assets from a business without reference to Section 19.
31. Please provide a list of each case in which Section 19 by the FTC was referenced in court cases from 2015-2020. Please indicate in which of those cases Section 19 was cited as the only basis for (a) appointment of a receiver for a business; and (b) for disgorgement of assets from a business.
32. In November, 47 bipartisan Members of the U.S. Senate and House of Representatives asked you in letter to withdraw the vehicle shopping rule – citing the lack of process leading up to the proposed rule. Given this lack of process, will the FTC withdraw the rule in favor of a Request for Information or an Advanced Notice of Proposed Rulemaking?
33. A point we often hear from the industry is the number of rebates franchisors are receiving based on franchisee purchases. While franchising often promises group purchasing power, there seems to be a disconnect here. What do you hope to find from the Request for Information about how franchisors limit suppliers while driving up the price?

34. What is the process for the FTC to communicate any future updates to this Subcommittee regarding actions it has taken regarding the Illumina-GRAIL merger?
35. Has the FTC ever successfully challenged a vertical integration?
36. When was the last time that the FTC successfully blocked a vertical merger?
37. President Biden has compared the effort to end cancer to America's race to the moon. America won that race. What would have happened if a regulatory body sought to hamstring America's only rocket manufacturer on perceived competition grounds? Isn't that precisely what FTC is doing here regarding the only multi-cancer early detection test on the market?
38. Isn't it true that the FTC has positioned itself as an obstacle to President Biden's cancer moonshot by blocking a merger between two American companies which can accelerate cancer screening for more than 50 different cancers in asymptomatic patients?
39. Is it inherently unfair or deceptive that a business that can provide goods or services across a state or the country decides to advertise to consumers outside its local area? If so, on what law or precedent are you relying on to support this position?
 - a) How do you define "local" area?
 - b) If the business can actually supply that good or service to the non-local customer, where is the harm?
 - c) Are there any circumstances under which you would consider such action unfair or deceptive? What are those circumstances?
40. Is it inherently unfair or deceptive for a business to use subcontractors to aid the business in providing goods or services to its customers without disclosing that subcontractors are being used? If so, on what law or precedent are you relying on to support this position?
 - a) Does failing to disclose that a business is using a subcontractor make that action somehow unfair or deceptive?
 - b) Under what circumstances would you consider a business not disclosing to its customers that it is using a subcontractor as being unfair or deceptive?
41. Do you believe it is the FTC's role to regulate prices?
 - a) Do you believe that just because one good or service costs more from one provider than from another, that the provider that charges more is being unfair or deceptive?
 - b) Do you think that because a Cadillac costs more than a Kia, that Cadillac is being unfair or deceptive?
 - c) Do you think that businesses have a right to increase costs to keep pace with inflation over time?

- d) If a business failed to increase its prices to keep pace with inflation over a five year period, with all other things being equal, what would that mean for the business's bottom line?
42. On February 17, 2022, the FTC held an open meeting and conducted a vote on a proposed 6(b) study entitled "Pharmacy Benefit Managers' (PBMs) Relationship with Affiliated and Independent Pharmacies." The Commission split along partisan lines and the proposal fell on a 2-2 vote with Commissioners Wilson and Phillips voting "No" out of concern the proposed study was biased and the fact that Wilson and Phillips had received a substantially rewritten 6(b) proposal the night before the vote. At the time Commissioner Wilson stated: "I have observed previously that stakeholders frequently attempt to co-opt the government in their battle against rivals. I am wary of having the FTC used as a pawn to boost the profitability of certain sectors or insulate them from competition." There are concerns about process abuse and bias in this case, since FTC debated and voted on the proposed 6(b) study without ever disclosing the actual language of the 6(b) study that was debated and voted on. The high cost of prescription drugs affects many Americans and I appreciate the FTC looking into it. At the same time, it is concerning the Commission would conduct a public meeting and vote on a 6(b) study without ever making public the actual language of the study in question. In an effort to bring transparency, public awareness and understanding of the activities of the Commission, will you provide to the Committee an unedited, exact copy of the 6(b) study entitled "Pharmacy Benefit Managers' (PBMs) Relationship with Affiliated and Independent Pharmacies?"
43. Chair Khan, for decades the FTC's mission was to protect consumers and preserve competition "without unduly burdening legitimate business activity." Last year, the FTC deleted "without burdening legitimate business activity" from its mission statement. No public comments supported this change. Yet, several public comments opposed this change. Why specifically did the FTC remove this clause from its mission statement given there were no public comments that supported such removal?
44. Chair Khan, why did you change FTC rules of practice to authorize yourself (rather than an independent arbiter) to serve as the Chief Presiding Officer over all FTC rulemakings?
45. How many resources (number of staff and total number of hours), has the FTC expended on each of the following rulemakings, separately for 2022 and YTD 2023:
- Earnings claims
 - Junk fees
 - Corporate surveillance
 - Non-compete rule
46. Chair Khan, please detail how the FTC undertakes the cost-benefit analysis in Magnuson-Moss rulemakings.
47. Rep. Harshbarger asked a question during the hearing regarding the FTC's Policy Statement on Enforcement Related to Gig Work, specifically noting the agency's creation of a new term, "working consumers". You responded with, "I'm not specifically familiar with that phrase", but the term is listed on Page 7 of the Policy Statement.

