

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

June 8, 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 Federal Trade Commission's (FTC) abuse of its statutory authorities in investigating Twitter.<sup>1</sup> The Committee's oversight has uncovered information suggesting that the FTC took action against Twitter in May 2022 as a result of Elon Musk's anticipated acquisition of the company. This information only reinforces the Committee's concerns about the FTC's actions and underscores the need for relevant documents to inform potential legislative reforms.

On April 12, 2023, after efforts to obtain your voluntary compliance,<sup>2</sup> the Committee issued a subpoena for documents relating to the FTC's investigation of Twitter.<sup>3</sup> The subpoena had a return date of April 26, 2023.<sup>4</sup> On April 26, you responded via letter, asserting that the FTC could not produce the subpoenaed documents because the FTC's investigation into Twitter was pending.<sup>5</sup> The pendency of an administrative investigation, however, is not a valid basis for your refusal to comply with a Congressional subpoena.

---

<sup>1</sup> See Letter from Hon. Jim Jordan, Chairman, H. Comm. on the Judic., & Hon. Ted Cruz to Lina Khan, Chair, Fed. Trade Comm'n (Mar. 10, 2023). See also H. Comm. on Judiciary and Select Subcomm. on the Weaponization of the Federal Gov't, 118th Cong., Interim Staff Rep. on The Weaponization of the Federal Trade Commission: An Agency's Overreach to Harass Elon Musk's Twitter (Mar. 7, 2023).

<sup>2</sup> Although the FTC provided one narrative response to the Committee's initial letter, it has declined to produce documents. See Letter from Lina Khan, Chair, Fed. Trade Comm'n, to Hon. Jim Jordan, Chair, H. Comm. on the Judic. (Mar. 27, 2023).

<sup>3</sup> See Letter from Hon. Jim Jordan, Chair, H. Comm. on the Judic. to Lina Khan, Chair, Fed. Trade Comm'n, at 2 (Apr. 12, 2023).

<sup>4</sup> *Id.*

<sup>5</sup> See Letter from Lina Khan, Chair, Fed. Trade Comm'n, to Hon. Jim Jordan, Chair, H. Comm. on the Judic. (Apr. 26, 2023).

Your reliance on *Pillsbury Co. v. FTC* for the assertion that Congressional inquiries “pose an inherent threat to” the FTC’s law enforcement mandate is misplaced.<sup>6</sup> *Pillsbury*, a case from 1966, concerned statements made at Senate and House subcommittee hearings, about a matter within the FTC’s adjudicatory process, at which the FTC chairman appeared.<sup>7</sup> The court noted that public advocacy by Members urging for a particular FTC outcome could affect the due process rights of a company before the Commission.<sup>8</sup> Such is not the case here, and notably your use of *Pillsbury* in this context is not to protect the due process rights of Twitter but instead to shield the FTC from Congressional scrutiny.<sup>9</sup> In any event, courts have held that an agency’s deliberations cannot be shielded when there is reason to believe misconduct has occurred.<sup>10</sup>

Even so, as an accommodation to the FTC, the Committee agreed to accept an initial briefing about the FTC’s actions toward Twitter, without waiving the Committee’s right to the subpoenaed documents.<sup>11</sup> The briefing occurred on May 8, 2023, conducted by [REDACTED] b(5) [REDACTED] b(5).<sup>12</sup> On May 12, [REDACTED] b(5) sent a follow-up letter with additional information that the FTC could not provide during the briefing.<sup>13</sup>

From the FTC’s briefing and subsequent letter, it appears that the FTC acted against Twitter in May 2022 as a result of Elon Musk’s (at the time potential) acquisition of the company. According to the information provided, in October 2019, Twitter self-reported a privacy issue.<sup>14</sup> [REDACTED] b(5) [REDACTED] b(5).<sup>15</sup> At the time, Commissioner Slaughter served as the FTC’s Acting Chair. In June 2021, you

---

<sup>6</sup> *Id.*

<sup>7</sup> 354 F.2d 952, 955-56 (5th Cir. 1966) (“The alleged interference, we hasten to add, was not alleged improper influence behind closed doors but was rather interference in the nature of questions and statements made by members of two Senate and House subcommittees having responsibility for legislation dealing with antitrust matters, all clearly spread upon the record.”); *id.* at fn. 2 (“At these hearings, Mr. Howrey, the then Chairman of the Commission, and several of the members of his staff, appeared including Mr. Kintner, the then General Counsel and later Chairman of the Commission, who wrote the final opinion from which this appeal is prosecuted.”).

<sup>8</sup> *Id.* at 963-64.

<sup>9</sup> See *supra* text accompanying notes 5-6.

<sup>10</sup> See, e.g., *In re Sealed Case (Espy)*, 121 F.3d 729, 737-38 (D.C. Cir. 1997) (noting that where there is reason to believe misconduct occurred, “the [deliberative process] privilege is routinely denied on the grounds that shielding internal government deliberations . . . does not serve the public interest in honest, effective government” (internal quotations omitted)).

<sup>11</sup> See generally Correspondence from House Judiciary Committee staff to FTC staff (May 2, 2023).

<sup>12</sup> Briefing by Fed. Trade Comm’n Staff to House Judiciary Committee Staff (May 8, 2023).

<sup>13</sup> Letter from Fed. Trade Comm’n Staff to House Judiciary Committee Staff (May 12, 2023). This letter asserted that “the Committee’s questions . . . fell outside the time frame of the Committee’s original request for documents and information.” This assertion is inaccurate. The Committee’s subpoena for documents covered a period beginning on April 1, 2022, more than a month before the FTC’s May 2022 Order against Twitter. [REDACTED] b(5) [REDACTED] b(5).

[REDACTED] b(5) [REDACTED] b(5) did Committee staff raise the issues that led to the subsequent letter.

<sup>14</sup> Concurring Statement of Commissioner Christine S. Wilson and Commissioner Noah Joshua Phillips, Twitter, Matter No. 2023062 at 6 (May 25, 2022).

<sup>15</sup> Letter from Fed. Trade Comm’n Staff to House Judiciary Committee Staff (May 12, 2023).

became Chair. [REDACTED] b(5)

The FTC's May 12 letter provides [REDACTED] b(5)

[REDACTED] b(5) However, your pending nomination and confirmation as a Commissioner should not have affected the day-to-day operations of the FTC or the [REDACTED] b(5) Further, because your designation as Chair was reportedly a surprise decision,<sup>18</sup> then-Acting Chair Slaughter should have had no reason to wait for your confirmation because it was not expected you would assume the role of Chair.

The letter then [REDACTED] b(5) But the letter noted in vague terms that [REDACTED] b(5) The letter continued with equally vague assertions about what happened in 2022, stating that [REDACTED] b(5) [REDACTED] b(5) [REDACTED] b(5) [REDACTED] b(5) [REDACTED] b(5)

The timeline of the FTC's actions raises significant questions. A close examination of the information provided suggests that there is [REDACTED] b(5) [REDACTED] b(5) A reasonable conclusion is that neither you nor Acting Chair Slaughter seriously planned to take action against Twitter until political pressure arose given Mr. Musk's impending acquisition.<sup>22</sup> The FTC's decision to enter the May 2022 Order after Mr. Musk's acquisition became apparent gave the FTC the power to then harass Twitter under cover of the May 2022 Order.<sup>23</sup> Put simply, what the Committee has learned of the FTC's actions reinforces the concern about the apparent partisan motivation behind the FTC's approach to Elon Musk's Twitter.<sup>24</sup>

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Alexei Alexis, *Khan sworn in as chairwoman of FTC in surprise White House move*, POLITICO (June 16, 2021).

<sup>19</sup> Letter from Fed. Trade Comm'n Staff to House Judiciary Committee Staff (May 12, 2023).

<sup>20</sup> *Id.*

<sup>21</sup> Press Release, Twitter, Elon Musk to Acquire Twitter (Apr. 25, 2022).

<sup>22</sup> See, e.g., Elizabeth Warren (@SenWarren), TWITTER (Apr. 25, 2022, 5:22 PM), <https://twitter.com/SenWarren/status/1518702084048179200>; Open Markets Institute, OMI Statement on Elon Musk and Twitter (Apr. 26, 2022); Jordan Boyd, *The Left Is Freaking Out Over Elon Musk Because Twitter Rigs The Game For Democrats*, THE FEDERALIST (Apr. 14, 2022); Ben Weingarten, *Elon Musk's Battle For Twitter Is A Proxy War For Americans Against The Ruling Class*, THE FEDERALIST (Apr. 20, 2022); Brian Schwartz, *Biden officials worry Musk will allow Trump to return to Twitter*, CNBC (Apr. 25, 2022).

<sup>23</sup> See Interim Staff Rep. on The Weaponization of the Federal Trade Commission: An Agency's Overreach to Harass Elon Musk's Twitter, *supra* note 1.

<sup>24</sup> *Cf. id.* at 1.

The FTC's compliance with the Committee's subpoena is deficient. The FTC has failed to provide a single document or communication responsive to the Committee's subpoena. The information provided to date, which the Committee accepted as an accommodation to the FTC, has only raised more concerns. The Committee expects that the FTC will promptly begin to produce material responsive to the subpoena. However, as an additional accommodation, the Committee is willing to prioritize the following categories of documents responsive to items 1 and 5 in the Committee's subpoena:

1. All recommendation memoranda provided to the FTC's Bureau of Consumer Protection and Bureau of Economics front offices or to the Commission, including drafts and final versions, relating to the investigation into Twitter's compliance with 2011 Commission Order;
2. All documents and communications referring or relating to the timing of the investigation into Twitter's compliance with 2011 Commission Order, including but not limited to the timing of potential or requested votes and recommendation memoranda; and
3. All documents and communications referring or relating to the FTC's demand that Twitter identify all journalists and other members of the media to whom Twitter allegedly granted access.

Please produce this material as soon as possible but no later than June 22, 2023, at 5:00 p.m.

The Committee remains concerned with the decision-making and internal controls that allowed for many specific demands in the FTC's investigation to be sent to Twitter, including demands targeting journalists. The information you provided suggests deficiencies in the structure of some of your investigations, including the matter the Committee is investigating.<sup>25</sup> These deficiencies are especially concerning given your actions to consolidate power in the Chair's office,<sup>26</sup> and heighten the importance of your full and complete compliance with the Committee's subpoena.

---

<sup>25</sup> See, e.g., Nonpublic Staff Briefing Regarding the FTC's Investigation of Twitter (Monday, May 8, 2023)

b(5)

<sup>26</sup> Dissenting Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson Regarding the Issuance of Two Omnibus Compulsory Process Resolutions (July 1, 2022) ("In its statement, the majority assures us that the omnibus resolutions 'will not substantially change the multiple layers of checks and balances that are critical to the Commission's oversight of investigations.' This assertion is baffling, as these broad resolutions eliminate the only layer of Commission oversight concerning the use of compulsory process in the vast majority of the agency's competition-related investigations.").

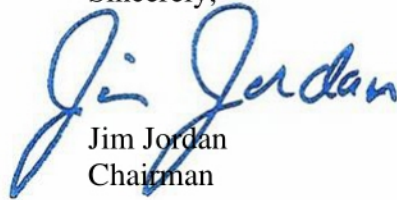
The Honorable Lina M. Khan

June 8, 2023

Page 5

Your compliance with the Committee's subpoena is deficient. If you continue to refuse to comply with the Committee's subpoena, the Committee may be forced to take action to enforce the subpoena, including but not limited to considering a resolution of contempt of Congress.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is written in a cursive, flowing style.

Jim Jordan  
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member



Office of the Chair

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

June 22, 2023

The Honorable Troy A. Carter, Sr.  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative Carter:

Thank you for your letter regarding the recent acquisition by Louisiana Children's Medical Center ("LCMC") of three Tulane University hospitals in the New Orleans area from HCA Healthcare ("HCA").

I fully agree that robust, faithful, and even-handed enforcement of antitrust laws and associated federal pre-merger reporting requirements is critical to protect Americans and the growth and dynamism of our economy. Accordingly, the Federal Trade Commission ("FTC" or "Commission") sued in federal district court to stop LCMC from integrating the three competing hospitals pending federal merger review, explaining that LCMC and HCA defied the federal Hart-Scott-Rodino ("HSR") Act by consummating the \$150 million acquisition without reporting it to U.S. antitrust authorities and without observing the mandatory waiting period.<sup>1</sup>

Complying with the laws that Congress passes is not optional. Accordingly, the FTC seeks a temporary restraining order and a preliminary injunction requiring that LCMC and HCA comply with the HSR Act, that LCMC hold the three acquired hospitals and related assets separate from its existing hospital system pending an FTC investigation into the transaction, and that LCMC give the FTC prior notice of certain transactions while the court resolves the proceeding.

The Commission noted in its court petition that LCMC and HCA have taken the position that the notification and waiting period requirements of the HSR Act do not apply because the Attorney General of Louisiana approved a Certificate of Public Advantage (COPA) for the acquisitions under Louisiana state law. However, the Commission pointed out that the state's grant of a COPA is not among the statutory exemptions under HSR Act and has not been recognized by any court as a basis for refusing to comply with the HSR Act.

---

<sup>1</sup> Press Release, Fed. Trade Comm'n, FTC Sues to Stop the Potentially Illegal Integration of New Orleans Area Hospitals Over Failure to Follow Federal Reporting Law (Apr. 20, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-sues-stop-potentially-illegal-integration-new-orleans-area-hospitals-over-failure-follow-federal-reporting-law>.

As the FTC continues to faithfully discharge its statutory obligations and enforce the laws Congress has passed, the Commission hews closely to the legal standards set by judicial precedent and takes seriously the need for companies to comply with their obligations to file the premerger notification required by the HSR Act.

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 cursive script 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

June 22, 2023

The Honorable Joseph D. Morelle  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative Morelle:

Thank you for your letter regarding the proposed affiliation between the University of Rochester Medical Center and Finger Lakes Regional Health System.

While I cannot comment on the existence or details of any Commission investigations, 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 of any type 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 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 and the text of our statutes. As the FTC continues to challenge only those 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 do not hesitate to contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in cursive script 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

June 22, 2023

The Honorable Earl L. “Buddy” Carter  
United States House of Representatives  
Washington, DC 20515

Dear Representative Carter:

Thank you for your April 17, 2023 letter regarding alternative funding vendors (“AFVs”). It was good to see you the following day at the Energy and Commerce hearing. In your letter, you provide the FTC with information regarding the practices of AFVs and your concerns about fraud, deception, and the potential impact on consumers. We appreciate your taking the time to communicate these concerns.

Rooting out unfair or deceptive practices and other unlawful business activity within the health care industry is a key priority for me. An act or practice is deceptive if it is material and would likely mislead consumers acting reasonably under the circumstances.<sup>1</sup> A practice is unfair if it causes or is likely to cause substantial consumer injury which consumers cannot reasonably avoid, and which is not outweighed by benefits to consumers or competition.<sup>2</sup>

I also wanted to take the opportunity to mention two measures essential for a robust FTC that can fully protect Americans from unlawful business practices: restoring the Commission’s full authority to return money to harmed consumers,<sup>3</sup> and providing the Commission with the funding necessary for us to fulfill our vital mission. The Commission’s loss of its ability to obtain monetary relief under Section 13(b) of the FTC Act has already had a profound effect on consumers and honest businesses: by conservative estimates, this court decision has already caused consumers to lose out on more than \$1.5 billion of relief that the agency previously could have obtained under Section 13(b), and the losses increase with each passing day.<sup>4</sup>

---

<sup>1</sup> See Federal Trade Commission Policy Statement on Deception, appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174-83 (1984).

<sup>2</sup> See 15 U.S.C. 45(n); Federal Trade Commission Policy Statement on Unfairness, appended to *Int’l Harvester Co.*, 104 F.T.C. 949, 1070-76 (1984).

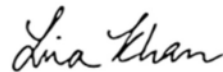
<sup>3</sup> In April 2021, the Supreme Court held that Section 13(b) of the FTC Act does not authorize federal courts to require defendants to pay refunds to harmed consumers or give up the unjust gains they earned from breaking the law. *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (2021).

<sup>4</sup> Statement of Commissioner Rebecca Kelly Slaughter Joined by Chair Lina M. Khan Regarding Section 13(b) of the FTC Act (Apr. 28, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Statement%20of%20Comm%27r%20Slaughter%20Joined%20by%20Chair%20Khan%20Regarding%20Section%2013%28b%29%20of%20the%20FTC%20Act\\_April%202022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Statement%20of%20Comm%27r%20Slaughter%20Joined%20by%20Chair%20Khan%20Regarding%20Section%2013%28b%29%20of%20the%20FTC%20Act_April%202022.pdf).

Furthermore, despite having a broad mandate from Congress and being on the front lines of many of the most pressing issues Americans face today, the agency's funding has not kept up with the additional demands on its resources. Indeed, the number of full-time employees at the FTC is about two-thirds of what it was at the beginning of 1980, even as the nation's GDP has increased six-fold. Demands on the Commission continue to grow as we receive more consumer complaints, review more corporate mergers, conduct more complex and expensive litigation, and respond to burgeoning requests for research and investigation of various economic sectors. While we constantly strive to enforce the law to the best of our capabilities, there is no doubt that, even with the increased appropriations Congress has provided in recent years, we continue to lack sufficient funding. I look forward to continuing to work with you to ensure that the Commission has the resources and tools it needs to vigorously protect Americans from unlawful business practices throughout the economy.

Thank you again for raising this topic. We will keep your office apprised if or when any information regarding this matter becomes public. If you or your staff has additional questions or comments, please do not hesitate to contact Jeanne Bumpus, Director of our Office of Congressional Relations, at (202) 326-2946.

Sincerely,

A handwritten signature in cursive script 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

June 22, 2023

The Honorable Neal P. Dunn, M.D.  
United States House of Representatives  
Washington, DC 20515

Dear Representative Dunn:

Thank you for your April 17, 2023 letter regarding alternative funding vendors (“AFVs”). It was good to see you the following day at the Energy and Commerce hearing. In your letter, you provide the FTC with information regarding the practices of AFVs and your concerns about fraud, deception, and the potential impact on consumers. We appreciate your taking the time to communicate these concerns.

