



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

Office of the Secretary

April 21, 2023

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

Dear Chairman Jordan,

Please find enclosed the Commission's third production in response to your February 14, 2023, letter requesting documents and information related to the Federal Trade Commission's Non-Complete Clause Notice of Proposed Rulemaking (NPRM). The Commission sent a first response on February 28, 2023. In addition, a second response was sent on March 7, 2023. The Commission continues to devote significant time and resources to respond to your request. As previously discussed, the Commission is submitting productions on a rolling basis as it collects and reviews responsive documents and information. This third production includes documents Bates stamped FTC-000001440 – FTC-000002435.

The documents and information we are providing today contain materials that have been withheld from public disclosure. In this instance, the Commission has decided to provide them to you without redactions as an accommodation and as a demonstration of the Commission's commitment to working with you and your staff. Notwithstanding this production, the Commission reserves the right to protect deliberative materials in future productions.

These documents are, in the unredacted form in which you are receiving them, confidential Commission documents. Because of their confidential nature, the Commission requests that the Committee maintain the confidentiality of this production. We further request that you consult with the Commission before you share any part of this production with outside parties and that you redact any personal information if you share information or documents with outside parties.

Thank you for that consideration and for your understanding as we continue to be responsive to this and other Committee information and document requests.

Sincerely,

April J. Tabor  
Secretary

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

April 12, 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 is conducting oversight of the Federal Trade Commission's (FTC) abuse of its statutory authorities in investigating Twitter. On March 10, 2023, the Committee wrote to you requesting relevant documents and information about the FTC's recent actions against Twitter.<sup>1</sup> To date, your voluntary compliance has been woefully insufficient. Accordingly, the Committee is issuing a subpoena to compel the production of documents necessary to inform our oversight.

On March 7, 2023, the Select Subcommittee on the Weaponization of the Federal Government released a report revealing how the FTC made inappropriate and burdensome demands coinciding with Elon Musk's acquisition of the company.<sup>2</sup> The Select Subcommittee's report revealed how the FTC harassed Twitter in the wake of Mr. Musk's acquisition, demanding, among other things, the identities of the journalists with whom it was engaging and all communications relating to Mr. Musk.<sup>3</sup> Based on the information in this report showing how the FTC had abused its statutory and enforcement authority, the Committee requested information in its March 10 letter to inform our oversight.<sup>4</sup>

On March 27, 2023, you sent a response letter seeking to justify the scope of the FTC's inquiry into Twitter by linking it to the terms of a narrower FTC Order related to Twitter's privacy practices.<sup>5</sup> However, as our March 10 letter outlined—and the Select Subcommittee

---

<sup>1</sup> See Letter from Hon. Jim Jordan, Chair, H. Comm. on the Judic., & Hon. Ted Cruz to Lina Khan, Chair, Fed. Trade Comm'n (Mar. 10, 2023).

<sup>2</sup> H. COMM. ON THE JUDIC. & SEL. SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T, THE WEAPONIZATION OF THE FEDERAL TRADE COMMISSION: AN AGENCY'S OVERREACH TO HARASS ELON MUSK'S TWITTER (Mar. 7, 2023).

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

<sup>4</sup> Letter from Jordan & Cruz, *supra* note 1.

<sup>5</sup> Letter from Lina Khan, Chair, Fed. Trade Comm'n, to Hon. Jim Jordan, Chair, H. Comm. on the Judic. (Mar. 27, 2023).

report explained in detail—the FTC’s requests to Twitter were not limited to the scope of the Order,<sup>6</sup> making the FTC’s justification pretextual at best. In addition, your letter addressed only one of the Committee’s requests, instead deferring to unspecified “further engagement on [the Committee’s] other requests.”<sup>7</sup> The FTC also produced none of the requested documents.

The Committee sought to engage with the FTC on its outstanding requests during a hearing of the Committee’s Subcommittee on Responsiveness and Accountability to Oversight on March 29, 2023.<sup>8</sup> During this hearing, the Director of the FTC’s Office of Congressional Relations testified that she was largely unaware of any progress being made toward satisfying the Committee’s requests.<sup>9</sup> For example, the Director did not know which FTC employee was overseeing the FTC’s compliance with the Committee’s requests,<sup>10</sup> and provided no information as to what information had been gathered or what sources were being reviewed for production, if any.<sup>11</sup> Following the hearing, in an exchange with Committee staff on April 3, 2023, FTC staff confirmed that the FTC had no immediate plans to provide the Committee with the documents and information it had requested.<sup>12</sup>

Based on this information, the Committee has good reason to believe that the FTC will not voluntarily produce the documents requested in our March 10 letter. The FTC’s refusal to provide this material is unacceptable. As Subcommittee Chairman Cline explained at the March 29 hearing:

The absence of a sound and transparent administrative process results in failed and costly Government policies. This is what we are seeing unfold at the FTC under Chair Lina Khan. It is incumbent on Congress to provide oversight to these matters. And such oversight will remain necessary while the FTC continues to take actions on matters its enabling statute does not authorize.<sup>13</sup>

The Supreme Court has recognized that Congress has a “broad and indispensable” power to conduct oversight, which “encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them.”<sup>14</sup> Pursuant to the Rules of the House of Representatives, the Committee on the Judiciary is authorized to conduct oversight on matters relating to the

---

<sup>6</sup> See THE WEAPONIZATION OF THE FEDERAL TRADE COMMISSION, *supra* note 2, at 1-2.

