

Congress of the United States
Washington, DC 20515

July 12, 2023

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

Dear Chair Khan:

The House Committee on the Judiciary and the Committee on Energy and Commerce are conducting oversight of the Federal Trade Commission (FTC). After two years under your leadership, public information raises serious concerns about mismanagement, a “toxic” environment, and a failure to enforce antitrust and consumer protection laws. As we continue to examine these matters to inform legislative reforms, we expect your full cooperation with our oversight.

The most glaring example of your inability to enforce the FTC’s mission is the decline in enforcement of the antitrust and consumer protection laws. In 2020, the FTC brought 31 challenges to mergers—a two-decade high.¹ In 2021, the year you became Chair, the FTC took only 15 actions against mergers.² In 2022, you brought actions against only 17 mergers.³ Of the cases that the FTC did litigate, it lost in federal court and in the FTC’s own administrative court⁴—succeeding only when the FTC Commissioners act as prosecutors and judges.⁵ On the consumer protection side, the FTC’s enforcement actions declined by more than half from the last year of the Trump administration and were similarly low in the second year under your leadership.⁶ Specifically, in 2021 FTC’s consumer protection actions fell from 79 to 31.⁷

The decline in the FTC’s enforcement of antitrust and consumer protection laws coincides with low morale and employee dissatisfaction at the agency. Each year, the U.S. Office

¹ Letter from Christine S. Wilson, Commissioner, Fed. Trade Comm’n. to President Joseph R. Biden, Jr. 2-3 (March 2, 2023) [hereinafter Resignation Letter].

² *Id.*

³ *Id.*

⁴ See Press Release, Fed. Trade Comm’n, Administrative Law Judge Dismisses FTC Antitrust Complaint against Altria Group and JUUL Labs, Inc. (Feb. 24, 2022); 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); *FTC v. Meta Platforms Inc.*, 2022 WL 16637996 (N.D. Cal. Nov. 2, 2022).

⁵ Press Release, Fed. Trade Comm’n, FTC Orders Illumina to Divest Cancer Detection Test Maker GRAIL to Protect Competition in Life-Saving Technology Market (April 3, 2023).

⁶ Resignation Letter, *supra* note 1, at 3.

⁷ See Hon. Christine S. Wilson, Comm’r, Fed. Trade Comm’n, Remarks at the Mercatus Antitrust Forum: One Year of Biden Antitrust (Jan. 26, 2022).

of Personnel Management (OPM) administers the government-wide Federal Employee Viewpoint Survey (FEVS) to assess “how employees jointly experience the policies, practices, and procedures characteristic of their agency and its leadership.”⁸ The purpose of FEVS is to offer “insights into whether, and to what extent, workplace conditions characterizing successful organizations are present in Federal agencies, information important to successful organizational change and development initiatives.”⁹

Under your leadership, the results have been dismal. The FEVS data shows that the FTC’s own workforce believes that agency honesty, integrity, and respect has degraded significantly. For example:

- In 2020, 87% of FTC employees agreed that senior leaders maintain high standards of honesty and integrity.¹⁰ Under your leadership, that figure fell to 53% in 2021 and declined further to 49% in 2022.¹¹
- In 2020, 83% of surveyed FTC employees agreed that they have a high level of respect for the FTC’s senior leaders.¹² Again, under your leadership, that figure plummeted to 49% in 2021 and 44% in 2022.¹³
- In 2020, 80% of FTC respondents agreed that senior leaders generate high levels of motivation and commitment in the workforce.¹⁴ Under your leadership, that figure dropped to 42% in 2021 and then down to only 36% in 2022.¹⁵

This drop in leadership quality is not only concerning by itself, but also in comparison to other agencies. In each category listed above, the FTC dropped from highest-rated to lowest or second-lowest of the ranked agencies in the entire federal bureaucracy.¹⁶

Confidential interviews with FTC staff conducted by reporters provide context to these dismal results. Several FTC employees described the FTC as having a “toxic environment.”¹⁷ One employee described your leadership as creating a “wall of silence” around the chair’s

⁸ *About, Federal Employee Viewpoint Survey*, U.S. OFFICE OF PERSONNEL MANAGEMENT (last visited June 22, 2023).

⁹ *Id.*

¹⁰ U.S. OFFICE OF PERSONNEL MANAGEMENT, 2020 OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEE VIEWPOINT SURVEY: REPORT BY AGENCY Q27 (Apr. 26, 2021) [hereinafter 2020 FEVS].

¹¹ U.S. OFFICE OF PERSONNEL MANAGEMENT, 2021 OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEE VIEWPOINT SURVEY: REPORT BY AGENCY Q33 (Apr. 28, 2022) [hereinafter 2021 FEVS]; U.S. OFFICE OF PERSONNEL MANAGEMENT, 2020 OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEE VIEWPOINT SURVEY: REPORT BY AGENCY Q56 (Oct. 20, 2022) [hereinafter 2022 FEVS].

¹² 2020 FEVS, *supra* note 10, at Q31.

¹³ 2021 FEVS, *supra* note 11, at Q37; 2022 FEVS, *supra* note 11, at Q60.

¹⁴ 2020 FEVS, *supra* note 10, at Q26.

¹⁵ 2021 FEVS, *supra* note 11, at Q32; 2022 FEVS, *supra* note 11, at Q55.

¹⁶ *Compare* 2020 FEVS, *supra* note 10, *to* 2021 FEVS, *supra* note 11 *and* 2022 FEVS, *supra* note 11, at Q55. *See also* Resignation Letter, *supra* note 1, at 2.