- a) Is it the agency's position that as long as it slaps the label "consumers" onto industry participants - whether the gig economy or any other industry -- then the FTC now has the authority to regulate those industries' business practices?
48. Chair Khan, you testified at the hearing that you will work with the Bureau of Economics to provide more guidance on how the FTC calculates monetary relief and civil penalties in consumer protection matters.
- a) Has that work started and when should we expect more guidance?
49. The practice of trying merger cases within the FTC administrative courts—where the FTC almost always wins—has been reinstated, even though administrative litigation is longer and costlier than the prior practice of trying matters in U.S. District Courts, which is where the Antitrust Division tries its cases. Even more perplexing is that in several key cases, notably Illumina/Grail and Altria/Juul, the Commission not only overturned the administrative judge, but in the case of Illumina/Grail, the Commission disregarded the factual findings.
- a) How is this an effective use of Commission resources?
50. In implementing the INFORM Consumers Act, would online marketplaces be permitted to restrict public disclosure of seller names and contact information (and instead maintain a written record of the information) when that information is confidential or a trade secret of the online marketplace?
51. In implementing the INFORM Consumers Act, would the “online marketplace” definition be understood to exclude marketplaces that have contractual agreements with sellers to provide customer service or be the initial point of contact for customer service?
52. In implementing the INFORM Consumers Act, would the definition of the term “seller” understood to only apply to those companies or individuals who sell directly to consumers on the online marketplace?

The Honorable Jeff Duncan

1. Do you agree that agency guidance should reflect agency thinking in the context of the law, not the law itself?
2. For every FTC rulemaking since 1990, please identify the number of enforcement actions that the agency had taken on the subject prior to the initiation of rulemaking proceedings?
3. You received a letter, dated April 12, 2023, from former FTC officials who express concern about leaks that may have come from current FTC employees.
 - a) What steps are you taking to address these concerns?
 - b) Will you commit to referring the issue to OIG?
4. Do you believe in equal protection under the law? Assuming so, is the FTC not at risk of violating merging parties' constitutional rights by subjecting HSR notified mergers that go before the FTC to the agencies administrative process, when under the law those transaction could have easily gone to the DOJ and would be challenged without delay before the courts.
5. As part of the White House Blueprint for a Renters Bill of Rights, FTC committed to explore ways to expand the use of its authority to take action against acts and practices it deems unfairly prevent tenants, as consumers, from obtaining and retaining housing. Do you believe the Agency has the authority to regulate operational aspects of housing such as eviction which historically are regulated by the states? If so, where does that authority come from?
6. Many towns in small rural communities have become food deserts after the local grocery store went out of business. Similarly, independent pharmacies have struggled to stay alive in these remote areas as well. The grocers and pharmacists tell us its due to Big Box Stores and PBMs that have forced them out of business. Can antitrust enforcement be used to stop this trend? If so, why aren't we doing it?
7. Is the Commission planning additional rulemaking related to "unfair methods of competition"?
8. Has the Commission ever adopted a rule that proscribed only an "unfair method of competition"?
9. Please explain, in detail, how your proposed ban on non-competes is both going to raise the price of labor by approximately \$300 billion and reduce health care costs by approximately \$148 billion, as those predictions appear to be inconsistent.
10. Do you agree that some worker noncompetes promote investments in the workforce? If so, are any of those agreements procompetitive?
11. Does the Commission believe the proposed rule will harm small businesses? If not, does the Commission dispute the arguments raised by the SBA Office of Advocacy?

12. If the Commission concludes that any of the alternatives discussed in the proposed rule are preferable to its initial proposal, will it seek public comment on the revised rule?
13. When does the Commission intend to finalize its noncompete rulemaking?
14. Small businesses in rural communities, like the ones I represent, have been crushed by dominant players. Instead of stretching its authority to ban noncompete clauses and to rewrite privacy rules, what tools does the FTC have to support small businesses?
15. On what date did you first consult with the DAEO on whether you needed to recuse yourself from the Meta-Within matter?
16. At the conclusion of those consultations did the DAEO issue a recommendation, and if so, what was that date?
17. What specifically did the DAEO recommend?
18. Are you aware of any instance in the history of the FTC where a chair, commissioner, or FTC staff member chose to go against the recommendation of the DAEO?
19. Do you believe the Congress and the general public should know when a recommendation to recuse oneself is issued by the DAEO and then not followed? If not, why?
20. Do you believe there is a difference between international cooperation and international coordination? If so, what is that difference?
21. Is it appropriate to coordinate with a foreign jurisdiction during the investigation phase of a merger or a unilateral conduct case? If so, what rationale justifies such coordination given market dynamics are different, legal standards across jurisdictions vary, etc?
22. Is it appropriate to coordinate with a foreign agency to run out the clock on a proposed merger?
23. Is it appropriate to avoid seeking a preliminary injunction to prevent a merger because the FTC believes a foreign agency is holding up the transaction?
24. Does the FTC have a duty to persuade foreign jurisdictions from engaging in extraterritorial activity?
25. The FTC seems proud of its cooperation agreements with foreign jurisdictions. If that is the case, why are the comity arrangements not enforced and routinely ignored?
26. In your appearance before the House Appropriations subcommittee, in response to a question about cooperation with foreign jurisdictions, you suggested that each enforcer needed to follow its own laws and make its own decisions. If this is the case, how do you justify the level of coordination on pending investigations.

27. What role is the FTC trying to play in international trade discussions? How do its positions support U.S. companies?
28. The FTC is asking for a large increase in budget and staffing. Why is the agency seconding employees to help implement foreign regulations such as the Digital Markets Act, that explicitly target U.S. companies and do not align with U.S. law?

In your engagements with European competition authorities about the DMA:

29. Have you had any conversations about an enforcement approach by them that only targets U.S. companies? If so, can you discuss what official U.S. government position you shared with them?
30. Have any of your discussions specifically covered the issue of potential enforcement against Chinese companies?
31. If so, can you please share a list of any specific Chinese companies that were discussed in these conversations?
32. Do you believe a DMA enforcement approach that only targets U.S. companies - and/or gives Chinese companies a pass - will result in Chinese companies gaining a competitive advantage?
33. The Biden Administration has made it a priority to stand up against authoritarian regimes and promote democracy. Rule of law, due process, and procedural fairness are core American values that are enshrined in our Constitution. You took an oath when you were sworn in that reflects these very same commitments. Further the USMCA has a chapter to ensure competition proceeding abide by due process norms. That agreement was ratified by the US Congress on a bipartisan basis. That agreement is now the law. Why then have you been trying to block USTR from tabling due process and procedural fairness provisions in future trade negotiations, seek to disregard the sorts of USMCA congressional approved commitments, and undermine the Constitution?
34. Yes or no: in the letter you sent to USTR back in late March raising objections to provisions in IPEF, did you suggest that the provisions of the competition chapter somehow are an obstacle to FTC competition investigations?
35. Yes or no, do you agree with the following statement: Due process may be inconvenient to an agency, but it's the law.
36. The law requires the DOJ and the FTC to "fish or cut bait" when reviewing an HSR merger. When will you return to following the law and reinstate "early terminations" for mergers that agency chooses not to issue a second request?

