

# OVERSIGHT OF THE FEDERAL TRADE COMMISSION

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## HEARING BEFORE THE COMMITTEE ON THE JUDICIARY U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTEENTH CONGRESS FIRST SESSION

THURSDAY, JULY 13, 2023

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# C O N T E N T S

THURSDAY, JULY 13, 2023

## OPENING STATEMENTS

	Page
The Honorable Jim Jordan, Chair of the Committee on the Judiciary from the State of Ohio .....	1
The Honorable Jerrold Nadler, Ranking Member of the Committee on the Judiciary from the State of New York .....	3

## WITNESS

The Hon. Lina Khan, Chair, Federal Trade Commission	
Oral Testimony .....	5
Prepared Testimony .....	7

## LETTERS, STATEMENTS, ETC. SUBMITTED FOR THE HEARING

All materials submitted for the record by the Committee on the Judiciary are listed below .....	112
An Attorney Detail Report of Lina Khan, New York State Unified Court System, Jul. 13, 2023, submitted by the Honorable Harriet Hageman a Member of the Committee on the Judiciary from the State of Wyoming, for the record	
A letter from Lina Khan to the Honorable Cathy McMorris Rodgers, Chair of the House Energy and Commerce Committee from the State of Washington and the Honorable Jim Jordan, Chair of the Committee on the Judiciary from the State of Ohio, submitted by the Honorable Jerrold Nadler, Ranking Member of the Committee on the Judiciary from the State of New York, for the record	
A letter from Small Business Rising, Jul. 11, 2023, to the Honorable Chair Jordan, Chair of the Committee on the Judiciary, from the State of Ohio, and the Honorable Nadler, Ranking Member of the Committee on the Judiciary from the State of New York, submitted by the Honorable Henry C. "Hank" Johnson, Jr., a Member of the Committee on the Judiciary from the State of Georgia, for the record	
Materials submitted by the Honorable Adam Schiff, a Member of the Committee on the Judiciary from the State of California, for the record	
An article entitled, "Elon Musk, King of Censorship: 10 Times the 'Free Speech Absolutist' Silenced Twitter Users," Jun. 25, 2023, Yahoo News	
An article entitled, "Twitter is complying with more government demands under Elon Musk," Apr. 27, 2023, Rest of the World	
An article entitled, "Ethics Official Owned Meta Stock While Recommending FTC Chair Recuse Herself From Meta Case," Jun. 30, 2023, The Wall Street Journal, submitted by the Honorable Madeleine Dean, a Member of the Committee on the Judiciary from the State of Pennsylvania, for the record	
Materials submitted by the Honorable Glenn Ivey, a Member of the Committee on the Judiciary from the State of Maryland, for the record	
An article entitled, "Does Justice Alito Hear Himself?" Jun. 22, 2023, The New York Times	
An article entitled, "Samuel Alito's Wife Leased Land to an Oil and Gas Firm While the Justice Fought the EPA," Jun. 26 2023, The Intercept	

Materials submitted by the Honorable Glenn Ivey, a Member of the Committee on the Judiciary from the State of Maryland, for the record—Continued

A collaborative letter to the Honorable Kevin McCarthy and the Honorable Jim Jordan, Apr. 17, 2023

A report entitled, “Assessment of Costs Associated with the Implementation of the Federal Trade Commission Notice of Proposed Rulemaking (RIN 2022–14214), CFR Part 463,” May 2023, Center for Automotive Research, submitted by the Honorable Wesley Hunt, a Member of the Committee on the Judiciary from the State of Texas, for the record

Materials submitted by the Honorable Jeff Van Drew, a Member of the Committee on the Judiciary from the State of New Jersey, for the record

An article entitled, “Linda Khan Has Some Explaining to do,” Jul. 12, 2023, Americans for Tax Reform

An article entitled, “Khan Reveals That She ‘Handpicked’ Controversial Unpaid Consultants,” Apr. 18, 2023, Americans for Tax Reform

#### QUESTIONS AND RESPONSES FOR THE RECORD

Questions for the Hon. Lina Khan, Chair, Federal Trade Commission, from the Honorable Darrell Issa from the State of California, Scott Fitzgerald from the State of Wisconsin, Lance Gooden from the State of Texas, Nathaniel Moran from the State of Texas, Laurel Lee from the State of Florida, Harriet Hageman from the State of Wyoming, Wesley Hunt from the State of Texas, Ted Lieu from the State of California, Zoe Lofgren from the State of California, and Mary Gay Scanlon from the State of Pennsylvania, for the record

A response from the Hon. Lina Khan, Chair, Federal Trade Commission

## OVERSIGHT OF THE FEDERAL TRADE COMMISSION

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Thursday, July 13, 2023

HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

Washington, DC

The Committee met, pursuant to notice, at 10:08 a.m., in Room 2141, Rayburn House Office Building, Hon. Jim Jordan [Chair of the Committee] presiding.

*Members present:* Representatives Jordan, Issa, Buck, Gaetz, Johnson of Louisiana, Biggs, McClintock, Tiffany, Massie, Roy, Bishop, Spartz, Fitzgerald, Bentz, Cline, Gooden, Van Drew, Nehls, Moore, Kiley, Hageman, Moran, Lee, Hunt, Fry, Nadler, Lofgren, Cohen, Johnson of Georgia, Schiff, Jayapal, Correa, Scanlon, Neguse, McBath, Dean, Ross, Bush, Ivey, and Balint.

Chair JORDAN. The Committee will come to order. Without objection, the Chair is authorized to declare a recess at any time. We welcome everyone to today's hearing on Oversight of the Federal Trade Commission. The Chair now recognizes the gentleman from Wisconsin, Mr. Fitzgerald, to lead us in the Pledge of Allegiance.

[Pledge of Allegiance.]

Chair JORDAN. I thank the gentleman. We begin today's hearing with what we normally do, with opening statements, and then we will get right to our witness. I appreciate Ms. Khan being with us—Chair Khan being with us today.

At a speech in Berlin in 2022, Chair Khan told an audience that the challenges facing antitrust today were “the result of a choice made 40 years ago to follow the misguided philosophy of people like Robert Bork.” In other words, according to Chair Khan, the prevailing view over the last 40 years, a bipartisan view, shared over more than 20 Congresses, six Presidential Administrations, and adopted and developed by all 50 States in their enforcement is now somehow wrong.

Consider that over those 40 years, the U.S. economy grew from about a \$3 trillion annual economy to \$25 trillion and was the single greatest period of wealth creation in human history. Everyone who oversaw economic policy for those four decades, according to the Chair, was wrong. She knows better. She is trying to usher in a radical departure from the norms that made the American economy great to a system where her and her cronies have unchecked

power over business practices in our country, untethered from any reasonable reading of precedent or statutory law.

So, we should ask now, over the two-years into her tenure, how has her approach to antitrust in playing out as she heads one of those critical agencies in our government? The short answer is that it has been a disaster. She has pushed investigations to burden parties with vague and costly demands without any substantive follow-through or, frankly, logic for the request themselves. She centralizes the decisionmaking at the Commission within her office, eliminating any pretext of due process or transparency in that decisionmaking. Her approach is best characterized as one of intimidation, followed by inaction.

The best example of this, which was only brought to light because of our work on the Weaponization Select Committee, was her targeted harassment of Twitter. After Mr. Musk bought the company, and following pressure from Democrat Senators, left-wing activist groups, the FTC issued over 350 requests for information from Twitter. These requests included asking for every communication about Mr. Musk inside the company, and most troubling, for information about Twitter's work with journalists, working to shed light on the government-driven censorship practices that existed and I think in some cases still exist in big tech. In fact, we got a great court decision last week that talked about this, how pervasive this effort was, in a preliminary injunction from that Federal court in the Western District of Louisiana.

Just this morning, though, in a filing in Federal court, we have learned that the situation is actually even worse than we could have imagined. This wasn't harassment. It was a shakedown. The FTC, as is common practice pursuant to the consent order, required Twitter to hire an independent assessor, an independent assessor whose legal obligation is to be truly independent and objective, not for one party or another. Well, it turns out objectivity was not what the Federal Trade Commission was interested in hearing.

Here is what the filing said about Ernst & Young, the independent assessor hired in this matter.

The FTC was so adamant with Ernst & Young conveying that this is absolutely what you will do and this is going to occur and you will produce a report at the end of the day that would be negative about Twitter, that senior Ernst & Young leaders feared that if Ernst & Young resigned as the independent assessor, the FTC would take exception to their withdrawal and create other challenges for Ernst & Young over time.

This is not conjecture from Twitter. This is from sworn testimony of the independent assessor in the deposition itself taken just last month. This is outrageous. This is unacceptable and it is the kind of behavior that occurs in banana republics, not in the United States of America.

So, it is no wonder Chair Khan has no interest in providing information to the people's representatives in the Congress, the people on this Committee when we ask for it.

Today, the FTC has not fully complied with a single request for documents from this Committee. Because of her mismanagement, not even her own staff is impressed with Chair Khan's leadership.

In 2020, the last year under Trump, the Trump Administration, 87 percent of FTC employees agreed that senior leaders maintain

high standards. Under Chair Khan, that figure fell to 53 percent in 2021. It declined even further to 49 percent in 2022. In 2020, 82 percent of surveyed FTC employees agreed that they have a high-level respect for the FTC senior leaders, again, under the Chairman, that figure plummeted to 49 percent. These numbers were before it was revealed recently that the Chair was advised by FTC's Ethics Council to recuse herself from a major case. She did not recuse herself, and then appears to have misled Congress about taking that advice.

We have a lot of questions today to get through. We look forward to the response from the Chair of the FTC. With that, I would yield to the gentleman from New York, the Ranking Member, for an opening statement.

Mr. NADLER. Thank you, Mr. Chair. Mr. Chair, since you brought up Robert Bork, I must say that I have thought for the last 40 years that the court's unfortunate following of Robert Bork's doctrines, upending all prior understandings of antitrust law, has resulted in a terrible misinterpretation of antitrust law and is directly responsible for the over-concentration of industry and the power of big business in today's economy.

Mr. Chair, yesterday, the Director of the FBI sat at the witness table for nearly six hours, enduring a steady stream of baseless attacks and conspiracy theories meant to fit a far-right narrative that may resonate on *Fox News*, but that lacks any basis in fact. Today, it is the Chair of the Federal Trade Commission's turn to step into the alternate universe that is the House Judiciary Committee under MAGA Republican leadership.

Chair Khan, the last time you were here, you sat on this side of this table, helping to reinvigorate this Committee's work on anti-trust matters, and I thank you for your service to the Committee. Unfortunately, I expect that today you will be the target of a barrage of personal attacks and wild accusations about the work of the FTC under your leadership.

Republicans will tell us that the Commission is wasting resources, but the FTC has returned over \$430 million to consumers under your watch and is vigorously enforcing the laws that Congress has entrusted to it. Meanwhile, it is the House Republicans who have wasted untold Congressional and agency staff resources, and millions of dollars, in pursuing a fruitless search for evidence of misconduct at the FTC.

The majority will also argue that the FTC's investigation into Twitter was politically motivated and conducted at the behest of Congressional Democrats. This argument also has no basis in fact. Twitter has been in trouble for failing to adequately protect the privacy of its users for more than a decade. It has been subject to a consent decree on this topic since as far back as 2011. It came under a second consent decree last year. Given the haphazard conduct of its new owner, it may very well be subject to new scrutiny today.

It is the FTC's duty to review compliance with these consent decrees, particularly when, as occurred last year, there are credible concerns that user data may have been compromised when the majority of its legal and engineering staff was fired. This work has

nothing to do with the new owner of the company and his political views.

Protecting user privacy is not political. Rushing to defend a company at all costs and investigating the agency that attempts to hold that company accountable, merely because the new owner shares your political views, is another matter.

Ultimately, Chair Khan, you will face attacks today because you are doing your job and that is what threatens Republicans the most. The Federal Trade Commission was created and charged with enforcing antitrust and competition laws to respond to a rise in consolidation across the market in the early 1900s. It helped bring down the trust and lessen monopoly power, it strengthened the economy, and helped support the formation of a strong middle class.

Unfortunately, in recent decades, the Executive Branch took a radical turn away from enforcement of the antitrust laws that kept us safe and prosperous for nearly a century. That failure led to massive consolidation across the market that gave rise to a handful of dominating companies with the power to squash competition.

The rise of monopolies and monopsonies in several fields was a boom to the corporate class, but it has been devastating to consumers, workers, and small businesses. This began to change when the Biden Administration announced several steps to reinvigorate the enforcement of Federal antitrust laws. By faithfully interpreting the original intent of the antitrust laws and the FTC Act to ensure fair competition and prices, the administration has announced that the party is over for large and unfettered corporations. Although most Americans welcome this change, and indeed our economy is booming and unemployment is at a historic low, the commitment to enforcing these laws has raised alarm among our Republican colleagues so they have taken aim at your agency and the important work the FTC does to protect consumers and promote competition.

I hope that my Republican colleagues will find it within themselves to put their baseless and often personal attacks on pause long enough to listen to the importance of your mission. In any event, I appreciate your appearing here today and I appreciate the valuable work of the FTC. I look forward to your testimony and I yield back the balance of my time.

Chair JORDAN. The gentleman yields back. Without objection, all opening statements will be included in the record.

We will now introduce today's witness, Hon. Lina Kahn. Ms. Kahn is the Chair of the Federal Trade Commission. She was sworn in on June 15, 2021. We welcome our witness and thank her for appearing here today.

We will begin by swearing you in. Will you please rise and raise your right hand? Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Let the record reflect the witness has answered in the affirmative. Thank you. Please know that your written testimony—you have seen this before. You sat behind the Chair—the former Chair before, so your written testimony will be entered into the record in its entirety. Accordingly, we ask that you summarize your testi-



mony in five minutes, and we will be a little lax with that if you need a few extra.

Chair Khan, you may begin, and then there will be questions.

#### **STATEMENT OF CHAIR LINA KAHN**

Ms. KHAN. Chair Jordan, Ranking Member Nadler, and Members of the Committee, thank you for inviting me to testify today. I am glad to join you to discuss the FTC's work to promote fair competition and protect Americans from unfair and deceptive practices.

It is a particular honor to appear before this Committee where I had the great privilege of serving during its historic bipartisan investigation into digital markets and the power of large technology platforms.

As this Committee knows well, there has long been a battle in this country between monopoly power and America's democratic institutions. Congress created the FTC in 1914 against the backdrop of an Industrial Revolution that had delivered significant technological advances, but also enabled intense consolidation. Given deep national unease about the unchecked powers that these monopolists could wield, lawmakers tasked the FTC with preventing unfair methods of competition and scrutinizing business practices through regular data collection and continuously building expertise.

In the subsequent years, Congress has expanded our legislative mandates to include laws in protecting consumers. With each of these efforts, Congress has redoubled its commitment to fair competition and to rooting out unfair or deceptive business practices.

At the FTC, our north star is fulfilling the important mandate that Congress has given us and doing all that we can to faithfully enforce the laws and safeguard America's citizens and businesses from harmful and even dangerous concentrations of private power that characterize significant swaths of our economy today.

I am endlessly impressed by the talent and tenacity of the FTC teams especially in the face of ongoing resource constraints and legal challenges to our authority. Over the past 24 months, the FTC has moved to challenge major transactions that would have eroded competition in critical sectors of the economy including defense, semiconductors, energy, digital markets, and pharmaceuticals.

We are tackling anticompetitive practices including those that harm American farmers, small businesses, and workers. Last year, the FTC in a bipartisan coalition of ten State Attorneys General, charged the two largest pesticide manufacturers with unlawful schemes that prevented farmers from having access to cheaper products, costing them billions of dollars.

In January, the FTC proposed a rule that would ban employers from imposing noncompete restrictions that lock in workers and collectively depress their wages by up to \$300 billion, while also depriving startups and businesses of the employees they need to expand and compete. In the months since proposing this rule, we have received over 21,000 public comments including from nurses and doctors, fast food workers, and hairdressers who all told us about how noncompetes had hurt their livelihoods and undermined their economic liberty. Already several enforcement actions by the

FTC have led firms to drop noncompete restrictions imposed on thousands of workers.

The FTC also continues to use its tools to conduct market-wide inquiries. Last June, the Commission launched an inquiry into the practices of pharmacy benefits managers to shed light on the opaque operations of these large, middlemen who can dictate pricing and access to life-saving drugs for millions of Americans. This inquiry follows thousands of public comments the FTC received explaining the real-life costs that can follow from PBM's current practices. One doctor, for example, recounted how delays in PMB approvals caused her patient to develop resistance when otherwise effective treatment ultimately leading to the needless loss of her patient's eye.

In addition to these critical areas of work, we are redoubling our efforts to protect Americans' privacy and combat fraud, while also activating additional authorities that Congress has given us. We have brought actions to protect consumers from Made in USA fraud, protect military families from predatory financing, and protect addiction recovery patients from deception.

We are fighting to protect the security of people's sensitive personal data and have obtained record monetary judgments including the largest ever judgment to protect children's privacy.

The Commission has also proposed rules to address some of the most widespread scams like government impersonation fraud, Made in USA fraud, and fake online reviews. The Agency is tackling junk fees plaguing American consumers and scrutinizing dark patterns that trick people into incurring unwanted charges or surrendering sensitive data. Our Click to Cancel proposal would require companies to make it as easy to cancel a subscription as it is to sign up for one.

The FTC is also committed to fighting for people's right to repair their own products. The FTC has brought several major actions against companies for imposing unlawful repair restrictions, hurting customers, and independent shops alike. In other words, the FTC is firing on all cylinders, fighting every day to protect the American people from unlawful business practices. These efforts reflect the extraordinary work of our agency staff whose talent and dedication are second to none.

It is a deep honor to serve in this role and I am enormously proud to see how our enforcement actions and policy work are materially helping Americans in their day-to-day lives. In the aggregate, our work helps promote the open, competitive, resilient markets that have been the bedrock of America's economic success and dynamism throughout our Nation's history.

Thank you for the opportunity to appear before you today and I am happy to answer your questions.

[The prepared statement of the Chair Khan follows:]

**PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION**

**Hearing on  
OVERSIGHT OF THE FEDERAL TRADE COMMISSION**

**Before the  
COMMITTEE ON THE JUDICIARY**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**WASHINGTON, D.C.  
July 13, 2023**

## **I. INTRODUCTION**

Chairman Jordan, Ranking Member Nadler, and members of the Committee, the Federal Trade Commission (“FTC” or “Commission”) is pleased to appear before you today to discuss the FTC’s work to protect Americans from unfair methods of competition and unfair or deceptive acts or practices.<sup>1</sup>

The FTC is an independent agency that comprises three bureaus: the Bureau of Competition (“BC”); the Bureau of Consumer Protection (“BCP”); and the Bureau of Economics, which supports both BC and BCP. To strengthen the FTC’s ability to keep pace with technological challenges in the digital marketplace, the FTC also recently announced the creation of an Office of Technology, which is supporting the agency’s law enforcement and policy work.

This testimony provides an overview of the FTC’s competition work, highlighting some of the agency’s major recent activities and initiatives, as well as major challenges. It also provides a discussion of the Commission’s efforts to protect consumers from unfair or deceptive practices and the FTC’s international efforts to advance both missions. Finally, the testimony discusses resource constraints and limitations on the Commission’s authorities, which are ripe for Congress to address.

## **II. COMPETITION MISSION**

The FTC enforces the competition laws in many crucial sectors of our economy. Our competition mission is driven by the tenet that vigorous antitrust enforcement is critical to the growth and dynamism of our economy, as well as to our shared prosperity and liberty. Recent decades, however, have vividly illustrated how Americans lose out when markets become more

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<sup>1</sup> This written statement presents the views of the Federal Trade Commission. The oral statements and responses to questions reflect the views of individual Commissioners, and do not necessarily reflect the views of the Commission or any other Commissioner.

consolidated and less competitive. Prices rise, wages fall, innovation suffers, and our markets become more fragile and less resilient. In light of these troubling realities, the FTC has been reassessing how we can enforce the antitrust laws to maximize our efficacy. Although this process is ongoing, as detailed below, we are proud of the significant accomplishments we have already made on this front.

#### **A. Utilizing the FTC's Full Set of Competition Tools**

When Congress created the FTC, it gave the agency a wide range of authorities to combat unfair methods of competition. To ensure the Commission is faithfully discharging its statutory obligations, the FTC has renewed its commitment to use its entire suite of authorities to maximize the agency's impact and faithfully execute the agency's mission.

Notably, the Commission issued a policy statement outlining the scope of Section 5 of the FTC Act, an authority Congress provided to the FTC to combat unfair conduct that lies outside the boundaries of the Sherman Act.<sup>2</sup> Reactivating the Commission's competition rulemaking authority under Section 6(g) of the FTC Act is also central to this effort. In January, the Commission proposed a rule that would ban employers from imposing noncompete restrictions on workers in all but a limited set of circumstances.<sup>3</sup> The Commission took extensive steps to inform the public about the proposed rule to ensure that all viewpoints were heard during the public comment period and is now considering the input collected on the record before determining how to proceed.<sup>4</sup>

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<sup>2</sup> FTC, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of The Federal Trade Commission Act (2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P221202Section5PolicyStatement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf).

<sup>3</sup> See Press Release, Fed. Trade Comm'n, FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition (Jan. 5, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-proposes-rule-ban-noncompete-clauses-which-hurt-workers-harm-competition>.

<sup>4</sup> On February 16, 2023, the FTC hosted a public forum to provide an opportunity for people to directly share their experiences with noncompetes. FTC, FTC Forum Examining Proposed Rule to Ban Noncompete Clauses (Feb. 16, 2023), <https://www.ftc.gov/news-events/events/2023/02/ftc-forum-examining-proposed-rule-ban-noncompete-clauses>.

## **B. Prioritizing Vigorous Merger Enforcement to Combat Industry Consolidation**

Together, the FTC and the Department of Justice Antitrust Division (“DOJ”) represent the American people’s front-line defense against unlawful industry consolidation, and stopping illegal mergers is central to that mission. Consistent with that, over the past 18 months, the FTC has moved to challenge major transactions in critical sectors of the economy, including semiconductors, defense, energy, healthcare, mortgage technology, digital markets, and pharmaceuticals.<sup>5</sup> This includes filing suit to block nine mergers outright,<sup>6</sup> as well as scrutinizing thirteen other anticompetitive mergers that parties have abandoned after the agency indicated competition concerns but before it filed a complaint.<sup>7</sup>

<sup>5</sup> Fed. Trade Comm’n & Dep’t of Justice, Hart-Scott-Rodino Annual Rep., Fiscal Year 2022 (2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/p110014fy2021hsranualreport.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/p110014fy2021hsranualreport.pdf).

<sup>6</sup> Press Release, Fed. Trade Comm’n, FTC Sues to Block Biopharmaceutical Giant Amgen from Acquisition That Would Entrench Monopoly Drugs Used to Treat Two Serious Illnesses (May 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-sues-block-biopharmaceutical-giant-amgen-acquisition-would-entrench-monopoly-drugs-used-treat>; Press Release, Fed. Trade Comm’n, FTC Acts to Block Deal Combining the Two Top Mortgage Loan Technology Providers (Mar. 9, 2023) <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-acts-block-deal-combining-two-top-mortgage-loan-technology-providers>; Press Release, Fed. Trade Comm’n, FTC Seeks to Block Microsoft Corp.’s Acquisition of Activision Blizzard, Inc. (Dec. 8, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/12/ftc-seeks-block-microsoft-corps-acquisition-activision-blizzard-inc>; Press Release, Fed. Trade Comm’n, FTC Seeks to Block Virtual Reality Giant Meta’s Acquisition of Popular App Creator Within (July 27, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-seeks-block-virtual-reality-giant-metas-acquisition-popular-app-creator-within>; Press Release, Fed. Trade Comm’n, FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System (June 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-utah-healthcare-rivals-hca-healthcare-steward-health-care-system>; Press Release, Fed. Trade Comm’n, FTC Sues to Block Merger Between New Jersey Healthcare Rivals RWJBarnabas Health and Saint Peter’s Healthcare System (June 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-new-jersey-healthcare-rivals-rwjbarnabas-health-saint-peters>; Press Release, Fed. Trade Comm’n, FTC and Rhode Island Attorney General Step in to Block Merger of Rhode Island’s Two Largest Healthcare Providers (Feb. 17, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-rhode-island-attorney-general-step-block-merger-rhode-islands-two-largest-healthcare-providers>; Press Release, Fed. Trade Comm’n, FTC Sues to Block Lockheed Martin Corporation’s Vertical Acquisition of Aerojet Rocketdyne Holdings Inc. (Feb. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/01/ftc-sues-block-lockheed-martin-corporations-44-billion-vertical-acquisition-aerojet-rocketydyne>; Press Release, Fed. Trade Comm’n, FTC Sues to Block \$40 Billion Semiconductor Chip Merger (Dec. 2, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/12/ftc-sues-block-40-billion-semiconductor-chip-merger>.

<sup>7</sup> See, e.g., Press Release, Fed. Trade Comm’n, Statement Regarding the Termination of Boston Scientific Corp.’s Attempted Acquisition of M.I. Tech Co., Ltd., (May 24, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/statement-regarding-termination-boston-scientific-corporations-attempted-acquisition-mi-tech>.

The Commission is particularly concerned about mergers that may cause significant economywide harm. For instance, in May the Commission challenged a \$13.1 billion merger between the two leading providers of mortgage technology, Intercontinental Exchange, Inc. and Black Knight.<sup>8</sup> The FTC's complaint alleges that the merger would eliminate competition between the merging parties for certain key mortgage processing platforms and tools used by lenders to secure the best interest rates for customers, leading to higher prices for lenders and homebuyers.<sup>9</sup>

The FTC is also taking steps to better capture the full set of ways in which mergers can harm competition. Central to this effort is placing greater weight on assessing both non-horizontal and forward-looking competitive harm. For example, in December 2021, the FTC sued to stop U.S. chip supplier Nvidia's proposed \$40 billion acquisition of U.K. chip design provider Arm.<sup>10</sup> More than two months into its litigation with the FTC, Nvidia abandoned its acquisition of Arm—representing the first abandonment of a litigated vertical merger in many years.<sup>11</sup> This effort also includes the Commission's February 2022 lawsuit to block Lockheed's proposed acquisition of Aerojet, a \$4.4 billion defense merger that would have eliminated the country's only remaining independent supplier of key missile propulsion inputs and given Lockheed the ability to cut off its competitors' access to these critical components.<sup>12</sup>

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<sup>8</sup> Press Release, Fed. Trade Comm'n, FTC Acts to Block Deal Combining the Two Top Mortgage Loan Technology Providers (Mar. 9, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-acts-block-deal-combining-two-top-mortgage-loan-technology-providers>.

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

<sup>10</sup> See FTC Sues to Block \$40 Billion Semiconductor Chip Merger, *supra* note 6.

<sup>11</sup> In addition to Nvidia/Arm, the FTC has a pending challenge to Microsoft's proposed \$69 billion acquisition of independent videogame company Activision Blizzard. See FTC Seeks to Block Microsoft Corp.'s Acquisition of Activision Blizzard, Inc., *supra* note 6. In particular, the FTC's December 2022 complaint highlights how Microsoft could use its control over Activision Blizzard's valuable content to undermine competition for videogame consoles as well as fast growing game subscription services and cloud-gaming. See *id.*

<sup>12</sup> Press Release, Fed. Trade Comm'n, Statement Regarding Termination of Lockheed Martin Corporation's Attempted Acquisition of Aerojet Rocketdyne Holdings Inc. (Feb. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/02/statement-regarding-termination-lockheed-martin-corporations-attempted-acquisition-aerojet>.