¹⁷ Mike Swift et al., *Under Khan’s leadership, staffers air frustrations in wake of survey*, MLEX (June 6, 2022).

office.¹⁸ FTC employees stated that you turned the agency into “a hierarchical, top-down organization, where even expert staffers say they feel marginalized and afraid to speak truth to power, for fear of being frozen out for not being ‘on board’ with [your] mission.”¹⁹ Even staff members agreeing with your goals have admonished your leadership, stating:

I think we’ve let too much stuff go in the past. But the way to fix that is not to ruin an agency; it’s to build an agency up. It’s not driving out the most experienced members of our team and browbeating everyone into submission where everybody just hides and waits.²⁰

In 2022, the FTC’s Office of Inspector General (OIG) investigated mismanagement in merger review at the FTC, which also revealed low employee morale and satisfaction. The OIG’s report found that many staff had “issues with the Front Office and other upper management, caused by problematic communication . . . resulting in inefficiency and ineffectiveness.”²¹ The OIG report also stated that “attorneys noted that higher agency leadership do not allow lower management and staff attorneys to exercise a sufficient level of discretion in their handling of merger reviews—with an end result of lower efficiency and staff morale.”²² The consequence of your treatment of staff has been a brain drain at the FTC. A report by *Bloomberg* found that 71 senior attorneys left the FTC in the two-year period between 2021 and 2022, which is the highest number of departures in the category for a comparable two-year period since 2000.²³

As we consider legislative reforms to correct a mismanaged FTC and your apparent failure to safeguard taxpayer resources, please provide the following documents and information to the Committees:

1. All documents and communications in the custody or control of the Performance Review Board or the Human Capital Management Office referring or relating to the performance or conduct of the Chair, the Chair’s staff, employees that report directly to the Chair, or Senior Executive Service employees.
2. All documents and communications in the custody or control of the Human Capital Management Office or the Office of the Executive Director referring or relating to allegations of misconduct towards or mistreatment of FTC employees by the Chair, the Chair’s staff, employees that report directly to the Chair, or Senior Executive Service employees.
3. All documents and communications referring or relating to complaints about senior leadership by FTC staff including, but not limited to, complaints about a lack of honesty,

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *See, e.g., id.*

²¹ Memorandum from Andrew Katsaros, Inspector General, Fed. Trade Comm’n to Holly Vedova, Director, Bureau of Competition, Fed. Trade Comm’n 9 (May 2, 2022).

²² *Id.* at 10.

²³ Dan Papszun, *FTC Lawyers Leave at Fastest Rate in Years as Khan Sets New Tone*, BLOOMBERG (Mar. 16, 2023).

integrity, respect, communication, commitment, motivation, workload, managerial experience, or prioritization, from the following custodians:

- a. Stephen Mohr, Assistant Director, Mergers I;
- b. Jordan Andrew, Deputy Assistant Director, Mergers I;
- c. James Weiss, Deputy Assistant Director, Mergers I;
- d. Sarah Wohl, Deputy Assistant Director, Mergers I;
- e. Peggy Bayer Femenella, Assistant Director, Mergers II;
- f. James Abell, Deputy Assistant Director, Mergers II;
- g. Joshua Goodman, Deputy Assistant Director, Mergers II;
- h. Peter Richman, Assistant Director, Mergers III;
- i. Jessica Drake, Deputy Assistant Director, Mergers III;
- j. Brian Telpner, Deputy Assistant Director, Mergers III;
- k. Mark Seidman, Assistant Director, Mergers IV;
- l. Rohan Pai, Deputy Assistant Director, Mergers IV;
- m. Stephen Rodger, Deputy Assistant Director, Mergers IV;
- n. Tara Isa Koslov, Deputy Director, Bureau of Competition;
- o. Patricia Galvan, Assistant Director, Technology Enforcement Division;
- p. Krisha Cerilli, Deputy Assistant Director, Technology Enforcement Division;
- q. Samuel Levine, Director, Bureau of Consumer Protection;
- r. Monica Vaca, Deputy Director, Bureau of Consumer Protection;
- s. Rebecca Unruh, Acting Deputy Director, Bureau of Consumer Protection;
- t. Audrey Austin, Acting Deputy Director, Bureau of Consumer Protection;
- u. Serena Viswanathan, Associate Director, Division of Advertising Practices;
- v. Jennifer Leach, Associate Director, Division of Consumer & Business Education;
- w. Maria Mayo, Associate Director, Division of Consumer Response & Operations;
- x. James Kohm, Associate Director, Division of Enforcement;
- y. Malini Mithal, Associate Director, Division of Financial Practices;
- z. Laura DeMartino, Associate Director, Division of Litigation Technology & Analysis;
- aa. Lois Greisman, Associate Director, Division of Marketing Practices; and
- bb. Ben Wiseman, Acting Associate Director, Division of Privacy & Identity Protection

Please produce this information as soon as possible, but no later than 5:00 p.m. on July 26, 2023.

The House 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.”²⁴ The Committee on Energy and Commerce is authorized by Rule X of the Rules of the House of Representatives to conduct

²⁴ Rules of the U.S. House of Representatives, R. X (2023).

The Honorable Lina M. Khan

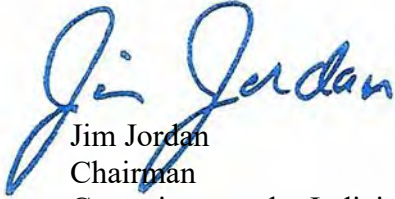
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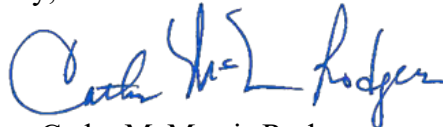
oversight of and legislate on matters relating to “[c]onsumer affairs and consumer protection” and “[i]nterstate and foreign commerce generally”²⁵

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

²⁵ *Id.*