<sup>7</sup> Letter from Khan, *supra* note 5.

<sup>8</sup> “Compliance with Committee Oversight”: Hearing before the Subcomm. on Responsiveness & Accountability to Oversight of the H. Comm. on the Judic., 118th Cong. (Mar. 29, 2023).

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

<sup>10</sup> In an email communication following the hearing, FTC staff identified an employee who has oversight of the Bureau of Consumer Protection, but it is unclear whether this employee was actually overseeing or directing any collection of responsive materials.

<sup>11</sup> “Compliance with Committee Oversight,” *supra* note 8.

<sup>12</sup> Telephone meeting between FTC Office of Congressional Relations staff and House Committee on the Judiciary staff (Apr. 3, 2023).

<sup>13</sup> “Compliance with Committee Oversight,” *supra* note 8.

<sup>14</sup> See, e.g., *Trump v. Mazars LLP*, 140 S. Ct. 2019, 2031 (2020) (internal quotation marks and citations omitted).

The Honorable Lina Khan

April 12, 2023

Page 3

“[p]rotection of trade and commerce against unlawful restraints and monopolies” to inform potential legislative reforms.<sup>15</sup> These legislative reforms could include, among other proposals, laws to ensure that the FTC’s investigative and enforcement authority is not abused in ways that hurt commerce and competition or harm civil liberties and free speech.

Accordingly, and in light of your disregard of our earlier requests for voluntary compliance, please find attached a subpoena for the requested documents and information.

Sincerely,



Jim Jordan  
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

Enclosure

---

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

**SUBPOENA**

**BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE  
CONGRESS OF THE UNITED STATES OF AMERICA**

To The Honorable Lina Khan, Chair, Federal Trade Commission

You are hereby commanded to be and appear before the  
Committee on the Judiciary

of the House of Representatives of the United States at the place, date, and time specified below.

- to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: House Committee on the Judiciary, 2138 Rayburn House Office Building  
Date: April 26, 2023 Time: 9:00 a.m.

- to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: \_\_\_\_\_  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

- to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: \_\_\_\_\_  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

To The U.S. Marshals Service, or any authorized Member or congressional staff  
\_\_\_\_\_ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at  
the city of Washington, D.C. this 11<sup>th</sup> day of April, 2023

Attest:

Deputy Clerk

Chairman or Authorized Member

## PROOF OF SERVICE

---

<b>Subpoena for</b>	The Honorable Lina Khan, Chair, Federal Trade Commission
<b>Address</b>	_____
	_____
<b>before the</b>	Committee on the Judiciary <input style="float: right;" type="button" value="v"/>
	_____
	_____
<i>U.S. House of Representatives</i>	
<i>118th Congress</i>	

<b>Served by (print name)</b>	_____
<b>Title</b>	_____
<b>Manner of service</b>	_____
	_____
<b>Date</b>	_____
<b>Signature of Server</b>	_____
<b>Address</b>	_____
	_____

## SCHEDULE A

In accordance with the attached Schedule instructions, you, The Honorable Lina Khan, are required to produce the following items in your possession, custody, or control, from April 1, 2022 to present, in unredacted form:

1. All documents and communications between or among Federal Trade Commission (FTC) officials or employees referring or relating to the FTC's investigation(s) of Twitter, Inc. ("Twitter");
2. All communications between or among officials or employees of the FTC and employees of any third-party organizations, including, but not limited to, any type of company or non-profit organization, referring or relating to Elon Musk's purchase of Twitter, and/or the FTC's investigation(s) of Twitter;
3. All documents and communications between or among officials or employees of the FTC and officials or employees of the Executive Office of the President referring or relating to Elon Musk's purchase of Twitter or any Executive Branch agency's investigation of Twitter;
4. All documents and communications between or among officials or employees of the FTC and officials or employees of the Consumer Financial Protection Bureau (CFPB) or any other Executive Branch agency referring or relating to Elon Musk's purchase of Twitter or any Executive Branch agency's investigation of Twitter; and
5. All documents and communications referring or related to the FTC's demand that Twitter identify all journalists and other members of the media to whom Twitter allegedly granted access.