Rooting out unfair or deceptive practices and other unlawful business activity within the health care industry is a key priority for me. An act or practice is deceptive if it is material and would likely mislead consumers acting reasonably under the circumstances.<sup>1</sup> A practice is unfair if it causes or is likely to cause substantial consumer injury which consumers cannot reasonably avoid, and which is not outweighed by benefits to consumers or competition.<sup>2</sup>

I also wanted to take the opportunity to mention two measures essential for a robust FTC that can fully protect Americans from unlawful business practices: restoring the Commission’s full authority to return money to harmed consumers,<sup>3</sup> and providing the Commission with the funding necessary for us to fulfill our vital mission. The Commission’s loss of its ability to obtain monetary relief under Section 13(b) of the FTC Act has already had a profound effect on consumers and honest businesses: by conservative estimates, this court decision has already caused consumers to lose out on more than \$1.5 billion of relief that the agency previously could have obtained under Section 13(b), and the losses increase with each passing day.<sup>4</sup>

---

<sup>1</sup> See Federal Trade Commission Policy Statement on Deception, appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174-83 (1984).

<sup>2</sup> See 15 U.S.C. 45(n); Federal Trade Commission Policy Statement on Unfairness, appended to *Int’l Harvester Co.*, 104 F.T.C. 949, 1070-76 (1984).

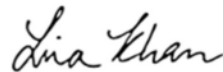
<sup>3</sup> In April 2021, the Supreme Court held that Section 13(b) of the FTC Act does not authorize federal courts to require defendants to pay refunds to harmed consumers or give up the unjust gains they earned from breaking the law. *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (2021).

<sup>4</sup> Statement of Commissioner Rebecca Kelly Slaughter Joined by Chair Lina M. Khan Regarding Section 13(b) of the FTC Act (Apr. 28, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Statement%20of%20Comm%27r%20Slaughter%20Joined%20by%20Chair%20Khan%20Regarding%20Section%2013%28b%29%20of%20the%20FTC%20Act\\_April%202022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Statement%20of%20Comm%27r%20Slaughter%20Joined%20by%20Chair%20Khan%20Regarding%20Section%2013%28b%29%20of%20the%20FTC%20Act_April%202022.pdf).

Furthermore, despite having a broad mandate from Congress and being on the front lines of many of the most pressing issues Americans face today, the agency's funding has not kept up with the additional demands on its resources. Indeed, the number of full-time employees at the FTC is about two-thirds of what it was at the beginning of 1980, even as the nation's GDP has increased six-fold. Demands on the Commission continue to grow as we receive more consumer complaints, review more corporate mergers, conduct more complex and expensive litigation, and respond to burgeoning requests for research and investigation of various economic sectors. While we constantly strive to enforce the law to the best of our capabilities, there is no doubt that, even with the increased appropriations Congress has provided in recent years, we continue to lack sufficient funding. I look forward to continuing to work with you to ensure that the Commission has the resources and tools it needs to vigorously protect Americans from unlawful business practices throughout the economy.

Thank you again for raising this topic. We will keep your office apprised if or when any information regarding this matter becomes public. If you or your staff has additional questions or comments, please do not hesitate to contact Jeanne Bumpus, Director of our Office of Congressional Relations, at (202) 326-2946.

Sincerely,

A handwritten signature in cursive script 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

June 22, 2023

The Honorable Brian Fitzpatrick  
United States House of Representatives  
Washington, DC 20515

Dear Representative Fitzpatrick:

Thank you for your April 17, 2023 letter regarding alternative funding vendors (“AFVs”). It was good to see you the following day at the Energy and Commerce hearing. In your letter, you provide the FTC with information regarding the practices of AFVs and your concerns about fraud, deception, and the potential impact on consumers. We appreciate your taking the time to communicate these concerns.

Rooting out unfair or deceptive practices and other unlawful business activity within the health care industry is a key priority for me. An act or practice is deceptive if it is material and would likely mislead consumers acting reasonably under the circumstances.<sup>1</sup> A practice is unfair if it causes or is likely to cause substantial consumer injury which consumers cannot reasonably avoid, and which is not outweighed by benefits to consumers or competition.<sup>2</sup>

I also wanted to take the opportunity to mention two measures essential for a robust FTC that can fully protect Americans from unlawful business practices: restoring the Commission’s full authority to return money to harmed consumers,<sup>3</sup> and providing the Commission with the funding necessary for us to fulfill our vital mission. The Commission’s loss of its ability to obtain monetary relief under Section 13(b) of the FTC Act has already had a profound effect on consumers and honest businesses: by conservative estimates, this court decision has already caused consumers to lose out on more than \$1.5 billion of relief that the agency previously could have obtained under Section 13(b), and the losses increase with each passing day.<sup>4</sup>

---

<sup>1</sup> See Federal Trade Commission Policy Statement on Deception, appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174-83 (1984).

<sup>2</sup> See 15 U.S.C. 45(n); Federal Trade Commission Policy Statement on Unfairness, appended to *Int’l Harvester Co.*, 104 F.T.C. 949, 1070-76 (1984).

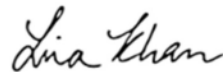
<sup>3</sup> In April 2021, the Supreme Court held that Section 13(b) of the FTC Act does not authorize federal courts to require defendants to pay refunds to harmed consumers or give up the unjust gains they earned from breaking the law. *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (2021).

<sup>4</sup> Statement of Commissioner Rebecca Kelly Slaughter Joined by Chair Lina M. Khan Regarding Section 13(b) of the FTC Act (Apr. 28, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Statement%20of%20Comm%27r%20Slaughter%20Joined%20by%20Chair%20Khan%20Regarding%20Section%2013%28b%29%20of%20the%20FTC%20Act\\_April%202022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Statement%20of%20Comm%27r%20Slaughter%20Joined%20by%20Chair%20Khan%20Regarding%20Section%2013%28b%29%20of%20the%20FTC%20Act_April%202022.pdf).

Furthermore, despite having a broad mandate from Congress and being on the front lines of many of the most pressing issues Americans face today, the agency's funding has not kept up with the additional demands on its resources. Indeed, the number of full-time employees at the FTC is about two-thirds of what it was at the beginning of 1980, even as the nation's GDP has increased six-fold. Demands on the Commission continue to grow as we receive more consumer complaints, review more corporate mergers, conduct more complex and expensive litigation, and respond to burgeoning requests for research and investigation of various economic sectors. While we constantly strive to enforce the law to the best of our capabilities, there is no doubt that, even with the increased appropriations Congress has provided in recent years, we continue to lack sufficient funding. I look forward to continuing to work with you to ensure that the Commission has the resources and tools it needs to vigorously protect Americans from unlawful business practices throughout the economy.

Thank you again for raising this topic. We will keep your office apprised if or when any information regarding this matter becomes public. If you or your staff has additional questions or comments, please do not hesitate to contact Jeanne Bumpus, Director of our Office of Congressional Relations, at (202) 326-2946.

Sincerely,

A handwritten signature in cursive script 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

June 22, 2023

The Honorable John Joyce, M.D.  
United States House of Representatives  
Washington, DC 20515

Dear Representative Joyce:

Thank you for your April 17, 2023 letter regarding alternative funding vendors (“AFVs”). It was good to see you the following day at the Energy and Commerce hearing. In your letter, you provide the FTC with information regarding the practices of AFVs and your concerns about fraud, deception, and the potential impact on consumers. We appreciate your taking the time to communicate these concerns.

Rooting out unfair or deceptive practices and other unlawful business activity within the health care industry is a key priority for me. An act or practice is deceptive if it is material and would likely mislead consumers acting reasonably under the circumstances.<sup>1</sup> A practice is unfair if it causes or is likely to cause substantial consumer injury which consumers cannot reasonably avoid, and which is not outweighed by benefits to consumers or competition.<sup>2</sup>

I also wanted to take the opportunity to mention two measures essential for a robust FTC that can fully protect Americans from unlawful business practices: restoring the Commission’s full authority to return money to harmed consumers,<sup>3</sup> and providing the Commission with the funding necessary for us to fulfill our vital mission. The Commission’s loss of its ability to obtain monetary relief under Section 13(b) of the FTC Act has already had a profound effect on consumers and honest businesses: by conservative estimates, this court decision has already caused consumers to lose out on more than \$1.5 billion of relief that the agency previously could have obtained under Section 13(b), and the losses increase with each passing day.<sup>4</sup>

---

<sup>1</sup> See Federal Trade Commission Policy Statement on Deception, appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174-83 (1984).

<sup>2</sup> See 15 U.S.C. 45(n); Federal Trade Commission Policy Statement on Unfairness, appended to *Int’l Harvester Co.*, 104 F.T.C. 949, 1070-76 (1984).

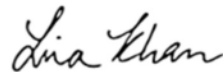
<sup>3</sup> In April 2021, the Supreme Court held that Section 13(b) of the FTC Act does not authorize federal courts to require defendants to pay refunds to harmed consumers or give up the unjust gains they earned from breaking the law. *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (2021).

<sup>4</sup> Statement of Commissioner Rebecca Kelly Slaughter Joined by Chair Lina M. Khan Regarding Section 13(b) of the FTC Act (Apr. 28, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Statement%20of%20Comm%27r%20Slaughter%20Joined%20by%20Chair%20Khan%20Regarding%20Section%2013%28b%29%20of%20the%20FTC%20Act\\_April%202022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Statement%20of%20Comm%27r%20Slaughter%20Joined%20by%20Chair%20Khan%20Regarding%20Section%2013%28b%29%20of%20the%20FTC%20Act_April%202022.pdf).

Furthermore, despite having a broad mandate from Congress and being on the front lines of many of the most pressing issues Americans face today, the agency's funding has not kept up with the additional demands on its resources. Indeed, the number of full-time employees at the FTC is about two-thirds of what it was at the beginning of 1980, even as the nation's GDP has increased six-fold. Demands on the Commission continue to grow as we receive more consumer complaints, review more corporate mergers, conduct more complex and expensive litigation, and respond to burgeoning requests for research and investigation of various economic sectors. While we constantly strive to enforce the law to the best of our capabilities, there is no doubt that, even with the increased appropriations Congress has provided in recent years, we continue to lack sufficient funding. I look forward to continuing to work with you to ensure that the Commission has the resources and tools it needs to vigorously protect Americans from unlawful business practices throughout the economy.

Thank you again for raising this topic. We will keep your office apprised if or when any information regarding this matter becomes public. If you or your staff has additional questions or comments, please do not hesitate to contact Jeanne Bumpus, Director of our Office of Congressional Relations, at (202) 326-2946.

Sincerely,

A handwritten signature in cursive script 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

June 22, 2023

The Honorable Nancy Mace  
United States House of Representatives  
Washington, DC 20515

Dear Representative Mace:

Thank you for your April 17, 2023 letter regarding alternative funding vendors (“AFVs”). It was good to see you the following day at the Energy and Commerce hearing. In your letter, you provide the FTC with information regarding the practices of AFVs and your concerns about fraud, deception, and the potential impact on consumers. We appreciate your taking the time to communicate these concerns.

Rooting out unfair or deceptive practices and other unlawful business activity within the health care industry is a key priority for me. An act or practice is deceptive if it is material and would likely mislead consumers acting reasonably under the circumstances.<sup>1</sup> A practice is unfair if it causes or is likely to cause substantial consumer injury which consumers cannot reasonably avoid, and which is not outweighed by benefits to consumers or competition.<sup>2</sup>

I also wanted to take the opportunity to mention two measures essential for a robust FTC that can fully protect Americans from unlawful business practices: restoring the Commission’s full authority to return money to harmed consumers,<sup>3</sup> and providing the Commission with the funding necessary for us to fulfill our vital mission. The Commission’s loss of its ability to obtain monetary relief under Section 13(b) of the FTC Act has already had a profound effect on consumers and honest businesses: by conservative estimates, this court decision has already caused consumers to lose out on more than \$1.5 billion of relief that the agency previously could have obtained under Section 13(b), and the losses increase with each passing day.<sup>4</sup>

---

<sup>1</sup> See Federal Trade Commission Policy Statement on Deception, appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174-83 (1984).

<sup>2</sup> See 15 U.S.C. 45(n); Federal Trade Commission Policy Statement on Unfairness, appended to *Int’l Harvester Co.*, 104 F.T.C. 949, 1070-76 (1984).

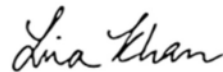
<sup>3</sup> In April 2021, the Supreme Court held that Section 13(b) of the FTC Act does not authorize federal courts to require defendants to pay refunds to harmed consumers or give up the unjust gains they earned from breaking the law. *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (2021).

<sup>4</sup> Statement of Commissioner Rebecca Kelly Slaughter Joined by Chair Lina M. Khan Regarding Section 13(b) of the FTC Act (Apr. 28, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Statement%20of%20Comm%27r%20Slaughter%20Joined%20by%20Chair%20Khan%20Regarding%20Section%2013%28b%29%20of%20the%20FTC%20Act\\_April%202022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Statement%20of%20Comm%27r%20Slaughter%20Joined%20by%20Chair%20Khan%20Regarding%20Section%2013%28b%29%20of%20the%20FTC%20Act_April%202022.pdf).

Furthermore, despite having a broad mandate from Congress and being on the front lines of many of the most pressing issues Americans face today, the agency's funding has not kept up with the additional demands on its resources. Indeed, the number of full-time employees at the FTC is about two-thirds of what it was at the beginning of 1980, even as the nation's GDP has increased six-fold. Demands on the Commission continue to grow as we receive more consumer complaints, review more corporate mergers, conduct more complex and expensive litigation, and respond to burgeoning requests for research and investigation of various economic sectors. While we constantly strive to enforce the law to the best of our capabilities, there is no doubt that, even with the increased appropriations Congress has provided in recent years, we continue to lack sufficient funding. I look forward to continuing to work with you to ensure that the Commission has the resources and tools it needs to vigorously protect Americans from unlawful business practices throughout the economy.

Thank you again for raising this topic. We will keep your office apprised if or when any information regarding this matter becomes public. If you or your staff has additional questions or comments, please do not hesitate to contact Jeanne Bumpus, Director of our Office of Congressional Relations, at (202) 326-2946.

Sincerely,

A handwritten signature in cursive script that reads "Lina Khan".

Lina M. Khan  
Chair, Federal Trade Commission



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

Office of the Chair

June 22, 2023

The Honorable Tammy Duckworth  
United States Senate  
Washington, DC 20510

Dear Senator Duckworth:

Thank you for your letter to the Federal Trade Commission (“FTC” or “Commission”) requesting an investigation of any recent decision or plan by AmerisourceBergen to sell the medication Mifepristone only to health care providers and not to retail pharmacies in certain states.

I share your concern about unlawful business practices in pharmaceutical markets. I am fully committed to ensuring that the FTC vigorously enforces the statutes it is charged with administering.<sup>1</sup> That includes bringing actions against all manner of law violations throughout the entire pharmaceutical supply chain, aided by ongoing efforts to strengthen its law enforcement approaches and tools.<sup>2</sup> Given the high stakes for American consumers, workers,

---

<sup>1</sup> 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](https://www.ftc.gov/system/files/ftc_gov/pdf/P210100SenateAntitrustTestimony09202022.pdf).  
<sup>2</sup> See, e.g., Press Release, Fed. Trade Comm’n, FTC Restores Rigorous Enforcement of Law Banning Unfair Methods of Competition (Nov. 10, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/11/ftc-restores-rigorous-enforcement-law-banning-unfair-methods-competition>; Fed. Trade Comm’n, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act (Nov. 10, 2022), <https://www.ftc.gov/legal-library/browse/policy-statement-regarding-scope-unfair-methods-competition-under-section-5-federal-trade-commission>; Press Release, Fed. Trade Comm’n, FTC to Ramp Up Enforcement Against Any Illegal Rebate Schemes, Bribes to Prescription Drug Middleman That Block Cheaper Drugs (Jun. 16, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-ramp-up-enforcement-against-illegal-rebate-schemes>; Fed. Trade Comm’n, The Future of Pharmaceuticals: Examining the Analysis of Pharmaceutical Mergers (June 14–15, 2022), <https://www.ftc.gov/news-events/events/2022/06/future-pharmaceuticals-examining-analysis-pharmaceutical-mergers>; Press Release, Fed. Trade Comm’n, FTC Launches Inquiry Into Prescription Drug Middlemen Industry (June 7, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-launches-inquiry-prescription-drug-middlemen-industry>; Press Release, Fed. Trade Comm’n, Federal Trade Commission and Justice Department Seek to Strengthen Enforcement Against Illegal Mergers (Jan. 18, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/01/federal-trade-commission-justice-department-seek-strengthen-enforcement-against-illegal-mergers>; Press Release, Fed. Trade Comm’n, FTC Streamlines Consumer Protection and Competition Investigations in Eight Key Enforcement Areas to Enable Higher Caseload (Sept. 14, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/09/ftc-streamlines-consumer-protection-competition-investigations-eight-key-enforcement-areas-enable>; Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter on Actions to Expedite Staff Investigations (Sept. 14, 2021), [https://www.ftc.gov/system/files/documents/public\\_statements/1596260/p859900omnibuslmkrksconcur.pdf](https://www.ftc.gov/system/files/documents/public_statements/1596260/p859900omnibuslmkrksconcur.pdf); Press Release, FTC Authorizes Investigations into Key Enforcement Priorities (July 1, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-authorizes-investigations-key-enforcement-priorities>; Press Release, Fed. Trade Comm’n, FTC Announces Multilateral Working Group to Build a New Approach to Pharmaceutical Mergers (Mar. 16, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/03/ftc-announces-multilateral-working-group-build-new-approach-pharmaceutical-mergers>.

honest businesses, local communities, and the nation's economy, policing potentially unlawful conduct in health care industries continues to be a top Commission priority.

Thank you again for raising this topic and 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,

A handwritten signature in cursive script 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

June 22, 2023

The Honorable Elizabeth Warren  
United States Senate  
Washington, DC 20510

Dear Senator Warren:

Thank you for your letter to the Federal Trade Commission (“Commission” or “FTC”) requesting robust antitrust enforcement against unlawful consolidation in health care markets.

I am fully committed to ensuring that the FTC marshals its complete set of tools and authorities to vigorously challenge illegal deals. Given the high stakes for American consumers, workers, honest businesses, local communities, and the nation’s economy, policing merger activity and other forms of potentially anticompetitive conduct in the health care industry continues to be a top Commission priority.