The Commission also remains committed to stopping harmful mergers between direct competitors, especially in markets for healthcare services. Those mergers threaten patients with higher cost and lower quality care<sup>13</sup> and healthcare workers with lower wages and poorer working conditions.<sup>14</sup> In February 2022, the two largest healthcare systems in Rhode Island, Lifespan Corp. and Care New England Health System, called off their merger after the FTC, in conjunction with the Rhode Island Attorney General, sought to block the merger.<sup>15</sup> And on the same day in June 2022, the Commission voted to block two proposed hospital mergers: HCA's acquisition of Steward Health Care System<sup>16</sup> and RWJBarnabas's acquisition of Saint Peter's Healthcare System.<sup>17</sup> The FTC will continue to identify and challenge hospital mergers that threaten access to critical healthcare services.

<sup>13</sup> See, e.g., Zack Cooper et al., *The Price Ain't Right? Hospital Prices and Health Spending on the Privately Insured*, 134 Q.J. ECON. 51 (2019); Nancy Beaulieu et al., *Changes in Quality of Care after Hospital Mergers and Acquisitions*, 382 NEW ENG. J. MED. 51 (2020). For surveys of the research literature, see, e.g., Martin Gaynor & Robert Town, *The Impact of Hospital Consolidation*, THE SYNTHESIS PROJECT, ROBERT WOOD JOHNSON FOUNDATION (June 2012), [http://www.rwjf.org/content/dam/farm/reports/issue\\_briefs/2012/rwjf73261](http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2012/rwjf73261); Martin Gaynor, Kate Ho & Robert Town, *The Industrial Organization of Health-Care Markets*, 53 J. ECON. LITERATURE 235 (2015).

<sup>14</sup> See, e.g., Elena Prager & Matt Schmitt, *Employer Consolidation and Wages: Evidence from Hospitals*, 111 AM. ECON. REV. 397 (2021); Daniel Arnold & Christopher Whaley, *Who Pays for Health Care Costs? The Effects of Health Care Prices on Wages* (RAND Health Care Working Paper, 2021), <https://www.econthecon.org/pdfs/Whaley.pdf>. See also Press Release, Fed. Trade Comm'n, FTC Policy Paper Warns About Pitfalls of COPA Agreements for Patient Care and Healthcare Workers (Aug. 15, 2022), <http://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-policy-paper-warns-about-pitfalls-copa-agreements-patient-care-healthcare-workers>. Recently, two hospital systems abandoned their proposed merger after the FTC raised concerns with the New York State Department of Health, voicing opposition to the granting of a COPA that would immunize the deal from antitrust scrutiny. See Press Release, Fed. Trade Comm'n, Statement of Elizabeth Wilkins, Director of the FTC's Office of Policy Planning, on the Decision of SUNY Upstate Medical University and Crouse Health System, Inc., to Drop Their Proposed Merger (Feb. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/statement-elizabeth-wilkins-director-ftcs-office-policy-planning-decision-suny-upstate-medical>.

<sup>15</sup> Press Release, Fed. Trade Comm'n, Statement Regarding Termination of Attempted Merger of Rhode Island's Two Largest Healthcare Providers (Mar. 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/statement-regarding-termination-attempted-merger-rhode-islands-two-largest-healthcare-providers>.

<sup>16</sup> Press Release, Fed. Trade Comm'n, FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System (June 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-utah-healthcare-rivals-hca-healthcare-steward-health-care-system>.

<sup>17</sup> Press Release, Fed. Trade Comm'n, FTC Sues to Block Merger Between New Jersey Healthcare Rivals RWJBarnabas Health and Saint Peter's Healthcare System (June 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-new-jersey-healthcare-rivals-rwjbarnabas-health-saint-peters>.



The Commission also acts to ensure that companies are incentivized to innovate and to make their pharmaceutical products available at affordable prices. In May 2023, the Commission filed a federal court action to block Amgen's \$27.8 billion acquisition of Horizon Therapeutics, alleging that the deal would allow Amgen to leverage its portfolio of blockbuster drugs to entrench the monopoly positions of Horizon medications used to treat thyroid eye disease and chronic refractory gout. According to the Commission, Amgen has a history of leveraging its broad portfolio of drugs to gain advantages over potential rivals, for example through cross-market bundling, which involves conditioning rebates on blockbuster drugs in exchange for receiving preferred placement for Amgen's other medications. The complaint alleges that these bundling strategies make it harder for smaller rivals to compete against Amgen, with its full line of products.<sup>18</sup> The Attorneys General from six states have joined the FTC in this federal court litigation.

### **C. Bringing Clarity and Efficiency to Merger Review**

For the past year, the Commission has been working with the DOJ to examine how the agencies can more readily detect potentially problematic deals. Pursuant to the Hart-Scott-Rodino ("HSR") Act of 1976, the federal antitrust agencies issue rules to ensure that we receive the information we need to be able to identify anticompetitive mergers and investigate them fully to determine whether to seek to block any that are likely to cause harm.<sup>19</sup> After conducting a top-to-bottom review of the information that market participants currently submit in premerger notification filings, the Commission has initiated a rulemaking to propose the collection of

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<sup>18</sup> In June, the FTC and DOJ released a summary of a two-day workshop that explored new approaches to enforcement of the antitrust laws in the pharmaceutical industry. Some of the approaches mentioned include applying heightened scrutiny to certain combinations that may increase the risk of anticompetitive bundling or cross-market leverage. Press Release, Fed. Trade Comm'n, FTC, DOJ Issue Summary on Joint Pharmaceutical Merger Analysis Workshop (June 1, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-doj-issue-summary-joint-pharmaceutical-merger-analysis-workshop>.

<sup>19</sup> 15 U.S.C. §18a.

additional information that the agencies need to more effectively and efficiently identify transactions that warrant deeper investigation.<sup>20</sup> These proposed changes represent the first significant re-examination of the HSR premerger notification program since the rules were first adopted in 1978. Since the adoption of the premerger notification program rules in 1978, transactions have become more complex, with the rise of new investment vehicles and changes in corporate strategy. Moreover, there have been increasing concerns that antitrust review has not sufficiently addressed the impact of mergers between firms that do not directly compete, or the effects of corporate consolidation on American workers and growth via acquisition in the technology and digital platform economies. The proposed changes would require filers to disclose additional information so that the agencies have a more complete picture about the proposed transaction's competitive impact, which would improve the efficiency of premerger review and ensure that the agencies can protect all stakeholders—including consumers, workers, and small businesses—from the harmful effects of mergers. The proposed changes are necessary so that the agencies can harness their limited resources to focus on those deals that are most likely to unlawfully lessen competition or tend to create a monopoly. Many of the updates in the proposal reflect data already collected by antitrust authorities around the world. For example, competition enforcers in other jurisdictions already require firms to provide narrative responses with information about business lines, the transaction's structure and rationale, business overlaps, and vertical and other relationships. Accordingly, much of what would be required in the updated HSR form should be familiar to market participants and their counsel.

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<sup>20</sup> Press Release, Fed. Trade Comm'n, FTC and DOJ Propose Changes to HSR Form for More Effective, Efficient Merger Review (June 27, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-doj-propose-changes-hsr-form-more-effective-efficient-merger-review>.

The proposed rule would also implement provisions of the Merger Filing Fee Modernization Act of 2022, which require companies to disclose information in their HSR filing about subsidies received from certain foreign governments and entities. Public comments on the proposed rulemaking are due August 28, 2023.

#### **D. Targeting Anticompetitive Conduct for Maximum Impact**

Despite a heavy merger workload, the FTC continues to maintain and develop a robust program to identify and stop anticompetitive conduct.

The FTC continues to scrutinize digital markets, recognizing that distinct features of digital technologies have ushered in new market dynamics and business strategies that require us to update our enforcement approach. Dominant digital platforms have captured control over key arteries of commerce and communications in ways that can undermine competition. The FTC's investigations in digital markets recognize the critical role of data, network externalities, moat building strategies, and other key factors to ensure that our enforcement is reflecting commercial realities.

Notably, the FTC continues to prosecute its complaint against Facebook (now Meta) in a lawsuit that, in addition to other forms of relief, seeks the divestment of Instagram and WhatsApp.<sup>21</sup> The FTC's amended complaint highlights the competitive importance of data and notes that privacy degradation can constitute an antitrust harm—a fact that the court also acknowledged when it denied Facebook's motion to dismiss the FTC's case.<sup>22</sup>

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<sup>21</sup> Press Release, Fed. Trade Comm'n, FTC Alleges Facebook Resorted to Illegal Buy-or-Bury Scheme to Crush Competition After String of Failed Attempts to Innovate (Aug. 19, 2021), <https://www.ftc.gov/newsevents/news/press-releases/2021/08/ftc-alleges-facebook-resorted-illegal-buy-or-bury-scheme-crush-competitionafter-string-failed>.

<sup>22</sup> See *FTC v. Facebook, Inc.*, 581 F. Supp. 3d 34 (D.D.C. 2022).

The FTC's litigation against Surescripts, an e-prescription giant, also remains ongoing.<sup>23</sup>

The FTC alleges that Surescripts intentionally kept e-prescription customers from using additional platforms (a practice known as multi-homing) through its use of anticompetitive exclusivity agreements, threats, and other exclusionary tactics. That conduct resulted in the exclusion of all meaningful competition in prescription routing and eligibility, leading to higher prices, reduced innovation, lower output, and no customer choice.

Additionally, the FTC recently finalized a consent order in May 2023 settling charges that Mastercard used illegal business tactics to force merchants to route debit card payments through its payment network.<sup>24</sup> Under the order, Mastercard will have to start providing competing networks with customer account information that these networks need to process debit payments. This reverses a tactic Mastercard allegedly had been using to prevent merchants from using competing networks to process certain ecommerce debit payments.

The FTC continues to prioritize and investigate allegations that employer conduct is harming workers. Between January and March 2023, the agency filed four separate enforcement actions under Section 5 resulting in three companies and two individuals dropping noncompete restrictions that they imposed on thousands of workers that barred them from seeking or accepting work with another employer or operating a competing business after they left the company.<sup>25</sup>

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<sup>23</sup> Complaint, *FTC v. Surescripts, Inc.*, No. 1:19-cv-01080 (D.D.C., Apr. 24, 2019),

[https://www.ftc.gov/system/files/documents/cases/surescripts\\_redacted\\_complaint\\_4-24-19.pdf](https://www.ftc.gov/system/files/documents/cases/surescripts_redacted_complaint_4-24-19.pdf).

<sup>24</sup> Press Release, Fed. Trade Comm'n, FTC Approves Final Order Requiring Mastercard to Stop Blocking the Use of Competing Debit Payment Networks (May 30, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-approves-final-order-requiring-mastercard-stop-blocking-use-competing-debit-payment-networks>.

<sup>25</sup> See Press Release, Fed. Trade Comm'n, FTC Approves Final Order Requiring Anchor Glass Container Corp. to Drop Noncompete Restrictions That It Imposed on Workers (June 2, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-approves-final-order-requiring-anchor-glass-container-corp-drop-noncompete-restrictions-it>; Press Release, Fed. Trade Comm'n, FTC Cracks Down on Companies That Impose

The Commission is also committed to preventing anticompetitive conduct that harms American farmers. In September 2022, the Commission and a bipartisan coalition of ten state Attorneys General charged the two largest pesticides manufacturers, Syngenta and Corteva, with maintaining their monopoly positions by paying distributors to block competitors from selling their cheaper generic products to farmers.<sup>26</sup> The complaint alleges that Syngenta Crop Protection and Corteva, Inc. rely on pay-to-block schemes in which distributors get paid only if they limit their dealings with competing manufacturers. The legal issue in this case is whether the antitrust laws bar firms from extending their patent monopolies through programs that require distributors *not* to buy cheaper generic products.<sup>27</sup> But for farmers the question is more practical: Do the antitrust laws protect them from abusive monopoly practices that threaten their livelihood by denying them access to cheaper versions of products they have to buy? This case is pending in federal court in North Carolina.<sup>28</sup>

#### **E. FTC Research and Policy Development Related to Healthcare Competition**

Through Section 6(b) of the FTC Act, Congress gave the agency broad investigative powers to conduct market-wide inquiries that allow us to keep pace with new business practices and market trends. A primary focus of Commission research and policy has been healthcare markets. For example, last June, the Commission authorized a 6(b) study of the contracting

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Harmful Noncompete Restrictions on Thousands of Workers (Jan. 4, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-cracks-down-companies-impose-harmful-noncompete-restrictions-thousands-workers>.

<sup>26</sup> Press Release, Fed. Trade Comm'n, FTC and State Partners Sue Pesticide Giants Syngenta and Corteva for Using Illegal Pay-to-Block Scheme to Inflate Prices for Farmers (Sept. 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-state-partners-sue-pesticide-giants-syngenta-corteva-using-illegal-pay-block-scheme-inflate>.

<sup>27</sup> The FTC has a long history of suing pharmaceutical companies for illegal pay-for-delay agreements that extend their patent monopolies and delay generic entry. See *FTC v. Actavis, Inc.*, 570 U.S. 136 (2013).

<sup>28</sup> See *FTC v. Syngenta & Corteva*, No. 22-cv-828 (M.D.N.C.).

practices of pharmacy benefits managers (“PBMs”).<sup>29</sup> In May and June 2023, the FTC expanded that ongoing inquiry to issue additional compulsory orders to three group purchasing organizations (“GPOs”) that negotiate drug rebates on behalf of other PBMs.<sup>30</sup> The Commission issued these orders after seeking and receiving public input from a wide variety of stakeholders.<sup>31</sup> This comprehensive study will shine a light on the opaque operations of these large pharmacy middlemen who can dictate the pricing and access to life-saving drugs for so many Americans.

#### **F. Broader Research Agenda and Policy Development**

In addition to healthcare markets, the Commission continues to make long-term investments to maximize the impact of our research and policy work in other areas. To tackle the pressing issues of today and tomorrow, we are broadening our institutional skillsets to ensure we are fully grasping market realities, especially as the economy becomes increasingly digitized. As mentioned above, the Commission launched its new Office of Technology to strengthen the FTC’s ability to keep pace with technological challenges in the digital marketplace.<sup>32</sup> Just one

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<sup>29</sup> 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>. Consistent with the competition concerns that prompted the PBM study, the Commission issued a “Policy Statement on Rebates and Fees in Exchange for Excluding Lower Cost Products,” putting the drug industry on notice that paying rebates and fees to exclude competition from formularies violates the antitrust laws. Press Release, Fed. Trade Comm’n, FTC to Ramp Up Enforcement Against Any Illegal Rebate Schemes, Bribes to Prescription Drug Middlemen that Block Cheaper Drugs (June 16, 2022), <http://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-ramp-up-enforcement-against-illegal-rebate-schemes>.

<sup>30</sup> Press Release, Fed. Trade Comm’n, FTC Deepens Inquiry into Prescription Drug Middlemen (May 17, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-deepens-inquiry-prescription-drug-middlemen>; Press Release, Fed. Trade Comm’n, FTC Further Expands Inquiry Into Prescription Drug Middlemen Industry Practices (June 8, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-further-expands-inquiry-prescription-drug-middlemen-industry-practices>.

<sup>31</sup> Press Release, Fed. Trade Comm’n, FTC Requests Public Comments on the Impact of Pharmacy Benefit Managers’ Practices, (Feb. 24, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-requests-public-comments-impact-pharmacy-benefit-managers-practices>.

<sup>32</sup> Press Release, Fed. Trade Comm’n, FTC Launches New Office of Technology to Bolster Agency’s Work (Feb. 17, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-launches-new-office-technology-bolster-agencys-work>.

month later, the Commission announced an RFI on cloud computing.<sup>33</sup> The Commission is gathering information to better understand key features of cloud computing; the potential for outages from large cloud providers to have widespread impact on large parts of the economy that rely on them; security risks; and issues related to market power and business practices affecting competition.

In November 2021, in response to reported bottlenecks, shortages, and rising consumer prices, the Commission used its 6(b) authority to order nine large retailers, wholesalers, and consumer goods suppliers to provide detailed information needed to better grasp both the factors that have contributed to supply chain disruptions and how they may have contributed to bottlenecks, shortages, anticompetitive practices, or rising consumer prices.<sup>34</sup>

In addition to these inquiries, the Commission has several others underway. The FTC opened one inquiry in December 2020 and asked nine social media and video streaming companies to provide data on how they collect, use, and present personal information, their advertising and user engagement practices, and how their practices affect children and teens.<sup>35</sup> Another inquiry began in January 2021 and is part of a broader initiative by the Bureau of Economics to revamp its merger retrospective program. There, the FTC issued orders to six health insurance companies to provide information that will allow the agency to study the effects

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<sup>33</sup> Press Release, Fed. Trade Comm'n, An Inquiry into Cloud Computing Business Practices: The Federal Trade Commission is seeking public comments (Mar. 22, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-seeks-comment-business-practices-cloud-computing-providers-could-impact-competition-data>.

<sup>34</sup> Press Release, Fed. Trade Comm'n, FTC Launches Inquiry into Supply Chain Disruptions (Nov. 29, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/11/ftc-launches-inquiry-supply-chain-disruptions>.

<sup>35</sup> Press Release, Fed. Trade Comm'n, FTC Issues Orders to Nine Social Media and Video Streaming Services Seeking Data About How They Collect, Use, and Present Information (Dec. 14, 2020), <https://www.ftc.gov/news-events/news/press-releases/2020/12/ftc-issues-orders-nine-social-media-video-streaming-services-seeking-data-about-how-they-collect-use>.

of physician group and healthcare facility consolidation that occurred from 2015 through 2020.<sup>36</sup> Then, in March 2023, the Commission requested public comment on franchise agreements and franchisor business practices, including how franchisors may exert control over franchisees and their workers.<sup>37</sup> This request followed public input suggesting that certain practices in franchising may disfavor franchisees. Each of these inquiries help guide FTC enforcement efforts as well as fulfill its unique mission as an expert agency that studies market trends and recommends solutions for policymakers.<sup>38</sup>

The FTC is also drawing on this research to issue policy papers to inform policymakers about how pending legislation may affect competition. In August 2022, the FTC issued a policy paper and fact sheet highlighting the pitfalls of using Certificates of Public Advantage (“COPAs”), which purport to shield hospital mergers from antitrust laws in favor of state oversight. The paper details research showing that these COPAs are often detrimental for patient costs, patient care, and healthcare worker wages.<sup>39</sup>

Finally, as part of the FTC’s competition policy work, the agency is reinvigorating its filing of friend-of-the-court briefs. For example, on June 20, the FTC filed an amicus brief in the

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<sup>36</sup> Press Release, Fed. Trade Comm’n, FTC to Study the Impact of Physician Group and Healthcare Facility Mergers (Jan. 14, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/01/ftc-study-impact-physician-group-healthcare-facility-mergers>.

<sup>37</sup> Press Release, Fed. Trade Comm’n, FTC Seeks Public Comment on Franchisors Exerting Control Over Franchisees and Workers (Mar. 10, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-seeks-public-comment-franchisors-exerting-control-over-franchisees-workers>.

<sup>38</sup> Press Release, Fed. Trade Comm’n, The Federal Trade Commission’s First Report on E-Cigarette Sales and Advertising Reveals Disturbing Trends Affecting the Health of Young Americans (Mar. 17, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/federal-trade-commissions-first-report-e-cigarette-sales-advertising-reveals-disturbing-trends>; Press Release, Fed. Trade Comm’n, FTC Staff Report Finds Many Internet Service Providers Collect Troves of Personal Data, Users Have Few Options to Restrict Use (Oct. 21, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-staff-report-finds-many-internet-service-providers-collect-troves-personal-data-users-have-few>; Press Release, Fed. Trade Comm’n, New FTC Staff Report Outlines Impact of Fraud on Communities of Color (Oct. 15, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/new-ftc-staff-report-outlines-impact-fraud-communities-color>.

<sup>39</sup> Press Release, Fed. Trade Comm’n, FTC Policy Paper Warns About Pitfalls of COPA Agreements for Patient Care and Healthcare Workers (Aug. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-policy-paper-warns-about-pitfalls-copa-agreements-patient-care-healthcare-workers>.



Second Circuit clarifying the legal standards that apply in certain antitrust cases involving the pharmaceutical sector.<sup>40</sup> The case relates to alleged efforts by branded drug makers to delay competition from generic drugs by compensating the generic drug makers through payments masked as contemporaneous business deals. The FTC also filed an amicus brief in March relating to potential harms to competition and consumers posed by a brand name drug's exclusion of generic competition.<sup>41</sup> Last week, the Commission filed an amicus brief in federal district court to address antitrust principles that apply to exclusive dealing and bundling conduct, tracking similar arguments the Commission has made in its own cases.<sup>42</sup>

### III. CONSUMER PROTECTION MISSION

As the nation's primary consumer protection agency, the FTC has a broad mandate to protect the public from unfair or deceptive practices throughout the economy. The FTC works to protect privacy and data security; fight fraud, junk fees, and related harms affecting consumers; combat fraud related to opioid recovery; combat abuse of artificial intelligence; and ensure that domestic manufacturers, independent repairers, and other small businesses have a chance to compete fairly, among other issues.

#### A. Protecting Every Community from Fraud and Deceptive Business Practices

The FTC is undertaking comprehensive enforcement action to root out fraud and deceptive business practices, including those that target historically underserved communities.

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<sup>40</sup> Press Release, Fed. Trade Comm'n, FTC Files Amicus Brief in Bystolic Antitrust Litigation Supporting Competition in the Hypertension Drug Market (June 20, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-files-amicus-brief-bystolic-antitrust-litigation-supporting-competition-hypertension-drug-market>.

<sup>41</sup> Brief for the FTC as Amicus Curiae, *Sage Chemical, Inc. v. Supernus Pharmaceuticals, Inc.*, No. 1:22d-cv-1302-CJB (D. Del.), <https://www.ftc.gov/legal-library/browse/amicus-briefs/sage-chemical-inc-et-al-v-supernus-pharmaceuticals-inc-et-al>.

<sup>42</sup> Brief for the FTC as Amicus Curiae, *Applied Med. Resources Corp. v. Medtronic, Inc.*, No. 8:23-cv-00268 CJC (C.D. Cal.), <https://www.ftc.gov/legal-library/browse/amicus-briefs/applied-medical-resources-corp-v-medtronic-inc>.

### 1. Reducing the Scourge of Unwanted Calls

The Commission uses every tool at its disposal to combat unwanted calls.<sup>43</sup> The FTC has filed 162 enforcement actions against 546 companies and 438 individuals alleged to be responsible for placing billions of unwanted telemarketing calls to consumers. We have also collected over \$393 million in civil penalties and equitable monetary relief from these violators. In cases where perpetrators ran telemarketing scams, the FTC has obtained court orders shutting down these businesses and freezing their remaining assets so that those funds could be returned to consumers.<sup>44</sup> In the past few months, the Department of Justice has filed two lawsuits against VoIP providers on the FTC's behalf. These VoIP providers facilitated an extraordinary number of illegal calls. In February, DOJ filed a lawsuit against Stratics Networks, which, according to the complaint, offered ringless voicemail services that delivered prerecorded messages directly to consumers' voicemail boxes.<sup>45</sup> The complaint alleges that just one of the Stratics customers sent 23 million of these messages to consumers. In May, DOJ filed a lawsuit against Xcast Labs.<sup>46</sup> According to the complaint, Xcast transmitted more than 2 billion calls to numbers on the Do Not Call Registry.

<sup>43</sup> FTC, Do Not Call Registry Data Book 2022: Complaint Figures for FY 2022 (2022),

[www.ftc.gov/system/files/ftc\\_gov/pdf/DNC-Data-Book-2022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/DNC-Data-Book-2022.pdf).

<sup>44</sup> Temporary Restraining Order, *FTC v. Green Equitable Sols.*, No. 2:22-cv-06499-FLA (C.D. Cal. Sept. 14, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2022.09.14%20Order%20granting%20TRO.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2022.09.14%20Order%20granting%20TRO.pdf) (freezing the defendants' assets and shutting down their deceptive practices). This action is being taken in conjunction with the state of California and involves allegations that the defendants illegally called consumers on the Do Not Call Registry, pitching mortgage relief services and falsely claiming to be affiliated with government COVID-19 relief programs. See Press Release, Fed. Trade Comm'n, Federal Trade Commission, California Take Action To Shut Down Mortgage Relief Operation That Preyed on Struggling Homeowners (Sept. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/federal-trade-commission-california-take-action-shut-down-mortgage-relief-operation-preyed>.

<sup>45</sup> Complaint, *United States v. Stratics Networks, Inc.*, No. 3:23-cv-313 (S.D. Cal. Feb. 16, 2023).

[https://www.ftc.gov/system/files/ftc\\_gov/pdf/001-complaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/001-complaint.pdf).

<sup>46</sup> Complaint, *United States v. Xcast Labs, Inc.*, No. 2:23-cv-3646 (C.D. Cal. May 13, 2023).

[https://www.ftc.gov/system/files/ftc\\_gov/pdf/2223097-xcast-labs-inc-complaint-for-permanent-injunction.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2223097-xcast-labs-inc-complaint-for-permanent-injunction.pdf).

The FTC is also disrupting foreign-based scammers that bring illegal robocalls into the United States. In April, the FTC announced Project Point of No Entry (“PoNE”), an initiative targeting “point of entry” or “gateway” Voice over Internet Protocol (“VoIP”) service providers.<sup>47</sup> In collaboration with the Federal Communications Commission, the Industry Traceback Group, and state Attorneys General, the FTC identifies point of entry VoIP service providers that are routing or transmitting illegal robocall traffic. The FTC then demands that they stop, warns that their conduct may violate the Telemarketing Sales Rule (“TSR”), and monitors recalcitrant providers, including by conducting law enforcement investigations and filing lawsuits when appropriate.

## 2. Fighting Opioid Recovery Fraud

The FTC has used the authority Congress gave us in the Opioid Addiction Recovery Fraud Prevention Act (“OARFPA”) to stop companies from exploiting Americans struggling with substance use disorders. In our first OARFPA case, we obtained a \$3.8 million civil penalty judgment against R360 based on allegedly deceptive claims to consumers seeking substance abuse treatment.<sup>48</sup> Earlier this year, we announced an OARFPA action against AWAREmed alleging false efficacy claims and obtained a \$100,000 civil penalty.<sup>49</sup>

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<sup>47</sup> Press Release, Fed Trade Comm’n, FTC Ramps Up Fight to Close the Door on Illegal Robocalls Originating from Overseas Scammers and Imposters (Apr. 11, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-ramps-fight-close-door-illegal-robocalls-originating-overseas-scammers-imposters>.

<sup>48</sup> See Press Release, Fed. Trade Comm’n, FTC Hits R360 and its Owner With \$3.8 Million Civil Penalty Judgment for Preying on People Seeking Treatment for Addiction (May 17, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-hits-r360-its-owner-38-million-civil-penalty-judgment-preying-people-seeking-treatment-addiction>.