## INSTRUCTIONS

*For the purposes of this subpoena, please apply the instructions and definitions as set forth below:*

1. In complying with this subpoena, you are required to 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, any FTC employee, Commissioner, Director or any third-party who may be required to produce such responsive material at your direction. These include official documents and responsive material on personal devices or platforms, including text, Twitter, Microsoft Teams, Jabber, or any other means of communication.
2. Requested documents responsive to the subpoena shall not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee. Notification of this preservation obligation should be made to all FTC employees, Commissioners, Directors or any third-parties who may be required to produce such responsive material at your direction.
3. You are instructed to notify the Committee if you have reason to believe that materials responsive to this subpoena may be in the possession of any other Executive Branch agency or state agency, and include in any such notice the basis for such reason to believe that such material may exist.
4. In the event that any entity, organization, or individual denoted in this subpoena has been, or is currently, known by any other name, the subpoena shall be read also to include such other names under that alternative identification.
5. The Committee's preference is to receive documents responsive to the subpoena in electronic form (i.e., via cloud content services, CD, memory stick, or thumb drive) in lieu of paper productions. Committee staff shall be consulted prior to production to discuss the best production method. If documents are produced in paper form, each document should be produced in a form that may be copied by standard copying machines.
6. Documents produced in electronic format should also be organized, identified, and indexed electronically.
7. Documents produced pursuant to this subpoena shall be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should be produced together in the order they appear in your files. Documents produced in response to this subpoena should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this subpoena was issued. Indicate the office or division and person from whose files each document was produced.



8. Documents produced to the Committee should include an index describing the contents of the production and should identify the paragraph(s) and/or clause(s) in the Committee's schedule to which the document responds. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
9. All documents shall be Bates-stamped sequentially and produced sequentially.
10. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
11. If any document responsive to this subpoena 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 subpoena, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.
12. If any document responsive to this subpoena was, but no longer is, in your possession, custody or control, state:
  - a. how the document was disposed of;
  - b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
  - c. the date of disposition; and
  - d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.
13. If any document responsive to this subpoena cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction, or unavailability.
14. If a date or other descriptive detail set forth in this subpoena referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. This subpoena is continuing in nature and applies to any newly discovered documents, regardless of the date of its creation. Any 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.

16. A cover letter shall be included with each production and shall including the following:
  - a. A total page count for the entire production, including both hard copy and electronic documents;
  - b. A list of custodians, identifying the Bates range for each custodian; and
  - c. All Bates Prefix and Suffix formats for all documents contained in the production.
  
17. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 2138 of the Rayburn House Office Building and one set to the minority staff in Room 2142 of the Rayburn House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.
  
18. In the event that a responsive document is withheld on any basis, including by a claim of privilege, you should provide a log containing the following information concerning every such document: (i) the reason the document is not being produced; (ii) the type of 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 document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, only that portion should be withheld 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 document either may or must be withheld from production pursuant to any legal doctrine, 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 subpoena compliance date.
  - b. In complying with this subpoena, 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; 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 subpoena recipient of any such non-constitutional legal bases 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.

19. If the subpoena cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.
20. Upon completion of the document production, you must submit a written certification, signed by you or your counsel, stating that: (a) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (b) documents responsive to the subpoena have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's subpoena or in anticipation of receiving the Committee's subpoena, and (c) all documents identified during the search that are responsive have been produced to the Committee, identified in a log provided to the Committee, as described in (18) above, or identified as provided in (11), (12) or (13) above.
21. When representing a witness or entity before the Committee in response to a subpoena, document request, or request for transcribed interview, counsel for the witness 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 the proceeding. 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.
22. Within seven calendar days of the date of this subpoena, you are instructed to meet and confer with Counsel for the Committee to discuss compliance with the subpoena. In that meeting, you are to identify the personnel who are expected to produce responsive materials, a good-faith estimate of the volume of materials to be produced.

## DEFINITIONS

*The following definitions apply to terms used within the Subpoena, Schedule A, these Instructions, and these Definitions:*

1. The term “Committee” refers to the House of Representatives Committee on the Judiciary, and any subcommittees thereof.
2. The term “Twitter” refers to Twitter, Inc., including, but not limited to, any and all parents, affiliates, subsidiaries, employees, agents, successors and assigns, and any business that Twitter controls directly or indirectly.
3. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, 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, and graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings, and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. 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. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
4. The phrase “possession, custody or control” means (a) documents 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) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.
5. 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, instant message, MMS or SMS message, encrypted instant messaging application (e.g., Signal, WhatsApp, Telegram, etc.), Discord message, Google Hangouts message, Jabber, Microsoft Teams message, Slack message, Skype message, Viber message, regular mail, telexes, releases, one-way communications channels (e.g., Teleporter), or otherwise.