Although I cannot comment on the existence or details of non-public investigations, the Commission is taking steps to update our law enforcement approaches and tools to keep pace with new market realities and the full set of ways in which mergers can harm competition. Central to this effort is placing greater weight on assessing mergers involving firms at different levels of the supply chain (i.e., non-horizontal mergers) and anticipating future competition concerns before markets are dominated by only a few firms. This includes orienting our enforcement efforts around targeting root causes of competitive harm, such as looking upstream for structural conditions and incentives that enable and motivate unlawful conduct. This approach is being incorporated into FTC merger review generally and has been reflected in several recent merger challenges.<sup>1</sup> We are focusing not only on the output side of markets, such as the goods and services offered to consumers, but on the input side as well to ensure competitive markets for workers’ labor.<sup>2</sup> The Commission has a long history of promoting competition in health care markets and will continue to diligently pursue that essential endeavor.<sup>3</sup>

---

<sup>1</sup> See, e.g., Press Release, Fed. Trade Comm’n, FTC Orders Illumina to Divest Cancer Detection Test Maker GRAIL to Protect Competition in Life-Saving Technology Market (Apr. 3, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-orders-illumina-divest-cancer-detection-test-maker-grail-protect-competition-life-saving>.

<sup>2</sup> See Fed. Trade Comm’n, Prepared Statement of the Federal Trade Commission Before the United States Senate Committee on the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights “Oversight of the Enforcement of Antitrust Laws” (Sept. 20, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P210100SenateAntitrustTestimony09202022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P210100SenateAntitrustTestimony09202022.pdf).

<sup>3</sup> See Health Care Division, Bur. of Competition, Fed. Trade Comm’n, Overview of FTC Actions in Health Care Services and Products (Oct. 2022),

[https://www.ftc.gov/system/files/ftc\\_gov/pdf/2022.10.28OverviewHealthcare.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2022.10.28OverviewHealthcare.pdf).

See also Health Care Division, Bur. of Competition, Fed. Trade Commission, Overview of FTC Actions in Pharmaceutical Products and Distribution (July 2022),

[https://www.ftc.gov/system/files/ftc\\_gov/pdf/2022.07.12OverviewPharmafinalupdated.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2022.07.12OverviewPharmafinalupdated.pdf).

We have taken the liberty of forwarding your letter to the Department of Justice Antitrust Division (DOJ) for consideration. To avoid duplication and maximize the effectiveness of concurrent federal antitrust jurisdiction, the Commission and the DOJ have long maintained an arrangement through which we divide responsibility for antitrust review based on several factors. Pursuant to that arrangement, the FTC will defer to the DOJ with respect to your request for an investigation of CVS Health's proposed acquisition of Oak Street Health.

Thank you again for raising this topic and 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

cc: The Honorable Jonathan Kanter  
Assistant Attorney General for Antitrust  
U.S. Department of Justice

# United States Senate

WASHINGTON, DC 20510

June 23, 2023

Lina Kahn  
Chair  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580

Dear Chair Khan:

We write to support the Federal Trade Commission's effort to revise its Negative Option Rule, as outlined in the Notice of Proposed Rulemaking published on April 24, 2023. We commend the Commission's efforts through individual enforcement actions and policy statements to address illegal practices sometimes used by unscrupulous sellers in automatic renewal subscriptions, continuity plans, free-to-pay conversions, and pre-notification plans. Nevertheless, problems persist. Industry, consumers, and regulators need a consistent legal framework to address negative option marketing across media and offers.

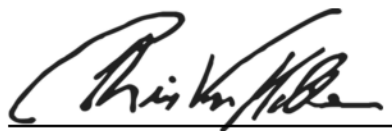
Every year, our constituents submit thousands of complaints to the Commission about negative option transactions, in which sellers interpret their failure to take affirmative action, either to reject an offer or cancel an agreement, as assent to be charged for goods or services. While negative option billing can be legitimate and beneficial with proper disclosure and consent, many consumers fall victim to deceptive tactics and suffer financial harm when marketers fail to be transparent or make cancellation difficult or impossible.

The proposed rule would help address these problems. Updating and strengthening existing regulations will safeguard consumers from deceptive practices and allow the Commission to adapt to market changes. Providing key information on trial periods, subsequent charges, and cancellation processes will enable customers to make informed decisions. The proposed rule focuses on clear disclosures in negative option marketing, ensuring consumers are fully informed about trial offers to prevent unintentional enrollment in recurring payments. The rule emphasizes the importance of transparency and fairness by requiring businesses to obtain explicit consent before charging consumers. It recognizes that accessible cancellation mechanisms like "click to cancel" are essential to protect consumer rights and foster trust in the marketplace. And critically, prohibiting businesses from sharing billing information without consent safeguards personal and financial privacy and prevents unauthorized charges.

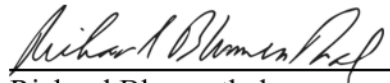
The Consumer Online Payment Transparency and Integrity Act (Consumer OPT-IN Act) that we co-sponsor in Congress aligns closely with these objectives. We believe that our collective efforts can effectively address the challenges associated with negative option marketing.

Thank you for your determined enforcement efforts and continued attention to consumer welfare and a fair and transparent marketplace.

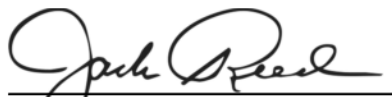
Sincerely,



Chris Van Hollen  
United States Senator



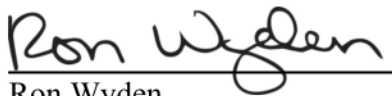
Richard Blumenthal  
United States Senator



Jack Reed  
United States Senator



Peter Welch  
United States Senator



Ron Wyden  
United States Senator



MARIA CANTWELL, WASHINGTON, CHAIR

AMY KLOBUCHAR, MINNESOTA  
RICHARD BLUMENTHAL, CONNECTICUT  
BRIAN SCHATZ, HAWAII  
EDWARD MARKEY, MASSACHUSETTS  
GARY PETERS, MICHIGAN  
TAMMY BALDWIN, WISCONSIN  
JON TESTER, MONTANA  
KYRSTEN SINEMA, ARIZONA  
JACKY ROSEN, NEVADA  
BEN RAY LUJÁN, 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>

June 16, 2023

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

Dear Chairwoman Khan:

I write to request a confidential staff briefing for the purpose of an *in camera* review of the DOJ/FTC letter sent to the USTR regarding competition and digital trade provisions in trade agreements.

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

AMY KLOBUCHAR, MINNESOTA  
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 LUJÁN, NEW MEXICO  
JOHN HICKENLOOPER, COLORADO  
RAPHAEL WARNOCK, GEORGIA  
PETER WELCH, VERMONT

TED CRUZ, TEXAS  
JOHN THUNE, SOUTH DAKOTA  
ROGER WICKER, MISSISSIPPI  
DEB FISCHER, NEBRASKA  
JERRY MORAN, KANSAS  
DAN SULLIVAN, ALASKA  
MARSHA BLACKBURN, TENNESSEE  
TODD YOUNG, INDIANA  
TED BUDD, NORTH CAROLINA  
ERIC SCHMITT, MISSOURI  
J.D. VANCE, OHIO  
SHELLEY MOORE CAPITO, WEST VIRGINIA  
CYNTHIA LUMMIS, WYOMING

LILA HELMS, MAJORITY STAFF DIRECTOR  
BRAD GRANTZ, REPUBLICAN STAFF DIRECTOR

## United States Senate

COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

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

June 19, 2023

The Honorable Lina Khan  
Chairwoman  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chairwoman Khan,

As a former Federal Trade Commission (“FTC”) Director of the Office of Policy Planning, I am troubled by recent reports regarding FTC employees’ sinking morale and deepening lack of confidence in FTC leadership. Despite your promises to address the situation, the problem appears to be worsening. I therefore write to inform you and FTC employees that the minority staff of the U.S. Senate Committee on Commerce, Science, and Transportation (“Committee”) is opening an investigation into allegations of mismanagement of the agency and mistreatment of staffers.

The data alone is disheartening. According to the 2022 Office of Personnel Management Federal Employee Viewpoint Survey, which was released in January 2023, less than half (49 percent) of FTC employees agreed that FTC “leaders maintain high standards of honesty and integrity.”<sup>1</sup> That number is four points lower than it was in the 2021 survey<sup>2</sup> and 38 points lower than it was in 2020—when 87 percent of FTC employees believed that the agency’s leaders “maintain[ed] high standards of honesty and integrity.”<sup>3</sup> Moreover, just 44 percent of FTC employees surveyed in 2022 said that they have “a high level of respect” for the FTC’s senior leaders.<sup>4</sup> Across the board, the data tells the same story: In 2022, 40 percent of employees strongly agreed that the FTC “is successful at accomplishing its mission,” down 24 percent from

---

<sup>1</sup> 2022 *Office of Personnel Management Federal Employee Viewpoint Survey: Report by Agency* (“2022 Survey”), Office of Personnel Management (2022), <https://www.opm.gov/fevs/reports/data-reports/data-reports/report-by-agency/2022/2022-agency-report.pdf>.

<sup>2</sup> 2021 *Office of Personnel Management Federal Employee Viewpoint Survey: Report by Agency* (“2021 Survey”), Office of Personnel Management (2021), <https://www.opm.gov/fevs/reports/data-reports/data-reports/report-by-agency/2021/2021-agency-report.pdf>.

<sup>3</sup> 2020 *Office of Personnel Management Federal Employee Viewpoint Survey: Report by Agency* (“2020 Survey”), Office of Personnel Management (2020), <https://www.opm.gov/fevs/reports/data-reports/data-reports/report-by-agency/2020/2020-agency-report.pdf>.

<sup>4</sup> 2022 Survey, *supra* note 1.

2020.<sup>5</sup> In 2022, just 62 percent of employees said they were satisfied with the FTC, compared to 85 percent in 2020.<sup>6</sup>

FTC staffers' personal stories underscore the data. Reporters who interviewed FTC staffers in June 2022 said that they "were notably emotional," and "admitted to a deep sadness and ... to a kind of angry grief" over recent changes at the FTC.<sup>7</sup> Employees explained that they "fe[lt] marginalized and afraid to speak truth to power, for fear of being frozen out for not being 'on board' with Khan's mission."<sup>8</sup> One "veteran staffer" stated that FTC leaders have "no regard to people's quality of life and what they are dealing with."<sup>9</sup> Others described the agency as a "toxic environment."<sup>10</sup>

It is no surprise then that employees are leaving the FTC. Seventy-one non-leadership, senior attorneys left the agency in the two-year period between 2021 and 2022—the highest number of senior attorneys to leave during a similar period since 2000.<sup>11</sup> And seven of the twenty-eight leadership attorneys left in 2021. Indeed, despite the FTC's repeated requests for more staff—110 additional staffers for FY 2022 (1,250), 300 additional staffers for FY 2023 (1,440), and 310 additional staffers for FY 2024 (1,690)—which Congress has (so far) granted, the number of FTC staffers has continued to decline from 2020 levels, falling to 1,128 in 2022.<sup>12</sup>

Some have offered possible explanations for the plunge in morale. One possibility is the FTC's recent insistence of investigating every merger application, without prioritizing those that are likely to harm consumers, has unnecessarily "maxed out staff."<sup>13</sup> Another is the reported general "fear of reprisals and pressure for ideological loyalty." Still others posit that "there is a lack of managerial experience and expertise at the top."

Whatever the reason, the FTC cannot accomplish its mission to "protect[] the public from deceptive or unfair business practices and from unfair methods of competition" with a demoralized and depleted staff. In order to understand the causes of the deepening dissatisfaction among FTC employees, please provide written responses and responsive documents to the initial requests listed below no later than July 3, 2023.

---

<sup>5</sup> 2022 Survey, *supra* note 1; 2020 Survey, *supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> Mike Swift, Kathleen Murphy, Michael Acton, *Under Khan's Leadership, Staffers Air Frustrations in Wake of Survey*, mlex (Jun. 6, 2022), <https://mlexmarketinsight.com/news-hub/editors-picks/area-of-expertise/antitrust/under-khans-leadership-staffers-air-frustrations-in-wake-of-survey>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Kathleen Murphy, *FTC Plummets in Best Workplace Rankings*, FTC Watch (Jul. 25, 2022), <https://www.mlexwatch.com/articles/16875/print?section=ftcwatch>.

<sup>11</sup> Dan Papsuncun, *FTC Lawyers Leave at Fastest Rate in Years as Khan Sets New Tone*, BLOOMBERG LAW (Mar. 16, 2023), <https://news.bloomberglaw.com/antitrust/senior-ftc-staff-departures-spike-as-ambitious-agenda-looms>.

<sup>12</sup> *FTC Appropriation and Full-Equivalent (FTE) History*, <https://www.ftc.gov/about-ftc/bureaus-offices/office-executive-director/financial-management-office/ftc-appropriation>.

<sup>13</sup> Swift et al. *supra* note 7.

1. Please provide the number of individuals employed/full-time equivalents (“FTE”) by the FTC from January 1, 2021 to present, broken down by month. Out of the total number of employees/FTE in a given month, please indicate how many are leadership attorneys and how many are senior attorneys.
2. How many employees/FTEs have left the FTC from January 1, 2021 to present? Please break that figure down by month and indicate how many of those departures were leadership attorneys and how many were senior attorneys.
3. Please identify any actions that the Chairwoman’s Office has taken to improve staff morale.
4. Please provide any and all complaints, both formal and informal, that the Chairwoman’s Office has received from FTC employees from January 1, 2021 to present.

In addition, please be advised that the minority staff of the Committee has established a whistleblower email and hotline for FTC employees to report any concerns. Concerned employees may anonymously reach out to my staff at [Republican\\_Whistleblower@commerce.senate.gov](mailto:Republican_Whistleblower@commerce.senate.gov) or 202-224-5115.

Please provide unedited and unredacted copies of this letter to all employees and contractors of the FTC. In doing so, please also inform them of their right to communicate with Congress and that it is against the law to deny or interfere with their rights to furnish information to Congress or to retaliate against whistleblowers.<sup>14</sup>

Thank you for your attention to this matter.

Sincerely,



---

Ted Cruz  
Ranking Member

---

<sup>14</sup> See 5 U.S.C. §§ 7211, 2302(b)(8).

**Congress of the United States**  
**House of Representatives**  
Washington, DC

June 23, 2023

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

**RE: Kroger-Albertsons Merger**

Dear Chair Khan:

Kroger's acquisition of Albertsons can be an opportunity to support good jobs, low prices, and food access if it is done right.

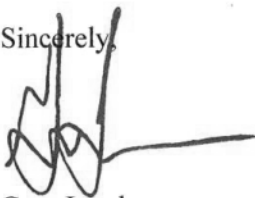
Of course, Kroger is a hometown company. Some of my favorite memories are shopping with my father. For a while, my son would come with me to Kroger every weekend. Now that he's eleven, he tags along with me every once and a while, but not every weekend. Still, like so many families, Kroger is a big part of our lives. As a member of Congress now, the company has even greater meaning for me, our communities, our workers, and American consumers. Kroger is a good corporate citizen and can ensure both good jobs and fair prices.

Kroger and Albertsons are union companies. In the past ten years, Kroger has created over 100,000 union jobs in partnership with the United Food and Commercial Workers. As a result of this merger, Kroger may become the nation's largest union company, which is a big deal for our region and the country. Kroger is in a position to prove that good business and good jobs are absolutely linked. In Kroger, we have an American and hometown company that could show folks how to grow responsibly.

Kroger has a long history of keeping prices low, and at a time when families need lower prices at the grocery store, they must stand by that commitment on pricing, because it will help families across the country. I appreciate that Kroger has already pledged to continue lowering prices after the merger. Having a hometown company, one that is accountable to its community, workers, and customers – not just shareholders – operate America's grocery stores makes a difference in protecting union jobs and keeping food prices low.

Again, protecting good union jobs and lower prices will be key measures of whether the Kroger-Albertsons merger is deemed a success. Kroger leadership has said that is their goal, and getting this right is absolutely necessary for workers and consumers, for our region, and for the country.

Sincerely,



Greg Landsman  
Member of Congress



Congress of the United States  
House of Representatives  
Washington, DC 20515

June 30, 2023

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

Dear Chair Khan,

We write to express concern regarding a lawsuit filed on June 21, 2023 in Los Angeles County Superior Court by plaintiffs Nina Baek and Megan Ramsey, which alleges that defendant Marriott International began charging a “junk fee” to customers under the guise of covering compliance with a hotel worker protection law that took effect on August 12, 2022 in the City of Los Angeles.

We commend the Biden Administration and the Federal Trade Commission (FTC) for its efforts to improve transparency and minimize junk fees in the airline, event and hospitality industries. However, if allowed to persist, the so-called “Hotel Worker Protection Ordinance Costs Surcharge” would set a dangerous precedent, potentially permitting hospitality companies to overcharge guests for alleged compliance with laws that protect workers from sexual harassment and assault by providing panic buttons, ensure fair pay for heavy workloads, and provide minimum wages.

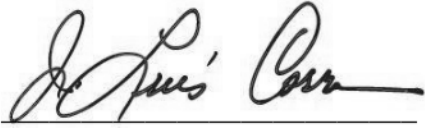
The fee ranges from \$10-14 per night and would enable Marriott to collect an estimated \$3.6 million per year at only one hotel, the 1,004-room Los Angeles Airport Marriott. Meanwhile, Marriott’s profits are soaring. The company’s adjusted earnings before interest, taxes, depreciation, and amortization (EBITDA) totaled \$1,098 million in the 2023 first quarter, compared to first quarter 2022 adjusted EBITDA of \$759 million.

Marriott International has numerous properties in our districts, including the 1,030-room Marriott Anaheim, the 490-room Sheraton Hotel Park at the Anaheim Resort and the 309-room Marriott Long Beach. Long Beach has similar legislation to the City of Los Angeles that protects workers from sexual harassment and assault by providing panic buttons, ensure fair pay for heavy workloads, and provide minimum wages. Similar legislation will also be on the ballot in Anaheim later this year. We want to make sure that the kind of “junk fee” that appeared in Los Angeles does not spread to our cities in response to efforts to protect hospitality workers.

The FTC should investigate whether Marriott International has imposed a similar surcharge in other cities that have passed hotel worker protection laws, including Long Beach, Santa Monica,

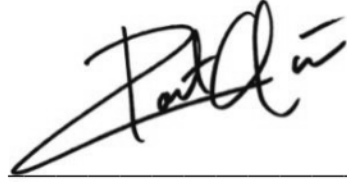
Glendale, West Hollywood, Irvine, Emeryville and Seattle and should make it clear that these fees are unacceptable.