37. Do you agree that, for merger guidelines to be effective, they must not ignore judicial precedents? Will the revised guidelines avoid cherry picking out of date cases that fail to capture economic understanding that have been developed in the past few decades?
38. Based on the U.S. Department of Commerce economic census data, recent studies have found that economic concentration in the U.S. has largely remained flat or even declined over the past two decades. How does this empirical evidence support your narrative that the U.S. economy is overconcentrated or that concentration is even a reliable measure of competition? After all, you can have highly concentrated industries that are highly competitive, and you can have industries that are not concentrated but stagnant.
39. In an August 2021 letter to Senator Elizabeth Warren, you said that you were skeptical of behavioral remedies to mergers, suggesting that rules governing the conduct of a company subject to a consent order “pose significant administrability problems and have often failed to prevent the merged entity from engaging in anticompetitive tactics”.
40. Isn't it in consumers' best interest for the FTC to accept behavioral remedies to allow the procompetitive benefits of the merger to be realized, while protecting competition through a behavioral restriction?
41. Isn't there a risk that if the FTC is too categorical in its opposition to behavioral remedies some transactions that help consumers may not happen?
42. The FTC's Policy Statement on Prior Approval Provisions in Merger Orders says that the FTC will “routinely require merging parties subject to a Commission order to obtain prior approval from the FTC before closing any future transaction affecting each relevant market for which a violation was alleged” and potentially other markets for a period of ten years. Congress could have provided the FTC prior approval authority when it passed the Hart-Scott-Rodino Act, but it did not. Under what authority does the FTC claim the ability to demand prior approvals?
43. Competition law isn't supposed to protect an industry's dominant player. In light of that, I find it curious that the FTC is taking action to protect Sony—which has 68 percent of the global market for high-end video gaming consoles—from competition by attempting to block Microsoft's proposed acquisition of Activision-Blizzard-King. As you know, the Japanese company Sony has been the most vocal opponent of that deal, and, remarkably, the FTC has sided with Sony. Can you explain why the FTC thinks it is a good idea to use its resources to protect the market share of an industry's dominant player? Especially when that dominant player is a foreign company?

The Honorable Debbie Lesko

1. Do you acknowledge that with government enforcement as a backstop, industry self-regulation promotes robust competition, can be more efficient than law enforcement and provides boost to legitimate commerce?
2. Effective self-regulation programs also should have “teeth”, including referrals to the FTC, correct?
3. Referrals from self-regulatory entities can actually save limited FTC staff resources and should be prioritized, correct?
4. The Direct Selling Self-Regulatory Council was launched at the recommendation of the Commission in 2019 to proactively monitor the direct selling marketplace for income and product claims. The DSSRC has referred 22 cases to the FTC in its four years—although Commission staff privately acknowledges receipt of the referrals, there is no further visibility to the public nor industry into FTC actions on the referrals despite undertaking other enforcement actions within the industry. Will you work with us and FTC staff to publicly acknowledge and provide an update on these referrals if they are not subject to ongoing enforcement actions?

The Honorable Larry Bucshon

1. Chair Khan, one FTC product I am particularly concerned with is the Advance Notice of Proposed Rulemaking on so-called “junk fees,” as its scope is quite broad. Would you consider an optional product, like a life insurance policy or an unemployment policy on a personal installment loan, a “junk fee”?

The Honorable Kelly Armstrong

1. The Commission has brought a minimal number of enforcement actions under the authority granted in the Better Online Ticket Sales (BOTS) Act. What circumstances have limited the Commission's enforcement actions related to the BOTS Act? Are there pending enforcement actions related to the BOTS Act? What additional enforcement authority would assist the Commission's enforcement of the BOTS Act?
2. News reports indicate that the Commission may bring first enforcement actions in decades under the Robinson Patman Act. Courts and the Commission have held the position that the Act should be interpreted and applied in a manner consistent with other antitrust laws when possible. What are the Commission's views on the Robinson Patman Act? What are the Commission's views how the Robinson Patman Act fits with other antitrust laws? Are there legislative changes to the Robinson Patman Act that would address inconsistencies with other antitrust laws?
3. The Commission's policy statement on Section 5 states that determining whether alleged conduct is an unfair method of competition "does not require a separate showing of market power or market definition," and that "the inquiry will not focus on the 'rule of reason' inquiries" to distinguish between procompetitive and anticompetitive conduct. How will the Commission decide what constitutes an unfair method of competition if it can avoid defining markets and showing actual market power, and if it is not guided by rule of reason analysis? How does the policy statement provide guidance to the business community when the standard does not require a separate showing of market power or market definition"?
4. What sources or documentation is the Commission relying on for claims that consumers will spend three fewer hour shopping for a vehicle if the Motor Vehicle Dealers Trade Regulation Rule is promulgated? Why did the Commission fail to identify any such sources or documentation in the Notice of Proposed Rulemaking (NPRM)?
5. Regarding the Motor Vehicle Dealers Trade Regulation Rule, the Commission states that there were 62.1 million vehicle transactions in 2019. It is true that this figure includes fleet sales (i.e., business-to-business sales) as well as private sales, both of which do not typically involve a motor vehicle dealer? If so, does that alter the Commission's estimates that the rule would save consumers \$31 billion annually?
6. Does the Commission's cost-savings analysis on the Motor Vehicle Dealers Trade Regulation Rule account for time and resources necessary to comply with the several disclosures required for "add on" products? Please provide an estimate of the additional time would be required for consumers to review and consider each disclosure.
7. Section 1.10 of the Commission's procedural rules states: "Prior to the commencement of any trade regulation rule proceeding, the Commission must publish in the Federal Register an advance notice of such proposed proceeding." Since the Motor Vehicle Dealers Trade Regulation Rule is a "trade regulation rule", why did the Commission fail to issue an Announced Notice of Proposed Rulemaking (ANPRM)? Please explain how the issuance of a Notice of Proposed Rulemaking (NRPM) is consistent with Section 1.10?