<sup>49</sup> Press Release, Fed. Trade Comm’n, FTC Sues Medical Clinic and Its Owner for False or Unsubstantiated Claims Its Treatment Center Could Cure Addiction and Other Diseases (Mar. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-sues-medical-clinic-its-owner-false-or-unsubstantiated-claims-its-treatment-could-cure-addiction>.

### 3. Combatting Fraud Targeting Older Adults

Protecting older consumers continues to be one of the FTC’s top priorities, which the agency pursues through aggressive law enforcement actions, innovative education and outreach campaigns, extensive research, regulatory initiatives, and collaboration with partners and stakeholders. The FTC has brought a number of actions against companies targeting older adults with allegedly deceptive practices, including around timeshares,<sup>50</sup> sham health plans,<sup>51</sup> and foot pain.<sup>52</sup> In June, the Commission announced a settlement with Publishers Clearing House (PCH) in a case alleging that PCH used “dark patterns” to manipulate consumers—particularly older consumers—into thinking that they needed to make a purchase to enter a sweepstakes or that purchasing would help them win. The Commission also alleged that PCH surprised the same consumers with substantial shipping and handling fees after they were obligated to pay for an order and it was too late to stop a shipment.<sup>53</sup> In addition, as with its work on unwanted calls, the FTC is going after companies that allegedly assist and facilitate scams (like the grandparent and lottery or sweepstakes scams) at scale.<sup>54</sup> The agency’s education and outreach work complements this vigorous enforcement.

<sup>50</sup> Complaint, *United States v. Consumer Law Prot., LLC*, No. 4:22-cv-01243 (E.D. Mo. Nov. 21, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2123065SquareOneComplaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2123065SquareOneComplaint.pdf).

<sup>51</sup> Press Release, Fed. Trade Comm’n, FTC Action Against Benefytt Results in \$100 Million in Refunds for Consumers Tricked into Sham Health Plans and Charged Exorbitant Junk Fees (Aug. 8, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-action-against-benefytt-results-100-millionrefunds-consumers-tricked-sham-health-plans-charged>.

<sup>52</sup> Complaint, *FTC v. Gravity Defyer Medical Technology Corp.*, No. 1:22-cv-01464 (D.D.C. May 25, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/1923114GravityDefyerComplaintrev.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/1923114GravityDefyerComplaintrev.pdf).

<sup>53</sup> Press Release, Fed. Trade Comm’n, FTC Takes Action Against Publishers Clearing House for Misleading Consumers About Sweepstakes Entries (June 27, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-takes-action-against-publishers-clearing-house-misleading-consumers-about-sweepstakes-entries>.

<sup>54</sup> Complaint, *FTC v. Walmart, Inc.*, No. 1:22-cv-03372 (N.D. Ill. June 28, 2022), <https://www.ftc.gov/legal-library/browse/cases-proceedings/182-3012-walmart-ftc-v>.

During 2022, the FTC updated its most popular<sup>55</sup> education campaign, *Pass It On*<sup>56</sup> (*Pásalo*<sup>57</sup> in Spanish) and promoted it through a series of webinars presented in English and Spanish to thousands of people, including representatives from aging services providers, congressional offices, and the Senior Medicare Patrol program, among others.

Collaborating with stakeholders is another key component of the FTC's strategies to combat fraud against older adults. In 2022, the FTC established an Advisory Group under the Stop Senior Scams Act that includes representatives from government, industry, and consumer advocacy groups.<sup>58</sup> The Advisory Group has launched new initiatives to expand consumer education, improve industry training, identify new technology or other means of detecting and stopping fraud, and develop research on consumer and employee engagement. The FTC also keeps track of new trends impacting older adults through its Senior Fraud Advisory Office, which the FTC created pursuant to the Seniors Fraud Prevention Act of 2022 to advise the Commission on strategies to protect older adults.<sup>59</sup> The Commission's annual report to Congress describes in detail our work for older adults.<sup>60</sup>

#### 4. Protecting Servicemembers and Veterans

Combatting fraud aimed at servicemembers remains a top priority. In July 2022, in its first case enforcing the Military Lending Act,<sup>61</sup> the FTC and a group of 18 states took action against Harris Jewelry, a national jewelry retailer, to stop the company from targeting military

<sup>55</sup> Since its original launch in 2014, nearly 18 million Pass It On materials have been distributed nationwide in English and Spanish.

<sup>56</sup> See <http://www.ftc.gov/PassItOn>.

<sup>57</sup> See <http://www.ftc.gov/Pasalo>.

<sup>58</sup> See Fraud and Scam Reduction Act, Section 101, Division Q of the Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, <https://www.congress.gov/117/plaws/publ103/PLAW-117publ103.pdf> (Subtitle A of the Act is referred to as the "Stop Senior Scams Act.").

<sup>59</sup> *Id.* (Subtitle B of the Act is referred to as the "Seniors Fraud Prevention Act of 2022.").

<sup>60</sup> FTC, Protecting Older Consumers 2021-2022 (2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P144400OlderConsumersReportFY22.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P144400OlderConsumersReportFY22.pdf).

<sup>61</sup> 10 U.S.C. § 987.

families with illegal financing and sales practices, ultimately requiring the company to pay \$10.9 million in refunds and engage in other affirmative assistance to its victims.<sup>62</sup> The Commission's efforts to protect military and veteran communities include a vigorous, long-standing educational campaign and close coordination with servicemember and veteran agencies.<sup>63</sup> This collaborative outreach is the cornerstone of the annual Military Consumer Month,<sup>64</sup> which the FTC created and manages with its partners, including AARP's Veterans & Military Families Initiative.<sup>65</sup> The agency also participates in an ongoing working group led by the Department of Veterans Affairs ("VA") to alert veterans about current scams.

### 5. Combatting Fraud Targeting Speakers of Other Languages

The FTC has taken action to address deceptive practices that target consumers who speak languages other than English. For example, in June, the FTC sued Ganadores Online and its owners for allegedly scamming Spanish-speaking consumers out of millions of dollars in a real estate and online commerce coaching scheme.<sup>66</sup> According to the FTC's complaint, the Ganadores scheme has targeted Spanish-speaking consumers using false or unfounded promises that its "infallible system" can help consumers replace their day jobs, and give their families financial independence. Litigation is ongoing. The FTC has also brought actions in the past year against companies whose practices allegedly: deceived Spanish-speakers about home

<sup>62</sup> Press Release, Fed. Trade Comm'n, FTC and 18 States Sue to Stop Harris Jewelry from Cheating Military Families with Illegal Financing and Sales Tactics (July 20, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-18-states-sue-stop-harris-jewelry-cheating-military-families-illegal-financing-sales-tactics>; see also *infra* note 75 (discussing action against BurgerIM for deceiving veterans).

<sup>63</sup> See, e.g., [militaryconsumer.gov](https://militaryconsumer.gov) (launched by FTC and operated in cooperation with Department of Defense Office of Financial Readiness (DoD FinRed) and the Consumer Financial Protection Bureau's Office of Servicemember Affairs (CFPB OSA)).

<sup>64</sup> See Carol A. Kando-Pineda, Military Consumer Month 2022, FTC (June 27, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/06/military-consumer-month-2022>.

<sup>65</sup> See AARP, Veterans and Military Families, <https://www.aarp.org/volunteer/causes/veterans-military-families/>.

<sup>66</sup> Press Release, Fed. Trade Comm'n, FTC Acts to Stop Real Estate and Online Commerce Coaching Scheme 'Ganadores' Targeting Spanish-Speaking Consumers With Brazen Money-Making Pitches (June 13, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-acts-stop-real-estate-online-commerce-coaching-scheme-ganadores-targeting-spanish-speaking>.

improvement financing<sup>67</sup>; and used deceptive sales pitches in Spanish, Vietnamese, and Amharic to trap small business owners with surprise exit fees and zombie charges.<sup>68</sup> As part of the Commission's efforts to provide relevant information to all Americans, the FTC continues to translate all its consumer education materials into Spanish and recently expanded its reach to speakers of other languages with the launch of [ftc.gov/languages](https://www.ftc.gov/languages).

## 6. Preventing Financial Exploitation

The FTC brought ten federal court actions in recent years against companies that targeted financially insecure consumers and made false credit repair, mortgage, or other debt relief promises,<sup>69</sup> as well as one action against a debt relief payment processor.<sup>70</sup> For example, last September, the FTC and the California Department of Financial Protection and Innovation filed a law enforcement action against several corporate and individual defendants doing business as

<sup>67</sup> Press Release, Fed. Trade Comm'n, FTC, California Act to Stop Ygrene Energy Fund from Deceiving Consumers About PACE Financing, Placing Liens on Homes Without Consumers' Consent (Oct. 28, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-california-act-stop-ygrene-energy-fund-deceiving-consumers-about-pace-financing-placing-liens>.

<sup>68</sup> Press Release, Fed. Trade Comm'n, FTC Takes Action to Stop Payment Processor First American from Trapping Small Businesses with Surprise Exit Fees and Zombie Charges (July 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-takes-action-stop-payment-processor-first-american-trapping-small-businesses-surprise-exit-fees>.

<sup>69</sup> Complaint, *FTC v. SL Finance LLC*, No. 8:23-cv-0698 (C.D. Cal. 2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/01-Complaint-FTC-v-SL-Finance-LLC.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/01-Complaint-FTC-v-SL-Finance-LLC.pdf); Complaint, *FTC v. BCO Consulting Services, Inc.*, No. 8:23-cv-0699 (C.D. Cal. 2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/FTC-v-BCO-Consulting-Services-Inc-et-al-23-cv-0699-Complaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/FTC-v-BCO-Consulting-Services-Inc-et-al-23-cv-0699-Complaint.pdf); Complaint, *FTC v. ACRO Servs. LLC*, No. 3:22-cv-00895 (M.D. Tenn. 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Complaint-Unsealed.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Complaint-Unsealed.pdf); Complaint, *FTC v. Fin. Educ. Servs. Inc.*, 2:22-cv-11120-BAF-APP (E.D. Mich. 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/DE%201%20-%20Complaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/DE%201%20-%20Complaint.pdf); Complaint, *FTC v. Green Equitable Sols.*, No. 2:22-cv-06499-FLA (C.D. Cal. 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Home%20Matters%20-%20Complaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Home%20Matters%20-%20Complaint.pdf); Complaint, *FTC v. SLAC, Inc.*, No. 5:20-cv-00470 (C.D. Cal. 2020), [https://www.ftc.gov/system/files/documents/cases/doc\\_1\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/doc_1_complaint.pdf); Complaint, *FTC v. Am. Fin. Support Servs., Inc.*, No. 8:19-cv-02109-JWH (C.D. Cal. 2019), [https://www.ftc.gov/system/files/documents/cases/192\\_3040\\_arete\\_financial\\_group\\_complaint\\_for\\_permanent\\_injunction\\_and\\_other\\_equitable\\_relief\\_11-12-19.pdf](https://www.ftc.gov/system/files/documents/cases/192_3040_arete_financial_group_complaint_for_permanent_injunction_and_other_equitable_relief_11-12-19.pdf); Complaint, *FTC v. Manhattan Beach Venture LLC*, No. 2:19-cv-7849 (C.D. Cal. 2019), [https://www.ftc.gov/system/files/documents/cases/172\\_3041\\_mbv\\_complaint\\_0.pdf](https://www.ftc.gov/system/files/documents/cases/172_3041_mbv_complaint_0.pdf); Complaint, *FTC v. Student Advocates Team, LLC*, No. 8:19-cv-01728-JVS (C.D. Cal. 2019), [https://www.ftc.gov/system/files/documents/cases/172\\_3036\\_pag\\_complaint\\_1.pdf](https://www.ftc.gov/system/files/documents/cases/172_3036_pag_complaint_1.pdf); Complaint, *FTC v. Elegant Sols., Inc.*, No. 8:19-cv-01333-JVS (C.D. Cal. 2019), [https://www.ftc.gov/system/files/documents/cases/192\\_3105\\_elegant\\_solutions\\_-\\_first\\_amended\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/192_3105_elegant_solutions_-_first_amended_complaint.pdf).

<sup>70</sup> Complaint, *FTC v. Automatic Funds Transfer Servs., Inc.*, No. 1:21-cv-02932 (D.D.C. 2021), [https://www.ftc.gov/system/files/documents/cases/complaint\\_7.pdf](https://www.ftc.gov/system/files/documents/cases/complaint_7.pdf).

Home Matters USA, among other names, for allegedly operating sham mortgage relief services that misled consumers and cost them millions.<sup>71</sup> The federal district court granted a temporary restraining order including an asset freeze against the defendants, and litigation is ongoing. In May, Response Marketing Group, LLC and its principals agreed to a court order that requires them to pay \$15 million and permanently bans them from selling money-making opportunities to settle charges by the FTC and the State of Utah that they used false promises to sell consumers a series of expensive real estate investment training programs. In addition, two of the primary real estate celebrities who promoted the training agreed to orders that require them to pay \$1.7 million. The Commission also is working closely with the Department of Education to prevent fraud around recent changes to the student loan program<sup>72</sup> and to ensure relief for those affected by deceptive practices by for-profit colleges.<sup>73</sup> In April, the FTC filed lawsuits against a pair of student loan debt relief scams and their principals, alleging that the defendants used false promises of student loan forgiveness to bilk consumers of nearly \$12 million since 2019.<sup>74</sup> The

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<sup>71</sup> Press Release, Fed. Trade Comm'n, Federal Trade Commission, California Take Action To Shut Down Mortgage Relief Operation that Preyed on Struggling Homeowners (Sept. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/federal-trade-commission-california-take-action-shut-down-mortgage-relief-operation-preyed>.

<sup>72</sup> See K. Michelle Grajales, *Student Loan Scammers Are Circling. Keep Them at Bay*, FTC (Oct. 3, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/10/student-loan-scammers-are-circling-keep-them-bay>; Terri Miller, *Got Student Loans? Spot Scams Related to the Sweet Lawsuit*, FTC (Sept. 16, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/09/got-student-loans-spot-scams-related-sweet-lawsuit>; Terri Miller, *Limited Waiver for Student Loan Forgiveness Ends October 31*, FTC (July 21, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/07/limited-waiver-student-loan-forgiveness-ends-october-31-0>.

<sup>73</sup> See Press Release, Fed. Trade Comm'n, FTC Enforcement Action Leads U.S. Dept. of Education to Forgive \$71.7 Million in Loans for Students Deceived by DeVry University (Feb. 16, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-enforcement-action-leads-us-dept-education-forgive-717-million-loans-students-deceived-devry>; Press Release, Fed. Trade Comm'n, Federal Trade Commission Takes Action Against For-Profit Medical School for Using Deceptive Marketing to Lure Students (Apr. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/04/federal-trade-commission-takes-action-against-profit-medical-school-using-deceptive-marketing-lure>.

<sup>74</sup> See Press Release, FTC Stops Student Loan Debt Relief Schemes that it Says Bilked Students Out of Millions (May 8, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-stops-student-loan-debt-relief-schemes-it-says-bilked-students-out-millions>.



federal district court entered preliminary injunctions against the defendants, including asset freezes and appointment of a receiver, and litigation is ongoing.

### **7. Combatting Junk Fees and Unwanted Charges**

Junk fees are unavoidable charges for products with little or no value that are imposed on consumers with no notice. Consumers can get hit with junk fees at any stage of the purchase process, and companies may use digital dark patterns and other tricks to hide or mask them. These fees undercut honest businesses by making it harder to compete on price and cause harm to consumers who are often surprised and frustrated by unexpected charges. The FTC has initiated two new rulemakings to address this problematic conduct. Last year the FTC published a notice of proposed rulemaking to ban certain junk fees and bait-and-switch advertising tactics that can plague consumers throughout the car-buying experience. The proposal also would require dealers to make key disclosures to consumers, including providing a true “offering price” for a vehicle that would be the full price a consumer would pay, excluding only taxes and government fees.<sup>75</sup> Separately, we are exploring a rulemaking to crack down on deceptive or unfair junk fees across multiple industries. We are reviewing thousands of comments we received from the public on the types of junk fees they’ve experienced and the harm caused by such fees.<sup>76</sup>

The Commission also has proposed to amend the Negative Option Rule to better address deceptive or unfair practices around negative marketing, including perpetual subscriptions,

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<sup>75</sup> Press Release, Fed. Trade Comm’n, FTC Proposes Rule to Ban Junk Fees, Bait-and-Switch Tactics Plaguing Car Buyers (June 23, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-proposes-rule-ban-junk-fees-bait-switch-tactics-plaguing-car-buyers>.

<sup>76</sup> Press Release, Fed. Trade Comm’n, Federal Trade Commission Explores Rule Cracking Down on Junk Fees (Oct. 20, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/federal-trade-commission-explores-rule-cracking-down-junk-fees>.

difficulty in cancellation, and failure to obtain consumers' express, affirmative consent.<sup>77</sup> The proposed rule amendment covers a broad scope of recurring subscriptions and similar arrangements in all media to ensure that sellers provide important information about these contracts up front, obtain consumers' express informed consent, and provide simple cancellation mechanisms to allow consumers to easily cancel unwanted subscriptions.

Attacking specific problems in this area, the Commission recently sued Amazon for its alleged use of dark patterns to trick consumers into signing up for automatically renewing Prime subscriptions and for knowingly making it difficult for Prime subscribers to cancel their memberships.<sup>78</sup> This matter remains in active litigation.

#### **8. Expanding Consumer and Business Education**

The FTC's Every Community Initiative represents the agency's coordinated effort to ensure that the FTC is responsive to the needs of historically underserved communities. Through this initiative, the agency has provided historically underserved communities with practical, language-appropriate, and user-friendly educational resources and information to help them spot, avoid, and report scams.<sup>79</sup> The FTC continues to translate all its consumer education materials

<sup>77</sup> Press Release, Fed. Trade Comm'n, Federal Trade Commission Proposes Rule Provision Making It Easier for Consumers to 'Click to Cancel' Recurring Subscriptions and Memberships (Mar. 23, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/federal-trade-commission-proposes-rule-provision-making-it-easier-consumers-click-cancel-recurring>.

<sup>78</sup> Press Release, Fed. Trade Comm'n, FTC Takes Action Against Amazon for Enrolling Consumers in Amazon Prime Without Consent and Sabotaging Their Attempts to Cancel (June 21, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-takes-action-against-amazon-enrolling-consumers-amazon-prime-without-consent-sabotaging-their>.

<sup>79</sup> See, e.g., FTC, *Consumer Issues Affecting American Indian and Alaska Native Communities* (2023), <https://www.ftc.gov/reports/consumer-issues-affecting-american-indian-alaska-native-communities> (describing expanded targeted education and outreach efforts with American Indian/Alaska Native (AI/AN) communities nationwide). Agency staff also employed listening sessions with sources trusted in AI/AN communities, built ongoing partnerships with tribal governments and organizations serving AI/AN populations, and created a website—as directed by Congress—to share information on the issues raised. See <https://consumer.ftc.gov/features/native-american-communities-spot-avoid-and-report-scams>.

into Spanish and recently expanded its reach to speakers of other languages.<sup>80</sup> All of these Every Community education and outreach efforts are supported by ethnic media telebriefings, in-person roundtables, and paid media campaigns that have led to millions of impressions through print, radio, and digital media.

### **B. Safeguarding Consumer Privacy and Strengthening Data Security, and Combatting Abuse of Artificial Intelligence**

The FTC is taking bold steps to safeguard consumer data and move away from the “notice and choice” privacy model. We are particularly focused on health data, children and teens, data security, and market-wide initiatives to strengthen privacy and data security.

#### **1. Protecting Consumers’ Sensitive Health Data**

The FTC is taking action to address the privacy of health data where HIPAA does not apply, including data shared with direct-to-consumer health websites and apps that can reveal consumers’ medications, visits to providers, and health conditions.

First, the FTC is taking action to ensure that geolocation data that reveals health conditions and other sensitive information is not indiscriminately sold to the highest bidder. In the summer of 2022, FTC staff warned the marketplace that we were prepared to bring enforcement actions to halt the illegal use and sharing of consumers’ geolocation data.<sup>81</sup> Last August, we filed a complaint against Kochava, Inc., alleging that the data broker compiled massive amounts of users’ geolocation data and then sold it in a format that makes it easy to

<sup>80</sup> See <https://consumer.ftc.gov/features/languages>. The 12 languages include: Amharic, Arabic, Chinese (Simplified and Traditional), French, Hmong, Korean, Russian, Somali, Spanish, Tagalog, Ukrainian, and Vietnamese.

<sup>81</sup> Kristin Cohen, *Location, Health, and Other Sensitive Information: FTC Committed to Fully Enforcing the Law Against Illegal Use and Sharing of Highly Sensitive Data*, FTC Business Blog (July 11, 2022), <https://www.ftc.gov/business-guidance/blog/2022/07/location-health-and-other-sensitive-information-ftc-committed-fully-enforcing-law-against-illegal>.

track users' visits to sensitive locations, such as doctors' offices, houses of worship, and temporary shelters for domestic violence survivors.<sup>82</sup> This matter remains in active litigation.

The FTC has also brought three groundbreaking actions barring consumer-facing health providers from sharing sensitive health data for advertising purposes. In *GoodRx*,<sup>83</sup> *BetterHelp*,<sup>84</sup> and *Premom*,<sup>85</sup> the Commission alleged that the companies disclosed their users' personal health information to advertising platforms such as Facebook and Google, without consent and in contravention of their privacy promises. The settlements in these actions included important provisions prohibiting the transfer of data to third parties for advertising purposes, as well as other strong injunctive provisions, including requirements for consent for certain information sharing, data retention limitations, and deletion requirements. The *GoodRx* and *Premom* settlements included civil penalties resulting from the Commission's first enforcement actions under the Health Breach Notification Rule. The *BetterHelp* order includes \$7.8 million in monetary relief that will go back to consumers as partial refunds, another first in a health privacy case.

The Commission has also taken steps to combat unfair or deceptive acts or practices related to the collection and use of consumers' biometric information and the marketing and use

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<sup>82</sup> Press Release, Fed. Trade Comm'n, FTC Sues Kochava for Selling Data that Tracks People at Reproductive Health Clinics, Places of Worship, and Other Sensitive Locations (Aug. 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-sues-kochava-selling-data-tracks-people-reproductive-health-clinics-places-worship-other>.

<sup>83</sup> Press Release, Fed. Trade Comm'n, FTC Enforcement Action to Bar GoodRx from Sharing Consumers' Sensitive Health Info for Advertising (Feb. 1, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-enforcement-action-bar-goodrx-sharing-consumers-sensitive-health-info-advertising>.

<sup>84</sup> Press Release, Fed. Trade Comm'n, FTC to Ban BetterHelp from Revealing Consumers' Data, Including Sensitive Mental Health Information, to Facebook and Others for Targeted Advertising (Mar. 2, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-ban-betterhelp-revealing-consumers-data-including-sensitive-mental-health-information-facebook>.

<sup>85</sup> Press Release, Fed. Trade Comm'n, Ovulation Tracking App Premom Will be Barred from Sharing Health Data for Advertising Under Proposed FTC Order (May 17, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ovulation-tracking-app-premom-will-be-barred-sharing-health-data-advertising-under-proposed-ftc>.

of biometric information technologies. In May, the Commission issued a policy statement concerning the use of biometric information technologies.<sup>86</sup> The policy statement warns that false or unsubstantiated claims about the accuracy or efficacy of biometric information technologies or about the collection and use of biometric information may violate the FTC Act. The policy statement also warns that a business's use of biometric information or biometric information technology could be unfair in violation of the FTC Act if the business fails to, among other things, assess foreseeable risks to consumers before collecting biometric information and promptly address those risks. In addition, in June, the Commission brought an action against the genetic testing firm 1Health.io,<sup>87</sup> alleging that the company left sensitive genetic and health data unsecured, deceived consumers about their ability to delete their data, and unlawfully changed its privacy policy by retroactively expanding the types of third parties with which it may share consumers' data.

## 2. Protecting Children and Teens

Online services can pose unique risks to children and teens, and the FTC is taking an expansive look at how to protect minors from digital harms, both through the Children's Online Privacy Protection Act Rule ("COPPA"), which protects children under 13, as well as through Section 5 of the FTC Act. For example, we brought a law enforcement action against Epic Games, Inc. ("Epic")—creator of the popular video game "Fortnite"—alleging that Epic violated COPPA<sup>88</sup> and engaged in an unfair practice by employing default settings that connected

<sup>86</sup> Policy Statement of the Federal Trade Commission on Biometric Information and Section 5 of the Federal Trade Commission Act (2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/p225402biometricpolicystatement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/p225402biometricpolicystatement.pdf).

<sup>87</sup> Press Release, Fed. Trade Comm'n, FTC Says Genetic Testing Company 1Health Failed to Protect Privacy and Security of DNA Data and Unfairly Changed its Privacy Policy (June 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-says-genetic-testing-company-1health-failed-protect-privacy-security-dna-data-unfairly-changed>.

<sup>88</sup> Press Release, Fed. Trade Comm'n, Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars Over FTC Allegations of Privacy Violations and Unwanted Charges (Dec. 19, 2022),

children and teens via voice and text chat to strangers, exposing them to psychological harm.<sup>89</sup> This action ultimately resulted in a federal court order securing strong and novel relief for consumers—requiring Epic to adopt strong default privacy settings for children and teens, implement a privacy program subject to outside assessments, and pay a \$275 million civil penalty, the largest ever under COPPA.

The Commission also is committed to preventing data abuses around educational technology services and last year issued a policy statement making clear that we would use our full set of authorities to hold firms accountable. Last year, we brought an enforcement action against online learning platform Chegg, Inc., for allegedly failing to properly protect sensitive employee and user data, leading to several data breaches that exposed the personal data of millions of customers. Now under FTC order, Chegg is required to implement strong data security measures, including documenting and following a data collection and retention schedule, providing multifactor authentication or an equivalent authentication method to its customers and employees, and providing customers with access and deletion rights for the information that Chegg collects about them.<sup>90</sup>

The Commission also announced three significant actions under COPPA in recent months. First, we brought an enforcement action against Amazon, alleging that the company

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<https://www.ftc.gov/news-events/news/press-releases/2022/12/fornite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>.

<sup>89</sup> The FTC is considering steps to deepen this work, including retaining psychologists and youth development experts to allow the agency to analyze conduct, assess harms and remedies, and pursue studies with an interdisciplinary approach, including conduct affecting children. FTC, Federal Trade Comm'n Annual Performance Report for Fiscal Year 2021 and Annual Performance Plan for Fiscal Years 2022 to 2023 [hereinafter "FTC FY22-23 Annual Performance Report"] at 79, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/21apr\\_22-23app.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/21apr_22-23app.pdf); FTC, Federal Trade Comm'n Strategic Plan for Fiscal Years 2022-2026 [hereinafter "FTC FY22-26 Strategic Plan"] at 24, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf).