Regards,

Handwritten signature of J. Luis Correa in black ink, written in a cursive style.

---

J. Luis Correa  
Member of Congress

Handwritten signature of Robert Garcia in black ink, written in a cursive style.

---

Robert Garcia  
Member of Congress

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.<sup>1</sup> 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."<sup>2</sup> 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.<sup>3</sup> In its initial response, the FTC stated that 47 employees, contractors, advisors or consultants worked on or contributed to the rulemaking.<sup>4</sup> The FTC also identified eight individuals who are expected to play or have played a supervisory role related to the rulemaking.<sup>5</sup> One such individual was a Consumer Financial Protection Bureau (CFPB) employee detailed to the Commission, who "led the team on a daily

---

<sup>1</sup> 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).

<sup>2</sup> 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")

<sup>3</sup> See Committee Feb. 14 Letter at 3-4.

<sup>4</sup> See FTC Feb. 28 Letter at 2.

<sup>5</sup> *Id.*



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

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.<sup>7</sup> 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.<sup>8</sup>

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.”<sup>9</sup> If you have any questions about this matter, please ask your staff to contact Committee staff at (202) 225-6906.

---

<sup>6</sup> *Id.*

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

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

<sup>9</sup> 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 black 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

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

June 8, 2023

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

Dear Chair Khan:

On September 2, 2021, we wrote to you to conduct oversight about the Federal Trade Commission's (FTC) unusual approach to the merger of Illumina and GRAIL.<sup>1</sup> The FTC refused to cooperate with our oversight, responding without explanation that it "cannot provide any nonpublic information concerning this subject."<sup>2</sup> Due to your earlier refusal to comply with our oversight, and in light of troubling facts we have since learned that the FTC worked with foreign regulators to deny U.S. companies due process, we write to renew our requests for material about the FTC's review of the Illumina-GRAIL merger.

Illumina and GRAIL are two American health care companies focused, in part, on developing cancer screening tests.<sup>3</sup> Recent news and court filings show that the FTC shared sensitive information with European regulators shortly before the European Commission (EC) took unprecedented action to challenge the Illumina-GRAIL merger.<sup>4</sup> The FTC then used the EC's action to withdraw from federal court and instead challenge the merger in the FTC's in-house administrative court, where the Commissioners act as both prosecutors and judges.<sup>5</sup> These facts raise serious concerns about the FTC's commitment to due process in adjudicative and enforcement matters.

---

<sup>1</sup> See Letter from Hon. Jim Jordan, Chairman, H. Comm. on the Judic. & Hon. Darrell Issa, Chairman, Subcomm. on Courts, Intellectual Property, and the Internet to Lina Khan, Chair, Fed. Trade Comm'n (Sept. 2, 2021).

<sup>2</sup> See Letter from April J. Tabor, Secretary, Fed. Trade Comm'n to Hon. Jim Jordan, Chairman, H. Comm. on the Judic. (Sept. 22, 2021).

<sup>3</sup> Press Release, Illumina Forms New Company to Enable Early Cancer Detection via Blood-Based Screening, GRAIL (Jan. 10, 2016).

<sup>4</sup> Editorial Board, *The FTC's Antitrust Collusion*, WALL ST. J., Feb. 23, 2023; ECF 124, Opposition to FTC's Motion to Dismiss the Complaint Without Prejudice, *FTC v. Illumina, Inc.*, Case No. 3:21-cv-800-CAB-BGS, (S.D. Cal., May 26, 2021).

<sup>5</sup> ECF 120-1, Memorandum in Support of Plaintiff's *Ex Parte* Application to Dismiss the Complaint Without Prejudice, *FTC v. Illumina, Inc.*, Case No. 3:21-cv-800-CAB-BGS, 5 (S.D. Cal., May 21, 2021).

The FTC's approach to the Illumina-GRAIL merger departs from the FTC's normal processes and raises questions about the Commission's reliance on foreign jurisdictions to enforce U.S. laws. In March 2021, the FTC filed a complaint in federal district court to obtain an order preventing the parties from merging during the FTC's administrative litigation.<sup>6</sup> Simultaneously, the FTC contacted the EC about the merger,<sup>7</sup> after which the EC opened an investigation that effectively prevented the parties from merging.<sup>8</sup> While the EC effectively held off the merger, the FTC withdrew its complaint from federal court and proceeded with its own administrative hearing.<sup>9</sup> The FTC took this step even though the companies were challenging the EC's jurisdiction to prevent the merger.<sup>10</sup>

Illumina and GRAIL opposed the FTC's motion to withdraw, seeking the opportunity to defend the merger in federal court and claiming that "there is reason to believe that the FTC engineered the EC investigation" as part of its opposition to the merger.<sup>11</sup> Some commentators also speculated that the FTC may have withdrawn its complaint from federal court to prevent the court from ruling against the FTC.<sup>12</sup> Although the FTC initially lost its challenge to the merger at trial in its own administrative court in September 2022, the Commission, acting as judge and prosecutor, reversed its Chief Administrative Law Judge and ordered Illumina to divest GRAIL on March 31, 2023.<sup>13</sup>

In our September 2021 letter, we noted our concern that the FTC was in extensive contact with the EC about the merger and requested information related to the FTC's communications with the EC, among other requests.<sup>14</sup> Despite the FTC's failure to produce any documents responsive to our request, federal court documents confirmed this concern. For example, court filings revealed that FTC officials were "in frequent contact with the EC," which included providing the EC with information relating to a third-party complainant and sensitive timing information.<sup>15</sup> In addition, a Freedom of Information Act (FOIA) request uncovered additional

---

<sup>6</sup> See ECF 120-1, Memorandum in Support of Plaintiff's *Ex Parte* Application to Dismiss the Complaint Without Prejudice, *FTC v. Illumina, Inc.*, Case No. 3:21-cv-800-CAB-BGS, 5 (S.D. Cal., May 21, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See ECF 124, Opposition to FTC's Motion to Dismiss the Complaint Without Prejudice, *FTC v. Illumina, Inc.*, Case No. 3:21-cv-800-CAB-BGS, at n. 5 (S.D. Cal., May 26, 2021).

<sup>12</sup> See, e.g., Editorial Board, *Government Race Against a Cure*, WALL ST. J. (June 2, 2021).

<sup>13</sup> Press Release, Fed. Trade Comm'n, Administrative Law Judge Dismisses FTC's Challenge of Illumina's Proposed Acquisition of Cancer Detection Test Maker Grail (Sept. 12, 2022); Press Release, Fed. Trade Comm'n, FTC Orders Illumina to Divest Cancer Detection Test Maker GRAIL to Protect Competition in Life-Saving Technology Market (Apr. 3, 2023).

<sup>14</sup> Letter from Hon. Jim Jordan, Chairman, H. Comm. on the Judic. & Hon. Darrell Issa, Chairman, Subcomm. on Courts, Intellectual Property, and the Internet to Lina Khan, Chair, Fed. Trade Comm'n (Sept. 2, 2021).

<sup>15</sup> ECF 124, Opposition to FTC's Motion to Dismiss the Complaint Without Prejudice, *FTC v. Illumina, Inc.*, Case No. 3:21-cv-800-CAB-BGS, n. 5 & 10-11 (S.D. Cal., May 26, 2021).

evidence of improper coordination between the FTC and EC.<sup>16</sup> The heavily redacted documents between FTC employees and European regulators revealed considerable communications leading up to the EC's unprecedented action to review the merger.<sup>17</sup> Shortly thereafter, the FTC moved to dismiss its case from federal court in favor of its in-house administrative process because EC review was preventing the merger from closing.<sup>18</sup> The timing and topics of the discussions between the FTC and European regulators suggests a coordinated effort to attack the Illumina-Grail merger and avoid a U.S. federal court.

Denying the parties due process in a federal court while working with European regulators to delay the merger is improper and an abuse of the FTC's authority. The FTC's in-house administrative process undoubtedly favors the FTC as Commissioners sit as judges in the very case they decide to prosecute.<sup>19</sup> The FTC's advantage is highlighted by its perfect win rate on appeal to itself.<sup>20</sup> Former FTC Chair Paul Rand Dixon explained this prejudgment concern, stating:

[B]y the very nature of the administrative process, the administrator, unlike a judge in a constitutional court, can never come to his adjudicative task with a mind wholly devoid of factual information about the subject before him. The statutory scheme . . . requires him to entertain a provisional conviction on the subject before the charges are even lodged.<sup>21</sup>

Relying on European enforcers to prevent a merger from closing and leveraging an in-house administrative process in a way that stacks the deck against private parties demands Congressional oversight. This need for oversight is especially true considering the agency's recent unanimous loss at the Supreme Court in *Axon Enterprise, Inc. v. FTC*, which opens the FTC's in-house administrative process to constitutional attacks in federal court.<sup>22</sup>

As the Committee continues oversight and considers legislation relating to the FTC's authority and operations, we ask that you please provide the following material for the period January 1, 2021, to the present:

1. All documents, in unredacted form, provided in response to any FOIA requests related to the merger of Illumina and GRAIL;

---

<sup>16</sup> See Letter from Hon. Jim Jordan, Chairman, H. Comm. on the Judic. & Hon. Darrell Issa, Chairman, Subcomm. on Courts, Intellectual Property, and the Internet to Lina Khan, Chair, Fed. Trade Comm'n (Sept. 2, 2021); Letter from April J. Tabor, Secretary, Fed. Trade Comm'n to Hon. Jim Jordan, Chairman, H. Comm. on the Judic. (Sept. 22, 2021); Editorial Board, *The FTC's Antitrust Collusion*, WALL ST. J., Feb. 23, 2023.

<sup>17</sup> *Id.*

<sup>18</sup> ECF 120-1, Memorandum in Support of Plaintiff's *Ex Parte* Application to Dismiss the Complaint Without Prejudice, *FTC v. Illumina, Inc.*, Case No. 3:21-cv-800-CAB-BGS, 5 (S.D. Cal., May 21, 2021).

<sup>19</sup> See, e.g., *Axon Takes On the Feds*, WALL ST. J. (Feb. 21, 2020).

<sup>20</sup> ECF 120-1, Memorandum in Support of Plaintiff's *Ex Parte* Application to Dismiss the Complaint Without Prejudice, *FTC v. Illumina, Inc.*, Case No. 3:21-cv-800-CAB-BGS, 5 (S.D. Cal., May 21, 2021).

<sup>21</sup> *The Pure Oil Company, et al.*, 66 FTC 1552, 1557 (1964).

<sup>22</sup> 143 S.Ct. 890 (2023).


2. All documents and communications between the FTC and any foreign regulators or enforcers referring or relating to the merger between Illumina and GRAIL, including but not limited to call logs, meeting schedules, emails, instant messages, and text messages;
3. All documents and communications between or among employees or officials of the FTC referring or relating to the review or enforcement of the merger between Illumina and GRAIL by foreign enforcers or regulators;
4. All recommendation memoranda provided to the FTC's Bureau of Competition and Bureau of Economics front offices or to the Commission, including drafts and final versions, relating to the merger of Illumina and GRAIL;
5. All documents and communications between or among employees or officials of the FTC referring or relating to the FTC's motion to dismiss its challenge to the merger of Illumina and GRAIL in federal court;
6. All documents and communications referring or relating to *Axon Enterprise, Inc. v. FTC*, including any plans or analysis the FTC is considering in light of the Supreme Court's unanimous decision; and
7. All documents and communications referring or relating to prejudgment or other constitutional concerns in the FTC's in-house administrative process.

Please produce this information as soon as possible but no later than 5:00 p.m. on June 22, 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,” as well as “federal courts and judges, and local courts in the Territories and possessions.”<sup>23</sup> If you have any questions about this matter, please ask your staff to contact Committee staff at (202) 225-6906. Thank you for your attention to this matter.

Sincerely,



Jim Jordan  
Chairman



Darrell Issa  
Chairman  
Subcommittee on Courts, Intellectual  
Property, and the Internet

---

<sup>23</sup> Rules of the U.S. House of Representatives, R. X (2023).

The Honorable Lina Khan

June 8, 2023

Page 5

A handwritten signature in cursive script that reads "Thomas Massie".

Thomas Massie

Chairman

Subcommittee on the Administrative State,  
Regulatory Reform, and Antitrust

cc: The Honorable Jerrold Nadler, Ranking Member  
The Honorable Henry C. Johnson, Ranking Member, Subcommittee on Courts,  
Intellectual Property, and the Internet

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

June 8, 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 Federal Trade Commission's (FTC) abuse of its statutory authorities in investigating Twitter.<sup>1</sup> The Committee's oversight has uncovered information suggesting that the FTC took action against Twitter in May 2022 as a result of Elon Musk's anticipated acquisition of the company. This information only reinforces the Committee's concerns about the FTC's actions and underscores the need for relevant documents to inform potential legislative reforms.

On April 12, 2023, after efforts to obtain your voluntary compliance,<sup>2</sup> the Committee issued a subpoena for documents relating to the FTC's investigation of Twitter.<sup>3</sup> The subpoena had a return date of April 26, 2023.<sup>4</sup> On April 26, you responded via letter, asserting that the FTC could not produce the subpoenaed documents because the FTC's investigation into Twitter was pending.<sup>5</sup> The pendency of an administrative investigation, however, is not a valid basis for your refusal to comply with a Congressional subpoena.

---

<sup>1</sup> See Letter from Hon. Jim Jordan, Chairman, H. Comm. on the Judic., & Hon. Ted Cruz to Lina Khan, Chair, Fed. Trade Comm'n (Mar. 10, 2023). See also H. Comm. on Judiciary and Select Subcomm. on the Weaponization of the Federal Gov't, 118th Cong., Interim Staff Rep. on The Weaponization of the Federal Trade Commission: An Agency's Overreach to Harass Elon Musk's Twitter (Mar. 7, 2023).

<sup>2</sup> Although the FTC provided one narrative response to the Committee's initial letter, it has declined to produce documents. See Letter from Lina Khan, Chair, Fed. Trade Comm'n, to Hon. Jim Jordan, Chair, H. Comm. on the Judic. (Mar. 27, 2023).

<sup>3</sup> See Letter from Hon. Jim Jordan, Chair, H. Comm. on the Judic. to Lina Khan, Chair, Fed. Trade Comm'n, at 2 (Apr. 12, 2023).

<sup>4</sup> *Id.*

<sup>5</sup> See Letter from Lina Khan, Chair, Fed. Trade Comm'n, to Hon. Jim Jordan, Chair, H. Comm. on the Judic. (Apr. 26, 2023).



Your reliance on *Pillsbury Co. v. FTC* for the assertion that Congressional inquiries “pose an inherent threat to” the FTC’s law enforcement mandate is misplaced.<sup>6</sup> *Pillsbury*, a case from 1966, concerned statements made at Senate and House subcommittee hearings, about a matter within the FTC’s adjudicatory process, at which the FTC chairman appeared.<sup>7</sup> The court noted that public advocacy by Members urging for a particular FTC outcome could affect the due process rights of a company before the Commission.<sup>8</sup> Such is not the case here, and notably your use of *Pillsbury* in this context is not to protect the due process rights of Twitter but instead to shield the FTC from Congressional scrutiny.<sup>9</sup> In any event, courts have held that an agency’s deliberations cannot be shielded when there is reason to believe misconduct has occurred.<sup>10</sup>

Even so, as an accommodation to the FTC, the Committee agreed to accept an initial briefing about the FTC’s actions toward Twitter, without waiving the Committee’s right to the subpoenaed documents.<sup>11</sup> The briefing occurred on May 8, 2023, conducted by Jim Kohm, the FTC’s Associate Director of the Division of Enforcement.<sup>12</sup> On May 12, Mr. Kohm sent a follow-up letter with additional information that the FTC could not provide during the briefing.<sup>13</sup>

From the FTC’s briefing and subsequent letter, it appears that the FTC acted against Twitter in May 2022 as a result of Elon Musk’s (at the time potential) acquisition of the company. According to the information provided, in October 2019, Twitter self-reported a privacy issue.<sup>14</sup> The FTC and Twitter reached a tentative settlement agreement in March 2021.<sup>15</sup> At the time, Commissioner Slaughter served as the FTC’s Acting Chair. In June 2021, you

---

<sup>6</sup> *Id.*

<sup>7</sup> 354 F.2d 952, 955-56 (5th Cir. 1966) (“The alleged interference, we hasten to add, was not alleged improper influence behind closed doors but was rather interference in the nature of questions and statements made by members of two Senate and House subcommittees having responsibility for legislation dealing with antitrust matters, all clearly spread upon the record.”); *id.* at fn. 2 (“At these hearings, Mr. Howrey, the then Chairman of the Commission, and several of the members of his staff, appeared including Mr. Kintner, the then General Counsel and later Chairman of the Commission, who wrote the final opinion from which this appeal is prosecuted.”).

<sup>8</sup> *Id.* at 963-64.

<sup>9</sup> See *supra* text accompanying notes 5-6.

<sup>10</sup> See, e.g., *In re Sealed Case (Espy)*, 121 F.3d 729, 737-38 (D.C. Cir. 1997) (noting that where there is reason to believe misconduct occurred, “the [deliberative process] privilege is routinely denied on the grounds that shielding internal government deliberations . . . does not serve the public interest in honest, effective government” (internal quotations omitted)).

<sup>11</sup> See generally Correspondence from House Judiciary Committee staff to FTC staff (May 2, 2023).

<sup>12</sup> Briefing by Fed. Trade Comm’n Staff to House Judiciary Committee Staff (May 8, 2023).

<sup>13</sup> Letter from Fed. Trade Comm’n Staff to House Judiciary Committee Staff (May 12, 2023). This letter asserted that “the Committee’s questions . . . fell outside the time frame of the Committee’s original request for documents and information.” This assertion is inaccurate. The Committee’s subpoena for documents covered a period beginning on April 1, 2022, more than a month before the FTC’s May 2022 Order against Twitter. Mr. Kohm began the briefing, unprompted, with information dating back to 2011 and a discussion about the actions leading up to the May 2022 Order. Only after Mr. Kohm made apparently inaccurate statements about the timeline did Committee staff raise the issues that led to the subsequent letter.

<sup>14</sup> Concurring Statement of Commissioner Christine S. Wilson and Commissioner Noah Joshua Phillips, Twitter, Matter No. 2023062 at 6 (May 25, 2022).