6. The terms “and” and “or” should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.
7. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
8. The terms “referring” or “relating,” with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
9. The term “employee” means agent, borrowed employee, casual employee, consultant, de facto employee, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, contract employee, contractor, or any other type of service provider.
10. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; and (b) the individual’s business address and phone number.
11. The term “you” or “your” means and refers to you as a natural person, the Federal Trade Commission, and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, contractors, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the subpoena document request letter.
12. The term “state agency” refers to as any natural person or entity operating under the authority of any governing body within the United States including, but not limited to the fifty states, territories and/or the District of Columbia and any jurisdiction within any such state, territory, or the District of Columbia.

13. The term "Executive Branch agency" means any federal executive department of the United States, any federal agency or independent agency, any government corporation, any independent establishment, and the Executive Office of the President as well as any such entity's agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, contractors, or any other persons acting on any such entity's behalf or under any such entity's control or direction.

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

April 5, 2023

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

Dear Chair Khan:

On March 9, 2023, Republican Committee Members wrote to you requesting documents and information regarding the Federal Trade Commission's (FTC) "ill-advised current approach to mergers."<sup>1</sup> To date, the FTC has failed to comply with this request for information.

Accordingly, we reiterate the outstanding requests—itemized in the March 9, 2023, letter and incorporated herein—and ask that you provide this information as soon as possible, but no later than 5:00 pm on April 10, 2023.

The Committee on the Judiciary is authorized to conduct oversight of and legislate on matters relating to the "[p]rotection of trade and commerce against unlawful restraints and monopolies."<sup>2</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 prompt attention to this matter.

Sincerely,



Jim Jordan  
Chairman



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

<sup>1</sup> Letter to Hon. Lina Khan, Chair, FTC, from Rep. Moran, et al. (March 9, 2023) (attached).

<sup>2</sup> Rules of the U.S. House of Representatives, R. X (2023).

The Honorable Lina Khan

April 5, 2023

Page 2

cc: The Honorable Jerrold L. Nadler, Ranking Member  
The Honorable David Cicilline, Ranking Member, Subcommittee on the Administrative  
State, Regulatory Reform, and Antitrust

Enclosure



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

March 9, 2023

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

Dear Chair Khan:

We write to express our concern regarding the Federal Trade Commission's (FTC) ill-advised current approach to mergers and acquisitions, an approach that stifles innovation, impedes competition, and diminishes consumer choice. The FTC's decisions are decreasing the predictability in the merger review process that is critical for American enterprises to grow and innovate and for markets to function efficiently. As Members of Congress, we are concerned with the Biden FTC's pursuit of a partisan agenda that expands agency power and discards decades of experience to the detriment of the American people.<sup>1</sup> We urge the FTC to revert to a principled approach that puts consumers above partisan agendas and write to request information and documents relevant to Congress's oversight.

The consumer welfare standard, which the FTC had followed for over forty years, provides an important basis for merger review and enforcement by assessing the impact that a planned merger may have on consumers.<sup>2</sup> The analysis includes metrics such as changes in price and output, as well as product quality and innovation.<sup>3</sup> Under this standard, enforcers must treat all businesses fairly, regardless of size, which supports the rule of law.<sup>4</sup> Conversely, without the consumer welfare standard, the FTC can effectively "pick[] winners and losers" and centrally plan the economy.<sup>5</sup>

The Trump Administration understood the importance of focusing on consumer welfare and maintaining sound antitrust policy. For example, during the Trump Administration, the FTC

---

<sup>1</sup> See generally Christine Wilson, *Why I'm Resigning as an FTC Commissioner*, WALL ST. J. (Feb. 14, 2023).

<sup>2</sup> See, e.g., Makan Delrahim, Former Ass't Att'y Gen., Antitrust Div., Dept. of Just., Opening Remarks as Prepared for the Federalist Society National Lawyers Convention: Ensuring the Legacy of the Consumer Welfare Standard 2 (Nov. 14, 2019).

<sup>3</sup> See James Keyte, *New Merger Guidelines: Are the Agencies on A Collision Course with Case Law?*, 36 ANTITRUST 49, 49 (2021).

<sup>4</sup> See Alden Abbott, *Why Consumer Welfare Remains the Standard for Antitrust*, WALL. ST. J. (Apr. 7, 2022); see generally Phil Gramm & Christine Wilson, *The New Progressives Fight Against Consumer Welfare*, WALL ST. J. (Apr. 3, 2022).