8. Did any employee, Commissioner, or consultant engage or communicate with the Consumer Financial Protection Bureau on the Motor Vehicle Dealers Trade Regulation Rule prior to it being proposed on July 13, 2022? If so, please provide the dates.
9. In March 2022, Sen. Warren sent a letter urging the Commission to "immediately begin a review of the laws regulating automobile sales and begin the rulemaking process to improve consumer protections and pricing practices in this industry." Please provide a copy of the Commission's response to Sen. Warren's March letter and/or provide details regarding any briefing provided Sen. Warren's office for the record.

The Honorable Rick W. Allen

1. Cleaning products are essential to public health and quality of life and consumers have a right to know, understand, and trust the ingredients in the products they bring into their homes.
2. However, the lack of a federal labeling standard for cleaning products makes it challenging for consumers to access ingredient information important to their families.
3. How would a uniform labeling standard on cleaning product's ingredient communication benefit consumers in terms of the ability to access clear, reliable information regardless of where they live or how they purchase cleaning products?

The Honorable Russ Fulcher

The proposed “Motor Vehicle Dealers Trade Regulation Rule” claims it will save consumers \$31 billion, while only imposing \$1.4 billion in regulatory costs.

The entirety of these savings is based on FTC’s claim that consumers will spend 3 fewer hours shopping for a vehicle. The Commission arrives at that figure by taking the number of vehicle transactions in 2019, which it states is 62.1 million, multiplying it by three, and then multiplying that sum by \$22.20, which is the value of non-work time for the average U.S. worker.

The three hours of savings is based on the Commission’s “assumption” that the proposed rule will save consumers 3 hours. The rule cites no support for this assumption. If your assumption is wrong, the entirety of your savings would be illusory.

1. Chair Khan: What sources or documentation does the Commission have for this assumption?
2. Chair Khan: Why did the Commission fail to identify any such sources or documentation in the Notice of Proposed Rulemaking (NPRM)?

The 62.1 million vehicle transaction figure includes fleet sales (i.e., business-to-business sales) as well as private sales that do not involve motor vehicle dealers. The actual number of vehicle deliveries for the period upon which the Commission based this figure (2019) is less than 43 million. Consequently, the consumer savings figure the Commission touts to the public is overstated.

3. Chair Khan: Why did the Commission include in its cost savings calculation millions of transactions that have no relationship to the proposed rule?

Your rule also mandates up to four new disclosures for car buyers to sign related to “add-on” products. As we all know, burdening consumers with more government paperwork adds time.

4. Chair Khan: Did your “assumption” factor in that your own rule will cost consumers more time in the showroom?
5. Chair Khan: Using the Commission’s calculation of the value of a consumer’s nonwork time, can you provide an estimate of how much the added paperwork mandated under the proposed rule will cost consumers?

In response to a question for the record by Sen. Cruz last year, you stated, “*For a recent and exceptionally well-done example of an economic analysis that FTC economists played a leading role in formulating, I recommend to you the notice of proposed rulemaking concerning a Motor Vehicle Dealers Trade Regulation Rule.*” The billion dollar-plus regulatory cost of this rule is real.

Your economic analysis of the proposed rule is based on inflated figures and an unsupported “assumption” of consumer savings, which may or may not materialize.

6. Chair Khan: Is this what passes in the FTC now for an “exceptionally well-done example of an economic analysis” – an analysis based on inflated data and an assumption, supported by no economic data?

Section 1.10 of the FTC’s procedural rules states: “Prior to the commencement of any trade regulation rule proceeding, the Commission must publish in the Federal Register an advance notice of such proposed proceeding.”³

7. Chair Khan: Since the proposed “Motor Vehicle Dealers Trade Regulation Rule” is a “trade regulation rule”, why didn’t the FTC first issue an Announced Notice of Proposed Rulemaking (ANPRM)?
8. Chair Khan: Did the FTC violate its own rules by not issuing an ANPRM?
 - a) If not, explain how the Commission’s issuance of an NPRM in this matter is consistent with Section 1.10 of the FTC’s procedural rules.

Last year, a bipartisan letter led by my colleague Chris Pappas of New Hampshire signed by 29 House members was sent to you asking that the 60-day comment period be reopened for an additional 60 to 90 days. Even the Small Business Administration’s Office of Small Business Advocacy supported extending the comment period. This request was denied.

9. Chair Khan: Can you provide me with a list of all the rulemakings where the comment period was extended and another list of all the rules where extending the comment period was denied and designating whether they were ANPRMs or NPRMs (“Notice of Proposed Rulemaking”) during your tenure?

Your proposed rulemaking purports to help consumers, yet none of the new paperwork requirements it foists on car buyers has been tested. It is my understanding – and basic due diligence would suggest – that when a federal agency is going to mandate marketplace changes that affect consumers, the agency will beta test those changes to ensure that they are beneficial.

For example, the FTC was part of a multiagency, multiyear effort that concluded in 2009 to create model privacy disclosures under Gramm-Leach-Bliley. That effort involved quantitative testing of consumers.

Additionally, in 2008, the Federal Reserve Board conducted extensive consumer testing to review the effectiveness of consumer disclosures about mortgage broker fees.

10. Chair Khan: Wouldn’t it have been prudent to consumer test the FTC’s proposed paperwork requirements before proposing them, to see if they work as intended?
11. Chair Khan: Since you don’t know whether your new government paperwork requirements will work, if these new paperwork requirements wind up confusing customers, what contingency plan has the FTC developed to correct its mistake?