<sup>15</sup> Letter from Fed. Trade Comm’n Staff to House Judiciary Committee Staff (May 12, 2023).

became Chair. Despite the tentative agreement in March 2021,<sup>16</sup> the Commission took no action against Twitter in 2021.

The FTC's May 12 letter provides two pretextual suggestions for why the FTC did not act against Twitter in 2021 despite the tentative agreement. First, the letter suggests your nomination in the same month that the FTC reached the tentative agreement justified then-Acting Chair Slaughter's lack of action.<sup>17</sup> However, your pending nomination and confirmation as a Commissioner should not have affected the day-to-day operations of the FTC or the implementation of an agreed-upon settlement. Further, because your designation as Chair was reportedly a surprise decision,<sup>18</sup> then-Acting Chair Slaughter should have had no reason to wait for your confirmation because it was not expected you would assume the role of Chair.

The letter then attempts to explain the FTC's lack of action against Twitter, after you became Chair, by suggesting the need for a stronger settlement agreement. But the letter noted in vague terms that "FTC staff determined it was unable to obtain the additional relief" through the rest of 2021, without explaining why the terms of the tentative agreement were no longer acceptable to the FTC.<sup>19</sup> The letter continued with equally vague assertions about what happened in 2022, stating that the Bureau Director briefed the Chair in January 2022 and that "staff resolved outstanding issues" in January and February of 2022.<sup>20</sup> Ultimately, the Bureau Director circulated what became the May 2022 Order to all Commissioners on April 26, 2022—just one day after Twitter accepted Mr. Musk's offer to buy the company.<sup>21</sup>

The timeline of the FTC's actions raises significant questions. A close examination of the information provided suggests that there is an unjustified approximate one-year gap in the FTC's actions with respect to Twitter. A reasonable conclusion is that neither you nor Acting Chair Slaughter seriously planned to take action against Twitter until political pressure arose given Mr. Musk's impending acquisition.<sup>22</sup> The FTC's decision to enter the May 2022 Order after Mr. Musk's acquisition became apparent gave the FTC the power to then harass Twitter under cover of the May 2022 Order.<sup>23</sup> Put simply, what the Committee has learned of the FTC's actions reinforces the concern about the apparent partisan motivation behind the FTC's approach to Elon Musk's Twitter.<sup>24</sup>

---

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Alexei Alexis, *Khan sworn in as chairwoman of FTC in surprise White House move*, POLITICO (June 16, 2021).

<sup>19</sup> Letter from Fed. Trade Comm'n Staff to House Judiciary Committee Staff (May 12, 2023).

<sup>20</sup> *Id.*

<sup>21</sup> Press Release, Twitter, Elon Musk to Acquire Twitter (Apr. 25, 2022).

<sup>22</sup> See, e.g., Elizabeth Warren (@SenWarren), TWITTER (Apr. 25, 2022, 5:22 PM), <https://twitter.com/SenWarren/status/1518702084048179200>; Open Markets Institute, OMI Statement on Elon Musk and Twitter (Apr. 26, 2022); Jordan Boyd, *The Left Is Freaking Out Over Elon Musk Because Twitter Rigs The Game For Democrats*, THE FEDERALIST (Apr. 14, 2022); Ben Weingarten, *Elon Musk's Battle For Twitter Is A Proxy War For Americans Against The Ruling Class*, THE FEDERALIST (Apr. 20, 2022); Brian Schwartz, *Biden officials worry Musk will allow Trump to return to Twitter*, CNBC (Apr. 25, 2022).

<sup>23</sup> See Interim Staff Rep. on The Weaponization of the Federal Trade Commission: An Agency's Overreach to Harass Elon Musk's Twitter, *supra* note 1.

<sup>24</sup> *Cf. id.* at 1.

The FTC's compliance with the Committee's subpoena is deficient. The FTC has failed to provide a single document or communication responsive to the Committee's subpoena. The information provided to date, which the Committee accepted as an accommodation to the FTC, has only raised more concerns. The Committee expects that the FTC will promptly begin to produce material responsive to the subpoena. However, as an additional accommodation, the Committee is willing to prioritize the following categories of documents responsive to items 1 and 5 in the Committee's subpoena:

1. All recommendation memoranda provided to the FTC's Bureau of Consumer Protection and Bureau of Economics front offices or to the Commission, including drafts and final versions, relating to the investigation into Twitter's compliance with 2011 Commission Order;
2. All documents and communications referring or relating to the timing of the investigation into Twitter's compliance with 2011 Commission Order, including but not limited to the timing of potential or requested votes and recommendation memoranda; and
3. All documents and communications referring or relating to the FTC's demand that Twitter identify all journalists and other members of the media to whom Twitter allegedly granted access.

Please produce this material as soon as possible but no later than June 22, 2023, at 5:00 p.m.

The Committee remains concerned with the decision-making and internal controls that allowed for many specific demands in the FTC's investigation to be sent to Twitter, including demands targeting journalists. The information you provided suggests deficiencies in the structure of some of your investigations, including the matter the Committee is investigating.<sup>25</sup> These deficiencies are especially concerning given your actions to consolidate power in the Chair's office,<sup>26</sup> and heighten the importance of your full and complete compliance with the Committee's subpoena.

---

<sup>25</sup> See, e.g., Nonpublic Staff Briefing Regarding the FTC's Investigation of Twitter (Monday, May 8, 2023) (explaining that neither the Bureau of Consumer Protection front office nor any individual Commissioners review or comment on demands made by the Division of Enforcement to companies under investigation for consent order violations).

<sup>26</sup> Dissenting Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson Regarding the Issuance of Two Omnibus Compulsory Process Resolutions (July 1, 2022) ("In its statement, the majority assures us that the omnibus resolutions 'will not substantially change the multiple layers of checks and balances that are critical to the Commission's oversight of investigations.' This assertion is baffling, as these broad resolutions eliminate the only layer of Commission oversight concerning the use of compulsory process in the vast majority of the agency's competition-related investigations.").

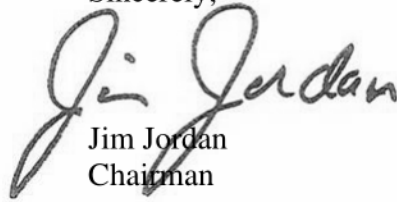
The Honorable Lina M. Khan

June 8, 2023

Page 5

Your compliance with the Committee's subpoena is deficient. If you continue to refuse to comply with the Committee's subpoena, the Committee may be forced to take action to enforce the subpoena, including but not limited to considering a resolution of contempt of Congress.

Sincerely,

A handwritten signature in black 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

GARY C. PETERS, MICHIGAN, CHAIRMAN

THOMAS R. CARPER, DELAWARE  
MAGGIE HASSAN, NEW HAMPSHIRE  
KYRSTEN SINEMA, ARIZONA  
JACKY ROSEN, NEVADA  
ALEX PADILLA, CALIFORNIA  
JON OSSOFF, GEORGIA  
RICHARD BLUMENTHAL, CONNECTICUT

RAND PAUL, KENTUCKY  
RON JOHNSON, WISCONSIN  
JAMES LANKFORD, OKLAHOMA  
MITT ROMNEY, UTAH  
RICK SCOTT, FLORIDA  
JOSH HAWLEY, MISSOURI  
ROGER MARSHALL, KANSAS

# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
WASHINGTON, DC 20510-6250

DAVID M. WEINBERG, STAFF DIRECTOR  
WILLIAM E. HENDERSON III, MINORITY STAFF DIRECTOR  
LAURA W. KILBRIDE, CHIEF CLERK

June 13, 2023

**VIA ELECTRONIC MAIL (mrcrawford@ftc.gov)**

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

Dear Chair Khan:

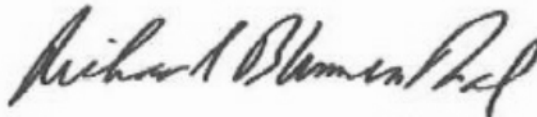
I write to request confidential staff briefings on the following two areas of the Commission's work: (1) activities with respect to junk fees, including the Unfair or Deceptive Fees Trade Regulation Rule, the Motor Vehicle Dealers Trade Regulation Rule, the Negative Option Rule, and any non-public investigations; and (2) any information involving investigations under the Health Breach Notification Rule and any health privacy investigations.

I hope to set up these briefings at your earliest possible convenience.

I understand the sensitivity of discussing such matters, and neither I nor my staff will disclose any non-public information provided during the briefings.

Thank you for your assistance in this matter.

Sincerely,



Richard Blumenthal  
Chairman  
Permanent Subcommittee on Investigations

cc: The Honorable Ron Johnson  
Ranking Member  
Permanent Subcommittee on Investigations

# Congress of the United States

Washington, DC 20515

June 28, 2023

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

Dear Chair Khan:

The Committee on the Judiciary and the Committee on Energy and Commerce are conducting oversight of your adherence to federal ethics guidance and whether you misled Congress about following ethics advice from the Federal Trade Commission's (FTC) Designated Agency Ethics Official (DAEO). A recent report suggests that you declined to fully follow ethics advice that you recuse yourself from a pending FTC matter in 2022, despite testifying under oath in 2023 that you have always followed nonpartisan ethics guidance. Accordingly, we write to request information and documents related to your apparent ethical failure and misleading testimony to Congress.

On April 18, 2023, you testified before an Energy and Commerce subcommittee hearing regarding the Federal Trade Commission's (FTC) budget.<sup>1</sup> At that hearing, Chair Rodgers asked you: "Are there any instances where you've not followed the DAEO's advice?"<sup>2</sup> After pausing for a few seconds, you responded, "no," and then attempted to explain your response by stating, "I have consulted with the DAEO and have taken actions that are consistent with the legal statements the DAEO has made."<sup>3</sup> Chair Rodgers then asked Commissioners Rebecca Slaughter and Alvaro Bedoya, "would you have concerns with an FTC Commissioner not following the recommendation of the DAEO?"<sup>4</sup> Both Commissioners Slaughter and Bedoya refused to answer the question.<sup>5</sup>

On June 16, 2023, a journalist published a nonpartisan ethics memorandum, dated August 31, 2022, and written by the FTC's DAEO, analyzing your ability to sit as a judge in a specific proceeding before the FTC.<sup>6</sup> According to the ethics memorandum, the DAEO "recommend[ed]

---

<sup>1</sup> *Fiscal Year 2024 Federal Trade Commission Budget: Hearing Before the Subcomm. on Innovation, Data, and Com. of the H. Comm. on Energy and Com.*, 118<sup>th</sup> Cong. (2023).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See Leah Nylen, *Lina Khan Rejected FTC Ethics Recommendation to Recuse in Meta Case*, BLOOMBERG (June 16, 2023); Memorandum from Lorielle L. Pankey, Designated Agency Ethics Official, Fed. Trade Comm'n, to Christine

Chair Khan recuse to avoid an appearance of partiality concern pursuant” to federal ethics regulations.<sup>7</sup> The relevant ethics regulations specify that even if there is no *per se* conflict of interest, “where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter . . . .”<sup>8</sup> The DAEO concluded that a reasonable person would question your partiality in the matter at hand, noting her “strong reservations with Chair Khan participating as an adjudicator in this proceeding.”<sup>9</sup>

Despite this advice from the FTC’s nonpartisan DAEO, you declined to recuse yourself from that matter.<sup>10</sup> In a November 2022 statement addressing your decision, you relied on a court opinion in a separate matter that examined the actions of a prosecutor.<sup>11</sup> The federal ethics analysis for acting as a prosecutor, however, is different than the analysis for acting as an adjudicator in an administrative proceeding.<sup>12</sup> You failed to address the ethical concerns of acting as an adjudicator in your statement.<sup>13</sup> Indeed, in the DAEO’s memorandum, she explicitly noted the distinction between her nonpartisan assessment of your role as an adjudicator versus a prosecutor.<sup>14</sup>

The recent disclosure of the DAEO’s memorandum suggests that your response to Chair Rodgers during the recent subcommittee hearing omitted an important recommendation by the DAEO and raises serious questions about your commitment to the fair and impartial administration of the FTC’s authorities. Given the gravity of this situation, please promptly provide the following documents and information to the Committees:

1. All documents and communications, including any documents and communications already produced to the Energy and Commerce Committee on April 19, 2023, referring or relating to whether the DAEO recommended to you that you recuse yourself to avoid an appearance of partiality concern pursuant to 5 C.F.R. § 2635.502.
2. All documents and communications referring or relating to your ethics analysis including, but not limited to, all communications between your office and FTC ethics staff.
3. All documents and communications referring or relating to your testimony before a subcommittee of the Energy and Commerce Committee on April 18, 2023.

Please produce this information as soon as possible but no later than 5:00 p.m. on July

---

S. Wilson, Commissioner, Fed. Trade Comm’n (Aug. 31, 2022) [hereinafter DAEO Memorandum]; *see also* Chelsey Cox, *FTC Chair Lina Khan refused to sit out agency’s case against Meta despite ethics concerns*, report says, CNBC (June 16, 2023).

<sup>7</sup> DAEO Memorandum, *supra* note 6, at 1.

<sup>8</sup> 5 C.F.R. § 2635.502(a).

<sup>9</sup> DAEO Memorandum, *supra* note 6, at 1-2.

<sup>10</sup> Internal Statement of Lina M. Khan, Chair, Fed. Trade Comm’n at 5 (Nov. 18, 2022).

<sup>11</sup> *Id.*

<sup>12</sup> *See* DAEO Memorandum, *supra* note 6, at 3.

<sup>13</sup> Internal Statement of Lina M. Khan, Chair, Fed. Trade Comm’n at 5 (Nov. 18, 2022).

<sup>14</sup> *See* DAEO Memorandum, *supra* note 6, at 9 n.25.

The Honorable Lina M. Khan

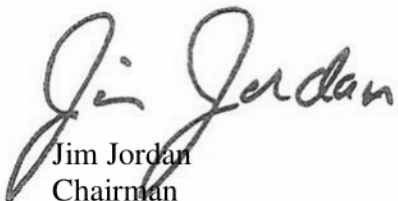
June 28, 2023

Page 3

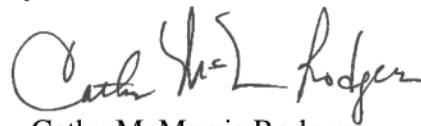
12, 2023. The Committee on the Judiciary is authorized by Rule X of the Rules of the House of Representatives to conduct oversight of and legislate on matters relating to the “[p]rotection of trade and commerce against unlawful restraints and monopolies.”<sup>15</sup> The Committee on Energy and Commerce is authorized by Rule X of the Rules of the House of Representatives to conduct oversight of and legislate on matters relating to “[c]onsumer affairs and consumer protection” and “[i]nterstate and foreign commerce generally”<sup>16</sup>

If you have any questions about this matter, please ask your staff to contact Judiciary Committee staff at (202) 225-6906 or Energy and Commerce Committee staff at (202) 225-3641. Thank you for your attention to this matter.

Sincerely,



Jim Jordan  
Chairman  
Committee on the Judiciary



Cathy McMorris Rodgers  
Chair  
Committee on Energy and Commerce

cc: The Honorable Jerrold Nadler, Ranking Member  
Committee on the Judiciary

The Honorable Frank Pallone, Ranking Member  
Committee on Energy and Commerce

---

<sup>15</sup> Rules of the U.S. House of Representatives, R. X (2023).

<sup>16</sup> *Id.*



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

June 28, 2023

The Honorable Lina Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
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). As a part of this oversight, and to inform potential legislative reforms, the Committee requires testimony from the following FTC employees:

1. Mr. Stephen Mohr, Assistant Director, Mergers I;
2. Mr. Jordan Andrew, Deputy Assistant Director, Mergers I;
3. Mr. James Weiss, Deputy Assistant Director, Mergers I;
4. Ms. Sarah Wohl, Deputy Assistant Director, Mergers I;
5. Mr. Peggy Bayer Femenella, Assistant Director, Mergers II;
6. Mr. James Abell, Deputy Assistant Director, Mergers II;
7. Mr. Joshua Goodman, Deputy Assistant Director, Mergers II;
8. Mr. Peter Richman, Assistant Director, Mergers III;
9. Ms. Jessica Drake, Deputy Assistant Director, Mergers III;
10. Mr. Brian Telpner, Deputy Assistant Director, Mergers III;
11. Mr. Mark Seidman, Assistant Director, Mergers IV;
12. Mr. Rohan Pai, Deputy Assistant Director, Mergers IV;
13. Mr. Stephen Rodger, Deputy Assistant Director, Mergers IV;
14. Ms. Tara Isa Koslov, Deputy Director, Bureau of Competition;
15. Ms. Patricia Galvan, Assistant Director, Technology Enforcement Division;
16. Ms. Krisha Cerilli, Deputy Assistant Director, Technology Enforcement Division;
17. Ms. Jeanne Bumpus, Director, Office of Congressional Relations;
18. Ms. Kim Vandecar, Congressional Specialist, Office of Congressional Relations;
19. Ms. Robin Moore, Office of the General Counsel;
20. Ms. Elizabeth Tucci, Deputy General Counsel for Legal Counsel, Office of the General Counsel;

The Honorable Lina Khan

June 28, 2023

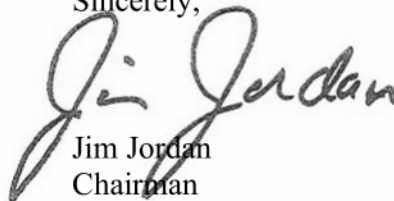
Page 2

21. Ms. Lorielle Pankey, Associate General Counsel for Ethics, Office of the General Counsel;
22. Ms. April Tabor, Secretary of the Commission; and
23. Mr. James Kohm, Associate Director, Division of Enforcement.

We ask that you make these individuals available for transcribed interviews with the Committee promptly. Please have your staff contact Committee staff as soon as possible but no later than 5:00 p.m. on July 7, 2023, to schedule these transcribed interviews. The Committee may also require testimony in a transcribed interview setting with other FTC employees in the future.

The Committee on the Judiciary is authorized by 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.”<sup>1</sup> If you have any questions about this matter, please contact Committee staff at (202) 225-6906.

Sincerely,

A handwritten signature in black 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

---

<sup>1</sup> Rules of the U.S. House of Representatives, R. X (2023).