<sup>5</sup> Alden Abbott, *supra* note 4; cf. Christine S. Wilson, Comm'r, Remarks for the Joint Conference on Precautionary Antitrust: Rule of Law and Innovation Under Assault: Marxism and Critical Legal Studies Walk into the FTC: Deconstructing the Worldview of the Neo-Brandeisians (Apr. 8, 2022).

kept the 2010 Horizontal Merger Guidelines, which courts have heavily relied on in analyzing transactions.<sup>6</sup> Similarly, the FTC's 2020 Vertical Merger Guidelines accounted for the effects that deals have on consumers.<sup>7</sup> But in 2021, the Biden FTC voted—along party lines—to rescind those guidelines, even as the Biden Justice Department's Antitrust Division left them in place.<sup>8</sup> The FTC's unilateral reversal has created uncertainty that is harming competition and the American people, and has imperiled the rule of law by allowing the merger review standard that is applied to vary depending upon which agency conducts the review.<sup>9</sup>

In addition to rejecting consumer-centric antitrust policy, the Biden FTC has needlessly slow-walked merger reviews and intentionally undermined dealmaking. Citing resource constraints<sup>10</sup> and merger volume,<sup>11</sup> the Biden FTC announced in early 2021 that it would suspend “early terminations,” which allow mergers that pose no competitive risk to close before a thirty-day waiting period.<sup>12</sup> Accordingly, the FTC has been holding mergers—including some of the smallest and least competitively consequential—for at least thirty days.<sup>13</sup> The Biden FTC's approach has “introduce[d] inefficiency into market operation, harming consumers.”<sup>14</sup> In some cases, the Biden FTC has also sent letters informing merging parties that they are still under investigation even after the expiration of the waiting period.<sup>15</sup> These letters, often sent without a reason to believe the merger is unlawful, effectively extend investigations past the timeline that Congress has set for the FTC's merger review.<sup>16</sup> Threatening future litigation even when the FTC may have little reason to believe a deal is anticompetitive chills the growth and innovation of American businesses,<sup>17</sup> and is inconsistent with Congress's intent in establishing merger review.<sup>18</sup>

---

<sup>6</sup> Noah J. Phillips & Christine S. Wilson, Comm'rs, FTC, Statement Regarding the Request for Information on Merger Enforcement 1 (Jan. 18, 2022).

<sup>7</sup> See Noah J. Phillips & Christine S. Wilson, Comm'rs, FTC, Dissenting Statement Regarding the Commission's Rescission of the 2020 FTC/DOJ Vertical Merger Guidelines and the Commentary on Vertical Merger Enforcement 2-3 (Sep. 15, 2021).

<sup>8</sup> Press Release, FTC, *Federal Trade Commission Withdraws Vertical Merger Guidelines* (Sep. 15, 2021); Carl Shapiro & Herbert Hovenkamp, *How Will the FTC Evaluate Vertical Mergers*, PROMARKET (Sep. 23, 2021).

<sup>9</sup> Cf. Noah J. Phillips & Christine S. Wilson, Comm'rs, FTC, Dissenting Statement Regarding the Commission's Rescission of the 2020 FTC/DOJ Vertical Merger Guidelines and the Commentary on Vertical Merger Enforcement 5 (Sep. 15, 2021).

<sup>10</sup> Holly Vedova, *Adjusting Merger Review to Deal With the Surge in Merger Filings*, FTC (Aug. 3, 2021).

<sup>11</sup> Press Release, FTC, *FTC, DOJ Temporarily Suspend Discretionary Practice of Early Termination* (Feb. 4, 2021).

<sup>12</sup> *Id.*

<sup>13</sup> See Noah J. Phillips & Christine S. Wilson, Comm'rs, FTC, Statement Regarding the Commission's Indefinite Suspension of Early Terminations 2 (Feb. 4, 2021).

<sup>14</sup> *Id.* at 4.

<sup>15</sup> Diane Bartz, *U.S. Antitrust Enforcer Says Merger Wave Means Slower Vetting*, REUTERS (Aug. 3, 2021).

<sup>16</sup> Noah J. Phillips, Comm'r, FTC, Prepared Remarks for the Eighth Annual Berkeley Spring Forum on M&A and the Boardroom: Disparate Impact: Winners and Losers from the New M&A Policy 9 (Apr. 27, 2022).

<sup>17</sup> See generally Diane Bartz, *supra* note 15.

<sup>18</sup> See Noah J. Phillips & Christine S. Wilson, Comm'rs, FTC, Statement Regarding the Commission's Indefinite Suspension of Early Terminations 1 (Feb. 4, 2021).

Despite receiving additional funding from Congress at the end of 2022,<sup>19</sup> and a significant drop in merger activity,<sup>20</sup> the FTC has not resumed early terminations<sup>21</sup> and has continued to exceed the statutory deadline for reviewing mergers. Yet, according to Commissioner Christine Wilson, FTC “enforcement numbers under this administration are significantly lower than enforcement numbers under the Trump Administration.”<sup>22</sup> One must wonder, then, if the Biden FTC is shirking its responsibility to investigate mergers effectively and efficiently, and instead wasting new funds on partisan projects like illegal rulemaking.<sup>23</sup>

Based on early indicators, it seems unlikely that the Biden FTC will re-embrace the consumer welfare standard. For example, the FTC’s Request for Information on Merger Enforcement foreshadows a skepticism toward mergers by dismissing out of hand potential procompetitive and cost-cutting justifications.<sup>24</sup> Instead, the FTC seems poised to implement a new approach that focuses on factors that may be unrelated to sound, economics-based merger analysis.<sup>25</sup> Additionally, it may be much harder for companies to pass the FTC’s scrutiny under any new merger guidelines, even when a merger will benefit consumers.<sup>26</sup> Focusing on new considerations other than consumer welfare without accounting for relevant economic harms is a disservice to the American people.