<sup>90</sup> Press Release, Fed. Trade Comm'n, FTC Brings Action Against Ed Tech Provider Chegg for Careless Security that Exposed Personal Data of Millions of Customers (Oct. 31, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-brings-action-against-ed-tech-provider-chegg-careless-security-exposed-personal-data-millions>.

violated COPPA and deceived parents and users of the Alexa voice assistant service by preventing parents from using their deletion rights, keeping sensitive voice and geolocation data for years, and using it for its own purposes, while putting data at risk of harm from unnecessary access.<sup>91</sup> This action made clear that indefinitely retaining data to feed algorithms violates COPPA's ban on indefinite retention of children's data. The Commission and the DOJ negotiated a strong proposed federal court order that requires Amazon to pay a \$25 million civil penalty, delete inactive child accounts and certain voice recordings and geolocation information, and prohibits the company from using such data to train its algorithms.<sup>92</sup> Second, the Commission charged Microsoft<sup>93</sup> with violating COPPA in connection with its Xbox account registration. To resolve the charges, Microsoft agreed to an order requiring it to pay a \$20 million civil penalty and make a number of changes to better protect the privacy of child Xbox users. And the Commission brought a COPPA enforcement action against education technology provider Edmodo for allegedly collecting personal data from children without obtaining their parents' consent, using that data for advertising, and unlawfully outsourcing its COPPA compliance responsibilities to schools. Under the order, Edmodo is, among other things,

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<sup>91</sup> Press Release, Fed. Trade Comm'n, FTC and DOJ Charge Amazon with Violating Children's Privacy Law by Keeping Kids' Alexa Voice Recordings Forever and Undermining Parents' Deletion Requests (May 31, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings-forever>.

<sup>92</sup> Press Release, Fed. Trade Comm'n, FTC and DOJ Charge Amazon with Violating Children's Privacy Law by Keeping Kids' Alexa Voice Recordings Forever and Undermining Parents' Deletion Requests (May 31, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings-forever>.

<sup>93</sup> See Press Release, FTC, *FTC Will Require Microsoft to Pay \$20 Million over Charges it Illegally Collected Personal Information from Children Without Their Parent's Consent* (June 5, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-will-require-microsoft-pay-20-million-over-charges-it-illegally-collected-personal-information>.

prohibited from requiring students to hand over more personal data than is necessary in order to participate in an online educational activity, which is a first for an FTC order.<sup>94</sup>

### 3. Strengthening Data Security

The best way for firms to protect consumers' data is to not collect it in the first place. Accordingly, several recent Commission data security orders mandate restrictions on what data firms can collect and retain. For example, our recent order against the online alcohol marketplace Drizly, LLC requires the company to minimize the data it collects and keeps from consumers.<sup>95</sup> Likewise, the settlement with online merchandise platform CafePress requires the company to implement policies to minimize the data it collects, stores, and retains. The CafePress settlement order also requires the company to use secure multi-factor authentication methods.<sup>96</sup>

The Commission also recently took action against home security camera company Ring, alleging that it compromised its customers' privacy by allowing any employee or contractor to access consumers' private videos and failed to implement basic privacy and security protections, enabling hackers to take control of consumers' accounts, cameras, and videos.<sup>97</sup> We obtained a federal court order against Ring that requires it to pay \$5.8 million, which will be used for consumer refunds, to implement a privacy and data security program, and to delete certain

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<sup>94</sup> Press Release, Fed. Trade Comm'n, FTC Says Ed Tech Provider Edmodo Unlawfully Used Children's Personal Information for Advertising and Outsourced Compliance to School Districts (May 22, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ed-tech-provider-edmodo-unlawfully-used-childrens-personal-information-advertising>.

<sup>95</sup> Press Release, Fed. Trade Comm'n, FTC Takes Action Against Drizly and its CEO James Cory Rellas for Security Failures that Exposed Data of 2.5 Million Consumers (Oct. 24, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-takes-action-against-drizly-its-ceo-james-cory-rellas-security-failures-exposed-data-25-million>. The Drizly settlement also names the CEO, and thus imposes separate obligations on him which will follow him beyond Drizly, underscoring the need for C-Suite attention to data security obligations.

<sup>96</sup> Press Release, Fed. Trade Comm'n, FTC Takes Action Against CafePress for Data Breach Cover Up (Mar. 15, 2022), [www.ftc.gov/news-events/news/press-releases/2022/03/ftc-takes-action-against-cafepress-data-breach-cover-up](https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-takes-action-against-cafepress-data-breach-cover-up).

<sup>97</sup> Press Release, Fed. Trade Comm'n, FTC Says Ring Employees Illegally Surveilled Customers, Failed to Stop Hackers from Taking Control of Users' Cameras (May 31, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ring-employees-illegally-surveilled-customers-failed-stop-hackers-taking-control-users>.



customer videos and data collected from an individual's face and any work products it derived from the videos.

#### **4. Combatting Abuse of Artificial Intelligence**

As companies race to deploy and monetize artificial intelligence, the Commission is taking a close look at how we can best achieve our dual mandate to promote fair competition and to protect Americans from unfair or deceptive practices. As these technologies evolve, we are committed to doing our part to uphold America's longstanding tradition of maintaining the open, fair, and competitive markets that have underpinned both breakthrough innovations and our nation's economic success—without tolerating business models or practices involving the mass exploitation of their users. Although these tools are novel, they are not exempt from existing rules, and the Commission will vigorously enforce the laws we are charged with administering, even in this new market.

Artificial intelligence promises to have a profound impact on many aspects of our society, with vast implications for how people live, work, and communicate. The benefits of AI, though, are accompanied by serious risks; AI misuse can violate consumers' privacy, automate discrimination and bias, and turbocharge imposter schemes and other types of scams. And the rapid development and deployment of AI risks further locking in the market dominance of large incumbent technology firms. The Commission will vigorously use the full range of our authorities to protect consumers from deceptive and unfair conduct and maintain open, fair, and competitive markets in this rapidly evolving technology. Through blog posts and other public pronouncements, the agency is providing timely analysis to market participants and the public. The Commission is poised to move aggressively against businesses that engage in deceptive or unfair acts involving AI and to help ensure that illegal practices do not undermine competition and innovative uses of AI.

### C. Ensuring Fairness for Workers, Entrepreneurs, and Small Businesses

As American workers and small businesses attempt to recover from the effects of the pandemic, the Commission is taking a comprehensive approach—through enforcement, rulemaking, and advocacy—to ensuring that they are not held back by unfair or deceptive practices.

#### 1. Ensuring Domestic Manufacturers Can Compete Fairly

As many firms look to onshore production and as many consumers look to buy “Made in America” goods, the FTC is taking comprehensive action to protect the integrity of the label and ensure a level playing field for domestic manufacturers. In 2021, the Commission finalized a rule that prohibits the misuse of the “Made in America” label, and the Commission is already taking action to enforce this rule. For example, in 2022, the Commission charged a manufacturer of lithium-ion batteries with falsely labeling its products as “Made in America.”<sup>98</sup> Months later, the Commission charged a seller of falsely advertised personal protective equipment.<sup>99</sup> And, most recently, the Commission sued a motocross and ATV parts maker alleging that it falsely labeled its products as “Made in USA.”<sup>100</sup>

Marketers making false “Made in USA” claims covered by other laws and rules that the FTC enforces also can expect consequences. For example, in the past year we charged companies with making false claims for imported textile products such as apparel and bedding.<sup>101</sup>

<sup>98</sup> See *United States v. Lithionics Battery, LLC*, No. 8:22-cv-00868 (M.D. Fla. 2022) (imposing a civil penalty of treble profits on sales of deceptively marketed battery products).

<sup>99</sup> See *United States v. Axis LED Group, LLC*, No. 3:22-cv-01389 (N.D. Ohio 2022) (imposing a civil penalty and suspended redress judgment based on sales of falsely labeled PPE and LED products).

<sup>100</sup> Press Release, Fed. Trade Comm’n, FTC Finalizes Order Against Motocross and ATV Parts Maker Cycra for False Made in USA Claims (June 2, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-finalizes-order-against-motocross-atv-parts-maker-cycra-false-made-usa-claims>.

<sup>101</sup> See *In re Lions Not Sheep Products, LLC*, Docket No. C-4772 (July 28, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/C4772%20Decision%20and%20Order.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/C4772%20Decision%20and%20Order.pdf) (imported apparel products relabeled as “Made in USA”); *In re Electrowarmth Products, LLC*, Docket No. C-4779 (Oct. 25, 2022) (imported bedding products entering the USA pre-labeled as “Made in USA”), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/222-3096-Electrowarmth-Decision-and-Order.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/222-3096-Electrowarmth-Decision-and-Order.pdf).

We also recently sued a manufacturer of glass baking products for continuing to advertise its products as “Made in USA” during a shift to overseas production at the height of the pandemic.<sup>102</sup> The FTC continues to carefully monitor the market for false “Made in America” claims and will use all available tools to ensure scammers who cheat consumers, honest businesses, and American workers face heavy consequences for their lawbreaking.

## **2. Combatting Unfair or Deceptive Practices Affecting Gig Workers**

The Commission is making clear that regardless of whether gig workers are treated as employees or independent contractors under labor laws, they are fully protected by the FTC’s prohibition on unfair or deceptive practices. Last year, the Commission issued a policy statement highlighting how traditional principles of consumer protection and competition apply in the gig economy,<sup>103</sup> and the Commission continues to investigate potential law violations and bring enforcement actions to ensure fairness for these workers. Earlier this year, for example, the Commission issued an order requiring HomeAdvisor to pay up to \$7.2 million to contractors who may have been harmed by deceptive claims about the quality and source of the leads the company sells.<sup>104</sup>

## **3. Allowing Consumers to Repair their Products and Giving Independent Repairers a Chance to Compete**

In May 2021, the Commission submitted a report to Congress entitled *Nixing the Fix: An FTC Report to Congress on Repair Restrictions*.<sup>105</sup> In the report, the Commission found “scant

<sup>102</sup> *In re Instant Brands LLC*, Docket No. C-4788 (Mar. 1, 2023) (imported glass measuring cups advertised as “Made in USA”).

<sup>103</sup> See FTC, Policy Statement on Enforcement Related to Gig Work (Sept. 15, 2022), <https://www.ftc.gov/legal-library/browse/policy-statement-enforcement-related-gig-work>.

<sup>104</sup> See Press Release, Fed. Trade Comm’n, FTC Approves Final Order Against HomeAdvisor, Inc. for Deceptively Marketing Its Leads for Home Improvement Projects (Apr. 21, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-approves-final-order-against-homeadvisor-inc-deceptively-marketing-its-leads-home-improvement>.

<sup>105</sup> FTC, *Nixing the Fix: An FTC Report to Congress on Repair Restrictions* (May 2021), [https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing\\_the\\_fix\\_report\\_final\\_5521\\_630pm-508\\_002.pdf](https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf).

evidence” to support manufacturers’ justifications for repair restrictions.<sup>106</sup> The Commission followed this report with three major actions against companies for allegedly imposing unlawful repair restrictions on consumers.<sup>107</sup> The Commission also is exploring other avenues to strengthen consumers’ right to repair, including by supporting state efforts<sup>108</sup> and seeking comment on whether manufacturers should be required to provide consumers with repair instructions.<sup>109</sup>

#### 4. Protecting Franchisees from Unfair or Deceptive Practices

The agency continues to take an integrated approach to franchise issues, undertaking both enforcement and policy initiatives. Last year, for example, we partnered with the DOJ to file a suit against fast-food chain BurgerIM, alleging that the chain made false promises and withheld information required by the Franchise Rule to persuade more than 1,500 consumers, some of them veterans, to purchase franchises.<sup>110</sup> Earlier this year, the agency issued a Request for Information (“RFI”) related to franchise agreements and franchisor business practices.<sup>111</sup> The RFI seeks information about the means by which franchisors may exert control over franchisees and their workers. Earlier this year we also launched a consumer education blog series entitled Franchise Fundamentals, in which we highlight for prospective franchisees factors they should

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<sup>106</sup> *Id.* at 6.

<sup>107</sup> Press Release, Fed. Trade Comm’n, FTC Approves Final Orders in Right-to-Repair Cases Against Harley-Davidson, MWE Investments, and Weber (Oct. 27, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-approves-final-orders-right-repair-cases-against-harley-davidson-mwe-investments-weber>.

<sup>108</sup> Press Release, Fed. Trade Comm’n, FTC Testifies Before California State Senate on Right to Repair (Apr. 11, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-testifies-california-state-senate-right-repair>.

<sup>109</sup> 87 Fed. Reg. 64,399 (Oct. 25, 2022).

<sup>110</sup> Press Release, Fed. Trade Comm’n, FTC Sues Burger Franchise Company That Targets Veterans and Others with False Promises and Misleading Documents (Feb. 8, 2023), <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-sues-burger-franchise-company-targets-veterans-others-false-promises-misleading-documents>.

<sup>111</sup> Press Release, Fed. Trade Comm’n, Solicitation for Public Comments on Provisions of Franchise Agreements and Franchisor Business Practices (Mar. 10, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-seeks-public-comment-franchisors-exerting-control-over-franchisees-workers>.

consider when deciding whether to purchase a franchise.<sup>112</sup> Finally, we are coordinating closely with DOJ and the National Labor Relations Board, and in December 2021 we filed an amicus brief in a class action suit by 7-Eleven franchisees in which we successfully argued that the FTC’s Franchise Rule does not address whether franchisees are employees under Massachusetts law.

### 5. Shining a Light on Small Business Credit Reports

Credit reports can be make-or-break for small businesses. To better understand this opaque market, the FTC recently voted to issue orders under Section 6(b) of the FTC Act to five business credit reporting agencies, requiring that they provide information about: (1) how they collect and report data on small businesses; (2) how they market their business credit reporting products; and (3) whether and how they address factual errors in the reports.<sup>113</sup> The 6(b) study will shine a needed light on an industry that has not been reported on extensively but can be critical to the survival of a smaller firm. It will also advance the agency’s broader effort to ensure a fair shot in the marketplace for small businesses and entrepreneurs. The 6(b) study follows the FTC’s April 2022 complaint against and order with Dun & Bradstreet (“D&B”) in which the FTC alleged, among other things, that D&B reported incorrect information about small businesses then failed to provide a clear, consistent, and reliable way for those businesses to get

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<sup>112</sup> Franchise Fundamentals: Debunking Five Myths About Buying a Franchise, <https://www.ftc.gov/business-guidance/blog/2023/04/franchise-fundamentals-debunking-five-myths-about-buying-franchise>; Franchise Fundamentals: Researching Franchise Opportunities, <https://www.ftc.gov/business-guidance/blog/2023/05/franchise-fundamentals-researching-franchise-opportunities>; Franchise Fundamentals: Taking a deep dive into the Franchise Disclosure Documents, <https://www.ftc.gov/business-guidance/blog/2023/05/franchise-fundamentals-taking-deep-dive-franchise-disclosure-document>.

<sup>113</sup> In March 2023, the FTC issued 6(b) orders to D&B, Experian Information Solutions, Equifax, Ansonia Credit Data, and Creditsafe USA. See Press Release, Fed. Trade Comm’n, FTC Launches Inquiry into Small Business Credit Reports (Mar. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-launches-inquiry-small-business-credit-reports>.

corrections.<sup>114</sup> D&B is now subject to an order that bars it from misrepresenting certain types of credit improvement products and mandates better processes for businesses to correct errors.

#### IV. RESOURCE CONSTRAINTS AND LEGAL CHALLENGES

Despite the many successes highlighted above, we also want to highlight significant headwinds the Commission faces. First, as our work illustrates, Congress has charged the FTC with policing unlawful conduct across a broad swath of the U.S. economy. Although we are at the front lines of many of the most pressing economic issues Americans face today, the number of full-time employees we plan to have at the end of FY2023 will be about 80% of the number we had at the beginning of 1980, while the nation's GDP has increased six-fold.<sup>115</sup> Demands on the Commission continue to grow as we review corporate mergers,<sup>116</sup> conduct more complex and expensive litigation, receive consumer complaints,<sup>117</sup> try to stay abreast of transformative technological and market changes, and respond to burgeoning requests for research and

<sup>114</sup> Decision and Order, *In re Dun & Bradstreet*, Docket No. C-4761, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/172%203196%20Dunn%20and%20Bradstreet%20combined%20package%20unsigned\\_0.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/172%203196%20Dunn%20and%20Bradstreet%20combined%20package%20unsigned_0.pdf).

<sup>115</sup> For example, as of March 2022, the UK's Information Commissioner's Office, the principal privacy enforcement agency in the UK, had 944 permanent staff. See Information Commissioner's Office, Information Commissioner's Annual Report and Financial Statements 2021-22 (July 2022) at 107, <https://ico.org.uk/media/about-the-ico/documents/4021039/ico-annual-report-2021-22.pdf>. Ireland's Data Protection Commission, responsible for enforcing the European privacy regulation, had 196 employees as of December 2022. See Data Protection Commission, Annual Report 2022 at 53, [https://www.dataprotection.ie/sites/default/files/uploads/2023-03/DPC%20AR%20English\\_web.pdf](https://www.dataprotection.ie/sites/default/files/uploads/2023-03/DPC%20AR%20English_web.pdf). By contrast, the Federal Trade Commission's Division of Privacy and Identity Protection currently has just 48 employees. Although it is true that FTC employees in other units, including the regional offices, the Division of Enforcement, and the Division of Marketing Practices, contribute to the Commission's security and privacy efforts, the total number of FTC employees working on these issues is dwarfed by our European counterparts.

<sup>116</sup> As reflected in the annual report on the Hart-Scott-Rodino premerger program, the agencies reviewed an overwhelming number of HSR-reportable transactions in FY 2021 and issued more "Second Requests" for additional information from the merging parties than the year before, signaling a significant increase in the merger workload. 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>. While the number of HSR filings have fallen since the FY2021 peak, they remain high, with filings for over 3200 transactions in FY2022. (Monthly HSR numbers are posted on the FTC website at <https://www.ftc.gov/enforcement/premerger-notification-program>).

<sup>117</sup> See, e.g., Press Release, Fed. Trade Comm'n, New FTC Data Show Consumers Reported Losing Nearly \$8.8 Billion to Scams in 2022, <https://www.ftc.gov/news-events/news/press-releases/2023/02/new-ftc-data-show-consumers-reported-losing-nearly-88-billion-scams-2022>.

investigation of various economic sectors. While we constantly strive to enforce the law to the best of our capabilities, there is no doubt that—despite the much-needed increased appropriations Congress has provided in recent years—we continue to lack sufficient funding. We seek to work with Congress to ensure that the Commission has the resources and tools it needs to vigorously protect the American people.

Second, the FTC faces several significant legal challenges to statutory authorities that have been important tools in executing our mission. The Supreme Court issued its decision in *AMG Capital Management v. FTC* in April 2021, upending decades of lower court rulings that had held that Section 13(b) of the FTC Act enabled the FTC to pursue equitable monetary relief in federal court. Practically, *AMG* ended the FTC’s ability to seek monetary relief for consumers in competition matters, most concretely in cases involving anticompetitive conduct by drug companies. In some consumer protection cases, Section 19 of the Federal Trade Commission Act allows the Commission to seek refunds for consumers in federal court either for certain rule violations or in some cases after an administrative proceeding. While this avenue has always been more limited than Section 13(b), it may now face further constraints in light of various legal challenges to the administrative process. Simply put, some companies that profited by deceiving consumers are now able to keep that money.<sup>118</sup> That makes restoring our ability to use Section 13(b) to provide redress to consumers for law violations all the more important.

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<sup>118</sup> See, e.g., Press Release, Fed. Trade Comm’n, FTC Order to Bar ZyCal Biocentials from Deceptive Health Marketing (Feb. 6, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-order-bar-zycal-biocentials-deceptive-health-marketing> (“Unfortunately, the Supreme Court decision in *AMG Capital Management* prevented us from obtaining refunds for consumers in this case. The Commission has urged Congress to enact legislation to restore the agency’s ability to obtain critical relief for consumers through federal court actions.”); Press Release, Fed. Trade Comm’n, Federal Court Rules in Favor of FTC, Halting Illegal Tactics Used to Promote Smoking Cessation, Weight-Loss, and Sexual-Performance Aids (Mar. 25, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/federal-court-rules-favor-ftc-halting-illegal-tactics-used-promote-smoking-cessation-weight-loss> (“[D]espite the fact that the FTC presented evidence that consumers lost \$18.2 million to the defendants’ deceptive marketing, the court declined to order any compensation because of [the] Supreme Court’s ruling in the case of *AMG v. FTC*, which undercuts the agency’s authority to obtain such consumer redress”).

**V. CONCLUSION**

The FTC remains committed to marshalling its resources efficiently in order to effectively protect Americans from unfair or deceptive practices and unfair methods of competition. We look forward to continuing to work with you, and we would be happy to answer your questions.



Chair JORDAN. Thank you, Madam Chair. We will now move to five-minute questioning. The Chair recognizes the gentlelady from Wyoming.

Ms. HAGEMAN. Like other Federal agencies, the FTC has a Designated Agency Ethics Official, known as DAEO. On April 18, 2023, you testified before a Subcommittee of the House Energy and Commerce Committee. At the hearing, Chair Rodgers asked you, “Are there any instances where you have not followed the DAEO’s advice?” You responded, “no” and you followed up by saying that you, “Have consulted with the DAEO and taken actions that are consistent with the legal statements that DAEO has made.”

On June 16, 2023, a Bloomberg journalist published a leaked memoranda written by the FTC’s DAEO analyzing Chair Khan’s ability to sit as a judge in the FTC’s review of a meta acquisition of a company called Within. According to the ethics memoranda, the DAEO “recommended you recuse to avoid an appearance of partiality concern pursuant to Federal ethics regulations.”

Do you believe that you were completely honest and forthcoming with Congress when you asked if there were “Any instances where you would not follow the DAEO’s advice?” You answered “no.” Yes or no?

Ms. KHAN. Yes, Congresswoman.

Ms. HAGEMAN. OK. In the letter that you sent to this Committee yesterday evening, you claimed that you received only oral advice from the DAEO, but never saw the leaked memo until after you decided not to recuse yourself.

First, it is unbelievable to me that you would not ask for written ethics advice on this particular topic. You admit that you have written ethics advice on other topics, but on this topic, you claim you did not see the written memo. Instead, you want us to believe that you only received oral advice and not specific oral advice, but only general advice on “understanding the legal framework.”

Did DAEO give you advice that is different than what was written in the memoranda?

Ms. KHAN. Thanks for the question, Congresswoman. So, my work before I joined the Commission was focused on assessing the power of large technology—

Ms. HAGEMAN. I need you to answer the question that I asked. The question that I asked was did you receive different oral advice than what was written in the memoranda from DAEO, a very simple question.

Ms. KHAN. So, I consulted with the ethics official. The ethics official, as was noted in the memo that you cited, although I did not receive that memo, noted that the ultimate framework for instances in which somebody has no financial conflicts of interest—

Ms. HAGEMAN. Did she give you different oral advice than what was in the written memoranda, yes or no?

Ms. KHAN. —the legal framework is for the employee to themselves determine whether they should or should not recuse. That was—

Ms. HAGEMAN. Did she give you different advice than what was—orally than was in the written memoranda, yes or no?

Ms. KHAN. Congressman, as was noted in the written memoranda, there was no ethics violation created by my participating in the matter—

Ms. HAGEMAN. You didn't follow the DAEO's advice, did you? You could have recused at any time, couldn't you?

Ms. KHAN. I followed the determination that there was no ethics violation—

Ms. HAGEMAN. You could have recused at any time, couldn't you?

Ms. KHAN. There was no violation under the ethics laws because I have not a penny in financial stock, not a penny in financial interests relating to—

Ms. HAGEMAN. The DAEO gave you the advice to recuse, and you did not do so, correct?

Ms. KHAN. Congresswoman, as was noted in the memo, as I noted—

Ms. HAGEMAN. I am going to move on since you are not willing to answer my question. I read your four-page letter which was nothing more than a front to your obligation of honesty, integrity, and candor before this tribunal, but is owed by every public servant. I would reference Part 2635 of the Code of Federal Regulations which describes your ethics standards. I want to note that the ethics standards are actually higher than one owed by lawyers which brings me to my next point.

Do you expect lawyers at the FTC to follow Federal ethics rules?

Ms. KHAN. Of course, everybody at the Federal Trade Commission—

Ms. HAGEMAN. Do you expect lawyers at the FTC to be an active member, in good standing of a bar of the United States?

Ms. KHAN. If they are practicing as a lawyer, they need to be in good standing and follow the bar rules.

Ms. HAGEMAN. I understand that you were admitted to the New York bar on July 16, 2020, but in 2019 and 2020, according to your Senate questionnaire, you held yourself out as Counsel for the Democrats on this very Committee. You used this title, but you were not licensed to practice law. Counsel is a term reserved for lawyers, licensed lawyers. In Wyoming, a person who in any manner holds themselves as competent to practice law without a license to do so is guilty of unauthorized practice of law.

I believe the law in the District of Columbia where you held yourself out is similar. Do you believe it is appropriate for non-lawyers to claim the title of counsel?

Ms. KHAN. Congressman, when I had the honor to work for this Committee, I complied with all the document requests that the H.R. folks requested, including documentation about the fact that I—

Ms. HAGEMAN. When I checked your registration status this morning, I learned that you were not in good standing with the New York bar. Your license is listed as delinquent, which means you have failed to file your biennial registration and it means that you have not been paying your bar dues, completing your continuing legal education, and maintaining your law license. I believe it is shown on the screen. It also means you are subject to referral for disciplinary action. I find this situation to be stunning and a reflection on your ethics. With that, I yield back.

Chair JORDAN. The gentlelady yields back. The Chair now recognizes the Ranking Member from New York for five minutes of questions.

Mr. NADLER. I find the statement of the gentlelady from Wyoming incredible. Will the Republican staff all commit to recusing themselves from any matters that relate to their work on the Committee? Because that is the standard they are holding Chair Kahn to?

Chair Khan, thank you for coming before our Committee today. Under your tenure, the Commission has returned over \$430 million to consumers and proposed a ban on noncompete agreements that would increase workers' earnings by nearly \$300 billion a year, would save consumers up to \$148 billion in healthcare costs, and would close racial and gender wage gaps by between 3.6 and 9.1 percent.

What are some other ways that the Commission supports a strong economy?

Ms. KHAN. Thanks for the question, Congressman. So, our work on the antitrust side is focused on ensuring robust competition. This has involved blocking mergers that we believe would have eroded competition including in the defense industry, including in healthcare. We have brought a set of lawsuits alleging that certain types of hospital mergers would have deprived Americans of access to quality affordable healthcare. We have a whole set of work underway focused on the fact that all too often drug prices are way too expensive for American people and we are scrutinizing the ways in which potentially unlawful practices may be contributing to those high prices.

We are also hearing directly, day in and day out, from small businesses, from independent grocers, independent pharmacists, franchisees, about the ways in which the FTC's work can help ensure that they have a robust open opportunity to compete in the marketplace and make sure that Americans are benefiting from robust competition.

Mr. NADLER. Thank you, and you have made it clear that anti-trust enforcers like your own agency must be more active in enforcing the law and bringing high-impact cases, even if those cases ultimately are unsuccessful.

Can you expand on this for us and share what you think having a strong cop on the beat is essential to a fair marketplace?

Ms. KHAN. Thanks, Congressman. I have been very clear that my worry has been about under enforcement. Unfortunately, I think there were missed opportunities in the last few decades where all too often entire sectors were allowed to consolidate. That has now created markets that are closed off to competition.

Recently, the Defense Department has been noting how this consolidation is also now directly undermining national security with significant consolidation in the defense industrial base is harming our military and making it more difficult for us to compete globally. These are just some of the harms that we have seen from consolidation. Because of that, we think it is incredibly important to be vigorously enforcing the laws that Congress has charged us with enforcing. This includes the FTC's act prohibition on unfair methods of competition. It includes the Clayton Act. It includes the

Sherman Act. There have been provisions of these statutes that unfortunately have been left dormant and we are fully committed to reinvigorating the law and make sure that we are fully enforcing all the provisions that Congress has charged us with enforcing.