COMMITTEE ON THE JUDICIARY

COMMITTEE ON APPROPRIATIONS  
EX-OFFICIO MEMBER



**ADAM B. SCHIFF**

MEMBER OF CONGRESS · 30<sup>TH</sup> DISTRICT, CALIFORNIA

2309 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515

245 EAST OLIVE AVENUE, SUITE 200  
BURBANK, CA 91502

@RepAdamSchiff · schiff.house.gov

June 28, 2023

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

Dear Chair Khan,

I write today to express my concern regarding the proposed merger between Albertsons and Kroger. This \$24.6 billion merger, which is expected to be finalized early next year, would be the largest grocery store merger in United States history. I am concerned that this merger may pose a serious threat to the livelihoods of workers around the country.

I concur with the members of the United Food and Commercial Workers International Union (UFCW), who have raised serious issues with the process surrounding the proposed merger, including the lack of transparency. Workers who stand to be directly impacted by this potential merger deserve to be central to the conversation about whether the merger should move forward and what that process should look like.

While the CEOs of Kroger and Albertsons—who make approximately \$19 million and \$8.6 million, respectively—have stated that the proposed merger would not result in any lost jobs or closed stores, we have heard such claims before and they proved all too inaccurate. What’s more, I am deeply concerned that such a concentration of the market has the potential to drive down wages and the bargaining power of workers. According to the Economic Policy Institute, a Kroger-Albertsons merger could impact grocery store workers not just at those stores, but elsewhere in the market. In their [report](#), they claim that “most of the wage losses caused by the merger will be a negative externality that falls on grocery store workers employed by other firms.” Even if the claims made by the companies’ CEOs were true—which I suspect time will show otherwise—the merger would impact workers beyond just their stores.

At a time when Americans around the country are trying to stay afloat with prices on the rise, a merger of this size and with this potential impact should be the utmost concern of the Federal Trade Commission.

We must do everything we can to ensure that workers continue to see their wages and bargaining power increase, not be suppressed by a merger that raises serious antitrust concerns. I urge you to review this proposed merger very critically and thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Adam B. Schiff". The signature is stylized and cursive.

Adam B. Schiff  
Member of Congress

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

June 30, 2023

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

Dear Chair Khan:

Small businesses are the backbone of America's economy. For these businesses, access to goods and services is essential. The COVID-19 pandemic disrupted America's supply chain severely limiting small businesses' access to goods and services. The House Judiciary Committee is conducting oversight of the Federal Trade Commission's (FTC) study of supply chain disruptions.

On November 29, 2021, the FTC ordered nine large retailers, wholesalers, and consumer goods suppliers to provide detailed information to help the FTC study the causes behind the then-ongoing supply chain disruptions.<sup>1</sup> As you said at the time:

The FTC has a long history of pursuing market studies to deepen our understanding of economic conditions and business conduct, and we should continue to make nimble and timely use of these information-gathering tools and authorities.<sup>2</sup>

This study could potentially shed light on supply chain issues that have had effects on local and regional grocers, retailers, and businesses. It has been more than 17 months since the FTC's requested responses were due. The FTC has not been forthcoming with any report or analysis as to how the supply chain disruption has affected the American economy and competition.

We write to request a staff-level briefing on the status of the FTC's supply chain investigation. This briefing should include the factual and economic findings to date related to the effects that supply chain disruptions have had on American small businesses. The briefing should also include information related to how manufacturers may have changed distribution practices with large retailers as compared to smaller retailers, including examples of how large retailers may have benefitted from favorable pricing, and what authority the FTC could use, if

---

<sup>1</sup> Fed. Trade Comm'n, Press Release, FTC Launches Inquiry into Supply Chain Disruptions (Nov. 29, 2021).

<sup>2</sup> *Id.*

any, to address effects on competition. In connection with a briefing on topics outlined above, please prepare to address these questions:

1. What are the initial findings, if any, from the supply chain study?
2. What role are those initial findings, if any, playing in the FTC's approach to enforcement?
3. When did the FTC last undertake a Robinson-Patman Act investigation relating to how pricing affects retailers, including small or independent retailers and their ability to access goods? When did the FTC last initiate such an enforcement action?
4. The FTC has recently received significant additional funding from Congress, and has asked for more. How are FTC resources being used relative to enforcement of the Robinson Patman Act?
5. What are the limitations of the Robinson-Patman Act that make bringing an enforcement action difficult to win in court, including but not limited to the:
  - a. requirements that sales be in interstate commerce;
  - b. ability to sell to corporate affiliates or subsidiaries;
  - c. the differentiation between indirect sales through wholesalers compared to direct sales to retailers;
  - d. various components of price (including discounts, surcharges, and credit terms);
  - e. difference in costs to provide a product in different channels or to different customers;
  - f. exclusion of services;
  - g. requirement of like grade and quality, including the time dimension to this requirement;
  - h. limitation on applicability to exports;
  - i. differentiation between brand name and private label; and
  - j. requirement of an injury to competition?

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.”<sup>3</sup> If you have any questions about this matter, and to set up a briefing, please contact Committee staff at (202) 225-6906.

Thank you for your attention to this matter.



Thomas Massie  
Chairman  
Subcommittee on the Administrative  
State, Regulatory Reform, and Antitrust

Sincerely,



Lou Correa  
Ranking Member  
Subcommittee on the Administrative  
State, Regulatory Reform, and Antitrust

---

<sup>3</sup> Rules of the U.S. House of Representatives, R. X (2023).

United States Senate  
WASHINGTON, DC 20510

June 29, 2023

Assistant Attorney General Kanter  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530-0001

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

Dear Assistant Attorney General Kanter and Chair Khan:

We write to encourage you to examine competition issues regarding Apple’s and Google’s expansion into automotive markets. Increasingly, cars and trucks are no longer simply ways of getting from A to B. They are also becoming digital experiences. This trend will likely accelerate as our cars get smarter and begin to drive themselves. Competition in the auto industry is starting to focus on making the in-vehicle experience more enjoyable, productive, comfortable, and safe.

Unfortunately, the rapidly digitizing automotive industry risks being captured by two dominant platforms. Both Apple and Google act as gatekeepers with their mobile-phone platforms, iPhone and Android. Apple and Google already control key technologies that auto companies rely upon, like Apple CarPlay, Android Auto, and Google Maps. Both companies also control access to the chipsets on their respective mobile platforms, which can provide convenient and secure substitutes for vehicle key fobs.

On top of controlling the mobile platforms, Google and Apple are also two of the world’s dominant mapping and place search providers. Those services are “must haves” for auto original equipment manufacturers (OEMs) seeking to deliver a competitive digital experience.

As the industry enters the digital age, tech giants, auto OEMs, and new startups should all compete to offer the best experience to users. That competition will undoubtedly yield winners and losers. But that competition should happen on the merits—not because certain companies already enjoy market power. We are also concerned with the inherent safety risks from Big Tech’s planned automotive expansion including additional in-vehicle screens. Their business models are built on attracting user eyeballs to sell apps and ads, and these companies have very little experience in industries where safety is such a critical issue. We thus encourage the agencies to investigate thoroughly whether the tech giants are exploiting their existing dominant position to gain an unfair—and potentially illegal—advantage in auto. As you know, once dominant companies gain monopoly power in these sorts of platform markets, they can be difficult if not impossible to dislodge.

We appreciate your continued attention to these important issues.

Sincerely,

Handwritten signature of Amy Klobuchar in black ink.

Senator Amy Klobuchar

Handwritten signature of Michael Lee in black ink.

Senator Michael Lee



Congress of the United States  
House of Representatives  
Washington, DC 20515-0906

June 28, 2023

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

Dear Chair Khan,

We write with concern regarding recent reports<sup>1</sup> that Marriott International is alleged to be charging a deceptive “junk fee” to customers under the guise of covering compliance with a Hotel Worker Protection Ordinance that took effect on August 12, 2022<sup>2</sup>. We commend the Biden Administration and the Federal Trade Commission (FTC) for its efforts to improve transparency and minimize junk fees in the airline, event, and hospitality industries. As you are certainly aware, the FTC has authority to create rules that address junk fees that are unfair or deceptive and cause harm to American consumers.

According to reports, the above-mentioned “junk fees” purportedly range from \$10-14 per room per night, and would enable Marriott to collect an estimated \$3.6 million per year at one single hotel, the 1,004-room Los Angeles Airport Marriott. The hospitality industry is generating record profits, with 12-month RevPAR (Revenue per available room, the primary measure of hotel performance) exceeding 2019 levels every month in 2023<sup>3</sup>. The industry can and must protect workers and pay them fairly without charging deceptive fees.

If allowed to persist, we believe that the so-called “Hotel Worker Protection Ordinance Costs Surcharge” would set a dangerous precedent, potentially permitting hospitality companies to overcharge guests for alleged compliance with laws that protect workers from sexual harassment and assault by providing panic buttons, ensure fair pay for heavy workloads, and provide minimum wages. We believe it would be valuable for the FTC to use its discretion to investigate whether Marriott International has imposed a similar surcharge in other cities that have passed hotel worker protection laws, including Long Beach, Santa Monica, Glendale, West Hollywood, Irvine, Emeryville and Seattle. It is important to make clear that these fees will not be tolerated.

We request a meeting with the FTC to discuss future oversight and further collaboration on this vital issue, and appreciate your efforts looking into the matter.

<sup>1</sup> <https://www.wsj.com/articles/hotel-guests-sue-marriott-saying-los-angeles-locations-charge-junk-fee-a479feb1>

<sup>2</sup> [https://wagesla.lacity.org/sites/g/files/wph1941/files/2022-08/Hotel%20Worker%20Protection%20Ordinance%20Rules%20and%20Regulations\\_0.pdf](https://wagesla.lacity.org/sites/g/files/wph1941/files/2022-08/Hotel%20Worker%20Protection%20Ordinance%20Rules%20and%20Regulations_0.pdf)

<sup>3</sup> [https://www.ey.com/en\\_us/real-estate-hospitality-construction/hospitality-industry-looks-strong-for-2023-despite-recession-fears](https://www.ey.com/en_us/real-estate-hospitality-construction/hospitality-industry-looks-strong-for-2023-despite-recession-fears)

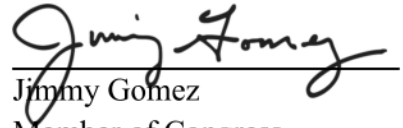


Sincerely,



---

Katie Porter  
Member of Congress



---

Jimmy Gomez  
Member of Congress



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 26, 2023

The Honorable Richard Blumenthal  
United States Senate  
Washington, D.C. 20510

Dear Sen. Blumenthal,

Thank you for the June 23, 2023, letter from you and others providing your views regarding the Commission's Negative Option rulemaking proceeding.<sup>1</sup> Your letter will be treated as a public comment in the rulemaking proceeding, and will be placed on the public comments page for that proceeding on [regulations.gov](https://www.regulations.gov).<sup>2</sup>

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Negative Option Rule, 16 C.F.R. Part 425.1; Notice of proposed rule, 88 Fed. Reg. 24,716 (Apr. 24, 2023), available at <https://www.federalregister.gov/documents/2023/04/24/2023-07035/negative-option-rule>.

<sup>2</sup> Public comments in the Negative Option rulemaking proceeding, available at <https://www.regulations.gov/docket/FTC-2023-0033>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 26, 2023

The Honorable Jack Reed  
United States Senate  
Washington, D.C. 20510

Dear Sen. Reed,

Thank you for the June 23, 2023, letter from you and others providing your views regarding the Commission's Negative Option rulemaking proceeding.<sup>1</sup> Your letter will be treated as a public comment in the rulemaking proceeding, and will be placed on the public comments page for that proceeding on [regulations.gov](https://www.regulations.gov).<sup>2</sup>

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Negative Option Rule, 16 C.F.R. Part 425.1; Notice of proposed rule, 88 Fed. Reg. 24,716 (Apr. 24, 2023), available at <https://www.federalregister.gov/documents/2023/04/24/2023-07035/negative-option-rule>.

<sup>2</sup> Public comments in the Negative Option rulemaking proceeding, available at <https://www.regulations.gov/docket/FTC-2023-0033>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 26, 2023

The Honorable Chris Van Hollen  
United States Senate  
Washington, D.C. 20510

Dear Sen. Van Hollen,

Thank you for the June 23, 2023, letter from you and others providing your views regarding the Commission's Negative Option rulemaking proceeding.<sup>1</sup> Your letter will be treated as a public comment in the rulemaking proceeding, and will be placed on the public comments page for that proceeding on [regulations.gov](https://www.regulations.gov).<sup>2</sup>

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Negative Option Rule, 16 C.F.R. Part 425.1; Notice of proposed rule, 88 Fed. Reg. 24,716 (Apr. 24, 2023), available at <https://www.federalregister.gov/documents/2023/04/24/2023-07035/negative-option-rule>.

<sup>2</sup> Public comments in the Negative Option rulemaking proceeding, available at <https://www.regulations.gov/docket/FTC-2023-0033>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 26, 2023

The Honorable Peter Welch  
United States Senate  
Washington, D.C. 20510

Dear Sen. Welch,

Thank you for the June 23, 2023, letter from you and others providing your views regarding the Commission's Negative Option rulemaking proceeding.<sup>1</sup> Your letter will be treated as a public comment in the rulemaking proceeding, and will be placed on the public comments page for that proceeding on [regulations.gov](https://www.regulations.gov).<sup>2</sup>

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Negative Option Rule, 16 C.F.R. Part 425.1; Notice of proposed rule, 88 Fed. Reg. 24,716 (Apr. 24, 2023), available at <https://www.federalregister.gov/documents/2023/04/24/2023-07035/negative-option-rule>.

<sup>2</sup> Public comments in the Negative Option rulemaking proceeding, available at <https://www.regulations.gov/docket/FTC-2023-0033>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 26, 2023

The Honorable Ron Wyden  
United States Senate  
Washington, D.C. 20510

Dear Sen. Wyden,

Thank you for the June 23, 2023, letter from you and others providing your views regarding the Commission's Negative Option rulemaking proceeding.<sup>1</sup> Your letter will be treated as a public comment in the rulemaking proceeding, and will be placed on the public comments page for that proceeding on [regulations.gov](https://www.regulations.gov).<sup>2</sup>

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Negative Option Rule, 16 C.F.R. Part 425.1; Notice of proposed rule, 88 Fed. Reg. 24,716 (Apr. 24, 2023), available at <https://www.federalregister.gov/documents/2023/04/24/2023-07035/negative-option-rule>.

<sup>2</sup> Public comments in the Negative Option rulemaking proceeding, available at <https://www.regulations.gov/docket/FTC-2023-0033>.

SHERROD BROWN, OHIO, CHAIRMAN  
JACK REED, RHODE ISLAND  
ROBERT MENENDEZ, NEW JERSEY  
JON TESTER, MONTANA  
MARK WARNER, VIRGINIA  
ELIZABETH WARREN, MASSACHUSETTS  
CHRIS VAN HOLLEN, MARYLAND  
CATHERINE CORTEZ MASTO, NEVADA  
TINA SMITH, MINNESOTA  
KYRSTEN SINEMA, ARIZONA  
JON OSSOFF, GEORGIA  
RAPHAEL G. WARNOCK, GEORGIA  
PATRICK J. TOOMEY, PENNSYLVANIA  
RICHARD C. SHELBY, ALABAMA  
MIKE CRAPO, IDAHO  
TIM SCOTT, SOUTH CAROLINA  
MIKE ROUNDS, SOUTH DAKOTA  
THOM TILLIS, NORTH CAROLINA  
JOHN KENNEDY, LOUISIANA  
BILL HAGERTY, TENNESSEE  
CYNTHIA M. LUMMIS, WYOMING  
JERRY MORAN, KANSAS  
KEVIN CRAMER, NORTH DAKOTA  
STEVE DAINES, MONTANA

LAURA SWANSON, STAFF DIRECTOR  
BRAD GRANTZ, REPUBLICAN STAFF DIRECTOR

## United States Senate

COMMITTEE ON BANKING, HOUSING, AND  
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

May 31, 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 staff briefing on the process through which franchise owners voice their complaints to the FTC, as well as the agency's ongoing review of the Franchise Rule and any matters related to franchisor conduct or franchise owners and investors, including complaints and investigations.

I hope to set up a briefing and review at your earliest possible convenience. I also request to invite the staff of Senator Cortez Masto, who I have partnered with in overseeing this issue, to this confidential briefing. I understand the sensitivity of discussing such matters, and neither I nor my staff will disclose any non-public information provided during the briefing.

Thank you for your assistance in this matter.

Sincerely,



Elizabeth Warren  
Chair

Subcommittee on Economic Policy

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY  
2157 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051  
<https://oversight.house.gov>

June 1, 2023

The Honorable Lina M. Khan, Chair  
The Honorable Rebecca K. Slaughter, Commissioner  
The Honorable Alvaro Bedoya, Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Washington, D.C. 20580

Dear Chair Khan and Commissioners Slaughter and Bedoya,

The Committee on Oversight and Accountability is investigating matters raised by Commissioner Christine S. Wilson’s February 14, 2023, announcement of her unexpected resignation from the Federal Trade Commission (Commission or FTC). Commissioner Wilson declared her intent to resign over deep concerns that the Commission, under current Chair Lina M. Khan’s leadership, is abusing its power and disregarding the rule of law, due process, and federal ethics laws.<sup>1</sup> We seek documents and information to shed light on Commissioner Wilson’s allegations and determine the extent to which the Commission has deviated from its mission to protect America’s consumers.