The current head of the Consumer Financial Protection Bureau, Rohit Chopra, took that post after resigning from the FTC in 2021.

12. Chair Khan: What consultations, communications, or other coordination did the FTC's employees, or its consultants have with the Consumer Financial Protection Bureau related to the Motor Vehicle Dealers Trade Regulation Rule before it was proposed on July 13, 2022? And if so, please provide the dates.

In March 2022, Sen. Warren sent you a letter urging the FTC to "immediately begin a review of the laws regulating automobile sales and begin the rulemaking process to improve consumer protections and pricing practices in this industry."

13. Chair Khan: Is this proposed rulemaking in response to the Senator's request?
14. Chair Khan: Can you provide a copy of the FTC's response to Sen. Warren's March letter and/or provide details regarding any briefing you provided Sen. Warren's office for the record?

This proposed regulation will cost \$1.4 billion, and these costs will be borne primarily by the consumer in the form of high prices for vehicles. This cost is made worse particularly for consumers in rural areas where dealerships are less available, and choice is harder to provide.

Last week, the Biden administration put out a rule that would "gas stove" affordable vehicles, by raising the average upfront per-vehicle cost by \$1,400 in model year 2032⁴.

15. Is the FTC mindful of what impact the proposed Motor Vehicle Dealer Trade Regulation Rule will have on inflation, or how taken together the costs of these rules will price millions of working Americans entirely out of the new car market?

The Honorable Diana Harshbarger

1. The financial survival of independent grocers and pharmacies is often tied to the health of rural communities, which often rely on family-owned grocers and pharmacies for basic necessities like food and medicine. What has the FTC studied, and concluded, in terms of allegations of conflicts of interest, anti-competitive conduct, and marketplace distortions, which disproportionately impact our constituents and these essential businesses in our rural communities?
2. It's been over a year since the FTC initiated its study of supply chain issues in the grocery markets and the study of PBMs. I certainly hope the study will address whether consolidation with PBMs and in the food retail sector make it impossible for smaller independent competitors to survive. We know that many rural communities rely on small independent grocers and pharmacies to get access to basic necessities. When do you expect to complete that report?

Bloomberg recently reported, based on data obtained through a FOIA request, that 71 FTC "line staff" attorneys at the GS-15 pay level left between 2021 and 2022, the highest number of such departures in 20 years.

3. What is the role of your front office in the hiring decisions for replacement of these career positions?
 - a) Are there ideological litmus tests, or a requirement to come from certain prior jobs -- at plaintiffs' firms, or having worked in private practice with current Antitrust Division leadership?
 - b) Has your front office ever consulted with Capitol Hill when determining whether to hire a career staffer?
 - c) Has your office ever consulted with the White House Office of Presidential Personnel when determining whether to hire a career staffer?
4. Would you please share all correspondence related to hiring of FTC personnel between your current and prior Chief's of Staff and:
 - a) Any House or Senate Member and/or House or Senate staffer?
 - b) The White House Office of Presidential Personnel?
 - c) Any hiring authority within the Federal Trade Commission?
5. Rulemakings on privacy and non-competes tread on what should be legislative turf and will leave gaps where the FTC lacks jurisdiction. What is the rationale for the FTC to act as a quasi-legislature, instead of as an expert agency advising Congress?

Commissioner Wilson's resignation expressed concern with the FTC's "willful disregard of congressionally imposed limits on agency jurisdiction" and abuse of power.

The FTC's Policy Statement on Prior Approval Provisions in Merger Orders is simultaneously an end run around congressionally imposed limits on the FTC's authority and an abuse of power.

The statement says that the FTC will "routinely require merging parties subject to a Commission order to obtain prior approval from the FTC before closing any future transaction affecting each relevant market for which a violation was alleged" and potentially other markets for a period of ten years.

Congress could have provided the FTC prior approval authority when it passed the Hart-Scott-Rodino Act, but it did not.

6. Am I correct that the HSR Act provides the FTC with an opportunity to review mergers before they close, and if appropriate, seek a court order to enjoin a merger that would substantially lessen competition?
7. The HSR Act does not grant the FTC the ability preapprove mergers, correct?
8. Under what authority does the FTC claim the ability to demand prior approvals?
9. Beyond reviewing and updating the FTC Franchise Rule, do you intend to pursue a rule governing the franchise relationship?
10. How does the FTC-NLRB memorandum of understanding affect the FTC's review of franchise issues, particularly at a time when the NLRB is finalizing a rule to upend the franchise relationship?
11. Does the Commission have authority to grant a private right of action to franchisees under the FTC Act?

The Honorable Janice Schakowsky

1. Chair Khan, you have been vocal about the need for the FTC to broaden its review of mergers and acquisitions to focus not just on how a deal affects consumer welfare, but also how it affects the overall competitive landscape of an industry. What about how deals affect employees? Does the FTC consider the impact that mergers or acquisitions have upon employees when deciding whether to take enforcement action?
2. Rebate walls create de facto exclusivity, similar to one of the counts alleged in FTC v. Qualcomm, which forecloses biosimilars from market access. Given that the FTC is investigating pharmacy benefit managers (PBMs), are there specific areas you feel Congress should direct the FTC to investigate? Should Congress advocate for immediate action under Section 5 of the FTC Act?
 - a) If a PBM demands a larger rebate, pharmaceutical companies often proceed to offset this demand by increasing the price of their drugs. What impact do high drug rebates have on patient costs - specifically as it relates to insurance premiums and copayments?
 - b) How can PBMs prioritize patients over profits and get Humira biosimilars on formulary tiers that are affordable and unrestricted for patients to achieve maximum cost-savings for patients, instead of using them as leverage for larger rebates? For example, brands may have an opaque agreement that guarantees volume in exchange for a retroactive rebate at the end of the year, taking decision-making away from patients and providers, and disallowing multiple points of competition from biosimilars.
3. In the past year, two biosimilars have launched with dual pricing strategies, both with a low wholesale acquisition cost (WAC) and a high WAC. (Biocon Semglee Biosimilar Insulin and Amgen Amjevita Biosimilar Humira). Why is that? What happens to the employer and patient costs between a low WAC and a high WAC product?
 - a) Recent data shows that some plans actually require patients to step through the high-priced version of the biosimilar to get to the lower-priced biosimilar. There's no clinical benefit for the patient under this setup, so what would be the reasoning behind this?
 - b) What should be done to ensure the PBMs adopt the lower-cost biosimilar? If patients are driven to the higher-priced option, they lose out on the true savings associated with biosimilar options.