Mr. NADLER. I assume you also enforce the Celler-Kefauver Act. I know that you also support bringing court actions instead of reaching a settlement under consent decree with a company that has broken the law. Why is this?

Ms. KHAN. So, Congressman, we assess every matter on a case-by-case basis. On the antitrust side, we have seen, unfortunately, instances in which certain remedies that were achieved in merger settlements unfortunately fail to fully protect competition in the way that the agencies are required to do under the law, so certain behavioral commitments that firms made, or certain divestitures really fail to preserve the competition that we are charged with safeguarding.

As a result, we are learning from that experience and adjusting and modifying where needed. In some cases, that means bringing a lawsuit if a remedy that is being offered and we don't believe will fully resolve the underlying competitive harm. In other instances, it means really improving and strengthening and tightening up the remedies that we are achieving. So, it really depends on a case-by-case basis.

Mr. NADLER. Thank you. Despite claims from the Majority that you did not follow ethics guidance, we know for a fact that under the law you have no conflicts of interest that would require you to recuse yourself, correct?

Ms. KHAN. Correct.

Mr. NADLER. Indeed, the designated ethics official instructed you correctly that the decision to recuse yourself was a personal one that you are charged to make, correct?

Ms. KHAN. That is right.

Mr. NADLER. You also spoke of the General Counsel's Office who also stated that you do not have a conflict of interest that would require your recusal, correct?

Ms. KHAN. That is right, correct.

Mr. NADLER. You do not own any stock in any corporation or have any personal ties that would require you to recuse yourself, correct?

Ms. KHAN. I have not a penny in any individual firm's stock, correct.

Mr. NADLER. The Federal Trade Commission plays a critical role in protecting consumers, ensuring competition, and enforcing the laws we have entrusted to it. The agency has done this work for over a hundred years, and I appreciate that it will continue to do so under your leadership.

Finally, Mr. Chair, before I yield back, I ask unanimous consent to enter into the record a copy of a letter from Lina Khan to Hon. Cathy McMorris Rodgers and yourself.

Chair JORDAN. Wow. I appreciate it. That is fine. Without objection, so ordered.

Mr. NADLER. Thank you, I yield back.

Chair JORDAN. The gentleman from California, Mr. Kiley, is recognized for five minutes.

Mr. KILEY. Good morning, Ms. Khan. A few days ago, you lost another case. This was your challenge to the Activision acquisition. The Northern District of California, in the opinion by a Biden appointee, denied your request for a preliminary injunction. After what the court called voluminous pre- and post-hearing written submissions, the court found you are not likely to succeed on the merits.

You seem to be losing quite a bit, and I don't say that to be disrespectful, but these are, after all, taxpayer funds. You are now zero for four in merger trials. The average win rate for the FTC in the modern antitrust era is around 75 percent. So, I have to ask, why are you losing so much?

Ms. KHAN. Thanks for the question, Congressman.

I should note, first, that the FTC has some of the best litigators around. In the very trial that you mentioned, it was just phenomenal to see, and the judge herself, personally, commented on how the fact that the FTC, despite being totally out-resourced by some of these companies, was really able to go toe-to-toe in terms of legal talent and skill. I'm enormously proud of our litigators.

Mr. KILEY. Well, I'm not sure the taxpayers are going to take much delight in the legal talent and skill of enforcement actions that cost great taxpayer dollars and end in defeat. So, the question is, why is your track record so poor when it comes to actually winning cases?

Ms. KHAN. Congressman, we've had significant success in the courts. There are a whole set of matters, including our case against Martin Shkreli, where the court found resoundingly in the FTC's favor; also, banned Martin Shkreli for life from the pharmaceutical industry. We also had a recent—

Mr. KILEY. OK. You're zero for four in merger trials. So, when I was trying to figure out what is going on here, I found maybe a clue in an article from *The New York Times*, December 7, 2022, which reported comments you made at a conference where you said this. You said,

If there's a law violation and agencies think that current law might make it difficult to reach, there's a huge benefit to still trying.

She added that any courtroom losses would signal to Congress that lawmakers need to update antitrust laws to better suit the modern economy.

I'm, certainly, not somebody who thinks that success is marked by a 100 percent court record.

So, this raises the question, Chair Khan, are you losing on purpose?

Ms. KHAN. Congressman, the key clause in the quote you mentioned was "if there is a law violation." We only bring cases when the facts before us lead us to believe that there is a law violation under the existing laws.

On the merger front, there are a whole set of cases where we've won, including in instances where the parties abandoned and walked away after they filed the complaint.

Mr. KILEY. OK. You are zero for four in merger trials. So, what did you mean when you said that any courtroom losses would sig-

nal to Congress that lawmakers need to update the antitrust laws? What does that mean?

Ms. KHAN. So, there is an institutional dialog, right, between enforcers, between Congress, between the courts. There's a century worth of antitrust back-and-forth between the agencies, between Congress. This very Committee, in the 1950s, determined that the agencies were not bringing the types of cases that Congress was worried about in terms of monopoly power.

Mr. KILEY. OK, but you're actually bringing the cases. You're losing because you don't have the authority that you want from Congress. So, this is how you think you're going to persuade Congress to give you more authority, is by exceeding the authority that you now have?

Ms. KHAN. Congressman, again, we only bring lawsuits where we believe there is a law violation, given the facts and the law at hand. We fight hard when we believe that there is a law violation, and unfortunately, things don't always go our way. We make determinations about—

Mr. KILEY. Are you bringing cases that you expect to lose?

Ms. KHAN. Would you repeat that?

Mr. KILEY. Are you bringing cases that you expect to lose?

Ms. KHAN. Absolutely not.

Mr. KILEY. OK. Well, your track record seems to suggest otherwise.

Let's look more closely at the Activision decision, though. The court first noted that, in an attempt to lower your burden, you, essentially, made up case law. You couldn't find anything actually that the courts have provided in terms of precedence. So, you cited to your own FTC decision as precedent.

Irrespective of the legal standard, the court—you probably wouldn't have won under any standard because the court said this:

The FTC has not raised serious questions regarding whether the proposed merger is likely to substantially lessen competition .... Not raised serious questions.

The court also rejected your assertion—not only rejected your assertion of a likely anticompetitive effect, but found just the opposite, that the record evidence points to more consumer access.

So, why should Americans have faith in your judgment, when this Biden-appointed judge says you are so far off the mark?

Ms. KHAN. Congressman, this matter is still pending before the FTC in administrative adjudication. So, I'm just going to be limited in what I can say about the merits.

Our complaint lays out the staff's view of what this merger would result in and why that would be a law violation. You may—

Mr. KILEY. The judge roundly rejected it and said there weren't even serious questions. Now, having lost, you're spending even more taxpayer money on an appeal that you're even less likely to win, because the appeals court is going to defer to the trial court's findings of fact in this very fact-intensive matter. So, why are you spending even more taxpayer resources pursuing this appeal?

Ms. KHAN. So, I can say, again, this was a staff recommendation. I can say, in a general matter, staff always looks closely at an opinion and looks at whether there are certain errors in law that they

believe are worth appealing on. Those are, in general, the types of determinations that go into whether the FTC ends up appealing.

Chair JORDAN. The gentleman's time has expired.

The Chair now recognizes the gentleman from Tennessee.

Mr. COHEN. Thank you, Mr. Chair.

Chair Khan, thank you for being here and for putting up with some of the questions you've been asked.

Yesterday, FBI Director Wray sat here for almost five hours and put up with continual questions attacking his patriotism, his judgment. It was really amazing the hypocrisy that was shown.

The issue was weaponization of the FBI. Yet, every Member of this panel who was here on January 6, 2021, knows that the government was weaponized on that day—as I said, nuclearized—to take over the government, to overthrow the government, in contradiction of the oath of office that each of us had taken. We have learned that certain Members of this Committee went and met with Donald Trump and that they were participating in the overthrow of our government, the nuclearization/weaponization of our government.

Yet, they had the chutzpah, the audacity, the lack of integrity to question Wray's judgment, and went on and on. I was sorry, I came in here today and I'm sorry—

Mr. ISSA. Is the gentleman accusing us of a lack of integrity?

Mr. COHEN. Mr. Chair, if you would ask whoever it is to shut up?

Mr. ISSA. I'm sure the Chair will rule when he comes back.

Mr. COHEN. I was surprised when I came in today and I heard some questions about your relationship with the Bar Association. Hey, you don't talk about rope in a house where a man's been hung. You don't ask about membership in the Bar Association on a Judiciary Committee, where there are Members who never passed the bar and aren't members of the Bar, and they are Members of this Committee in good standing. So, we need to get beyond the hypocrisy and realize where we are and don't raise such subjects.

Chair Khan, let me ask you this: The Federal Trade Commission deals in issues that protect consumers. Subscriptions to magazines, to services, on subscription services for media are everywhere and you can subscribe to them easily. It's hard to unsubscribe. It's difficult to find that spot. This has been a problem to consumers, and the companies just make money hand over fist, as people give up on trying to unsubscribe or cancel their membership.

What steps is the FTC taking to reel in these predatory practices?

Ms. KHAN. So, Congressman, you're absolutely right. We have a complaint data base where we hear directly from consumers. Oftentimes, we hear about significant frustrations about these subscriptions that are very easy to sign up for, but effectively impossible, in some cases, to fully cancel.

We've brought enforcement actions, including a case we brought against Vonage last year. We also recently proposed a rule—it's our click-to-cancel rule—that requires that companies make it as easy to cancel a subscription as it is to sign up for one. We've been collecting public comments. We're going to look closely at the record and determine how to proceed.

Mr. COHEN. Thank you for that.

I had a bundle with Disney, Hulu, and ESPN 26, or something. I tried to get out of that bundle and just do Hulu. Whatever it is, I'm being charged for both of them. I've given up. I've just tried to cancel and it's just too much. It needs to be easy.

Ms. KHAN. That's right. We've also seen through our work that companies sometimes use what are known as "dark patterns." These are these manipulative design techniques that are designed to trick people into either signing up for unwanted services or that make it very difficult to cancel or opt out of something. So, those manipulative design tactics are very much on our radar.

Mr. COHEN. Another consumer, anticonsumer practice is robocalls. I've heard about it forever. It bothers me; it bothers so many people to get these robocalls and asking you to sign up for this or sign up for that, and to speak, and they get you.

This is also the FCC, maybe, but what is the FTC doing to help us with these deceptive calls?

Ms. KHAN. So, we work hard on this one. One thing that we've been thinking about is, how can we be most effective and efficient with our resources? We've been looking upstream at the voice over internet protocol providers, who sometimes are helping facilitate or enable these robocalls. So, we've brought a whole set of enforcement actions against them to have a more deterrent impact and really protect consumers from these unwanted calls.

Mr. COHEN. Have you tried to encourage or help companies—the public, where antitrust actions could give them more choices and better prices?

Ms. KHAN. Absolutely.

Mr. COHEN. Well, I thank you for what you're doing.

By the way, do you have any books that you checked out from the library that are overdue? No.

Ms. KHAN. Not that I can—

Mr. COHEN. The public really cares about that. That's important. [Laughter.]

Mr. COHEN. I yield back the balance of my time.

Chair JORDAN. The gentleman yields back.

The gentleman from California is recognized for five minutes.

Mr. ISSA. Thank you, Mr. Chair.

On behalf of the Committee, for the work that your 1,600-plus full time equivalents do on areas like thwarting robocalls and your efforts to promote the right to repair, I want to thank the people at the FTC.

Our beef, though, is not with much of the good work you do, much of which, as you said to Mr. Kiley, is successful when you litigate.

Our problem here today, my problem here today is that you're a bully. You have half a billion dollars to spend, and you choose to spend it promoting a policy that, when you were a staffer sitting behind us, you seemed to be very much into. I believe you've taken the idea that companies should have to be less competitive to merger; that every merger has to be somehow bad for the company and good for the consumer—a standard that cannot be met.

I will take, for example, Illumina, a situation in which they have had the audacity to tell you that a company that they spun off, but



still held major assets in, that has to be reacquired, so that a breakthrough, noncompetitive drug, a technology of detection of cancer could be promoted more quickly—one which has no current competitor; one which is not on the market.

Yet, you decided that a company with a market cap of about 10 percent that of Pfizer somehow would be anticompetitive if it assimilated a new—took on something that would be new, that they had helped internally produce before spinning it off. You're failing in that; you're going to fail.

You, then, took on Microsoft. Microsoft is a big, big company. Everybody up here seems to want to beat on anyone that has over a trillion-dollar market cap. When you served on the Committee, you were big on, if you were over a trillion dollars, we need to break you up or stop you.

However, that merger that you lost the other day is one in which a protected market that's Sony enjoys in Japan, a company that is already larger, needs competition. The reality is we are a global market, and you are thinking only of who you want to go after for some reason.

I cannot find your logic, and I believe that it begins at the top. When you blamed your staff and said staff decisions, shame on you. The fact is you run this organization, and its left turn came when you took over, not with the staff, many whom would have already been there.

Now, one of the things beyond Illumina that gets me is—and this is my question to you—if cancer patients die because you had blocked the merger, which you didn't because they went forward over your objections, and will continue to fight you, if cancer patients die because they don't have the money to bring this technology forward, where has the consumer benefited?

I know that you are going to say Illumina is currently pending; we're still working on it; I can't answer. It's interesting, you can answer yes or no to the Democrats, but you can never simply to us. I'll get you a chance.

If something is not on the market, and an organization of two companies say we want to merge to bring something to the market, where does the FTC see anticompetitiveness? Briefly, if you can answer.

Ms. KHAN. Before I answer, I should just note, if anybody asks me on either side about an ongoing matter—

Mr. ISSA. No, no. Please answer my question.

Ms. KHAN. —I will not be able—

Mr. ISSA. My time is limited.

Ms. KHAN. I will not be able to answer about ongoing adjudicative proceedings.

Mr. ISSA. OK.

Ms. KHAN. Relating to the matter that you mentioned, I was not at the Commission when it was voted out. There was a recent Commission opinion. In that opinion, we lay out our view—that was voted out unanimously—we laid out our view about how the anti-trust laws apply in nascent markets. There is significant case law around how it's incredibly important to be protecting competition, not just in well-established markets, but especially in nascent markets.

Mr. ISSA. OK. So, let's go back through this. Your opinion, the opinion, whether you inherited it or not, that you seem to bear, is that in the future there could be a failure to have competition in a market that has not yet occurred. If people have to meet a standard of your hypothetical market will not develop because we—"we"—have to predict the future, if your ability to predict the future is so good, how is it you could not predict that you were going to lose four out of four cases? How is it you can predict the future of markets, when, in fact, the stock market can't even do it?

I would contend that you have overstepped your boundaries and your half-billion dollar budget is being wasted. I, for one, will not support your \$160 million increase as long as you do not stick to those things, which you do well, for which the FTC has the responsibility, and for those robocalls that, in fact, you have never managed to stop.

With that, I yield back.

Chair JORDAN. The gentleman yields back.

The gentleman from Georgia is recognized.

Mr. JOHNSON of Georgia. Thank you, Mr. Chair.

I want to commend my colleagues on the other side of the aisle in the 118 Congress in diversifying the membership on their side of the aisle, but, frankly, we haven't done enough. They have not done enough. They can't do enough at this point.

It reflects in the treatment that a witness such as yourself, Chair Khan, receives from this Committee. When a witness comes in, sitting so low at that table in front of all these interrogators, it's a daunting look. The American people can see it.

When we treat a witness who looks like you with the politics of personal destruction, and when we only attack witnesses who look like you with allegations of incompetence and a lack of ability to lead their agency, it's indicative of the need for this Committee to reflect what the American people look like.

I want to appreciate you today for withstanding what you have had to endure thus far, and we've only begun.

I will say this, Chair Khan, Americans rely on regulations to protect consumers and workers in this country. The Federal Trade Commission should be as aggressive in its enforcement as the circumstances dictate.

Today, in America, there are only four large corporate conglomerates that control the market for beef, pork, and poultry. Consolidation in the meat packing industry shows up at the grocery store, resulting in inflation for consumers and at the same time, coincidentally, record high profits for the corporate conglomerates who are soaking those profits from the American people.

A single company controls most of the web searching and a single company controls nearly half of all e-commerce. That's too much power in the hands of too few corporations, and they can hike prices with little recourse. They control vast amounts of personal data. Consumers are being squeezed by consolidation in almost every aspect of the marketplace—from food production to hospitals.

So, I'm glad to see that you are using your position to strongly enforce antitrust laws to ensure fair competition and prices. Moreover, we are lucky to have an FTC Chair who does not have personal or monetary conflicts of interest that would require her to

recuse herself from cases involving big tech companies. That is good thing. Because of that, Chair Khan is able to lead an agency that is properly investigating companies like Amazon, Meta/Facebook, and Twitter. I'm glad that we do not have the fox guarding the henhouse and that we, instead, have an FTC that is actively working to protecting American consumers.

Now, I want to ask you, Chair Khan, pharmacy benefit managers manage prescription drug benefits on behalf of large insurers, large employers, and other payers. However, this middleman role allows PBMs to artificially inflate the prices of drugs that individuals must pay for critical medications, resulting in consumers having to pay almost 20 percent more for generic drugs. The market for PBMs is an area of the market that is highly consolidated with just three PBMs controlling 79 percent of the market.

What can the Commission do to ensure the market for pharmacy benefit managers is competitive and fair, so that Americans can afford their prescription drugs?

Ms. KHAN. This is an area where we're looking very closely. We issued a policy statement last year, unanimously, noting some of our concerns in the pharmacy benefit management space.

In addition to the consolidation that you mentioned, we've also seen vertical integration. So, these PBMs have also now expanded into insurance. Sometimes they're competing with the very pharmacies that are dependent on them. We've heard that this can create conflicts of interest. We've also heard that these PBMs demand rebates in ways that may be denying patients access to more affordable drugs.

So, we have put the market on notice that we are looking at these practices closely. If we find law violations, we won't hesitate to act.

Mr. JOHNSON of Georgia. Thank you.

Mr. Chair, I have a unanimous—

Mr. ISSA. Mr. Chair, I have a point of order.

Mr. JOHNSON of Georgia. I have a unanimous consent request.

Chair JORDAN. We will do the point of order, and then, I will come to your unanimous consent.

Mr. ISSA. Mr. Chair, I waited for the gentleman to complete his time, but I must raise a point of order that I, personally, felt that he was referring to all Republicans, but particularly to me, for his comments about diversity and his comments about our treating the witness, apparently, because of the color of skin, which happens to be similar to my Brown skin. I would ask that this portion of his testimony be taken down as inappropriate and argumentative to, and making a racial slur against, myself and other Members of the Congress, who, by the way, yesterday treated what I would call a very White man of a greater age very similarly.

Ms. JAYAPAL. Is this a point of order, Mr. Chair, or is this a speech?

Chair JORDAN. I don't think the gentleman's point of order has been stated in a timely fashion. It's supposed to happen right after the statement—

Mr. ISSA. Then, I withdraw my point of order, but not my objection.

Chair JORDAN. Well, I would just point out we should all engage in proper decorum, not disparage colleagues, not disparage people in the government, not disparage anyone. So, let's just keep that in mind.

With that, I know we have got a unanimous consent request.

Mr. JOHNSON of Georgia. Thank you, Mr. Chair.

I would move for the entry of a letter from Small Business Rising to yourself, as well as to the Ranking Member, Jerrold Nadler, into the record, without objection.

Chair JORDAN. Without objection.

Mr. JOHNSON of Georgia. I would also like to take, if the Chair will allow me to, the opportunity to simply clarify to my friend—

Chair JORDAN. Briefly.

Mr. JOHNSON of Georgia. —Chair Issa that no personal affront was intended. This was directed at the entire panel.

Chair JORDAN. We got that. We got that.

The Chair recognizes the gentleman from Wisconsin.

Mr. ISSA. It wasn't me; it was everyone.

[Laughter.]

Mr. FITZGERALD. That makes me feel good, Mr. Johnson. Thank you.

Chair Khan, thanks for being here today.

Last December, I sent you a letter, along with several of my colleagues, asking about the FTC's consideration of environmental, social, and corporate governance factors, or ESG, as it is known, in merger enforcement. I appreciate that you had a prompt response in answering that FTC would not support conditioning the approval of the unlawful merger on the adoption of a particular set of ESG policies or commitments.

While pleased with the first part of the response, you did not answer whether you would block a merger if it met traditional competition criteria, but falls short of some standard on ESG goals. Can you commit that ESG criteria will not play a role in a decision by the FTC to block a merger?

Ms. KHAN. We look at the text of the statutes, which tells us to block mergers if they substantially lessen competition or tend to create a monopoly. That's what we look at. Again, if companies make certain commitments to us about social justice commitments or ESG commitments, those are irrelevant to us.

Mr. FITZGERALD. OK. Thank you.

Since becoming Chair, have you ever communicated using Signal, WhatsApp, or through a different encrypted messaging app, on matters principally related to antitrust or consumer protection policy, FTC enforcement actions, press, political strategy, or any official communication? In particular, I'm interested to see if you've had any communication with Senator Warren, States Attorneys General, or outside groups.

Ms. KHAN. Congressman, the FTC has a very clear policy requiring that any FTC business relating to substantial matters be conducted only on authorized FTC devices, and I fully comply with that policy.

Mr. FITZGERALD. Did you have any communication with your now-Senior Advisor, Ms. Sarah Miller? Sarah Miller works for you, is that right?

Ms. KHAN. Ms. Miller joined my staff earlier this year, correct.

Mr. FITZGERALD. While she was in her role at the Economic Liberties Project, regarding the decision to air attack ads on Members of this Committee, including myself, for our opposition to the FTC's proposed noncompete rule?

Ms. KHAN. Congressman, I talk to a lot of people, but I'm never involved in those types of discussions.

Mr. FITZGERALD. So, you weren't involved in the idea to, in fact, go after Members of this Committee in their districts?

Ms. KHAN. Congressman, we're really excited about this proposal. We're accepting a lot of public comments. We're eager to hear from Members of Congress. I've talked to many of you about the proposal. We're eager to hear you, your feedback and input.

Mr. FITZGERALD. It was announced last night that you intended to break 30 years of precedent by challenging the court's ruling in the merger of Microsoft and Activision. Can you explain why, despite 39 countries and the European Union already clearing this merger, that you intend to move forward with, on administrative proceedings?

Ms. KHAN. So, Congressman, again, this matter is pending before the Commission in our administrative adjudication. So, I can't comment on the merits. When we get an adverse ruling, our teams look closely at the text of the opinion; determine whether there are errors of law that they believe warrant an appeal. Those are the types of considerations that they take into account.

Mr. FITZGERALD. In April of this year, the FTC's Associate Director for Litigation for the Bureau of Competition stated at a conference that, quote, "Merger policy is industrial policy," and

There is a role for merger policy in directing the way capital flows into projects. That means at the next venture capital meeting, they're not going to say, what's the exit via acquisition? It will be, how do we get to an IPO.

Do you endorse this statement?

Ms. KHAN. Congressman, I'm not familiar with the details of it. Happy to look at it in a question for the record.

I'll say, generally, it is true that antitrust and competition policy is about ensuring robust competition. Entrepreneurs benefit from that. Startups benefit from that. I just met with some venture capitalists the other week that were expressing concern about a lack of exit options that don't involve being bought up by one of the large technology companies. These are certainly issues that we hear about.

Mr. FITZGERALD. I think the issue for myself and many of my colleagues has been that the way you're running the FTC, that you're not simply trying to kill deals in the board room, you're also killing small businesses still in the crib. You want startups to seek an IPO rather than acquisition, but the cost of entering the public markets has doubled since the nineties, and your colleague, Mr. Gensler, at the SEC has been piling on with the rulemaking.

So, I don't know if this is what the administration means by Biden economics, but I have to ask, why would anyone start a small business under this administration right now?

Ms. KHAN. So, Congressman, we hear regularly from small businesses. One of the things that we started since I joined the Commission is open Commission meetings, where anybody in the coun-

try can sign up and come talk to us. We hear from a lot of small businesses.

More often than not, what we hear is about the challenges that they face in being able to compete in an open, competitive marketplace. We hear about how the existing giants and existing incumbents are squeezing them and making it difficult, be it for an independent grocer, an independent pharmacist. So, we are very eager to hear from small businesses and make sure we're enforcing the laws in the ways that are enabling everybody to compete in the marketplace.

Mr. FITZGERALD. Mr. Chair, I yield back.

Chair JORDAN. The time of the gentleman has expired. The gentleman yields back.

The gentlelady from California is recognized.

Ms. LOFGREN. Thank you, Mr. Chair.

Thanks to our witness for being here.

I have an interest in several areas where it seems to me the FTC has been less than robust, and which maybe you can disabuse me of that notion.

First, in the area of swipe fees, Visa and Mastercard have more than 83 percent of market share. Congressman Gooden and I introduced the Credit Card Competition Act of 2023 to introduce competition. Our small businesses pay a higher swipe fee than people do in other developed nations. I'm wondering whether the FTC will be having an active engagement in this area.

I'm also concerned about the issue of consolidation in the grocery sector. These large companies have the power to secure preferential pricing and treatment from suppliers, to the detriment of independent grocers.

Now, recently, Mr. Tiffany and I led appropriations request for \$10 million specifically for FTC enforcement of the Robinson-Patman Act. I'm interested in what you can tell us about FTC and Robinson-Patman.

I also have long been a champion of right to repair. Congressman Issa and I recently introduced legislation to limit the enforcement period of design patents, so that monopolies cannot prevent individuals from repairing what they own.

The Nixing the Fix Report was before your tenure, but I'm interested in what FTC is interested in doing in this area going forward.

Finally, Congresswoman Eshoo and I introduced what I think is the toughest online privacy act that's ever been introduced in Congress. It simply prevents companies from collecting data, so they cannot, then, use it to manipulate Americans. I'm interested in what actions the FTC is going to take to minimize data minimization, which I think is a key to data security, privacy, and also, helpful in competition.

Ms. KHAN. So, on your first point, just a few months ago, the FTC announced an enforcement action against Mastercard. We alleged that there was a violation of the Durbin Amendment, and that Mastercard had engaged in unlawful tactics to block competing networks and really stifle the competition that Congress has sought to encourage in this market back in 2010, because I think you're absolutely right, we still see fees that are much higher than what we see in sectors where you have more competition.

Robinson-Patman, and reinvigorating enforcement of it, is a top priority. We've certainly heard from independent grocers about the ways in which differential treatment and discriminatory prices may be squeezing them and disfavoring them, making it difficult to compete, especially in parts of rural America. That's something that we're looking at closely.

We also, several months ago, launched a market inquiry looking at supply chain disruptions, and the degree to which that type of differential treatment may have contributed.

On right to repair, this has been a big area of focus for us. In addition to the great staff report you mentioned, we also issued a policy statement. We followed up with several enforcement actions, including one against Harley-Davidson, one against Weber.

Since then, we've also been working with State legislatures, several of whom are also considering right to repair legislation. Just the other month, one of our staffers went to California to testify before the State Senate there to give input and feedback on their legislative efforts in this area. So, we're bringing our own lawsuits, but also looking to serve as force multipliers where other legislators are looking to be active.