Commissioner Wilson highlighted several key matters related to her resignation. First, she pointed to Chair Khan’s refusal to recuse herself from review of Meta’s proposed merger with Within Unlimited, even though Chair Khan had stated publicly before joining the Commission that Meta should never be allowed to merge with any company.<sup>2</sup> Commissioner Wilson, the Commission’s sole Republican commissioner, challenged this refusal on due process and federal ethics grounds, detailing her concerns in a dissenting opinion.<sup>3</sup> Her Democrat co-commissioners, however, “imposed heavy redactions” on her dissent, preventing the details from reaching the public.<sup>4</sup> According to Commissioner Wilson, these redactions “served no purpose but to protect Ms. Khan from embarrassment.”<sup>5</sup>

---

<sup>1</sup> Christine S. Wilson, *Why I’m Resigning as an FTC Commissioner: Lina Khan’s Disregard for the Rule of Law and Due Process Make It Impossible for Me to Continue Serving*, Wall Street Journal (Feb. 14, 2023) (*Why I’m Resigning*).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*



In addition to Chair Khan’s conduct in the Meta-Within merger, Commissioner Wilson recounted three other examples fueling her concerns:

- the Commission’s issuance of a controversial November 2022 “antitrust enforcement policy statement asserting that the FTC could ignore decades of court rulings and condemn essentially any business conduct that three unelected commissioners find distasteful;”
- the Commission’s launch in January 2023 of a rulemaking to ban under the FTC Act “nearly all noncompete clauses in employee contracts”—which, Commissioner Wilson argued, defied fresh Supreme Court precedent that “an agency can’t claim ‘to discover in a long-extant statute an unheralded power representing a transformative expansion in its regulatory authority;” and,
- the Commission’s apparently routine abuses of the merger review process to chill “all mergers, not only those that hinder competition.”<sup>6</sup>

These matters raise questions whether the FTC under Chair Khan has become a rogue agency—particularly given Chair Khan’s drive at the beginning of her tenure to “bulldoz[e] procedural safeguards,” “consolidate agency power,” “unilaterally assert and expand regulatory authority,” and “abandon bipartisan and open processes.”<sup>7</sup> We also are concerned whether departures from prior norms under Chair Khan are due to White House influence. President Biden, after all, called upon Chair Khan to play a leading role in implementation of his Executive Order 14036 on “Promoting Competition in the American Economy.”<sup>8</sup>

Many of these concerns are discussed in more detail in numerous speeches, dissents and other statements by Commissioner Wilson over the course of Chair Khan’s tenure.<sup>9</sup> Former

---

<sup>6</sup> *Id.*

<sup>7</sup> Letter from Hon. Jim Jordan, Ranking Member, H. Comm. on the Judiciary, Hon. Cathy McMorris Rodgers, Ranking Member, H. Comm. on Energy and Commerce, and Hon. James Comer, Ranking Member, H. Comm. on Oversight and Reform, to Hon. Lina Khan, Chair, Hon. Noah Phillips, Commissioner, Hon. Rohit Chopra, Commissioner, Hon. Rebecca K. Slaughter, Commissioner, and Hon. Christine S. Wilson, Commissioner, U.S. Fed’l Trade Comm’n (July 29, 2021).

<sup>8</sup> 86 Fed. Reg. 36,987 (July 24, 2021).

<sup>9</sup> See, e.g., U.S. Fed’l Trade Comm’n, *Statement of Christine S. Wilson: Regarding the Announcement of Pre-Consummation Warning Letters* (Aug. 9, 2021); U.S. Fed’l Trade Comm’n, *Dissenting Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson: Regarding the Commission’s Rescission of the 2020 FTC/DOJ Vertical Merger Guidelines and the Commentary on Vertical Merger Enforcement* (Sept. 15, 2021); H. Comm. on the Judiciary, Subcomm. on Antitrust, Comm’l and Admin. Law, *Hearing on Reviving Competition Part 4: 21<sup>st</sup> Century Antitrust Reforms and the American Worker, Testimony of Christine S. Wilson* (Sept. 28, 2021); U.S. Fed’l Trade Comm’n, *Dissenting Statement of Commissioners Christine S. Wilson and Noah Joshua Phillips: Regarding the Statement of the Commission on Use of Prior Approval Provisions in Merger Orders* (Oct. 29, 2021); Christine S. Wilson, *The Neo-Brandeisian Revolution: Unforced Errors and the Diminution of the FTC*, U.S. Fed’l Trade Comm’n (Nov. 9, 2021); Christine S. Wilson, *Marxism and Critical Legal Studies Walk into the FTC: Deconstructing the Worldview of the Legal Neo-Brandeisians*, U.S. Fed’l Trade Comm’n (April 8, 2022); U.S. Fed’l Trade Comm’n, *Dissenting Statement of Commissioner Christine S. Wilson: Regarding the “Policy Statement Regarding the Scope of Unfair Methods of Competition under Section 5 of the Federal Trade Commission Act,”*

commissioners and other experts and observers have echoed Commissioner Wilson's concerns. At a recent forum on developments at the FTC, former commissioner Joshua D. Wright suggested the Commission during Chair Khan's tenure is routinely abusing merger review processes, holding parties in lengthy suspense without any clarity over whether their mergers ultimately will be challenged.<sup>10</sup> He also decried the Commission's troubling policy of requiring merging parties to waive judicial review of future mergers as the price of the Commission's willingness to settle a current case.<sup>11</sup> George Washington University Law School Professor Richard J. Pierce pointed to recent empirical research, finding the Commission is "not acting in accordance with any . . . prior published [Commission] guidelines," "no one has any idea what they are doing," and "there is a tremendous range of uncertainty."<sup>12</sup> Bilal Sayyed, former director of the Commission's Office of Policy Planning, suggested "uncertainty has become the crux of [the Commission's] merger policy . . . uncertainty and delay."<sup>13</sup>

Over the many decades since Congress created it, the FTC has played a leading role in assuring the protection of American consumers and the integrity of the American marketplace. We are concerned that the developments at the Commission catalogued by Commissioner Wilson and others could undermine consumers' and markets' confidence in the Commission's ability to perform its functions effectively and with integrity.

To assist the Committee in conducting oversight of whether the FTC is indeed failing to show due regard for the rule of law, due process and federal ethics standards, please provide the following documents and information, covering the time period January 20, 2021 to the present unless otherwise indicated, as soon as possible but not later than June 15, 2023:

1. An unredacted copy of Commissioner Wilson's dissent from Chair Khan's refusal to recuse herself from review of the proposed Meta-Within Unlimited merger;
2. An unredacted copy of each opinion received by Chair Khan from the Commission's Office of the General Counsel or any component or official thereof regarding whether the Chair should recuse or should have recused herself from participation in review of the Meta-Within Unlimited merger;

---

Comm'n File No. P221202 (Nov. 10, 2022); U.S. Fed'l Trade Comm'n, *Dissenting Statement of Commissioner Christine S. Wilson Regarding the Notice of Proposed Rulemaking for the Non-Compete Clause Rule*, Comm'n File No. P201200-1 (Jan. 5, 2023); U.S. Fed'l Trade Comm'n, *Statement of Commissioner Christine S. Wilson: In the Matter of HSR Premerger Notification, Commission File No. P110014* (Feb. 7, 2023); Christine S. Wilson, *Rule-A-Palooza: Realities and Repercussions* (Feb. 24, 2023).

<sup>10</sup> The Federalist Society, *A Roundtable on Recent Developments at the FTC* (Mar. 6, 2023), online at [A Roundtable on Recent Developments at the FTC - Regulatory Transparency Project \(fedsoc.org\)](https://www.fedsoc.org/).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* (citing D. Daniel Sokol, Marissa Grimm, Robert Calzaretta, and Marcello Santana, *Antitrust Mergers and Regulatory Uncertainty* (Draft) (Dec. 11, 2022), online at <https://ssrn.com/abstract=4295283>).

<sup>13</sup> *Id.*

3. All documents or communications by or for, or sent to or from, current or former Commission officials, including former commissioner Rohit Chopra, discussing whether the Commission's current policy on enforcement of Section 5 of the Federal Trade Commission Act is inconsistent with the terms of that Act, due process, judicial precedent, or any opinion of the Commission's Office of the General Counsel, Bureau of Competition or Bureau of Consumer Protection;
4. All documents or communications by or for, or sent to or from, current or former Commission officials, including former commissioner Rohit Chopra, discussing the impacts on potential merging parties or Commission staff of increased delay or uncertainty in the merger review process, including whether such delay or uncertainty could be used instead of judicial or administrative litigation to deter or stop merger activity or whether such delay or uncertainty raises issues concerning due process, fidelity to the rule of law, inconsistency with any opinion of the Commission's Office of the General Counsel or Bureau of Competition, or waste of agency or proposed merging parties' resources;
5. All documents or communications by or for, or sent to or from, current or former Commission officials, including former commissioner Rohit Chopra, discussing whether the Commission's current policy of seeking prior approval concessions from merging parties in merger settlement agreements is inconsistent with any statute administered by the Commission, due process, judicial precedent, or any opinion of the Commission's Office of the General Counsel or Bureau of Competition;
6. All documents or communications by or for, or sent to or from, current or former Commission officials, including former commissioner Rohit Chopra, discussing whether any rule proposed by the Commission in a rulemaking proceeding is inconsistent with any statute administered by the Commission, due process, judicial precedent, or any opinion of the Commission's Office of the General Counsel, Bureau of Competition or Bureau of Consumer Protection;
7. All documents or communications by or for, or sent to or from, current or former Commission officials, including former commissioner Rohit Chopra, discussing whether the Commission's departures from prior Commission policy, practice or procedure, or collusion with foreign antitrust authorities to impede mergers of U.S. companies, raise issues concerning fidelity to the rule of law, including statutes administered by the Commission, due process, judicial precedent, or federal ethics standards, or inconsistency with any opinion of the Commission's Office of the General Counsel or Bureau of Competition;
8. All documents or communications by or for, or sent to or from, current or former Commission officials, including Chair Khan prior to her confirmation as a commissioner or chair or former Commissioner Rohit Chopra, discussing the preparation, terms or implementation of Executive Order 14036 or matters addressed within it; and

9. All documents or communications by or for, or sent to or from, current or former Commission officials, including Chair Khan prior to her confirmation as a commissioner or chair or former commissioner Rohit Chopra, that reflect involvement or views of White House officials or other non-Commission officials in or on changes in Commission policy, practice or procedure or discuss whether such involvement or views threatened to or did compromise the Commission's independence.

Further, we request that you preserve all documents and communications that are related to the above requests, including any documents and communications in your custody or control. If it is the routine practice of any employee or contractor to destroy or otherwise alter such documents or electronic records, either halt such practices or arrange for the preservation of complete and accurate duplicates or copies of such records, suitable for production if requested. If, pursuant to routine practice or otherwise, any such documents or communications have already been destroyed, we request that you provide a detailed log of all such documents and communications and specify the date and manner of their destruction.

To arrange for the delivery of responsive documents or ask any related follow-up questions, please contact Committee on Oversight and Accountability Majority Staff at (202) 225-5074. Attached are instructions for producing the documents and information to the Committee.

The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate, "any matter" at "any time" under House Rule X. Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive style with a horizontal line underneath the name.

James Comer

Chairman

Committee on Oversight and Accountability

cc: The Honorable Jamie Raskin, Ranking Member  
Committee on Oversight and Accountability

## **RESPONDING TO COMMITTEE REQUESTS**

*The following instructions and definitions apply to the Committee's Request:*

### **INSTRUCTIONS**

1. In complying with this request, you should produce all responsive documents in unredacted form that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. The records and documents responsive to the request should not be destroyed, modified, removed, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read to include such other names under that alternative identification.
4. At the time of your production, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the records and documents respond.
5. The records and documents should be produced in the order in which they appear in your files and not be rearranged. The production should include copies of file labels, dividers, or identifying markers that were associated with the document and record when this request was issued. Indicate the office or division and person from whose files each record and document was produced.
6. The records and documents should be produced in electronic format and should be organized, identified, indexed electronically, and Bates-stamped sequentially. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, cloud, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should consult with Committee staff to determine the appropriate format in which to produce the information.
7. If any record or document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the record or document and explain the circumstances under which the record or document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.
8. If any record or document responsive to this request cannot be located, describe with particularity the efforts made to locate the item and the specific reason for its unavailability.
9. The request is continuing in nature and applies to any newly discovered record or document, regardless of the date of its creation. Any record or document not produced

because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

10. Two sets of the productions should be delivered to the Committee, one set to the majority staff in Room 2157 of the Rayburn House Office Building and one set to the minority staff in Room 2105 of the Rayburn House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.

11. In the event that a responsive document is withheld on any basis, including a claim of privilege, you shall provide a log containing the following information concerning every such record or document: (i) the reason the record or document is not being produced; (ii) the type of record or document; (iii) the general subject matter; (iv) the date, author and addressee; (v) the relationship of the author and addressee to each other; and (vi) any other description necessary to identify the record or document. If a claimed privilege applies to only a portion of any record or document, that portion only should be withheld (*i.e.*, redacted) and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a record or document either may or must be withheld from production pursuant to any statute, rule, or regulation.

- (a) Any objections or claims of privilege are waived if you fail to provide an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding each withheld document prior to the request compliance date.
- (b) In complying with the request, be apprised that (unless otherwise determined by the Committee) the Committee does not recognize: any purported non-disclosure privileges associated with the common law including, but not limited to, the deliberative-process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.
- (c) Any assertion by a request recipient of any such non-constitutional legal basis for withholding documents or other materials, for refusing to answer any deposition question, or for refusing to provide hearing testimony, shall be of no legal force and effect and shall not provide a justification for such withholding or refusal, unless and only to the extent that the Committee (or the chair of the Committee, if authorized) has consented to recognize the assertion as valid.

12. Upon completion of your production, you must submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all records, documents, and communications in your possession, custody, or control which reasonably could contain responsive materials; (2) records, documents, and communications responsive to the request have not been destroyed, modified, removed, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request, and (3) all records, documents, and communications identified during the search that are responsive have been

produced to the Committee, identified in a log provided to the Committee, as described herein.

13. When representing a witness or entity before the Committee in response to a document request, counsel for the individual or entity must promptly submit to the Committee a notice of appearance specifying the following: (a) counsel's name, firm or organization, and contact information; and (b) each client represented by the counsel in connection with this request. Submission of a notice of appearance constitutes acknowledgement that counsel is authorized to accept service of process by the Committee on behalf of such client(s), and that counsel is bound by and agrees to comply with all applicable House and Committee rules and regulations.

### **DEFINITIONS**

1. The term "record" or "document" means any written, recorded, or graphic matter of any nature whatsoever, including any communication, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in an in-person meeting, by telephone, facsimile, email (desktop or mobile device), text message or chat (encrypted or unencrypted), instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The term "records, documents, or communications in your possession, custody or control" means (a) records, documents, or communications that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) records, documents, or communications that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) records, documents, and communications that have been placed in the possession, custody, or control of any third party.



Office of the Chair

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

June 22, 2023

The Honorable Cindy Hyde-Smith  
United States Senate  
Washington, DC 20515

Dear Senator Hyde-Smith:

Thank you for your letter regarding the misleading advertising of imported shrimp. Specifically, you request that the FTC describe: (1) its efforts to challenge country-of-origin labeling for imported shrimp that may violate Section 5 of the FTC Act; (2) activities undertaken by the agency to monitor deceptive claims on restaurant menus about the country of origin of shrimp; and (3) the agency's position that such claims appear to be largely a regional issue. I share your concerns about deceptive conduct in this space.

Enforcing the law against Made in USA fraud is a top priority. Deceptive labels harm consumers and punish honest businesses, undermining fair competition. One of the first actions we pursued after I joined the FTC was finalizing a rule prohibiting fraudulent Made in USA claims,<sup>1</sup> and we have followed-up through several enforcement actions.<sup>2</sup>

The FTC actively monitors complaints related to deceptive country-of-origin claims, including those relating to the marketing of imported shrimp. As you know, however, the United States Department of Agriculture ("USDA") has primary authority over country-of-origin labels for most fish and shellfish products.<sup>3</sup> USDA Country of Origin Labeling ("COOL") regulations also incorporate specific standards under which marketers can label shrimp as Made in the USA.<sup>4</sup> We will continue to watch the marketplace and take appropriate action to the extent limited categories of agricultural products fall outside USDA's jurisdiction.

---

<sup>1</sup> Press Release, Fed. Trade Comm'n, FTC Issues Rule to Deter Rampant Made in USA Fraud (July 1, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-issues-rule-deter-rampant-made-usa-fraud>.

<sup>2</sup> See, e.g., Press Release, Fed. Trade Comm'n, FTC Finalizes Order Against Pyrex Glass Manufacturer for False Made in USA Claims (Mar. 7, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-finalizes-order-against-pyrex-glass-manufacturer-false-made-usa-claims>; Press Release, Fed. Trade Comm'n, FTC Sues Heated Mattress Pads Marketer Electrowarmth for Falsely Claiming that Chinese Products Were Made in the USA (Aug. 30, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-sues-heated-mattress-pads-marketer-electrowarmth-falsely-claiming-chinese-products-were-made-usa>; Press Release, Fed. Trade Comm'n, FTC Sues Marketer of Personal Protective Equipment and Light Fixtures for Advertising Claims About Products Being Made in the USA and Government-Certified (Aug. 9, 2022); Press Release, Fed. Trade Comm'n, FTC Enforces New Made in USA Rule against Lithionics and Owner Steven Tartaglia for Falsely Labeling Foreign-Made Batteries as American (Apr. 13, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/04/ftc-enforces-new-made-usa-rule-against-lithionics-owner-steven-tartaglia-falsely-labeling-foreign>.

<sup>3</sup> 7 U.S.C. § 1638.

<sup>4</sup> 7 C.F.R. § 60.128.



As always, we will coordinate as appropriate with our state and local law enforcement partners, as well as USDA and sister agencies such as U.S. Customs and Border Protection and the Food and Drug Administration, to take action where possible.

We look forward to providing more information to your staff at a briefing in the near future. If you or your staff has additional questions or comments, please do not hesitate to contact Jeanne Bumpus, Director of our Office of Congressional Relations, at (202) 326-2946.

Sincerely,

A handwritten signature in cursive script that reads "Lina Khan".

Lina M. Khan  
Chair, Federal Trade Commission



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable Pramila Jayapal  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Jayapal,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable Barbara Lee  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Lee,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable James P. McGovern  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative McGovern,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable Katie Porter  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Porter,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable Jamie Raskin  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Raskin,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable Mark Takano  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Takano,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable Rashida Tlaib  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Tlaib,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.





UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable Bonnie Watson Coleman  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Watson Coleman,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable Richard Blumenthal  
United States Senate  
Washington, D.C. 20510

Dear Senator Blumenthal,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable Cory A. Booker  
United States Senate  
Washington, D.C. 20510

Dear Senator Booker,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable Edward J. Markey  
United States Senate  
Washington, D.C. 20510

Dear Senator Markey,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable Brian Schatz  
United States Senate  
Washington, D.C. 20510

Dear Senator Schatz,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable Elizabeth Warren  
United States Senate  
Washington, D.C. 20510

Dear Senator Warren,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable Ron Wyden  
United States Senate  
Washington, D.C. 20510

Dear Senator Wyden,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.