The Biden FTC’s approach to mergers and acquisitions ignores market realities. Many startups pursue the long-term goal of being acquired.<sup>27</sup> Accordingly, the FTC’s actions in the merger space chill investment and discourage start-ups from growing and developing their businesses, because the prospect of an acquisition may disappear.<sup>28</sup> This could have a lasting impact on the flourishing of U.S. markets. It is critical, now more than ever, to establish certainty in our marketplace that provides incentives for American innovators to continue competing. The American people would be best served if Biden antitrust enforcers would abandon partisan agendas and restore traditional antitrust principles and processes that promote competitive markets, transparency, and the rule of law.<sup>29</sup>

To allow us to conduct oversight of the FTC’s approach, please provide the following information and material:

---

<sup>19</sup> David Shepardson & Diane Bartz, *Government Funding Bill to Bolster U.S. Antitrust Regulators*, REUTERS (Dec. 22, 2022).

<sup>20</sup> Peter Brennan & Gaurang Dholakia, *M&A Activity Slumped in North America in 2022 After Record 2021*, S&P GLOBAL (Jan. 17, 2023).

<sup>21</sup> Rebecca Farrington & Heather Greenfield, *Antitrust Scrutiny Intensifies as DOJ and FTC Step Up Enforcement*, WHITE & CASE (Jan. 27, 2023).

<sup>22</sup> See Christine S. Wilson, Comm’r, FTC, Statement In the Matter of HSR Premerger Notification (Feb. 7, 2023).

<sup>23</sup> See Letter from Rep. Jim Jordan, Chair, H. Comm. on the Judiciary, et al., to Hon. Lina M. Khan, Chair, et al., FTC (Feb. 14, 2023).

<sup>24</sup> See, e.g., Alden Abbott, *FTC-DOJ RFI on Merger Guidelines: The Agencies Should Proceed with Caution*, TRUTH ON THE MKT. (Feb. 2, 2022).

<sup>25</sup> See, e.g., Lina M. Khan, Rohit Chopra, and Rebecca Kelly Slaughter, Chair and Comm’rs, FTC Statement on the Withdrawal of the Vertical Merger Guidelines 8 (Sep. 15, 2021).

<sup>26</sup> See, e.g., Mike Cowie & James A. Fishkin, *Back to the Drawing Board: The FTC and DOJ Rethink Merger Guidelines*, REUTERS (Mar. 7, 2022).

<sup>27</sup> See, e.g., Francesco Ferrati & Moreno Muffato, *Startup Exits by Acquisition: A Cross Industry Analysis of Speed and Funding*, EUR. CONF. ON INNOVATION AND ENTREPRENEURSHIP (2021).

<sup>28</sup> See generally Noah J. Phillips, *supra* note 16.

<sup>29</sup> See Christine Wilson, *Why I’m Resigning as an FTC Commissioner*, WALL ST. J. (Feb. 14, 2023).

1. A comprehensive list of each factor or consideration other than consumer welfare that the Biden FTC has used in any assessment of a proposed transaction since June 15, 2021.
2. For each factor or consideration listed in response to question one, please explain how the FTC evaluates a proposed transaction's effects on consumers relative to any effects relating to other factors or considerations.
3. The date when the Biden FTC will issue new merger guidelines.
4. All documents and communications referring or relating to the decision to withdraw the Trump Administration's 2020 vertical merger guidelines.
5. The date when the Biden FTC will reestablish the practice of early terminations. If the Biden FTC will not resume the practice of early terminations, please explain the FTC's rationale in detail, including for any types of transactions where the FTC routinely finds no anticompetitive effects.
6. The number of proposed transactions since June 15, 2021, where the FTC:
  - a. has not granted an early termination;
  - b. has not issued a second request;
  - c. has issued a second request;
  - d. has told parties to a proposed transaction that the agency would challenge a proposed transaction; or,
  - e. has challenged a proposed transaction.
7. All documents and communications, including any on personal devices and any communications with the Executive Office of the President or CFPB Director Rohit Chopra, relating to the FTC's policy concerning early terminations.
8. A precise description of how the FTC expects to spend its increased funding from December 2022 appropriations, and any merger fee revenues in 2023 in excess of appropriations, with respect to merger investigation and enforcement.

Please provide this information as soon as possible but no later than 5:00 p.m. on March 23, 2023.

Thank you for your attention to this matter.