Ensuring robust privacy protections for Americans is a top priority. We've been extraordinarily active in this area, especially when it involves children's privacy. We brought an enforcement action against Epic Games because we found that certain lax privacy policies that they had in place were endangering children.

We've also been looking at people's sensitive health information and instances in which companies are collecting health data for the purpose, ostensibly, of providing health services, but then, are turning it around and making it available for advertising.

We're also looking at geolocation data. We have a lawsuit pending in Idaho against a data broker called Kochava, where we allege in our complaint that its practices allowed people to—allowed companies to track and get very sensitive geolocation information on consumers in ways that revealed whether they were going to church, whether they were seeking certain types of health services, whether they were seeking addiction recovery facilities—very sensitive data. So, that lawsuit is still pending.

Ms. LOFGREN. Thank you, Mr. Chair. I see my time has expired and I yield back.

Chair JORDAN. The gentlelady yields back.

The Chair recognizes himself.

Madam Chair, why are you harassing Twitter?

Ms. KHAN. Congressman, thanks for the question.

As you might know, the FTC's work on Twitter goes back a decade. Back in 2000 and—

Chair JORDAN. I'm not talking about a decade; I'm talking about now.

Ms. KHAN. Back in—

Chair JORDAN. Twelve demand letters in 10 weeks, 300—over 350 separate requests you have demanded of Twitter. Why are you harassing them?

Ms. KHAN. Twitter has a history of lax security and privacy policies.

Chair JORDAN. You've asked for every single communication relating to Elon Musk, not communications that he just sent to someone or communications he received, but anytime he's mentioned. That actually seems more, actually, more than harassment. That seems like almost an obsession. Why such an intense focus?

Ms. KHAN. So, Congressman, again, it was found that Twitter's lax privacy policies allowed unauthorized users to coopt Twitter accounts, including that of *Fox News*. Subsequently, Twitter voluntarily entered into a consent order with the FTC. Unfortunately, we found—

Chair JORDAN. Here's what you wrote in December. Madam Chair, here's what you wrote in December:

Identify all journalists and other members of the media to whom Twitter has granted access since Musk bought the company.

You want to know the name of every journalist a private company has talked to? Do you think that's consistent with the First Amendment?

Ms. KHAN. Congressman, as a former journalist, I take extremely seriously the valuable work that they do and understand that there can be instances in which government action is—

Chair JORDAN. Particularly—

Ms. KHAN. —unjustifiably chilling that activity—

Chair JORDAN. Particularly, Madam Chair, if I could? Particularly, if I could just interject? Particularly, in the context here. I mean, it's bad enough if you've got government asking a private company about who are the journalists you're talking to. You name four of them and say, "We want the other names of any journalists you may, in fact, be communicating with." That's bad enough and I think a threat to the First Amendment and freedom of the press. In the context of giving us information about how government had suppressed speech on these platforms, that's the context you're asking for. I think that's particularly troubling, don't you?

Ms. KHAN. Congressman, the consent decree that we have prohibits Twitter from sharing personal information with third parties. When we read in the papers, like everybody else, that Twitter may have granted access to third parties, that's what our teams were seeking information about.

Again, this is a company whose history with the FTC goes back a decade—

Chair JORDAN. Madam Chair, we've got limited time. Madam Chair, who is David Roque?

Ms. KHAN. Could you repeat that, Congressman?

Chair JORDAN. David Roque, R-o-q-u-e, who is David Roque?

Ms. KHAN. I'm not familiar with that—

Chair JORDAN. You deposed him last month, June 21, 2023. David Roque is the independent partner for Ernst & Young's independent assessment of Twitter's program that's part of this consent decree. Do you know what Mr. Roque said in that deposition?

Ms. KHAN. I'm not aware.

Chair JORDAN. OK. Let me read it for you, then, because I think it's pretty important.

Mr. Roque testified—again, in front of your lawyers; you deposed him—testified that FTC's conduct made him feel,



... as if the FTC was trying to influence the outcome of the engagement before it had started .... In some of the discussions that we were having with the Federal Trade Commission, expectations were being conveyed about what those results should be before we had even begun any procedures.

So, they're the independent assessor in this consent decree the FTC has with Twitter, and you're telling the guy who is the person—he's the guy; he's the "Joe the accountant" who's going to get this information—you're telling him, you're putting your finger on the scale telling him what you want the outcome to be, and he's supposed to be the independent fact-finder. Why are you doing that?

Ms. KHAN. Congressman, I'm not familiar with those specifics—

Chair JORDAN. Because it was just filed today, but we are—this is filed in court today and this is your deposition.

Ms. KHAN. I'm happy to take a closer look at it and be back in touch.

I will say, as a general matter, we want to make sure that the assessors and auditors that are responsible for overseeing compliance are doing their job.

Chair JORDAN. You're saying Mr. Roque is lying in what he testified here, what's been filed in court today, that there were suggestions of what they would expect the outcome to be? "They" being the FTC. There were suggestions of what they wanted him to go find in his independent assessment of the consent decree agreement the FTC and Twitter.

Ms. KHAN. Again, I'm happy to take a close look and we can be back in touch with you about that allegation, but our staff are consummate professionals. When they conduct these investigations, they're focused on determining whether there was a violation—

Chair JORDAN. Did you go after—did you—is your attack on Twitter, harassment on Twitter, is that based on the fact that all kinds of Democrats have asked you to do this, and frankly, some things that you have written about dealing with, quote, "disinformation"? Does that have anything to do with it, Ms. Khan?

Ms. KHAN. Congressman, we make only independent determinations about whether there were law violations.

Chair JORDAN. The statement from Chair Nadler, the statements from—the letter, the press release and the letter from seven Democrat Senators, that had no impact on it? That's not why you're doing it?

Ms. KHAN. Absolutely not. We look very closely at the specific matter at hand.

Chair JORDAN. Twelve demand letters in 10 weeks, telling the independent assessor, "Hey, put your finger on the scale. This is the results we want," that's not harassment and it had nothing to do with the fact that every Democrat in this town seemed to be telling you to go after Twitter?

Ms. KHAN. Our focus is on protecting people's privacy and security. Twitter has sensitive data on 150 million Americans, including private messages. We need to make sure, especially given its history going all the way back to 2010, that we're doing everything to make sure Twitter is complying with the order.

Chair JORDAN. That's fine. Don't put your finger on the scale and don't attack the First Amendment and the rights of journalists.

Mr. IVEY. Mr. Chair, point of order.

Chair JORDAN. With that, I yield. I yield back and recognize the gentleman from California for five minutes.

Mr. SCHIFF. Thank you.

Madam Chair, thank you for your testimony today and thank you for the refreshing and aggressive approach you're taking to ensure competition.

In my view, we have reached a dangerous point in this country where there has been a tremendous concentration of corporate power—at the expense of working families. The challenge we face today is not that people aren't working; people are working. The problem is they're not making enough to get by. Part of that is the result of this concentration of power in corporate hands—the likes of which I don't think we have seen in our history. So, I appreciate the work that you're doing.

I want to ask you, in particular, about an issue I've written to you about that concerns me, and that is consolidation among the large grocery stores, the large grocery chains. This has the potential of not only having an adverse impact on price, but also having an adverse impact in the form of job losses, in the form of creation of food deserts, impacting communities.

If you are able to share your thoughts in terms of that particular merger, great. If you're not, I would ask, more generally, what you're looking at in terms of impacts and, also, vis-à-vis the narrowness of the doctrine that focuses only on consumer prices? Would that prevent you from looking at other criteria, such as the impact on communities and the impact workers?

Ms. KHAN. So, we seek to take a 360 view to make sure we're fully understanding how a particular merger may be lessening competition in ways that are informing consumers, but that may be hurting suppliers. In the context of grocery mergers, we really take care to make sure we're looking at all sides.

As you noted, there is a pending investigation that Kroger-Albertsons has disclosed. The FTC is looking at their proposal. I think you're absolutely right, though. We have seen the consolidation in the grocery sector could have devastating effects for communities, contributing to food deserts. One practice that is also on our radar is the way in which grocery chains can be using what are known as restrictive covenants to try to lock out competition geographically, which may also be contributing to these food deserts.

So, we're looking at that closely. We want to make sure that we're enforcing the antitrust laws in ways that are serving all communities.

Mr. SCHIFF. Well, I appreciate that. I have grave concerns about the Kroger-Albertsons merger and the impact on the communities that I represent, and many others throughout California and the country, in terms of impact on workers, on prices, and on communities.

Let me just turn to the issue that the Chair was just raising with you. You didn't get much of a chance to elaborate on the privacy and security problems at Twitter and how they could impact the privacy of millions and millions of Americans. I'd like to give you that opportunity, because I'm both concerned with the enormous proliferation of hate speech on Twitter, the firing of many of the

individuals charged with security at Twitter, and what impact that on the rise of hate, but also on the decrease in security and privacy of people's data at Twitter.

Ms. KHAN. So, again, we're squarely focused on the privacy and security implications of any decisions that may be made. As I noted, Twitter's history with the FTC goes back over a decade where serious security and privacy lapses led to personal information being compromised. As you noted, Twitter today also has access to deeply personal, sensitive information.

In 2022, we entered into a revised consent order because we found that Twitter unfortunately had been in violation of the prior consent order. Whenever we have repeat offenders at the agency, we're always thinking very hard about what we can be doing to prevent repeat violations. Our revised order has even tighter privacy and security provisions. It was voted out unanimously at the Commission. We'll continue to make sure that our orders are being followed that companies are protecting people's privacy and security.

Mr. SCHIFF. I appreciate that. I'd also like to ask unanimous consent to enter in the record a couple articles, one from Gizmodo, "Elon Musk, King of Censorship: 10 Times the Free Speech Absolutist Silenced Twitter Users," and also an article from Rest of the World, "Twitter is complying with more government demands under Elon Musk," which includes:

But Twitter's self-reported data shows that, under Musk, the company has complied with hundreds more government orders for censorship or surveillance—especially in countries such as Turkey and India.

I request consent to enter those into the record.

Chair JORDAN. Without objection.

Mr. SCHIFF. Thank you, Chair. I yield back.

Chair JORDAN. The gentleman yields back. The gentleman from Colorado is recognized.

Mr. BUCK. I thank the Chair. Chair Khan, thank you for being here. Do you own stock in Apple, Amazon, Facebook, or Google?

Ms. KHAN. No.

Mr. BUCK. Do you own stock in any of the competitors to those companies?

Ms. KHAN. I do not.

Mr. BUCK. Do you know that the ethics official who requested that you recuse yourself from any activities involving Facebook, owned stock in Facebook?

Ms. KHAN. I learned about that, yes.

Mr. BUCK. Do you know how much it costs to buy Congress? Well, big tech does. They spent \$250 million against the bills that pass out of this Committee last Congress. They spent money lobbying. They spent money on advertising in Members' districts. They spent money with third-party think tanks. They spent money that no other effort in recent memory certainly has been spent.

It's not just the money that they spent. On lobbying, for example, Meta spent—and I call it Facebook—\$20,070,000; Amazon, \$19,320,000; Alphabet, \$11,770,000; and Apple, \$6,500,000. It's not just the money that they spent on lobbying and those activities.

On June 18, 2021, just five days before the markup hearing of the big tech bills in this Committee, Paul Pelosi, Nancy Pelosi's

tech investor husband, bought 4,000 shares of Alphabet via a call option in which he promised stocks at a later date at a price of \$1,200 a share a month later. Now, this is after we've passed the bills. Nancy Pelosi, the Speaker, sent Steny Hoyer, the majority leader, to the press to tell the press that these bills were not ready for the floor.

A month later, the stock price rose to over \$2,500, making Paul Pelosi \$5.2 million richer without spending a penny. Speaker Pelosi's office, it should be noted, issued a statement denying any involvement or prior knowledge of the transaction. The fact remains that she refused to bring to a vote on the House floor those bills, bills that resulted from an 18-month long investigation.

We had last year as a result of Congresswoman Jayapal's efforts and my efforts and some other efforts a stock ban in the House, a ban that would prohibit Members from buying individual stocks. You probably also don't know that more than 50 Members of Congress bought stocks in pharmaceutical companies during the COVID crisis when Congress immunized—a good term, I guess, to use during the COVID crisis—immunized pharmaceutical companies if there were any problems with the vaccines that they created. We can't pass a stock ban, but we can call you into Congress and suggest that somehow you shouldn't be involved in activities involving some of these companies because you wrote a law review article.

Do you have a child? I don't want you to answer that question just yet because that's personal. Do you have a child who is lobbying for Amazon or Facebook?

Ms. KHAN. No, he's turning six—he's turning six months this week, so, no.

Mr. BUCK. OK. They'd probably still hire him. If they could influence you, they would hire your child at six months old because, in fact, they've hired Senator Schumer's daughters to lobby for them. The same bills that pass the House didn't pass—didn't get a chance—I'm sorry.

The same bills that passed the House Judiciary Committee and never saw the light of day on the Senate floor, either. That's just how the game goes. You're well aware of the need to update the antitrust laws concerning the new economy that we are facing. I'd just like you, if you could, briefly to explain what is the need. Why is it so difficult to apply antitrust laws written at the turn of the last century to the new economy?

Ms. KHAN. Thanks, Congressman. So, there is antitrust doctrine on the books that has embedded within its certain economic assumptions about how certain markets work, about what types of incentives businesses face. That doctrine in some cases is 30–40 years old, way before we had the advent of digital markets.

These digital markets function differently, right? You have the self-reinforcing advantages of data, network externalities. Companies face different incentives. They're engaged in different strategies.

Sometimes there can just be a gap between how the doctrine is saying businesses are acting and what we see in reality. So, legislative updates can be needed to close that gap between what the theory says or what the doctrine says, and what we're all living with

in actual markets. So, that's, in particular, where legislative action can be absolutely critical.

Chair JORDAN. The gentleman's time has expired. The gentleman yields back. The gentleman from California is recognized.

Mr. CORREA. Thank you, Mr. Chair. Chair Khan, welcome today. What is your job?

Ms. KHAN. I have the great honor of serving as Chair of the Federal Trade Commission.

Mr. CORREA. What do you do in that role?

Ms. KHAN. Well, help manage the agency oversee both our Bureau of Consumer Protections—

Mr. CORREA. Protect consumers?

Ms. KHAN. Protect consumers, protect—

Mr. CORREA. Where do you get that authority?

Ms. KHAN. Congress charged us with that in the FTC Act and subsequent Legislative Amendments.

Mr. CORREA. Is that new?

Ms. KHAN. Excuse me?

Mr. CORREA. That authority new?

Ms. KHAN. That authority stems back to 1914 and then subsequent amendments in the following decades.

Mr. CORREA. We talked a little bit earlier about litigation fees, enforcement costs. Let me ask you, are you a profit center or are you an agency in charge of protecting consumers, enforcing the law, and going after individuals that may prey on our consumers, our taxpayers?

Ms. KHAN. We're a government agency that using every dollar we have to protect the American people from illegal business practices.

Mr. CORREA. Thank you. Let's talk about Main Street, people who send us here to Washington. I get scam calls every day, robocalls. Seniors get robocalls every day. Veterans get robocalls every day. How are you working with the FCC to stop these calls from happening?

Ms. KHAN. So, we in the FCC have overlapping jurisdiction as you noted. One thing that we're doing in addition to going after some of the robocallers themselves is identifying what are some of the upstream factors that are allowing these calls to proliferate? Sometimes these calls are originating from other countries in ways that can make it difficult for us to go directly after them. This is why we look at VoIP providers and other upstream—

Mr. CORREA. Madam Chair, a number of years ago, I had a situation in my district. We had to get Interpol involved. Calls were originating from Mexico when the local telephone companies were providing the calling information. It was a huge, huge mess. International, very much a difficult challenge. What can we in Congress do to help you rein in these predatory calls?

Ms. KHAN. There are certainly legislative updates that we're happy to recommend to you and your team. I would say generally given that the FCC also has authority over the telecom carriers themselves. Directly taking action at that layer could also probably have a very big impact.

Mr. CORREA. At the end of those scam calls, you have victims, people that get hurt really bad and struggle to get that money

back. What is your agency doing to help consumers get their money back?

Ms. KHAN. We're bringing lawsuits where we can. Unfortunately, a couple of years ago, we suffered a big setback in court where the court said that 13B of the FTC Act which has been a core provision that we use to go into court and get back money for people who have been scammed out of money. The court said, "we can no longer use that authority."

That was a big setback. Since then, we've been activating other legislative authorities to make sure we're trying to get money back where we can. There's no doubt that billions of dollars evaporated after that court decision. People are losing out as a result.

Mr. CORREA. So, do you need legislative help from Congress to do your job, protect consumers in this area of junk fees?

Ms. KHAN. Absolutely. Legislation, in particular, enabling the FTC to go into court under Section 13B and get money back so that lawbreakers are not profiting from their lawbreaking. That would be essential.

Mr. CORREA. I think that's important. Lawbreakers need to know there's somebody there, a police officer waiting to make sure that they follow the law. Too many times my locals get ripped off. They call the local PD.

They don't know what to do. They call the local State agency. They don't know what to do. I hope that you and your agency can continue to be effective in making sure that consumers on Main Street are protected.

Our seniors essentially that sometimes are embarrassed to call me and tell me, I just got ripped off. They don't have the energy or the wherewithal to defend themselves. These are the people we need to be protecting.

I asked if you were a profit center. I know you're not. Nonetheless, I encourage you to continue to do a good job because my constituents, American taxpayers, are relying on your agency in doing a good job. Thank you very much. Mr. Chair, I yield.

Chair JORDAN. The gentleman yields back. The gentleman from Virginia is recognized.

Mr. CLINE. Thank you, Madam Chair. You implemented the use of omnibus resolutions in antitrust investigations. These resolutions in effect give the Chair of the FTC sole control over FTC investigations. The Chair could direct staff to investigate a transaction, sign all subpoenas without a Commission vote, which was previously necessary in investigations of almost all mergers and business conduct.

Former Commissioners Phillips and Wilson, Wilson resigned over much of this type of action from you. This paragraph eliminated the only layer of Commission oversight. Wouldn't you agree that the use of omnibus resolutions in this matter undermines the bipartisan nature of this Commission model? Are you trying to turn the Commission into your own personal empire?

Ms. KHAN. Congressman, omnibus resolutions have long been used at the FTC before I joined. It's fairly standard for there to be omnibus resolutions on the consumer protection side, again, long before I joined. Changes we made brought the consumer protection

side in symmetry with the competition side to empower our staff to act nimbly.

Mr. CLINE. OK. Let's talk about that because the staff has been leaving in droves. A report by Bloomberg found that 71 senior attorneys left the agency in the two-period between 2021–2022, the highest number of departures in the category for a comparable two-year period since 2000. Coincidentally, the Progressive Change Campaign happens to have a list of 400 recommended names for positions in the FTC and the Biden Administration. Has anyone including Adam Green of the Progressive Change Campaign communicated with you to hire any of these individuals?

Ms. KHAN. No.

Mr. CLINE. OK. Have you hired any of these individuals?

Ms. KHAN. No, I don't know what list you're talking about, to be honest.

Mr. CLINE. OK. Let's move on to this Committee and your responsiveness, or lack thereof, to this Committee following up on what the Chair asked. In March, your Director of the Office of Congressional Relations testified before my Subcommittee on Responsive and Accountability to Oversight regarding your refusal to produce documents related to this Committee's oversight of the FTC's harassment of Elon Musk following his acquisition of Twitter. It's well known that the FTC frequently seeks extensive information from the parties that it investigates.

When those parties fail to produce what's required to the FTC to conduct its investigation, the FTC seeks sanctions. In the FTC's response to this Committee's inquiry, most of what it has provided is already publicly available or otherwise incomplete. I find it inconceivable that the FTC would tolerate such a production for parties under its investigation. So, what should this Committee do and take from the FTC's paltry production to date on this matter?

Ms. KHAN. Congressman, our team has been enormously responsive. We've been working day after day to accommodate this Committee's request. We've offered and provided numerous nonpublic briefings including on the matter that you mentioned. It is true when we have an ongoing law enforcement investigation, there are additional consideration we have to take into account to make sure we're not compromising law enforcement or killing any of the free speech of the third parties that communicate with us.

Mr. CLINE. Does that include communication through nongovernmental email accounts? Because in the limited materials that you provided, we can see that your staff communicated using Gmail accounts. In other instances, employees from other agencies were using employees email account attached to that separate agency.

So, you were talking about how you're committed to using government communications methods. I don't know if you're aware that your staff is not. What steps have you taken to secure responsive material from sources outside the FTC?

Ms. KHAN. Congressman, whenever anybody onboards onto the FTC, we provide extensive training to make sure everybody knows only to use authorized devices. If sometimes inadvertently there is a message that props up somewhere else, you're supposed to forward it to your FTC email. I imagine that's why it was actually captured in those productions.

Mr. CLINE. OK. You asked Congress for a historic budget increase of 160 million, or 37 percent, citing staffing shortages which you're largely responsible for and insufficient resources. Did you announce a joint effort within the DOJ antitrust division with the FTC to send staff to Europe to assist with implementation of their Digital Markets Act?

Ms. KHAN. Congressman, we have a really fantastic Office of International Affairs that I inherited. It was launched in 2007 during the Bush Administration. As part of our international efforts, we're routinely sending detailees—

Mr. CLINE. Do you know how much that costs?

Ms. KHAN. Excuse me?

Mr. CLINE. How much does it cost to send staffers to Europe?

Ms. KHAN. I don't know off the top of my head, but we're happy to provide that information if it would be helpful to you.

Mr. CLINE. OK. Well, due to the rank partisanship that's coming up in your agency, the fact that you all are ignoring Congressional requests for information and the wastefulness that we've seen, I know that the Appropriations Committee is marking up your budget as we speak. They are seeking a 25 percent reduction in funding for the FTC today. Actually, the Appropriations Committee is going to be passing that government funding bill.

So, actions have consequences, Madam Chair. You're about to see what consequences your actions have had. I yield back.

Chair JORDAN. The gentleman yields back. The gentlelady from Pennsylvania is recognized.

Ms. SCANLON. Thank you, Mr. Chair.

[Simultaneous speaking.]

Chair JORDAN. I'm sorry. I'm sorry, sorry. I was just told that and soon forgot. The gentlelady from the other side of the country is recognized from the State of Washington.

Ms. JAYAPAL. Thank you, Mr. Chair. Chair Khan, as head of the Federal Trade Commission, I would just like to thank you for the FTC's investigations and enforcement actions that protects small businesses and hardworking Americans and promote competition. You have done what few before you have dared to do.

Few before you have had the courage to take on big corporations who use their endless lobbying money to hurt Americans with more fees, less transparency, and higher costs. You are taking on big tech and the monopoly powers that allow them to use our data and snuff out small business competitors. That was something that yesterday I got a lot of bipartisan praise for in taking on Director Wray at the FBI around privacy.

You're doing the same thing. There should be more people like Representative Ken Buck talking about that on this Committee, talking about the efforts that you are making to finally put teeth into protecting consumers. I am grateful to you.

In fact, I think it's precisely because of your success, your courage, and your integrity that you are receiving all these baseless attacks on your character. So, just for the record, here are the facts. It was FTC Ethics Official Lorielle Pankey who owned stocks in Meta when she recommended that Chair Khan recuse herself from investigating Meta, Facebook's parent company.



In contrast, Chair Khan owns no stocks in big tech, not one penny. A Federal judge ruled that her stances do not constitute a conflict of interest. So, I want to thank you to your integrity and your commitment to the mission, which is precisely why the President appointed you to head the FTC.

Now, I want to spend my time talking about your accomplishments, the FTC's accomplishments under your leadership. One in five workers are affected by noncompete clauses which essentially means that employers restrict or ban workers and their employment contracts from freely switching jobs just for the average person who's out there listening. The FTC is currently working on banning these noncomplete clauses. Can you explain in plain language why your agency proposed this rule to ban noncompete clauses?

Ms. KHAN. I'm happy to, Congresswoman. I would be remiss if I didn't mention our ethics officer. From working with her, I know our ethics officer to be a dedicated career professional who serves the agency with nothing but its best interest at heart. I understand in that instance she sought guidance from the Office of Government Ethics and acted consistently with it.

On noncompete, so these are clauses that lock in workers and prohibit them from being able to seek an alternative job with a competitor for a period of time and oftentimes geography limits. We've seen from our work that these clauses suppress worker wages to the tune of \$300 billion. They also make it difficult for startups and entrepreneurs and new businesses to enter and compete. That's why we've proposed this rule.

Ms. JAYAPAL. What types of workers are going to benefit from the implementation of that rule?

Ms. KHAN. At the proposal stage, it would be everybody. We've heard from gardeners, journalists, healthcare workers, fast foot workers, engineers, and scientists. These noncompete clauses have really proliferated across markets and across our economy in ways that are now hurting everybody.

Ms. JAYAPAL. So, let me turn to your work on junk fees. There are few issues today that unite Members of Congress more on the Hill. I'm proud to say that junk fees attract the ire of both Democrats and Republicans because as your agency notes, they are, quote, "surprise charges that inflate costs while adding little to no value." So, tell us how widespread these junk fees are and give us some examples of what you're talking about and how they harm consumers.

Ms. KHAN. Yes, I'm sure everybody can relate to this in their day-to-day lives. These mystery fees that show up, be it a resort fee charge on your hotel bill or an unwanted or unnecessary charge that shows us somewhere else. One of the areas where we've heard most about these junk fees is in the auto context.

Buying a car is one of the most significant financial investments that people make. Unfortunately, we've heard that all too often consumers are saddled with charges for unnecessary or unwanted or redundant fees. We're moving forward there.

We also brought a lawsuit last year against Vonage for also including some of these junk fees when people tried to cancel their subscription. So, that's just some of the work. We currently sought

comment on whether we should do more work on junk fees including potentially proposing a rule. We're reviewing those comments and determining how to move forward.

Ms. JAYAPAL. The FTC has got a long history of dealing with junk fees. Is that correct?

Ms. KHAN. That's right.

Ms. JAYAPAL. Can you talk about that?

Ms. KHAN. So again, in the auto context, in particular, we've gotten hundreds of thousands of complaints about this. We've brought dozens of lawsuits addressing junk fees that consumers are saddled with when trying to buy a car. It's really market-wide that we've seen these charges emerge and that we're looking to be actively addressing.

Ms. JAYAPAL. Well, I want to thank you for your work and hope that we talk more about some of the shared interest that we have across the aisle. Thank you. I yield back, Mr. Chair.

Chair JORDAN. The gentlelady yields back. The gentleman from Florida is recognized.

Mr. GAETZ. How timely. You are a brilliant woman with a tremendous ability to impact how consumers are going interface with the digital world for a long time to come. I want to get to those areas of agreement, but there is some ugliness we got to deal with. Now, you guys putting in the names of reporters in a correspondence to Twitter was solely predicated—based on anonymous news sources, right?

Ms. KHAN. It was based on reporting that—

Mr. GAETZ. Right, and we would agree that anonymous reporting is not a sufficient predicate for—to target—to send letters about journalists who are your critics, right?

Ms. KHAN. Congressman, yes, the goal was third parties, but this is good feedback for us. We want to make sure we are not in any way suggesting that we are interested in affecting journalists' work. It is really about privacy and security. So, I really appreciate—

Mr. GAETZ. I appreciate your acknowledgment that this is not the way we ought to do things. As someone who has seen ugly government action emerge out of anonymous reporting, perhaps I am a little sensitive to that, but I am glad that you have made that acknowledgment.