**Congress of the United States**  
**Washington, DC 20515**

June 21, 2023

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

Dear Chair Khan:

We write to support your efforts to address unfair and deceptive practices in the sale, financing, and leasing of motor vehicles by dealers.<sup>1</sup> We agree that the practices of some motor vehicle dealers impose substantial financial costs on consumers, and the problems you have identified in the automobile financing market are serious, harmful, and widespread. These practices also hurt honest dealers, making it more difficult and costly for them to compete. The Federal Trade Commission (FTC) should move forward with its rulemaking proceeding — the Motor Vehicle Dealers Trade Regulation Rule — and adopt a final rule to address these pressing issues.

Unfair and deceptive practices involving motor vehicle dealers have widespread consequences in the United States. An auto purchase is the second largest financial transaction for millions of American consumers, second only to buying a home. It is the most significant financial transaction for the 35 percent of American households that don't own homes, and nearly all car buyers who finance the purchase of their vehicle do so through the dealership (87 percent), subjecting them to many of the practices highlighted in your notice of proposed rulemaking.<sup>2</sup> Experts recognize that purchasing a car is a highly confusing process for consumers, so it is unsurprising that the FTC has received more than 100,000 complaints on this topic over the last three years.<sup>3</sup>

In light of these concerns, the FTC should adopt strong regulatory protections for car buyers. Specifically, the final rule should include the following components:

1. **The use of a uniform, enforceable Offering Price:** The most important factor for consumers purchasing a vehicle is its price, yet that price is often difficult to ascertain without spending hours at the dealership. Car prices are sky-high right now,<sup>4</sup> and dealer

---

<sup>1</sup> Federal Trade Comm'n Motor Vehicle Dealers Trade Regulation Rule, Notice of Proposed Rulemaking, 87 Fed. Reg. 42,012 (July 13, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-07-13/pdf/2022-14214.pdf> (hereinafter NPRM).

<sup>2</sup> Adam J. Levitin, *The Fast and the Usurious: Putting the Brakes on Auto Lending Abuses*, 108 Geo. L.J. 1257, 1262 (2020), available at [https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2020/05/Levitin\\_The-Fast-and-the-Usurious-Putting-the-Brakes-on-Auto-Lending-Abuses.pdf](https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2020/05/Levitin_The-Fast-and-the-Usurious-Putting-the-Brakes-on-Auto-Lending-Abuses.pdf).

<sup>3</sup> NPRM at 42015.

<sup>4</sup>Sean Tucker, *Is Now the Time To Buy, Sell, or Trade-in a Car?*, Kelley Blue Book (Apr. 19, 2023), <https://www.kbb.com/car-advice/is-now-the-time-to-buy-sell-or-trade-in-a-used-car/> (noting that “[n]ew car prices



conduct — for example, through advertisements that deceptively exclude fees or crowd the advertisement with special offers that have limited or no applicability to most consumers — often obfuscates consumers’ ability to learn how much a dealer will accept as full payment.<sup>5</sup> Dealers also pack vehicle sales with mandatory and price-inflated add-ons, increasing the cost and creating further confusion and uncertainty about a vehicle’s ultimate price.<sup>6</sup>

To remedy this, the FTC should require dealers to provide a simplified, uniform, comprehensive and legally enforceable “Offering Price” that includes all pre-installed and mandatory add-on products. The Offering Price should exclude only charges that a government entity imposes and are paid to it. We also encourage you to require dealers to use the Offering Price consistently, attach it in writing to each vehicle that is offered for sale, include it with all online descriptions of offered vehicles, and permit any consumer to purchase a vehicle by paying the Offering Price (plus applicable government charges) in cash or with other financing.

2. **Longer required record retention periods:** Strong recordkeeping requirements are a critical tool for enforcement agencies and consumers to ensure dealer compliance with any final rule. We encourage you to require auto dealers to retain records of consumer transactions for seven years or the length of the retail installment sales contract.
3. **Language requirements for disclosures and the financing agreement:** More than 20 percent of the U.S. population speak a language other than English at home.<sup>7</sup> These consumers face significant barriers when navigating the purchase of expensive financial products, including vehicles. Dealers advertise in foreign language publications and employ salespeople who speak other languages, yet dealers generally provide neither required disclosures nor the contract itself in the language used to negotiate with the consumer. The FTC should require dealers to provide all required disclosures and contractual agreements to consumers in the language in which the transaction was conducted.
4. **Clearly defined prohibited misrepresentations.** The Supreme Court’s ruling in *AMG Capital v. FTC*<sup>8</sup> significantly limited the FTC’s ability to obtain consumer restitution and

---

remain historically high” although they are in decline, but that “[u]sed car prices are creeping up, with limited supply likely to push them temporarily higher heading into summer.”)

<sup>5</sup> See Consumer Federation of America, 2021 Consumer Complaint Survey Report 4 (Aug. 8, 2022), available at <https://consumerfed.org/reports/2021-consumer-complaint-survey-report/> [hereinafter CFA 2021 Survey Report]. For the past six years, participating agencies have told CFA that auto-related complaints were the top complaint received from consumers. These annual reports include stories that exemplify the nature of the problems the FTC seeks to address in this rulemaking, such as undisclosed add-ons, hidden dealer fees, deceptive leasing practices, fraudulently altered financing applications, and yo-yo financing.

<sup>6</sup> See John W. Van Alst et al., National Consumer Law Center, *Auto Add-Ons Add Up: How Dealer Discretion Drives Excessive, Arbitrary, and Discriminatory Pricing* (Oct. 2017), available at <https://www.nclc.org/issues/auto-add-ons-add-up.html>.

<sup>7</sup> U.S. Census Bureau, 2019 American Community Survey 5-Year Estimates, Table S1601: Language Spoken at Home (2020), available at <https://data.census.gov/cedsci/table?q=S1601&tid=ACSSST5Y2020.S1601>.

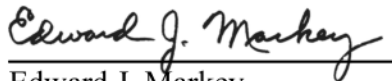
<sup>8</sup> In *AMG Capital Management LLC v. FTC*, 141 S.Ct. 1341 (2021), the Supreme Court ruled that the FTC does not have the authority to seek restitution for persons harmed by the unfair practices of a defendant, without clear


injunctive relief. A trade regulation that specifically identifies prohibited conduct is necessary to enable the FTC to return money to consumers and stop auto dealers' unfair and deceptive conduct. Promulgating a regulation that prohibits specific misrepresentations will ensure that the FTC can obtain restitution to consumers harmed by these practices.


We encourage you to adopt a final rule with these and other provisions to facilitate a more competitive marketplace, address deceptive sales practices that disproportionately burden car buyers of color, and reduce headaches for consumers.

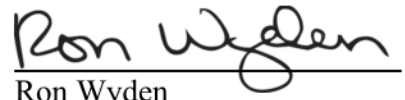
Thank you for your consideration.


Sincerely,

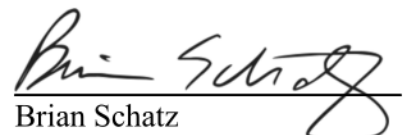
  
Edward J. Markey  
United States Senator

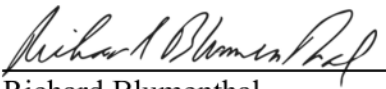
  
Pramila Jayapal  
Member of Congress

  
Elizabeth Warren  
United States Senator

  
Ron Wyden  
United States Senator

  
Cory A. Booker  
United States Senator

  
Brian Schatz  
United States Senator



---

Richard Blumenthal  
United States Senator



---

Katie Porter  
Member of Congress



---

Greg Casar  
Member of Congress



---

Barbara Lee  
Member of Congress



---

Bonnie Watson Coleman  
Member of Congress



---

James P. McGovern  
Member of Congress



---

Eleanor Holmes Norton  
Member of Congress



---

Jamie Raskin  
Member of Congress



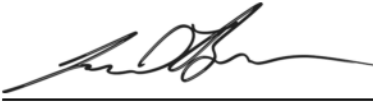
---

Rashida Tlaib  
Member of Congress



---

Mark Takano  
Member of Congress

A handwritten signature in black ink, appearing to read 'Jamaal Bowman', written over a horizontal line.

Jamaal Bowman, Ed.D.  
Member of Congress



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable Jamaal Bowman, Ed.D.  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Bowman,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable Greg Casar  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Casar,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

June 22, 2023

The Honorable Eleanor Holmes Norton  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Holmes Norton,

Thank you for the June 21, 2023, letter from you and others providing your views regarding the Commission's Motor Vehicle Dealers rulemaking proceeding.<sup>1</sup> Your letter will be placed on the public record.

We appreciate your interest in the rulemaking proceeding, and I can assure you that the information you have provided will be carefully considered. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

April J. Tabor  
Secretary

---

<sup>1</sup> Motor Vehicle Dealers Trade Regulation Rule, 16 C.F.R. Part 463: Notice of proposed rulemaking, 87 Fed. Reg. 42,012 (Jul. 13, 2022), available at <https://www.federalregister.gov/documents/2022/07/13/2022-14214/motor-vehicle-dealers-trade-regulation-rule>.



Office of the Chair

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

June 22, 2023

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

Dear Chairman Jordan:

I am writing in response to your June 8, 2023, letter concerning the Illumina-GRAIL merger. This production includes documents, which are Bates stamped FTC-JI-00000001 - FTC-JI-00000036. The Commission will submit additional productions on a rolling basis as we locate responsive documents.

Several of your questions implicate events that transpired before I joined the Commission, but we have summarized below the key events.

By way of background, GRAIL is one of several U.S. companies that is attempting to develop and commercialize a multi-cancer early detection (“MCED”) test. Illumina makes next generation sequencing (“NGS”) platforms that are a critical input for MCED test developers, and there are no alternatives to Illumina’s technology. In September 2020, Illumina announced plans to acquire GRAIL. This transaction poses antitrust concerns because, as the only supplier of a critical input, the merged firm would have the ability to favor GRAIL over its rivals. Following an investigation by staff, the Commission voted to issue a unanimous and bipartisan administrative complaint in March 2021, alleging that the merger would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, which forbids mergers “the effect of [which] may be to substantially lessen competition.”<sup>1</sup> The Commission also authorized its staff to seek a preliminary injunction if needed to prevent the merger from going forward during the pendency of the administrative proceedings. The sole objective of this antitrust enforcement action was to protect the American public from higher prices, lower output, less innovation, and other anticompetitive consequences that may result from the transaction.

As we previously explained in our September 2021 letter to you, after receiving referrals from several member states, the European Commission (EC) initiated its own law enforcement action to stop the acquisition in May 2021. Because the Commission understood that under European law, Illumina could not complete the merger while the EC action was pending, the

---

<sup>1</sup> The Commission votes to issue an administrative complaint when it finds “reason to believe” that the respondents are violating the law. 15 U.S.C. § 45(b).



Commission moved to dismiss the preliminary injunction action in federal court to conserve FTC and judicial resources.<sup>2</sup> However, the FTC continued its administrative action.<sup>3</sup>

After the Administrative Law Judge provided his initial decision, dismissing FTC's challenge of Illumina's acquisition of GRAIL, FTC staff appealed the ALJ's decision to the full Commission.<sup>4</sup> The Commission received briefs, held oral argument, and on April 3, 2023, the Commission issued a unanimous and bipartisan Opinion and Order requiring Illumina to divest GRAIL, finding that the merger would stifle competition and innovation in the U.S. market for life-saving cancer tests.<sup>5</sup> Illumina has filed an appeal of the Commission's decision in the Fifth Circuit, and the Commission has stayed its order until that appeal is complete.

It is longstanding practice for the FTC and EC to cooperate in the investigation of mergers that undergo scrutiny in both jurisdictions. Cross-border communication is an essential investigative practice since mergers like this one have cross-border effects. The FTC undertakes its cooperative engagement in conformity with the 1991 Agreement Between the Government of the United States of America and the Commission of the European Communities Regarding the Application of Their Competition Laws, the 1998 Agreement Between the Government of the United States of America and the European Communities on the Application of Positive Comity Principles in the Enforcement of Their Competition Laws, and the US-EU Merger Working Group Best Practices on Cooperation in Merger Investigations.<sup>6</sup> Such cooperation allows the agencies to identify issues of common interest, gain a better understanding of relevant facts, and—where possible—avoid inconsistent outcomes, which helps to promote efficient and effective enforcement for both the cooperating agencies and the subjects of an investigation. Given these benefits, merging parties routinely support the agencies' cooperation, including by

---

<sup>2</sup> Illumina and GRAIL did not object to the dismissal, although they argued it should be with prejudice, preventing the FTC from filing another motion for a preliminary injunction at another time. The court agreed with the FTC and dismissed the preliminary injunction without prejudice.

<sup>3</sup> Despite being prohibited from consummating the transaction under European law, Illumina nonetheless closed on its purchase of GRAIL in August 2021. The EC issued a statement alleging that Illumina and GRAIL breached the EU Merger Regulation by implementing the transaction while the EU's merger review was pending and issued an order requiring Illumina to hold GRAIL as a separate entity during the pendency of its proceedings. *See* Press Release, European Commission, Commission Alleges that Illumina and GRAIL Breached EU Merger Rules by Early Implementation of Their Transaction (July 19, 2022),

[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4604](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4604); Press Release, European Commission, The Commission Adopts a Statement of Objections Outlining Measures to Unwind Illumina's Blocked Acquisition of GRAIL (Dec. 5, 2022), [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7403](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7403).

<sup>4</sup> Once the administrative complaint is issued, responsibility for prosecution is assigned to FTC staff known as Complaint Counsel, who are walled off from the Commissioners and the Administrative Law Judge, in accordance with the requirements of the Administrative Procedure Act and the Commission's own regulations. *See* 5 U.S.C. § 554(d)(2); 16 C.F.R. § 4.7(b). FTC administrative proceedings provide analogous due process protections to a trial in federal court, including an entitlement to take discovery; present facts, expert witnesses, and documentary evidence; and cross-examine the other side's witnesses. The ALJ renders a decision that is reviewed by the Commission *de novo*. If the Commission issues a cease-and-desist order, judicial review is available via a petition for review in the federal courts of appeals.

<sup>5</sup> *See* Press Release, Fed. Trade Comm'n, FTC Orders Illumina to Divest Cancer Detection Test Maker GRAIL to Protect Competition in Life-Saving Technology Market (Apr. 3, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-orders-illumina-divest-cancer-detection-test-maker-grail-protect-competition-life-saving>.

<sup>6</sup> The agreements and related best practices document are available at: <https://www.ftc.gov/policy/international/international-cooperation-agreements>.

voluntarily providing agencies with waivers to facilitate interagency discussions, as was the case in this matter. Indeed, the business community has long supported and encouraged the U.S. antitrust agencies to engage closely with international enforcement partners.<sup>7</sup>

Specifically, the DOJ-FTC Antitrust Guidelines for International Enforcement and Cooperation § 5.1.4 states, “[w]hile confidentiality obligations generally prohibit the Agencies from disclosing to foreign authorities confidential information submitted by a person, that person can enable the Agencies to engage in more meaningful cooperation with foreign authorities by granting the Agencies a waiver of confidentiality as to information that may be otherwise protected from disclosure.”<sup>8</sup> Recognizing the value of that cooperation, Illumina and GRAIL voluntarily granted the FTC a waiver to share such confidential information related to the proposed transaction with the EC.<sup>9</sup>

Notwithstanding our cooperation, each agency carries out its own investigation independently, according to its own legal frameworks and considering the specific markets at issue in the jurisdiction. Thus, for example, the timing for the adoption of the EC’s decision in Illumina/GRAIL was based on the EC’s investigative timelines and procedures as set out in the EU Merger Regulation. The EC decision was independent of the timing of any FTC decision in the matter.

The allegation that FTC worked with foreign regulators to deny U.S. companies due process is simply false. The EC independently analyzed the merger consistent with its own laws and practices before concluding that the merger raised serious competition concerns and blocking the merger. The FTC does not have the ability to control or direct the actions of the EC or its member states. And communications at the staff level are not evidence of bias by the Commissioners, who are walled off from Complaint Counsel once an administrative complaint is filed. The only Commissioner-level communications with foreign authorities that Illumina has cited are with officials of the United Kingdom, which is no longer part of the European Union, and those predated the filing of the FTC’s administrative complaint.

The FTC has previously produced redacted versions of communications between FTC staff and EU regulators in response to a Freedom of Information Act (“FOIA”) request made by the Chamber of Commerce regarding this same matter.<sup>10</sup> None of these communications suggest any impropriety, much less any effort to deny Illumina and GRAIL their rights under U.S. law. The Chamber itself has consistently recognized the value of international cooperation in antitrust investigations. For example, in its public comments submitted in 2016 to the FTC and the Department of Justice in connection with draft revisions to the International Cooperation Guidelines, the Chamber stated that it “welcomes the fact that the guidelines extend beyond enforcement and now include cooperation,” observing that “[a]ntitrust cooperation between jurisdictions is increasingly important, particularly with regard to merger review.”<sup>11</sup>

---

<sup>7</sup> Comments of the U.S. Chamber of Commerce at 3 (Dec. 1, 2016).

<sup>8</sup> See DOJ & FTC, Antitrust Guidelines for International Enforcement and Cooperation (Jan. 13, 2017), [https://www.ftc.gov/system/files/documents/public\\_statements/1049863/international\\_guidelines\\_2017.pdf](https://www.ftc.gov/system/files/documents/public_statements/1049863/international_guidelines_2017.pdf).

<sup>9</sup> Resp. Mot. to Reopen the Record (“Resp. Mot.”) at 3 n.1, 5 n.4 (Mar. 4, 2023).

<sup>10</sup> These documents were appropriately redacted in part under FOIA Exemptions 3, 5, 6, 7(A), and 7(D), 5 U.S.C. § 552(b)(3), (5), (6), (7)(A) & (7)(D), and Section 21(f) of the FTC Act, 15 U.S.C. § 57b-2(f).

<sup>11</sup> Comments of the U.S. Chamber of Commerce at 3 (Dec. 1, 2016).

I hope this letter clarifies the routine nature of the cooperation between the EC and the FTC regarding our respective law enforcement actions pertaining to the Illumina-GRAIL merger.

Sincerely,

A handwritten signature in cursive script that reads "Lina Khan".

Lina M. Khan  
Chair, Federal Trade Commission

cc: The Honorable Jerrold Nadler, Ranking Member  
House Committee on the Judiciary