

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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May 16, 2024

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) practice of sending pre-consummation warning letters related to merger transactions. The FTC contends these warning letters inform parties that transactions remain under investigation after the pre-merger notification waiting period has expired.¹ However, the Committee's oversight efforts and recent news reports show that the FTC's claims about pre-consummation warning letters lack credibility.² Accordingly, we write to request information and documents related specifically to the FTC's pre-consummation warning letters.

On August 3, 2021, the FTC announced that it would begin sending pre-consummation warning letters for deals that it cannot fully investigate within the statutory timelines provided by Congress.³ The FTC sent these "standard form letters" to parties who notified the FTC about proposed transactions pursuant to the Hart-Scott-Rodino Act for which the FTC was allegedly unable to complete its investigation in the allotted time.⁴ The FTC claimed that by sending these letters it was "alerting companies that the FTC's investigation remains open and reminding companies that the agency may subsequently determine that the deal was unlawful."⁵ Following your appearance before the Committee on July 13, 2023, Representative Moran posed questions

¹ See Statement of Commissioner Christine S. Wilson, *Regarding the Announcement of Pre-Consummation Warning Letters* (Aug. 9, 2021).

² See ABUSE OF POWER, WASTE OF RESOURCES, AND FEAR: WHAT INTERNAL DOCUMENTS AND TESTIMONY FROM CAREER EMPLOYEES SHOW ABOUT THE FTC UNDER CHAIR KHAN, INTERIM STAFF REPORT, COMMITTEE ON THE JUDICIARY, U.S. HOUSE OF REPRESENTATIVES (Feb. 22, 2024) ("INTERIM STAFF REPORT"); Leah Nylen, *Pfizer, Thermo Fisher Among 200 Companies Warned by FTC Over Deals*, BLOOMBERG LAW (Apr. 4, 2024).

³ Press Release, FTC, Adjusting Merger Review to Deal with the Surge in Merger Filings (Aug. 3, 2021).

⁴ *Id.*

⁵ *Id.*

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for the record to you about the pre-consummation warning letters, but you failed to provide any details about these letters.⁶

The Committee's oversight and news reports reveal that the FTC's claims about these letters are not true. For example, during transcribed interviews with FTC career employees, the Committee learned that the FTC does not continue to investigate the parties after it sends the threat letters.⁷ Recent reporting by *Bloomberg News* also revealed that the FTC has sent these letters to more than 200 companies, but none of these letters led to any enforcement actions or known investigations.⁸

The Committee is considering significant legislative changes concerning the FTC. With respect to these new revelations, and to further inform the Committee's oversight and legislative efforts, please produce the following documents and information for the period June 14, 2021, to the present:


1. All pre-consummation warning letters, in unredacted form, that the FTC has sent since June 14, 2021; and
2. All documents and communications in the custody or control of Chair Khan or any person in Chair Khan's office, the Bureau of Competition, the Office of the General Counsel, or the Office of Policy Planning referring or relating to the FTC's policy and practice concerning pre-consummation warning letters.

Please produce all documents and information as soon as possible but no later than 5:00 p.m. on May 30, 2024. 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."⁹ If you have any questions about this matter, please ask your staff to contact Committee staff at (202) 225-6906.

Sincerely,



Jim Jordan
Chairman



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

⁶ See *Oversight of the Federal Trade Commission: Hearing Before the H. Comm. on the Judic.*, 118th Cong. (2023) (Responses to the Questions for the Record of Hon. Lina Khan, Chair, Fed. Trade Comm'n).

⁷ INTERIM STAFF REPORT, *supra* note 2 at 30-31 (Feb. 22, 2024).

⁸ See Leah Nylen, *Pfizer, Thermo Fisher Among 200 Companies Warned by FTC Over Deals*, BLOOMBERG LAW (Apr. 4, 2024).

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

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cc: The Honorable Jerrold Nadler, Ranking Member

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