Sincerely,

*Nathaniel Moran*

---

Nathaniel Moran  
Member of Congress

*Andy Biggs*

---

Andy Biggs  
Member of Congress

*Jefferson Van Drew*

---

Jefferson Van Drew  
Member of Congress

*Scott Fitzgerald*

---

Scott Fitzgerald  
Member of Congress

*Barry Moore*

---

Barry Moore  
Member of Congress

*Laurel Lee*

---

Laurel Lee  
Member of Congress



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

Office of the Chair

April 26, 2023

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

Dear Chairman Jordan:

I am writing in response to your April 12, 2023 letter requesting documents and information related to Twitter.

The documents you seek are part of an ongoing law enforcement investigation. In order to protect the integrity of our law enforcement work, I cannot provide these documents at this time.

As noted in my March 27, 2023 letter responding to your March 10, 2023 request, the Commission has a longstanding policy that forbids public discussion or disclosure of law enforcement investigations. Investigations are conducted non-publicly to protect individuals and businesses that are the subject of investigations, as well as third parties who have come forward with information relevant to the investigation.

Although Congress has a legitimate interest in determining how the Commission enforces statutes, Congressional inquiries into ongoing law enforcement investigations pose an inherent threat to the integrity of the Commission's law enforcement functions.<sup>1</sup> If targets and sources were unable to communicate in confidence with the Commission, there could be a chilling effect that could handicap the agency's fact-finding and law enforcement work over the long term. The Commission must also be able to protect its litigation plans and preparations, as well as career staff's willingness to provide the candid and independent analysis necessary for careful and considered decision making.

Consistent with longstanding Commission practice, I am happy to offer you and committee staff a nonpublic briefing regarding this matter so that the Commission can provide you the information you seek while ensuring that its investigation is not compromised.

The FTC conducts investigations pursuant to its congressional mandate to prevent unfair methods of competition and unfair or deceptive practices. Specifically, the Federal Trade Commission enforces Section 5 of the FTC Act and Section 7 of the Clayton Act, which, among other things, prohibit acquisitions that may substantially lessen competition. In addition, the FTC enforces Section 7A of the Clayton Act, which provides the FTC and the Department of Justice with information about larger mergers and acquisitions before they occur. Whether a particular acquisition is subject to the Section 7A requirements depends upon the value of the acquisition

---

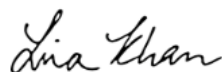
<sup>1</sup> See, e.g., *Pillsbury Co. v. FTC*, 354 F.2d 952 (5<sup>th</sup> Cir. 1966).

and the size of the parties, as measured by their sales and assets. Should the Commission or the Department of Justice decide that further examination is warranted, those agencies may seek additional information or documentary materials by issuing a “second request” to the parties. If the parties consummate the transaction without observing the requirements of the Clayton Act, the Commission may seek both injunctive relief and civil penalties, as appropriate, under Section 7A(g)(2) of the Clayton Act. The Commission may also grant an early termination of a waiting period.

Section 5 of the FTC Act also charges the Commission with halting unfair or deceptive business practices. As I noted in my March 27, 2023 letter, Twitter has been subject to an FTC order since 2011. In May 2022, the FTC announced it was taking action against Twitter for, among other things, deceptively using account security for targeted advertising in violation of the 2011 consent order.<sup>2</sup> Ensuring compliance with FTC orders is critical, especially when dealing with recidivists. The FTC is committed to vigorously enforcing FTC orders to protect American’s personal data, especially in an era where this data is being hacked and exploited by fraudsters and foreign adversaries alike.

We will continue to consider additional ways to provide the information you seek without jeopardizing the Commission’s law enforcement efforts. Congressional oversight plays an important function in our system of government, and the FTC is committed to constructive discussion and cooperation with the House Judiciary Committee. As you know, the FTC has provided the Committee a significant volume of materials in relation to another area of oversight, and we remain eager to accommodate your requests without undermining the Commission’s law enforcement work. I welcome your suggestions about how we can work together to accommodate the needs of our respective branches of government.

Sincerely,



Lina M. Khan  
Chair, Federal Trade Commission

cc: The Honorable Jerrold L. Nadler  
Ranking Member  
House Judiciary Committee

---

<sup>2</sup> See, e.g., Decision and Order, ¶ XIII, *In re Twitter*, No. C-4316 (F.T.C. May 26, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2023062C4316TwitterModifiedOrder.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2023062C4316TwitterModifiedOrder.pdf).



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

Office of the Chair

April 10, 2023

The Honorable Barry Moore  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative Moore:

Thank you for your letter of March 9 to the Federal Trade Commission (“FTC” or “Commission”) requesting information and documents regarding merger reviews and associated law enforcement approaches.

As you know, FTC staff conveyed to your team that your original letter would be treated as a request for public information. Accordingly, we are sending this initial reply to questions that can be answered without impermissibly disclosing nonpublic information.

In general, I share your view that federal investigations of potentially unlawful mergers should employ rigorous analysis that seeks to ensure that all Americans benefit from fair, open, and competitive markets.