The Honorable Debbie Dingell

In addition to geolocation data, the testimony at the TikTok hearing also caused me to be very concerned about another way some platforms are collecting sensitive consumer data that could jeopardize privacy: collecting users' keystroke and browser history. It's horrifying to think that if someone searches in a social media app for reproductive health care information, social media companies might be sharing that search history with third parties.

1. Chairwoman Khan, has the FTC brought cases or investigated how companies collect, process, and transfer consumer's keystroke and browser history?
2. Chairwoman Khan, do you know if it is possible for data brokers to buy or otherwise obtain this keystroke and browser history from social media platforms?

Mega-corporations like Amazon wield tremendous power over vast networks of contractors and subcontractors, while maintaining the illusion that these are "independent" entities. Companies exert this control without bearing the direct responsibilities of a formal employer, driving down wages and working conditions, through contracts known in as "vertical restraints."

3. Chairwoman Khan, does the FTC have any plans to study, investigate, and address the potential harms posed by these types of vertical restraint arrangements throughout the economy?
4. Chairwoman Khan, would you agree that when a company like Amazon self-preferences and forces sellers on its platform to use Amazon's or its contractors' logistics services, like warehousing and delivery—which are not unionized—this can undermine the ability of independent and unionized companies like UPS to compete? Does the FTC have any legal tools to combat this sort of self-preferencing? Would a new statutory prohibition on such self-preferencing help to clarify and strengthen current law in this area?

The Honorable Robin Kelly

Thank you for taking the time to testify at the U.S. House of Representatives Committee on Energy and Commerce Subcommittee on Innovation, Data, and Commerce hearing entitled, “Fiscal Year 2024 Federal Trade Commission Budget”. Please accept these questions for the record.

At the end of President Trump’s term in December 2020, the Federal Trade Commission (FTC) asked several tech and video streaming companies, including Facebook, Twitter and TikTok, to answer questions about how they collect and use personal information, about their advertising practices, and about how their apps affect children and teens.

Since then, several of these companies have had controversies – including a Facebook whistleblower warning us about the dangers of Facebook and Instagram to children and efforts to restrict access to TikTok – but the FTC still has not released a report on its findings more than two years later.

While Congress has held its own hearings on these topics, the benefit of an FTC report into how these companies treat the privacy of its users would be greatly beneficial to efforts to enact legislation that will protect Americans of all ages.

1. Chair Khan, I realize this began prior to your term but can we expect a report from the FTC soon?
2. Can you commit to a specific date by which the FTC will release its report?

The Honorable Lori Trahan

1. Chair Khan, in January 2022, the FTC in partnership with the DOJ, launched a Joint Public Inquiry Aimed at Modernizing Merger Guidelines to Better Detect and Prevent Anticompetitive Deals. It is expected that the merger guidelines will consider the impact of mergers in labor markets. How is the agency thinking through the important role that collective bargaining agreements or labor peace agreements play in improving wages and working conditions in labor markets?

The Honorable Yvette Clarke

1. Chair Khan, last year, the Appropriations Committee directed the FTC to brief their Committee on recommendations for programs or initiatives that could help educate consumers about the potential harm caused by disinformation, misinformation, and deepfakes, and help certify the authenticity and origin of online content. Have you provided that briefing, and if not, can you commit to providing my office, and any members of this Committee that wish to join, the briefing?

Chair Khan, a large part of your tenure as Chair has been dedicated to combatting unlawful power imbalances, where corporations have monopoly or monopsony power in a market. One of the power imbalances I'm highly concerned about is in workers' ability to organize and form unions. Our current labor law is clearly not up to the task to protect workers' rights when [over 70 percent of Americans approve of unions](#), but only [10 percent of workers](#) are actually union members.

2. Would you agree that unionizing can strengthen workers' ability to combat monopsony power?
3. Does the FTC consider legally binding contractual obligations that would better protect workers' ability to organize free from employer interference--like those agreed to by [Microsoft and the Communications Workers of America](#)--in reviews of mergers and acquisitions?
4. Commissioners, the FTC announced a draft agreement with Mastercard on its refusal to deal fairly with competitors on debit card transactions. With the comment period now closed, can you provide us some perspective on what the FTC found regarding Mastercard's actions and when a final decree might be published in that matter?
5. There are similar concerns regarding Visa's actions to block debit card competition. It has been publicly reported that the Department of Justice was investigating Visa on antitrust grounds for those activities. Has the FTC looked into those claims or do you have plans to do so?
6. Commissioners, smart assistants, like Alexa and Google Home, are now common in our homes and can be integrated with third-party smart devices such as thermostats, light and audio, and home security systems. For example, a consumer may want to use Alexa to control their smart thermostat. However, consumers are often unaware of what information or even how much information may be shared by their third-party smart device with their voice assistant/smart home hub.
7. Would you agree that changing what data is required to be shared for integration without consumer consent unreasonably jeopardizes consumers' privacy and has the potential to be deemed an unfair or deceptive practice?

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Jeff Duncan

1. During your testimony, you promised me a letter that you and DOJ Assistant Attorney General for Antitrust Jonathan Kanter sent to USTR objecting to the Competition and Digital Trade Chapters of the Indo-Pacific Economic Framework for Prosperity (IPEF). I still await a copy of that letter.