Let's get onto the important work that you are doing. Millions of Americans have Ring doorbell cameras, and your agency recently put out a correspondence saying, quote,

During a three-month period in 2017, a Ring employee viewed thousands of videos of female users in their bedrooms and bathrooms including videos of Ring's own employees.

There was also at Ring, according to the FTC, an unauthorized tunnel that allowed a Ukraine-based contractor to access consumer videos. An incident where a Ring employee gave information about a customer's—to their ex-husband was also something that you uncovered.

You also State that bad actors at Ring took advantage of the camera's two-way communication functionality to harass and threaten people who used Ring cameras. There was a case where an 87-year-old woman in an assisted living facility was sexually

propositioned through Ring's two-way features. Kids were subject to racial slurs. A hacker got in and threatened a family with physical harm if they did not pay a Bitcoin ransom and one hacker even communicated through the two-way feature to a customer that they had already killed the customer's mother and, quote, "tonight you die."

What is going on at Ring?

Ms. KHAN. So, as you know, we recently took enforcement action precisely because of these very serious lapses in data privacy, which endangered Americans in their day-to-day lives. Overall, looking at some of these surveillance devices and how they can be misused and abused is a top area of focus for us because people's privacy is paramount.

Mr. GAETZ. Yes, I thought that when people got Ring it was to enhance their personal security, not to have their 87-year-old relative in an ALF sexually propositioned, their children to be slurred at, and then to be told that they were going to be killed if they didn't pay Bitcoin ransom. So, thank you for that effort.

Let's go to another evil company, Kochava. Kochava is one of these data brokers that you are going after, right?

Ms. KHAN. That's right.

Mr. GAETZ. The American people should know that Kochava geolocates where people go to church and then they sell that data to commercial enterprises, right?

Ms. KHAN. That's right.

Mr. GAETZ. That is really creepy, isn't it?

Ms. KHAN. I believe most people would have that reaction, yes.

Mr. GAETZ. I got onto the FBI Director yesterday for their creepy FISA activity and now we have Kochava literally selling to people, oh, well, this is a Baptist, this is a Methodist, this was someone who goes to temple. Are you going to get these people and stop them?

Ms. KHAN. So, we have a pending lawsuit. We filed it last year. The court dismissed it. They gave us the opportunity to refile. We just refiled an amended complaint. We think it's urgent to act here because the types of stigmatization and harms that can stem from being able to track and sell people's sensitive geolocation information is just critical for us to be addressing.

Mr. GAETZ. We didn't like it when the FBI was wanting to infiltrate the Catholic churches and I don't know that I want the data brokers to do the same. By the way, we have even seen how the FBI is using the data brokers to do an end-run around the Fourth Amendment. So, I really want to encourage your work in this space, and I hope that your litigation against Kochava is something that creates precedent.

You know what, there has been criticism of some of your losses in court, but we as sophisticated lawyers know sometimes that a motion to dismiss in an initial complaint can create a pathway to an amended complaint to achieve relief. So, if the laws are insufficient to stop data brokers from selling information about where my constituents worship and if the laws are insufficient to stop Ring from these activities, I really hope you will work with us to change those laws.

All of Mr. Buck's points are really central to this because if Congress is bought off, if people are just coming here to beat you up over what email account you use or what trip you have been on to Europe, I think it misses these things that are far more central to the life that our constituents lead. Thank you for your work.

Chair JORDAN. I would just say worse than Kochava selling it, is the FBI is probably buying it. That is the scariest part.

Mr. GAETZ. Agree with both.

Chair JORDAN. So, I appreciate—

Mr. GAETZ. Let's get a bill, Mr. Chair, to deal with those data brokers.

Chair JORDAN. We are working with the gentlelady who just went right before you to do just that. That is something that I this Committee can hopefully agree on.

I neglected to mention this earlier, Madam Chair. We have been at this 1½ hours. If you need a break at any time, just let us know. If not, we can keep going because we can get up and leave, but you can't. So, you let us know if you need a break. With that, if you are willing to keep going, we will go to the gentlelady from Pennsylvania for five minutes.

Ms. SCANLON. Thank you. Chair Khan, I want to start by thanking you and the FTC for your work to protect American businesses and workers and consumers on issues ranging from privacy concerns to deceptive business practices, to unwanted telemarketing and robocalls, to fraud and financial exploitation that targets seniors, service members, veterans, and those in recovery from opioid disorder. Those are all really important issues, and we hear from our constituents regularly about all that.

You don't have an easy job. It is not made any easier when bogus claims are levied against you in Congressional Hearings. Every day some of our colleagues seem to be trying to prove the legal maxim that if you don't have the law on your side, argue the facts. If you don't have the facts either, just argue. So, we appreciate your patience in responding to a lot of fact-free questions.

I want to focus my questions on hospital consolidation and the growing problem of private equity firms buying up hospitals and healthcare groups. In the Philadelphia region in recent years, we have had two major hospitals purchased by private equity firms after which those firms mismanaged the healthcare functions of the hospitals, stripping them of their assets, and then either closing the hospitals or putting them up for sale.

This was Hahnemann Hospital in 2020, which was closed in the middle of the COVID pandemic after a private equity-backed real estate developer bought it. That left a gaping hole in our front-line healthcare system in one of the poorest cities in the country.

Then currently the Crozer Health system is teetering on the verge of bankruptcy while hemorrhaging talented staff and medical practices after a private equity owner stripped the system of assets, undermined its relationships with medical staff, and has reduced access to medical care, particularly maternity care, emergency services, and behavioral healthcare.

The impact on our local healthcare system has been so extreme. We have seen local Republican politicians calling for government intervention in this private equity firm's hospital business to pre-

vent from closing or bankrupting the system and its constituent parts.

We are also seeing this troubling national trend in which private equity firms have embarked on a buying spree to scoop up smaller healthcare groups. There was a revealing report from the Petris Center at UC Berkeley and the Washington Center for Equitable Growth detailing the trend of private equity firms buying up multiple doctor groups in a city and then using that consolidation to raise prices. So, we are really concerned about this trend that is reducing access to healthcare and then raising prices.

So, what is the FTC's response to the call for more regulatory scrutiny over these transactions and how can it increase oversight and enforcement activities to ensure that we preserve market competitiveness in our healthcare system?

Ms. KHAN. This is such an important issue, Congresswoman, and we at the FTC, our team has done a fantastic job really addressing hospital consolidation. In particular, in local markets we've had a whole set of successes really spanning hospitals trying to merge in ways that would have hurt patients. Our staff was able to block that transaction and the parties walked away.

I think you're absolutely right though that today we're seeing different types of strategies including the incursion of private equity. I recently met with some emergency medicine physicians who had come from across the country who were sharing how the incursion of private equity is really harming quality of healthcare for people in very material ways. So, that's something that's on our radar.

We're trying to figure out how do we update our tools to be able to address this. We recently issued some proposed updates to what's known as our Hart-Scott-Rodino Form. Sounds very technical, but it's basically the information that parties have to provide us when they're looking to make an acquisition. Partly those changes would give us more insight into some of the type of roll-up strategies that you're mentioning so that we know on day one whether a private equity firm has this history of roll-ups that should put us on high alert. So, definitely something that we're looking at closely.

Ms. SCANLON. OK. I have got a couple more questions on that same topic that I will save for the next round or submit to you, but I did want to yield 30 seconds to Representative Jayapal.

Ms. JAYAPAL. Thank you so much, Representative Scanlon.

I just wanted to say quickly before I ask my question that I was not trying to attack the ethics of your ethics officer. I was trying to point out the hypocrisy of those on the other side who raised that you have conflict of interest and don't mention the other issues that might exist there.

I just want to go to evil actors because there is one more I really want to talk about, and that is tax preparation companies. For years Intuit, the maker of TurboTax, flooded consumers with ads promising free, free, free tax filing services only to trick and trap them into paying, which is why taxpayers pay \$250 on average each year just for the privilege of filing their taxes.

So, State Attorney Generals have won taxpayer's money from Intuit and the FTC has also taken action. Can you just speak about that?

Ms. KHAN. Yes, absolutely. So, last year the FTC brought a lawsuit against Intuit for those very types of deceptive practices that are laid out in our complaint. That is still pending, but I couldn't agree more that claims of something being free but then ultimately not being so really hurts people.

Mr. GAETZ. The gentlelady's time is expired.

The gentleman from Louisiana is recognized for five minutes.

Mr. JOHNSON of Louisiana. Thank you, Mr. Chair.

Chair Khan, I'd like to begin with policies related to diversity, equity, and inclusion, DEI, that you have instituted at the FTC during your tenure.

Last month you implemented a so-called Equity Action Plan that calls on the FTC's Bureau of Competition to, quote, "update its case selection based on those two criteria." Allowing the bureau to wade into picking cases based on these amorphous terms like equity is an idea that we believe is fraught with problems.

You have also hired staff who have published articles on the topic of, quote, "antiracist antitrust." Can you explain to the Committee what that means? What does that term mean?

Ms. KHAN. Congressman, it's not a term that I've used. I can say generally I know that there is a lot of worry that concentrated economic power hurts everybody, all communities, and that the FTC needs to be mindful to make sure that our work is focused on the harm that is affecting everybody.

Mr. JOHNSON of Louisiana. Everybody, right? So antiracism should not play a factor in competition and consumer protection policies at the FTC, right?

Ms. KHAN. Congressman, we bring our lawsuits based on the law at and. We look at closely at where we—

Mr. JOHNSON of Louisiana. This is not one of the factors? Antiracism is not going to be used under your watch, right?

Ms. KHAN. There are instances in which Congress has asked the FTC to look at whether particular communities are being defrauded. In those instances, we follow what Congress has told us to do, but otherwise we just follow the general laws, that's correct.

Mr. JOHNSON of Louisiana. OK. A senior staffer at your FTC recently attended an event, gave a speech, and discussed, quote, "applying a gender lens to antitrust," in which the senior staffer praised a cross-agency equity team. Are you applying a gender lens in the context of antitrust analysis now?

Ms. KHAN. To be honest, I'm not really sure what that means.

Mr. JOHNSON of Louisiana. We aren't, either. I hope you are not using it. OK. Is there a cross-agency equity team? Was she accurate about that?

Ms. KHAN. We have a lot of cross-agency teams. There are teams that are focused on how you make the FTC a better place to work, including by making sure that certain types of—

Mr. JOHNSON of Louisiana. OK. Equity is not in your bailiwick now. You don't have a team dedicated to that, correct?

Ms. KHAN. We have a cross-agency team that's thinking about how to make sure that the FTC is a good place—

Mr. JOHNSON of Louisiana. OK. She just overspoke. OK. I got it, for time. Don't you think reorienting the FTC from protecting consumers to protecting favored groups, that this idea would run

counter to what the FTC's mission is? Right? You said it is to apply to everyone, right?

Ms. KHAN. That's right.

Mr. JOHNSON of Louisiana. We shouldn't be injecting these—I guess it is progressive policy initiatives that we are concerned about. The FTC has a really important mission, and we don't want you to get off course.

Last year on a party line vote FTC also expanded its authority under Section 5 of the FTC Act well beyond what any previous FTC has done over the last 40 years. In a November 2022 policy statement that power was expanded to unfair methods of competition that is described as, quote, “conduct that goes beyond competition on the merits,” and that, quote—here is the key—“even when conduct is not facially unfair, it may violate Section 5.”

Following that decision Former Commissioner Christine Wilson stated—this is what she said, quote, “The Commission has now created the authority to summarily condemn essentially any business it finds distasteful.”

That is an extraordinary power. It is very concerning because unfair is an amorphous and very subjective term by nature. Are you using Section 5 authority to determine what is unfair even if it is not facially unfair, whatever that means?

Ms. KHAN. Congressman, we look very closely at the text of the statutes that Congress wrote. The text of the FTC Act instructs us to prohibit unfair methods of competition. We have to take those words seriously. When putting together that policy statement our team looked closely at decades of case law to try to understand how have courts interpreted what this means, and the policy statement reflects that.

Mr. JOHNSON of Louisiana. OK. Really quickly, there is an example recently—I believe you are in the process of ending noncompete agreements as an unfair method of competition. That decision could go into effect next year, is that right?

Ms. KHAN. We got 24,000 comments on the proposal. We're reviewing them and determining how to move forward.

Mr. JOHNSON of Louisiana. Would you favor a blanket ban on all noncompete agreements? Is that your position?

Ms. KHAN. So, the proposal bans the vast majority of noncompetes with a few exceptions, one of which is noncompetes that are included as part of the sale of a business.

Mr. JOHNSON of Louisiana. OK. Let me ask you a question: Have you ever run or worked in a small business?

Ms. KHAN. I personally have not.

Mr. JOHNSON of Louisiana. Yes. So, do you think it is reasonable for entrepreneurs and small businesses who have spent considerable time and money developing practices to better compete against their rivals to find your ban on noncompete agreements unfair?

Ms. KHAN. We'll be eager to hear from them. I know we've gotten a lot of input. The other thing I'll say we hear from small businesses is that noncompetes make it difficult for them to compete because if they're trying to enter a market and compete with some of the big guys, but the big guys have locked up all the workers through noncompetes, that hurts the small businesses. So, we really have heard multiple views on this issue.

Mr. JOHNSON of Louisiana. I am out of time. I yield back.

Chair JORDAN. The gentleman yields back.

The gentleman from Colorado is recognized.

Mr. NEGUSE. Thank you, Mr. Chair.

Beware of that profound enemy of the free enterprise system who pays lip service to free competition but labels every antitrust prosecution as a persecution. Those words were uttered by President Franklin Delano Roosevelt 90 years ago.

I have listened to most of today's hearing, Madam Chair, and of course we are grateful that you are here today. I have listened to many of the criticisms that have been made by my colleagues of your leadership at the FTC on the other side of the aisle. Not all my colleagues, but most of them. The vast majority of these criticisms have nothing to do with your ethics or your integrity or your approach to the job and everything to do with corporate power. The reality is that you have pursued your duties as the Chair of the FTC in a way that puts the best interests of the consumers first. That is a new approach at the FTC.

I don't want to belabor the point because I have some substantive questions for you, but I will ask for unanimous consent later at the conclusion of my remarks and our colloquy here for an article in *The Wall Street Journal* from June 30, 2023, the headline of which is "Ethics Official Owned Meta Stock While Recommending FTC Chair Recuse Herself From Meta Case."

We have spent a great deal of time hearing my colleagues talk about this particular issue. I will just simply echo the comments made by my colleague from Colorado and my friend Mr. Buck who I thought very powerfully on this front.

Only in Washington, DC, can an individual, a regulator who has no financial interest in the merger before her be accused of an ethics violation by Members of Congress who own financial—or have rather financial interests in the company that has petitioned for that—or has rather proceeded with that particular merger that is under review by the FTC on the basis of an opinion that was issued that didn't conclude that there would be a per se ethics violation for the commissioner in question to proceed with considering the matter, but nonetheless opined that there would be an appearance of impropriety and of course that individual having a financial interest in the underlying—in the company that was involved in the merger.

I am not commenting. I agree with Ms. Jayapal on the propriety of the decisions made by the ethics individual or the Ethics Department more broadly. I am simply opining on the State of affairs in Washington, DC. Because for years we have had FTC commissioners who had real conflicts of interest. You didn't have any financial interest in Meta, right?

Ms. KHAN. That's correct.

Mr. NEGUSE. You never worked for Meta?

Ms. KHAN. That's correct.

Mr. NEGUSE. The basis as I understand it for the objections by many of my colleagues and others is that you have a certain view when it comes to putting consumers first and ensuring that monopolistic power does not reign supreme in our country. I just think



it is unfortunate that some of my colleagues have taken that approach.

I will say for my part I am grateful for the work that you have done at the department. I also am grateful for the work that your partners and of course other antitrust enforcement regulators and Assistant Attorney General Kanter has done over the course of the last several years.

We, as you know, passed a bill on a bipartisan basis last year. It was my bill, The Merger Filing Fee Modernization Act, which I believe is going to strengthen your efforts and your ability and the efforts of your hardworking workforce within the FTC by changing the fee schedule for mergers, actually decreasing the fees for smaller mergers, but increasing the fees proportionately for billion dollar transactions and giving you the resources that you need to fight for consumers on behalf of the American public.

I wonder if you might talk a bit about that particular bill, its implementation, and the impact it will have on agency resources.

Ms. KHAN. Thanks for the question and thanks for your effort leading that bill. It was a much overdue effort to update the filing fees. As you noted, make it clear that for larger transactions there is a higher fee; for smaller transactions a lower fee. We, in part, rely on those fees to be able to fund our enforcement and so that's absolutely going to be making a difference.

Mr. NEGUSE. Well, as I have said, I am grateful for the approach that you all are taking. I was proud to work on that bill with Representative Buck who has been a champion on these issues, among other colleagues of mine on both sides of the aisle. I think we look forward to continuing our work with you, Madam Chair, for years to come on this front.

With that, I will yield back.

Chair JORDAN. The gentleman yields back.

The gentleman from Kentucky is recognized.

Mr. MASSIE. I thank the Chair.

My constituents aren't contacting me worried about mergers between tech companies or that sort of thing, but one of the things I have been contacted about multiple times is the small independent grocers feel like they are—monopolistic practice is being used against them. Mr. Correa and I sent a bipartisan letter to you asking for an update because on November 29, 2021; this is 17 months ago, the FTC ordered nine large retailers, wholesalers, and consumer goods suppliers to provide detailed information to help you study the causes behind ongoing supply chain disruptions.

I appreciate you being willing to give us briefing, but can you brief us today? Like what have you found and are you going to be able to help these folks who are complaining about they can't get products or there is discriminatory pricing not based on quantity, but based on other things, or different package sizes? What can you tell us here today?

Ms. KHAN. Yes, this is such an important issue. We've heard from those independent folks as well and it's partly what informed our decision to launch this study. We're moving as expeditiously as we can. As you can imagine, sometimes firms don't have an incentive to give us all the information we need as quickly as we need it, but we are moving ahead full speed and happy to be providing

you with the nonpublic briefing to share what we've found so far. We'll be looking to make our findings public as soon as we can.

Mr. MASSIE. I hope that is soon. It has been 17 months since you asked them to give the information. I understand it takes them a while to get it to you, but I would hope we could get that very soon.

Another issue that concerns many of us are these so-called preconsummation warning letters. On August 3, 2021, FTC announced that it would send warning letters in connection with transactions it cannot fully investigate with the time provided by the statute before the deal closes.

Now, why should people trying to do regular business be punished because it is taking you too long to do your job? How many of these so-called pre-consummation warning letters have been sent by the FTC?

Ms. KHAN. So, the statute gives us only 30 days to look at a deal to determine whether we need to investigate it further. As deals have become more complex, that can be a very, very, very tight timeline. We have heard from some businesses that if we don't act within that 30-day period, the takeaway for them is that there are no issues and there are no concerns.

So, we thought it was important to put business on notice, to provide them clarity and transparency that if there is a deal that we think raised concerns, but we weren't able to act within the 30 days, that we're putting them on notice about that again to make sure that the market has clarity on it.

Mr. MASSIE. Commissioner Phillips publicly suggested that within the first six months of this practice over 50 letters were sent and raised the question of whether any of those investigations actually remained open and whether this approach was simply a tactic to scare business. I am worried that whether it is a tactic or not that is the effect that it is having. It is having a chilling effect. Then when you issue one of these letters and then you never tell them whether the case is closed or not kind of without doing anything, you have stopped transactions that would be helpful to Americans.

I want to now yield back the remainder of my time to Chair Jordan.

Chair JORDAN. I appreciate the gentleman yielding.

When the FTC attorney deposing Mr. Roque asked him to confirm that quote, "no one from the FTC directed you to reach a particular conclusion about Twitter's program." He explained to the contrary.

There were suggestions of what they would expect the outcome to be. He testified that the FTC communicated to Ernst & Young—again Ernst & Young is the independent assessor, the fact finder that the FTC selected and made Twitter pay for—that he communicated to Ernst & Young that, quote, "Ernst & Young under all circumstances will be conducting and issuing a report on behalf of the FTC order," and was very adamant about this is absolutely what you will do and this is going to occur and you will produce a report at the end of the day. The FTC was so adamant. Ernst & Young leaders feared that the FTC would take exception of they chose to withdraw from the case.

So, on the one hand you are harassing Twitter. Then you are saying to the guy we have selected, the entity we have selected,

Ernst & Young, the accountant we have selected to be the fact finder, you better find what we want. If you try to get out of it, we are going to retaliate against you. That is frightening. We talk about the weaponization of government? This from the same agency that said tell us all the journalists you are talking to? That is what we are concerned about, Ms. Khan. That is what has to change.

You can comment if you want, but I am reading from the motion filed today in court. It is amazing to me you don't even know this guy, you don't even know who this person is and your lawyers deposed him. He is the guy that you have set up as the fact finder and you didn't know who he was. Did you sign off on any of those 12 letters sent to Twitter in that 10-week timeframe?

Ms. KHAN. Congressman, we're fortunate to have a lot of work underway. A lot of this work is delegated to the front-line staff that are able to move quickly and nimbly to make sure—

Chair JORDAN. Yes, but you are in front of Congress today. You knew you were going to get questions about this. The idea you don't know this, I find amazing.

Ms. KHAN. It sounds like it was a late-breaking development and a filing this morning. It's not something that's on my radar. I'd be reluctant to weigh in on it in this setting without looking more closely at it. Happy to take questions for the record on it and engage later.

Chair JORDAN. Not on your radar that you told—based on the testimony of this guy that he felt there would be retaliation if Ernst & Young tried to get out of the agreement? Wow.

Mr. MASSIE. I yield back.

Chair JORDAN. The gentleman yields back.

I now recognize the gentlelady from Pennsylvania for five minutes.

Ms. DEAN. Thank you. Before my five minutes I ask unanimous consent to enter into the record what Mr. Neguse had hoped to enter: "Ethics Official Owned Meta Stock While Recommending FTC Chair Recuse Herself From Meta Case."

Chair JORDAN. Without objection.

Ms. DEAN. Thank you. Thank you, Mr. Chair.

Thank you, Chair Khan, for being here, for speaking with us today about the important work that FTC does to safeguard consumers and crack down on companies that would exploit them. I come from a perspective as a mother, as a grandmother. I care about exploitation of seniors, children, businesses, and consumers generally.

In your written testimony you explained that FTC works to protect privacy and data security, fight fraud, including fraud related to opioid recovery, and ensure that domestic manufacturers and small businesses have a chance to compete fairly. Somehow Republicans are using this time in other ways.

I apologize I am late to the hearing today, but I am pretty sure I am glad I missed some of what happened. I was in another hearing with Secretary Kerry on the climate crisis, so forgive me for coming late.

I wanted to ask you about the issue around opioid addiction and abuse and what FTC is doing. I know that FTC recently returned \$60 million to people suffering from opioid addiction. I know you

know, as well I, that the crisis, the health crisis, public health crisis in this country around the flood of opioids and opioid addiction is grave. A hundred and ten thousand people died last year of overdose. That is 300 people a day.

Can you tell us about your work, FTC's work to try to protect consumers, maybe this case, the \$60 million case with Reckitt—I don't know how to say that. Can you tell us about your work in that area?

Ms. KHAN. Happy to. When we were—this is a newer authority that Congress gave us, and I've been pleased that we have been able to quickly put it into action. We brought a set of lawsuits using this authority to make sure that if companies are deceiving potential patients of opioids recovery facilities, that we are acting quickly to prevent that deception.

We brought a case against a firm called R360 because we found that they were engaging in some of these deceptive practices in ways that were harming opioid recovery patients. We recently brought another action that also noted that deception around tobacco addiction recovery is also illegal under the statutory authority.

So, we are working to make sure if people are being deceived in ways that are illegal under this authority, we are acting and we are getting the money back.

Ms. DEAN. I thank you for that work. I hope you will continue in a robust way. Full disclosure, I have a son in long-term recovery, 10 years in recovery, from opioid addiction. We have lost too many others to this problem, and the deceptive practices are so egregious that it is very upsetting.

I wanted to move to—I have some time—I do; good—pharmacy benefit managers. They operate behind the scenes. Consumers don't really know what they are all about. They are a middleman in the drug market and determine patients' access to medications as well as the prices consumers pay.

In this role, PBMs have the power to raise prices and are part of the reason that consumers pay 20 percent more than they should for generic drugs. Can you speak to what FTC is doing around the issue of PBMs and disclosure to consumers and cracking down on the price hikes?

Ms. KHAN. You are absolutely right that these firms are oftentimes behind the scenes, so people are not directly interacting with them. Oftentimes, their decisions are determining what medicines make it onto what is known as the formulary.

Unfortunately, we have heard reports that suggest that rebates between the drug manufacturers and the PBMs may be keeping lower cost generics off the formularies.

So, what that means in practice is there is a lower-cost generic out there, but when patients are going to the pharmacy, they are not actually able to get it. They are having to pay more for the branded drug. So, we have said in our policy statement we are very concerned about that and are looking at it.

Ms. DEAN. Yes, how can we interrupt that, and FTC have some rulemaking, some effectiveness in interrupting that blockage of information to the consumer?

Ms. KHAN. So, we are looking closely at whether there may be violations of the FTC acts. The Robinson-Patman Act also prohibits certain types of kickbacks, I believe under 2(c) of the Robinson-Patman Act. So, we are really laying out all our authorities and making sure we are using them to address these issues.

Because oftentimes we hear from insulin patients about how they haven't been able to afford lifesaving medicine, potentially because some of these tactics. So, we recognize the urgency of this work.

Ms. DEAN. Again, on behalf of consumers, seniors, and kids out there, thank you for your work and the work of your entire team. I yield back.

Chair JORDAN. The gentleman from Arizona is recognized.

Mr. BIGGS. Thanks, Mr. Chair.

Thank you for being here today. I will say I wrote down something you said, I think I got the quote exactly right. I wrote it down because not only was it substantively meritorious, but also it was alliterative, "People's privacy is paramount." If only the FBI leadership believed and acted that same way, I would be happy.

I want to ask you first about the EU's Digital Markets Act. You previously commented and opined in response to Mr. Cline's questioning. He asked you how much spin, I think you said you don't know. I am wondering how many employees or personnel are working on the EU Digital Markets Act.

Ms. KHAN. So, my understanding is we currently have one employee that is detailed to Brussels. These details are routine, that have gone on for many years. They help improve coordination among agencies for us to better understand—

Mr. BIGGS. Is that employee working to help implement the EU Digital Marketing Act, or are they just observing? What is their role there?

Ms. KHAN. So, as a general matter, when we do these details, they are focused on antitrust enforcement, enforcement of the competition laws.

Mr. BIGGS. This is in Europe, though. This is implementation of a new law.

Ms. KHAN. So, these—

Mr. BIGGS. So, how does that impact antitrust law in the United States of America?

Ms. KHAN. So, these laws, as you noted, govern Europe. If the European Commission is working on implementing them, that is work that they are doing. Our work is focused on enforcing the U.S. laws, these types of details across agencies—

Mr. BIGGS. Right, but that begs the question, and I am looking for—I will move on because we always—the five-minute format is ridiculously absurd. We can't get a full answer or full question.

So, I am hoping that maybe you or your team will respond more fulsomely as to why we have someone there, even observing the implementation of an EU law that is not here, unless you are intending to support something like that here.