My responses to your requests follow:

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

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

---

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

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



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

Please see the response to Request Number 1 above.

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

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

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

As you know, the 2020 Vertical Merger Guidelines were adopted by the Commission on a 3-2 vote. When subsequently moving to withdraw the 2020 Vertical Merger Guidelines in September 2021, the Commission published statements explaining its reasoning.<sup>3</sup> As the statement explained, the Commission withdrew the 2020 VMGs in order to avoid judicial reliance on flawed analysis. The FTC and DOJ are currently working on formulating updated merger guidelines.

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

The Clayton Act, as amended by the HSR Act, requires that a party wishing to complete an acquisition must delay consummating the transaction for at least 30 days (15 days in the case of a pure cash tender offer) following the submission of a premerger notification to give the FTC and DOJ an opportunity to review the transaction and determine whether to investigate the transaction further. The statute gives the FTC and DOJ the ability to grant, in individual cases, exemptions from this statutorily defined waiting period. Specifically, the statute states that FTC and DOJ have the option to grant early terminations "in their discretion."<sup>4</sup> Granting early

---

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

<sup>4</sup> 16 C.F.R. § 803.11(c) (HSR Act: "The Federal Trade Commission and the Assistant Attorney General *may, in their discretion*, terminate a waiting period upon the written request of any person filing notification or ... sua sponte.") (emphasis added); 15 U.S.C.A. § 18a(2) (Clayton Act: "The Federal Trade Commission and the Assistant Attorney General *may*, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Register a notice that neither intends to take any action within such period with respect to such acquisition.") (emphasis added); see also "FTC, DOJ Temporarily Suspend Discretionary Practice of Early Termination," Federal Trade Commission (Feb. 4, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/02/ftc-doj->

termination consumes agency resources. Given our heavy workload, the FTC will continue to prioritize devoting resources to its statutory obligations over discretionary functions. We will consider reinstating early termination grants as agency resources permit.

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

a. *has not granted an early termination;*

The most recent complete data (including both FTC and DOJ activity) is from fiscal year 2021.<sup>5</sup> The agencies received filings related to 3,413 transactions for which a second request could have been issued. For 2,124 of these transactions, one or both of the parties requested early termination. The Agencies granted early termination for 417 such transactions, and did not grant an early termination regarding 1,707 transactions.<sup>6</sup>

b. *has not issued a second request;*

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

c. *has issued a second request;*

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

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

e. *has challenged a proposed transaction.*

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

---

temporarily-suspend-discretionary-practice-early-termination; “HSR Early Termination After a Second Request Issues,” Federal Trade Commission (Mar. 12, 2021), <https://www.ftc.gov/enforcement/competition-matters/2021/03/hsr-early-termination-after-second-request-issues> (“Typically, when an investigation resolves competition concerns, the agencies *use their discretion* to grant early termination of the second waiting period, and the grant of ET allows the parties to close their transaction.”) (emphasis added).

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

<sup>6</sup> FTC & Dep’t of Justice Antitrust Division, Hart-Scott-Rodino Annual Report Fiscal Year 2021, Appendix A, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/p110014fy2021hsrannualreport.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/p110014fy2021hsrannualreport.pdf).

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

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

As FTC staff has publicly explained, assessing whether early termination is appropriate sometimes requires more resources than are available in light of the volume of merger filings or other resource constraints.<sup>8</sup> My team will follow up on the Chairmen’s request for non-public documents.

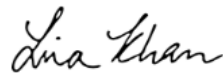
8. *A precise description of how the FTC expects to spend its increased funding from December 2022 appropriations, and any merger fee revenues in 2023 in excess of appropriations, with respect to merger investigation and enforcement.*

The FTC is in the process of finalizing and voting on its fiscal year 2023 operating budget. I anticipate that the additional resources will primarily fund an increase in full time employees and associated costs, the fiscal year 2023 pay increase (4.6%), and IT modernization efforts. We expect the merger fee revenue will be sent to the Treasury as an offsetting collection, as we do not expect that revenue to exceed our fiscal year 2023 appropriation amount.

\* \* \*

Thank you again for raising this topic. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,



Lina M. Khan  
Chair, Federal Trade Commission

---

<sup>8</sup> See Press Release, Fed. Trade Comm’n, FTC, DOJ Temporarily Suspend Discretionary Practice of Early Termination (Feb. 4, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/02/ftc-doj-temporarily-suspend-discretionary-practice-early-termination> (noting early termination temporarily suspended due to volume of filings and change in administrations); Press Release, Fed. Trade Comm’n, Resuming Early Termination of HSR Reviews (Mar. 27, 2020), <https://www.ftc.gov/enforcement/competition-matters/2020/03/resuming-early-termination-hsr-reviews> (noting early termination temporarily suspended in light of the pandemic, and when reinstating early termination noting that “Early termination will be granted but only as time and resources allow.”).