The Honorable Gus M. Bilirakis

1. When asked if you would commit to working with the Bureau of Economics to issue a monetary policy statement to shed more light on how the FTC calculates monetary relief and civil penalties in consumer protection matters, you stated that you would provide more information about how the FTC makes those calculations.

The Honorable Kat Cammack

1. According to the Inspector General's report titled, "[Audit of the Federal Trade Commission's Unpaid Consultant and Expert Programs](#)," you expanded the agency's use of unpaid consultants and experts. How many consultants were added to the FTC after your confirmation?
2. Please provide copies of the communications from these consultants to you, your office, and your staff.
3. During questioning, you indicated that the agency would have initiated contact with prospective unpaid consultants since these were specific needs that the FTC was looking to fill. You indicated that you received approval from the FTC's Office of General Counsel ethics team to do this. Please provide the written approval.

CATHY McMORRIS RODGERS, WASHINGTON
CHAIR

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States
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Minority (202) 225-2927

May 9, 2023

The Honorable Rebecca Kelly Slaughter
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Commissioner Slaughter:

Thank you for appearing before the Subcommittee on Innovation, Data, and Commerce on Tuesday, April 18, 2023, to testify at the hearing entitled "Fiscal Year 2024 Federal Trade Commission Budget."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Tuesday, May 23, 2023. Your responses should be mailed to Jessica Herron, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to (b)(6)@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Gus M. Bilirakis
Chair
Subcommittee on Innovation, Data, and Commerce

cc: Jan Schakowsky, Ranking Member, Subcommittee on Innovation, Data, and Commerce

Attachment

Attachment 1—Additional Questions for the Record

The Honorable Cathy McMorris Rodgers

1. Seven states (CA, CO, CT, IA, VA, UT, and IN) have already enacted broad consumer data privacy laws. Laws in two of those states (CA and VA) have already taken effect, and laws in three more states (CO, CT, and UT) are set to take effect later this year. How does this expanding legal patchwork impact small and medium-sized businesses and individual consumers?
 - a) What benefits would a broad federal consumer data privacy law have for legitimate businesses, especially small and medium-sized businesses, who will need to comply with multiple differing regimes, and individual consumers?
 - b) To what extent are you concerned with dormant commerce clause vacating state laws as they impact interstate commerce?
 - c) Relative to the state of California, if there were one state enforcement authority with which to confer on its state privacy law, who would that be?
2. In addition to the broad consumer data privacy laws, states have been considering (while some have passed laws including Washington and Illinois) and enacting sectoral legislation that ranges from quite narrow to quite broad and covers a variety of data, including health-related data, biometric data, and data pertaining to children's and teens' online activities.
 - a) What challenges does this state-level sectoral privacy patchwork pose to organizations and individuals?
 - b) How would enacting broad federal consumer data privacy legislation help address these challenges?

Given the global nature of the internet and the digital economy, enabling safe, secure, efficient, and privacy protective cross-border data flows is crucial.

- c) To what extent are you consulting with Secretary of Commerce Raimondo on the ramifications of balkanization of state laws and what it means for our international standing?
- d) How would federal consumer data privacy legislation help facilitate safe, secure, efficient, and privacy protective cross-border data flows?

The Honorable Gus M. Bilirakis

1. Who at the FTC has authority to initiate an investigation of a business?
1. Do commissioners have to vote to initiate an investigation of a business?
2. Do you know how many investigations of a business are currently underway?
3. Do you know how many investigations of a business have been initiated since the beginning of the year?
4. Is there a periodic list prepared to inform each commissioner of the specific investigations under way?
 - a) If not, why not?
5. How would a commissioner discover which businesses are under investigation?
6. Is there information controlled by a bureau that a commissioner may not review?
7. What types of information are not shared with commissioners?
8. Who at the FTC has authority to seek a court order against a business?
9. Do commissioners have to vote to seek a court order against a business?
10. Do you know how many court orders the FTC has sought against businesses in the past year?
11. Do you know how many court orders against businesses have been sought since the beginning of the year?
12. Is there a periodic list prepared to inform each commissioner of the specific court orders sought against businesses?
 - a) If not, why not?
13. In each instance when the FTC seeks a court order against a business, is there a public record of the court order, or are they sometimes granted under seal?
14. How would a commissioner discover which court orders the FTC has sought and the outcome of those requests?
15. Does the FTC ever seek to appoint a receiver for the assets of a business?
16. How does the FTC decide whom to appoint as a receiver?
17. Must commissioners approve the appointment of a receiver?
18. Is there an approved list of potential receivers at the FTC?

19. Please provide the Committee with a list of all receivers the FTC has appointed since January 2021.
20. Please provide the Committee with a list of all receivers the FTC has approved since January 2021.
21. Please provide the Committee with every contract used to retain a receiver since January 2021.
22. Please provide the Committee with the compensation received by each receiver as a result of its FTC approved receiver status since January 2021.
23. Please provide all FTC documents explaining how the FTC has statutory authority to seek in federal court disgorgements from businesses.
24. Please provide all FTC documents explaining how the FTC has statutory authority to seek in federal court disgorgements from a specific business without representation of that business in court.
25. Please provide all FTC documents explaining how the FTC has statutory authority to seek disgorgements from businesses under Section 19.
26. Please provide all FTC documents explaining how the FTC has statutory authority to seek disgorgements from businesses under Section 13.
27. Please provide all FTC documents explaining how the FTC has statutory authority to seek in federal court the appointment of a receiver for a business.
28. Please provide all FTC documents explaining how the FTC has statutory authority under Section 19 to seek in federal court the appointment of a receiver for a business.
29. Please provide all FTC documents explaining how the FTC has statutory authority under Section 19 to seek in federal court the appointment of a receiver for a business without representation of that business in court.
30. Please provide a list since January 2021 of each instance in which the FTC has employed Section 19 in federal court to seek the appointment of a receiver for a business.
31. Please provide a list since January 2021 of each instance in which the FTC has in federal court sought the appointment of a receiver for a business without reference to Section 19.
32. Please provide a list since January 2021 of each instance in which the FTC has employed Section 19 in federal court to seek the disgorgement of assets from a business.
33. Please provide a list since January 2021 of each instance in which the FTC has in federal court sought the disgorgement of assets from a business without reference to Section 19.

34. Please provide a list of each case in which Section 19 by the FTC was referenced in court cases from 2015-2020. Please indicate in which of those cases Section 19 was cited as the only basis for (a) appointment of a receiver for a business; and (b) for disgorgement of assets from a business.

The Honorable Jeff Duncan

1. Are you aware of any DAEO recommendation to Chair Khan in the Meta-Within matter?
2. Were you aware that Commissioner Wilson made clear she should resign if you went forward and redacted her dissent? If so, approximately, when did Commissioner Wilson make you aware?
3. How do you justify silencing Commissioner Wilson to help Chair Khan avoid any embarrassment and scrutiny over her decision to not recuse herself?
4. Are you aware of any instance in the history of the FTC where a chair, commissioner, or FTC staff member chose to go against the recommendation of the DAEO?
5. Do you believe the Congress and the general public should know when a recommendation to recuse oneself is issued by the DAEO and then not followed? If not, why?
6. Given that all of this has become public, do you regret your decision to deeply undermine the bipartisan nature of the agency, engage in cover up to prevent Chair Khan from having to justify her own decisions, and push out Commissioner Wilson, a presidential appointed, Senate confirmed senior government official?
7. On February 13, 2023, President Biden renominated you to another term. Leading up to that announcement, were there any conversations about your renomination and your decision to support Chair Khan's decision to not recuse herself or your decision to redact Commissioner Wilson? If so, what was the nature of those conversations?
8. Do you support due process and procedure fairness obligations in trade agreements?

The Honorable Kelly Armstrong

1. The Commission has brought a minimal number of enforcement actions under the authority granted in the Better Online Ticket Sales (BOTS) Act. What circumstances have limited the Commission's enforcement actions related to the BOTS Act? Are there pending enforcement actions related to the BOTS Act? What additional enforcement authority would assist the Commission's enforcement of the BOTS Act?
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3. The Commission's policy statement on Section 5 states that determining whether alleged conduct is an unfair method of competition "does not require a separate showing of market power or market definition," and that "the inquiry will not focus on the 'rule of reason' inquiries" to distinguish between procompetitive and anticompetitive conduct. How will the Commission decide what constitutes an unfair method of competition if it can avoid defining markets and showing actual market power, and if it is not guided by rule of reason analysis? How does the policy statement provide guidance to the business community when the standard does not require a separate showing of market power or market definition"?
4. What sources or documentation is the Commission relying on for claims that consumers will spend three fewer hour shopping for a vehicle if the Motor Vehicle Dealers Trade Regulation Rule is promulgated? Why did the Commission fail to identify any such sources or documentation in the Notice of Proposed Rulemaking (NPRM)?
5. Regarding the Motor Vehicle Dealers Trade Regulation Rule, the Commission states that there were 62.1 million vehicle transactions in 2019. It is true that this figure includes fleet sales (i.e., business-to-business sales) as well as private sales, both of which do not typically involve a motor vehicle dealer? If so, does that alter the Commission's estimates that the rule would save consumers \$31 billion annually?
6. Does the Commission's cost-savings analysis on the Motor Vehicle Dealers Trade Regulation Rule account for time and resources necessary to comply with the several disclosures required for "add on" products? Please provide an estimate of the additional time would be required for consumers to review and consider each disclosure.
7. Section 1.10 of the Commission's procedural rules states: "Prior to the commencement of any trade regulation rule proceeding, the Commission must publish in the Federal Register an advance notice of such proposed proceeding." Since the Motor Vehicle Dealers Trade Regulation Rule is a "trade regulation rule", why did the Commission fail to issue an Announced Notice of Proposed Rulemaking (ANPRM)? Please explain how the issuance of a Notice of Proposed Rulemaking (NRPM) is consistent with Section 1.10?

8. Did any employee, Commissioner, or consultant engage or communicate with the Consumer Financial Protection Bureau on the Motor Vehicle Dealers Trade Regulation Rule prior to it being proposed on July 13, 2022? If so, please provide the dates.
9. In March 2022, Sen. Warren sent a letter urging the Commission to "immediately begin a review of the laws regulating automobile sales and begin the rulemaking process to improve consumer protections and pricing practices in this industry." Please provide a copy of the Commission's response to Sen. Warren's March letter and/or provide details regarding any briefing provided Sen. Warren's office for the record.

The Honorable Rick W. Allen

1. Cleaning products are essential to public health and quality of life and consumers have a right to know, understand, and trust the ingredients in the products they bring into their homes.
2. However, the lack of a federal labeling standard for cleaning products makes it challenging for consumers to access ingredient information important to their families.
3. How would a uniform labeling standard on cleaning product's ingredient communication benefit consumers in terms of the ability to access clear, reliable information regardless of where they live or how they purchase cleaning products?

The Honorable Yvette Clarke

1. Commissioners, the FTC announced a draft agreement with Mastercard on its refusal to deal fairly with competitors on debit card transactions. With the comment period now closed, can you provide us some perspective on what the FTC found regarding Mastercard's actions and when a final decree might be published in that matter?
2. There are similar concerns regarding Visa's actions to block debit card competition. It has been publicly reported that the Department of Justice was investigating Visa on antitrust grounds for those activities. Has the FTC looked into those claims or do you have plans to do so?
3. Commissioners, smart assistants, like Alexa and Google Home, are now common in our homes and can be integrated with third-party smart devices such as thermostats, light and audio, and home security systems. For example, a consumer may want to use Alexa to control their smart thermostat. However, consumers are often unaware of what information or even how much information may be shared by their third-party smart device with their voice assistant/smart home hub.
4. Would you agree that changing what data is required to be shared for integration without consumer consent unreasonably jeopardizes consumers' privacy and has the potential to be deemed an unfair or deceptive practice?