Are you familiar with someone named Rebecca Kelly Slaughter?

Ms. KHAN. Excuse me?

Mr. BIGGS. Are you familiar with someone named Rebecca—

Ms. KHAN. She is my colleague.

Mr. BIGGS. Yes, right there.

Ms. KHAN. She is here.

Mr. BIGGS. So, I have a quote from her, interesting. We are glad you are here. She has called for an equity, inclusion, and antiracist agenda in the antitrust enforcement, yet antitrust enforcement typically is focused on the consumer welfare standard, right?

So, do you agree with Ms. Slaughter, Commissioner Slaughter's call for equity, inclusion, antiracist approach to antitrust enforcement?

Ms. KHAN. So, let me say, first, it is just such a huge privilege to serve on the Commission alongside Commissioner Slaughter. She has thought so hard about how we make using all our tools—

Mr. BIGGS. That is beautiful. We only have five minutes. Send me a letter telling me how glad you are, please, but please respond to my question.

Ms. KHAN. She has thought an enormous amount of these issues and I won't claim to speak for her. The way I—

Mr. BIGGS. I am not asking you to speak for her. I am asking whether you agree that this is the appropriate approach and when it is a de facto departure from the consumer welfare standard.

Ms. KHAN. So, we enforce the laws that Congress charged us with. That includes prohibitions on unfair methods of competition—

Mr. BIGGS. So, not to interrupt, but to interrupt, you are not answering my question. My question is really specific. Do you support and agree with this new approach—which is what it would, because it would be a departure from the consumer welfare standard—do you agree with Ms. Slaughter's call for equity, inclusion, and antiracist as a basis to examine antitrust violations?

Ms. KHAN. So, again, we examine antitrust violations under the laws that Congress wrote.

Mr. BIGGS. Can you name a single law dealing with antitrust that obviates the consumer welfare standard and replaces it with an equity, inclusion, and antiracist standard? Any statute?

Ms. KHAN. The statute—

Mr. BIGGS. Federal statute.

Ms. KHAN. The statutes are worded broadly. We look closely at the text of them, as well as any case law.

Mr. BIGGS. Can you give me one that would facilitate obviating the consumer welfare standard and replacing it with the equity, inclusion, and antiracist standard?

Ms. KHAN. So, Congressman, look, you are right, there aren't cases on these specific questions. I will say, when Congress was passing the antimonopoly laws, they were doing so because they were worried that concentrations of economic power hurt everybody. That is the mandate we have.

Mr. BIGGS. That is right. That is right. They—but that is from that point of view how the consumer welfare standard developed and evolved. Now this, if you were take the equity, inclusion, antiracist agenda and use that as your new standard, you would have moved away from statutory and case law and tried to impose a new standard.

That is the point I am trying to make, and that is the point you are not responding to. I would ask that maybe you, or Ms. Slaugh-

ter even, whatever, would respond in the future so we have a chance to get the bottom of that.

Appreciate you being here. Thank you. I yield back.

Chair JORDAN. The gentleman yields back. The gentleman from Maryland is recognized.

Mr. IVEY. Thank you, Mr. Chair. I do want to start by commending Congressmen Buck and Gaetz for their comments earlier today. I was pleasantly surprised to hear the affirmative comments they made with respect to the FTC, but also legislation they are working on with Ms. Jayapal that I think is important and critical legislation that could be very useful.

I kind of note that we haven't had hearings on legislation like that. We have had a lot of hearings for the weaponization issues and a lot of hearings trying to attack the Biden Administration in various ways. We haven't had any hearings on affirmative legislation that would have an impact on people in these markets.

I am on the Antitrust Subcommittee, and I think we have had two hearings there. We had one Mr. Massie put together that dealt with agriculture issues, I think it was meatpacking in small entities.

It wasn't explicitly an antitrust hearing. It just so happened that the witnesses at the table noted that the big four companies that are dominating that industry are the ones that are crushing small farmers and running them out of business and increasing prices. I requested at the hearing some sort of approach that would try and address that concern, but nothing has come back yet.

I would note this too, we have got matters pending in the United States here before your commission or Department of Justice. It has been mentioned today already the PBMs, Ticketmaster, JetBlue, Kroger Albertsons merger, and the Microsoft matter that was handled yesterday.

The Subcommittee on Antitrust has had no hearings on any of those issues whatsoever. So, I know this an oversight hearing with respect to the FTC, but it might make sense if we would take a moment and have a little oversight for ourselves on what is going on here on the Subcommittee.

A few minutes ago, it was raised that—about a subpoena that the FTC had issued. I guess the comment was that it was overbroad.

I did want to raise this as well, the Judiciary Committee on May 25, 2023, sent a document demand to the Department of Justice that demanded, and I am quoting,

All documents and communications between or among the Department of Justice and the Internal Revenue Service referring or relating to any investigations involving both the Department of Justice and Internal Revenue Service from May 1, 2023, to the present.

Now, we will set aside for a fact for a moment that this would include grand jury materials potentially, which of course they can't turn over based on a letter like this, even from Congress.

If we are going to throw rocks, let's make sure we are not in the glass house. Because that is beyond overbroad. I think it is—and this isn't, I just picked one out of many, but there's a lot of requests that this Committee has sent out to the administration, and

in some instances to private companies, depending on whether they are on the good side of the Republicans or not.

I think we should be very careful in making sure we are using the power of the Committee and the House of Representatives in an appropriate way, just like they are asking the FTC to do.

Then I did want to close with this point. That is with respect to the recusal issue. That has been discussed quite a bit. I think it has been addressed and Judge Boasberg's opinion I thought made it crystal clear why you didn't need to recuse yourself. In fact, he said in judging the motions that had filed to him, that it wasn't necessary or even appropriate.

At the same time, this Committee again is ignoring one of the most obvious issues with respect to recusal ethics, and that is with respect to the Supreme Court.

We had 35 Members send a letter to the speaker and to the Committee Chair raising the issues, and we have all heard of them. Justice Thomas, and you know, he has got billionaires buying property from his mother and taking him on yacht trips and the like. Justice Alito had similar sorts of issues.

We sent a letter to both the speaker and the Committee Chair asking to have hearings, that we should take a look at code of conduct for the Supreme Court justices. That we should consider whether there should be rules in place with respect to recusal for Members of Congress.

To the best of my knowledge, there has been no response to this letter. More importantly, no steps that have been taken to try and address the issues that have been made very obvious by the conduct of Justice Thomas and Justice Alito. That is just the beginning.

So, I would move for unanimous consent to have an op-ed from Jesse Wegman, "Does Justice Alito Hear Himself?" and then Daniel Boguslaw, "Samuel Alito's Wife Leased Land to an Oil and Gas Firm While the Justice Fought the EPA."

Then the letter that is dated April 17 to Honorable Kevin McCarthy and Honorable Jim Jordan, and it is from 35-plus Members of the House. I would ask that all these be made part of the record.

Chair JORDAN. Without objection. The gentleman from California—the gentleman yields back. The gentleman from California is recognized.

Mr. MCCLINTOCK. Ms. Khan, there is a *The Wall Street Journal* column written by Christine Wilson. She resigned from the FTC because of a range of concerns over how you discharge your duties. What caught my attention was the censoring of her dissent in the Meta acquisition case.

Severe disagreements around here are par for the course, and we go to great lengths every day on this Committee to demonstrate that. We sort out our differences by freely exchanging our views, confident that this process will separate truth from lies, wisdom from folly. A free society depends on people knowing the difference for themselves. Censoring speech is utterly destructive of this process.

Can you explain why Commissioner Wilson's dissent criticizing your conduct was censored?



Ms. KHAN. So, Congressman, I couldn't agree more that this type of debate and discussion is critical. Congress designed the FTC as a multimember commission, and we really enjoy internally those discussions and debates.

Mr. MCCLINTOCK. Well, obviously not, because her comments were, in her dissent, were censored. So, why was that? How do you explain that?

Ms. KHAN. So, the way the Commission procedures work is that I was walled off from those decisions. As the majority of the Commission explained, they were identifying nonpublic information relating to staff analysis and material protected by deliberative process that we have longstanding FTC policy, adopted during the Reagan Administration, that says we don't disclose that type of analysis because we don't want to chill—

Mr. MCCLINTOCK. This was specific to criticism of you. Did you have any discussions with your colleagues over this?

Ms. KHAN. No, again, I was totally walled off from the proceeding.

Mr. MCCLINTOCK. What do you see as the role of government in determining what is misinformation or, for that matter, hate speech?

Ms. KHAN. The FTC is focused on deceptive advertising, so I guess, if a company says something is made in America, but it is actually made in China, that from our perspective is fraud and deceptive—

Mr. MCCLINTOCK. Well, you were discussing Twitter just about an hour ago. Do you see the government having any role in determining what is misinformation or what is hate speech?

Ms. KHAN. We are not involved with that. Again, we are focused on deceptive advertising, like Made in USA fraud. That is really what we are focused on.

Mr. MCCLINTOCK. Let me ask you, what is your view of capitalism?

Ms. KHAN. Excuse me?

Mr. MCCLINTOCK. What is your view of capitalism?

Ms. KHAN. The FTC's job it to promote competition and—

Mr. MCCLINTOCK. Oh, no, what is your view of capitalism?

Ms. KHAN. Could you explain what you mean by that term?

Mr. MCCLINTOCK. Good system, bad system? What do you say is its strengths and weaknesses?

Ms. KHAN. So, I think open, competitive, robust, resilient markets are critical to America's economic success. The FTC has the honor of playing a really important role in ensuring that our markets are open and competitive and position America to compete globally.

Mr. MCCLINTOCK. Of course, the beauty of a capitalist system is the fact that consumers everyday vote with every dollar they spend on what the economy will produce and what prices they are willing to pay. Do you see a role in government in interposing its judgment for theirs?

Ms. KHAN. The role of the FTC is really one of a referee. We believe in open, competitive markets, but for these markets to deliver good outcomes, we need to make sure the companies are playing

by the rules of fair competition. That is the job that Congress gave the FTC, and that is what we do.

Mr. MCCLINTOCK. I think you go much farther than that. I certainly hope that you will take to heart the economic criticisms that you have heard today. Mergers, for example, generally occur when companies determine that it is going to improve their efficiency, productivity, and hence their ability to serve their consumers. That grows the economy and it helps consumers.

I would urge you to be very careful, and your colleagues, very careful and very humble with your powers. Because when your decisions harm the economy, you are also harming your administration. Now, the average consumer might not follow the day-to-day decisions of your commission, but they know how they are doing in their own lives.

I will yield the balance of my time to the Chair.

Chair JORDAN. I will waive that. I appreciate the gentleman yielding, but—

Mr. MCCLINTOCK. Then I will yield back.

Chair JORDAN. Thank you. The gentleman yields back. The gentlelady from North Carolina, OK, North Carolina is recognized for five minutes. Thank you, Tom.

Ms. ROSS. Thank you very much, Mr. Chair, and thank you, Chair Khan, for joining us today.

Also, thank you for mentioning your work on PBM reform in your opening statement. This is a very important issue for our healthcare industry, and as you pointed out, for the health of our constituents.

This Congress I have been working with a bipartisan coalition of lawmakers to address abusive and exclusionary pricing practices by pharmacy benefit managers, or PBMs. Access to affordable prescription drugs is a critical issue for all Americans. I am hopeful that the FTC will take substantive steps to address the ways in which PBMs take advantage of patients and providers in their pricing strategies.

I know that you got a general question from Congresswoman Dean a little bit earlier, but I want to be much more specific. The FTC has been working on a 6(b) study since June 2022. When do you anticipate completing that study, and do you have any interim conclusions or findings that you can share with us today?

Ms. KHAN. Thanks, Congresswoman. As I noted, we recognize very deeply the urgency of this work because it potentially means that patients are not getting access to affordable medicines, and that, as we all know, can have life-or-death consequences. So, we are moving with great haste.

We are dependent on the companies to provide us information in a timely way. We are trying to drive that forward as much as we can in general. Historically some of these studies at the agency have taken 4–5 years. My goal is for us to be able to move more expeditiously.

I should also note that if, as a matter of course during this inquiry we instead identified practices that we would determine are unlawful, nothing would stop us from being able to focus on some of those law violations and proceed on the enforcement track instead.

Ms. ROSS. Great. Then also, the FTC recently expanded the scope of its PBM investigation to include group purchasing organizations, or GPOs, that have opened in recent years. How does the FTC believe that PBMs might be using these GPOs, and what kind of harm could they have in the market for affordable drugs?

Ms. KHAN. So, GPOs are another one of these kinds of entities that are not visible to consumers but play a really central middleman role in the market. We have sent out these additional requests because we want to make sure that we are getting a full 360 view of what is happening with these practices.

I should also note we have all read stories about major shortages of critical drugs. We have also received letters and inputs suggesting that the role of the GPOs may also be contributing to some of those shortages of essential medicines, so that is something that is on our radar as well.

Ms. ROSS. Great. Given that the three large PBMs are currently—they currently control 80 percent of the market, I am interested in how consolidation within the PBM industry affects patient access and costs.

In addition to this PBM consolidation, the largest drug plan sponsors also own their own PBMs. So, we are seeing a great deal of vertical integration as well.

We know that PBMs set out to pocket costs based on full, undiscounted list prices of drugs, so patients don't see a lot of the PBM discounts at the pharmacy counter. We know that some health-plan-owned PBMs require patients to fill prescriptions only at certain pharmacies or providers, which reduces access.

How are you seeing this consolidation and vertical integration impacting patients?

Ms. KHAN. Yes, it is such a great point. This is one of the issues on which we are routinely hearing from people. We opened a docket to kind of collect input around what people are seeing about PBM practices.

We received thousands of patients—thousands of public comments, many of them from patients who were concerned that some of these decisions about which medicines the PBMs are putting on the formulary or not putting on is not being driven by what is best for the patient but is instead potentially being driven by which is going to give the PBM the highest rebate.

So, I think that could be an instance where there is a conflict of interest between what is in the PBM's own interest and what is best for patients. So, that is something that we have heard a lot about.

Ms. ROSS. Final quick question, do you see a role for Congress in this area as well, not just what your agency does?

Ms. KHAN. Absolutely. This is such an urgent problem relating to unaffordable drug prices for Americans that I think it is an all-hands-on-deck moment.

Ms. ROSS. Thank you. Mr. Chair, I yield back.

Chair JORDAN. The gentlelady yields back. The gentleman from Texas is recognized.

Mr. ROY. I thank the Chair. Ms. Khan, thanks for coming here testify before the Committee.

Would you commit to me to provide all updates necessary with respect to the LIV Golf PGA Tour merger and all of you are looking into whatever is occurring with that?

Ms. KHAN. So, Congressman, I believe it is our partners at the Justice Department that are looking at that.

Mr. ROY. The FTC is also having some look into what is going on there, at least the news accounts I see. I would just appreciate any updates from your office about that and the concerns about it. I am going to yield the balance of my time to the Chair.

Chair JORDAN. Thank the gentleman for yielding.

Ms. Khan, earlier, and I believe the gentleman from Arizona brought this up, you said people's privacy is paramount. I couldn't agree more. As we talked earlier, I do think there is bipartisan support to deal with that, this sweeping up of data that happens, and scarier yet is FBI purchasing that data. So, that is of paramount importance.

I would say the First Amendment is of paramount importance too. Would you agree?

Ms. KHAN. Absolutely.

Chair JORDAN. Then the gentleman from California, Mr. McClintock, asked you what is disinformation? You said you don't really have an opinion on that, is that a fair assessment of your answer?

Ms. KHAN. As part of our job at the FTC, we are focused on deception and fraud and that sort of thing.

Chair JORDAN. Well, you wrote a couple years ago in a *Law Review* article, "Digital businesses such as Twitter disserve their users by facilitating the spread of disinformation." What were you talking about there then, what is disinformation?

Ms. KHAN. I am happy to take a closer look at the material you are mentioning, but as part of our work at the FTC, we have seen how fraud and scams can sometimes proliferate on these social media websites. We have launched an inquiry to try to understand why are some of these crypto scams really proliferating on these sites and what can we be doing—

Chair JORDAN. So, these are the first two sentences in the introduction of the piece you wrote, again, just a couple years ago. "Digital businesses such as Twitter disserve their users by facilitating the spread of disinformation." Who decides what is disinformation?

Ms. KHAN. From the FTC's perspective, it is deception. Deception and fraud.

Chair JORDAN. That is fine, you can keep using synonyms, but I want to know who decides that it is deception, who decides that it is fraud, who decides that it is disinformation. In this case, you are talking about social media companies and what gets posted on their platform. Who decides what is disinformation, what isn't?

Ms. KHAN. So, Congressman, again, at the FTC, we are focused on fraud and deception. There is a legal standard about what constitutes fraud. Again, this is about—

Chair JORDAN. You didn't say fraud or deception, you said disinformation. My concern is again, and it is probably the third time I have talked about this, but the sustained attack on Twitter when the ownership there changed and the platform was committed to not taking down speech, not taking down posts, allowing the sharing of information and not censoring.

We just had a major decision last week from a court in Louisiana, Federal court in Louisiana, where they said the government was in fact pressuring Big Tech companies to censor and Big Tech companies willing to go along with it. Now, we have a change there and you are going after the one company that has changed how they are doing things.

That is what concerns me, particularly, in light of the fact that you just wrote about this a few years ago saying this is what goes on.

Ms. KHAN. Congressman, I am glad to have the opportunity to clarify some issues here. So, we at the FTC have no view on who should or should not own a company. All we care about is that the company is following the law. That is really what our focus is—

Chair JORDAN. We have covered that ground. I want to know about disinformation and who decides what is disinformation. You think the government should decide that?

Ms. KHAN. Congressman, the way I see it is concentrations of economic power including over speech platforms and communication platform, that it is that concentrated power and the ability to pick who gets heard, who doesn't get heard to make these types of decisions, that I think is concerning to all of us. The FTC's job is to be promoting—

Chair JORDAN. You know what kind of speech was getting censored? Do you know what the court said last week, what kind of—have you read the opinion, by the way?

Ms. KHAN. I have not. It did not concern the FTC.

Chair JORDAN. You know what kind of speech was getting censored, you know what the court said? Conservative speech. Conservative speech as well as all—the suppression was virtually all conservative. This is not Jim Jordan talking about it is not Republicans on the Judiciary Committee talking.

This is the Federal judge who had the facts, 86 pages, the facts, and laid out and put the facts and the law together in his opinion, strong opinion, which said it was the conservative speech that was getting censored and labeled as disinformation.

Ms. KHAN. So, Congressman, I fully understand why, given the extreme concentration of power over some of these speech platforms, why people would be afraid and worried about censorship. I couldn't agree more that when you have a handful of people making decisions about what gets seen, what doesn't get seen, who gets heard—

Chair JORDAN. You think the remedy for that is for government to decide what is disinformation and what is not?

Ms. KHAN. Congressman, at the FTC, our job is to promote competition. More competition means more people making these decisions, and I think that can alleviate some of the concerns about censorship that you are sharing.

Chair JORDAN. The gentleman's time has expired. The Chair now recognizes the—is Georgia? Or yes, OK. I didn't know who had walked in first, or how the gentlelady from Georgia is recognized for five minutes.

Ms. MCBATH. Thank you, Mr. Chair.

Good afternoon, Chair Khan, it is a pleasure to have you before us today. I have read your testimony. Thank you for your time and your testimony.

Ensuring that emerging American businesses have an opportunity to grow and to thrive is essential for our economy, and one of the most American of practices, so to speak. America is a country that is built on the success of creative and innovative ideas. The determination of grit of its people is so vital, and the endless opportunities of its society.

For these reasons, we must do all that we can in our power to support competition, as you have just mentioned, and fight monopolies, which crush American opportunities. A robust antitrust framework supports small businesses by helping to ensure that they are not intimidated into conciliation.

It empowers the American people by allowing them freedom of choice in the marketplace. A robust antitrust framework strengthens American workers against monopolistic efforts to lower wages and eliminate their benefits.

That is why it is so wonderful to have you here today. Thank you so much for being here at the helm of FTC. You have actually been a champion of enforcing America's antitrust and competition laws for years, and America's economy is much stronger for it.

In fact, the U.S. has the highest post-pandemic growth of any Nation in the G7 and the lowest inflation, with a historic low unemployment rate of 3.7 percent, and that must be noted here today.

As I spoke on earlier, enforcement of antitrust laws helps to promote fair competition across the United States economy while protecting consumers and workers from deceptive and unfair practices. Balancing competition and effective antitrust enforcement are critical to protecting our consumers, our workers, innovation, and economic equity in this country.

Over the past 20 years, the U.S. has seen consolidation across all markets, whether it be in a nursing home industry, tech industry, or agriculture industry. Can you please comment on how this is applied in the context of large mergers that affect smaller competitors in the marketplace?

Ms. KHAN. So, Congresswoman, when we see mergers between two large firms, especially if they are competing in the same market, that can make it more difficult for newer entrants to come into the market.

We have seen how entry barriers can be raised and independent firms, small businesses can have a difficult time really competing on a level playing field if the merger is leading to market power that allows the merged firms to get special types of terms or discriminatory benefits that are not available to others.

Ms. MCBATH. Thank you. So, these past two terms, Congress has actually been examining the role of Big Tech companies and their exercise of market dominance, which has allowed them to make a profit and to leverage their gatekeeper power over small or new companies and competitors.

Can you talk about the steps that you are taking to ensure smaller companies, especially in the tech marketplace, get a fair chance to compete against bigger, more entrenched companies?

Ms. KHAN. So, the FTC has been looking closely at digital markets since before I joined the Commission. One of the first actions that we took when I joined was refiling the FTC's amended complaint against Facebook, where the FTC is alleging that Facebook's acquisitions of Instagram and WhatsApp were anticompetitive and really helped Facebook maintain its dominance in ways that locked out rivals. It really hurt consumers at the end of the day.

We are continuing to look closely at mergers and acquisitions to make sure that if we worry that these acquisitions are similarly going to create dominance and allow firms to maintain their monopoly, that we are acting swiftly there.

Ms. MCBATH. So, under your tenure, FTC has endeavored to restore meaningful antitrust law enforcement over the last two years. In this process, the FTC has made some powerful enemies, have you not? Yes, you have, I can answer that for you.

Ms. KHAN. We hear from a lot of folks, yes.

Ms. MCBATH. So, isn't the lesson learned here that antitrust agencies should trust vigorous competition and antitrust enforcement to deliver innovation and better services, rather than enabling entrenched gatekeepers to continue growing through acquisition in markets?

Ms. KHAN. Absolutely. I think America's history shows that when we promote fair and open competition, that is what best produces innovation and allows us to succeed.

Ms. MCBATH. Thank, and I am out of time.

Mr. VAN DREW. [Presiding.] Thank you. I recognize the gentleman from Wisconsin for five minutes.

Mr. TIFFANY. Thank you very much. I am not going to take five minutes; I am just going to take a real brief time here.

We heard some of the same pablum yesterday. I don't have a question for the witness, but we heard some of the same stuff from the FBI yesterday that boy, we respect the Constitution and all the rest. Nonetheless, they are ending up censoring the American people.

It was so interesting to hear yesterday when the Director of the FBI was here, and he said, well, these companies work within the free market. We can't change how they go about operating.

When you have a Federal agency, whether it is the FBI or the FTC, that comes calling at your front door, and they say gosh maybe you should be doing things a little bit differently, they pay attention.

I have used the example of the man who originated Facebook. He said in a podcast in the last year that in regard to the FBI, when they come calling, you are going to pay attention. Censorship happens from there.

I hope that you are cognizant of that as you go about doing your business.

Second thing that I would say is that we talked about entrenched gatekeepers and stuff like that. The barriers to entry that have been built here in Washington, DC, over the last few decades are significant. I can go back to two major bills that are over a decade old now, one being Obamacare, the other one being Dodd-Frank.

We see probably the least entrepreneurship that has happened in the healthcare and finance banking industries that we have seen

in decades because the barriers to entry are so high. I sure hope that you will respect that.

That you, while building these regulations out here, while passing laws as happened over a decade ago in regard to Obamacare and Dodd-Frank, it has harmed the rest of America. It has harmed entrepreneurs. It has harmed main street America. When they no longer have a bank with their bank being consolidated into something that is bigger.

So, you may say that boy, we are going to go after these big companies. Well, hell, we created them here. I hope you won't participate in creating additional barriers to entry so that entrepreneurs cannot participate in the free-market society that was built in the United States of America over the last nearly 250 years.

I will yield back.

Mr. VAN DREW. Thank you. A couple questions I had. I just wanted, using a little bit of this time there. The gentleman from Georgia mentioned that he thought you were being treated unfairly, if you remember, at the beginning, that is about an 1½ hour ago, and differently because of your ethnicity and because of your color.

Do you believe that is true?

Ms. KHAN. Congressman, I am focused on really—

Mr. VAN DREW. I know you are, but just—

Ms. KHAN. Very diligently the questions you are asking, I—

Mr. VAN DREW. I am just curious; do you believe that is true? Because if you watch the hearing, I was offended by it, to be honest with you. If you watch the hearing yesterday, we gave a gentleman a pretty thorough raking over asking some difficult questions.

I hope that you know it has nothing to do with ethnicity or color. I hope you don't feel that way, and I was wondering if you do. It's a yes-or-no—

Ms. BUSH. A point of order.

Mr. VAN DREW. Yes?

Ms. BUSH. Mr. Chair, just wondering whose time we are using right—

Mr. VAN DREW. He yielded back his time to me.

Ms. BUSH. OK.

Mr. VAN DREW. He had time left over.

Ms. BUSH. Thank you.

Mr. VAN DREW. Mr. Tiffany. Yes, go ahead. Just give me a yes or no, do you think you are being treated fairly?

Ms. KHAN. It sounds like a robust debate among the Committee about these issues and I defer to you all.

Mr. VAN DREW. One of the things I would love to change is that when we ask people to say yes or no, they would. It is so hard when people come before us. I just wanted to say one other thing too, and then we will move on.

*Robocalls.* I know you heard about them today. It is a really big deal. You want to talk about a way that you are affecting people's lives. They are sophisticated, they are scary. People are getting in trouble because of them in everything from social security to buying timeshares. It is a really big problem.



I would love to, and I am going to speak to Mr. Correa, I would love to work with him across the aisle, love to work with whomever to do something about that issue.

I have other questions for you later, but at this point I will recognize the gentlelady from Missouri.

Ms. BUSH. Thank you. St. Louis and I are here today in strong support of the rights of workers, of consumers, small businesses, and the broader public to be free from corporate greed that monopolizes our access to information and treats employees and communities as expendable.

Thank you for being here, Chair Khan. I appreciate your service as a staffer on this Committee, your groundbreaking scholarship on antitrust law and antimonopoly issues, and your record of accomplishments as FTC Chair.

The Commission has an important role to play in protecting our economy from the harms caused by greedy, reckless corporations that put profit and power over people. Look at Big Tech, Big Pharma, Big Oil, and any other concentrated industry, these companies and the profit-obsessed executives behind them have abused their power for too long, and it is time that they be held accountable.

So, we absolutely need to level the playing field for workers and consumers. The FTC can and is trying to help under your leadership, and I appreciate that, because it makes a real difference in communities like mine.

For example, in recent years, FTC lawsuits have resulted in more than \$33 million provided to more than 178,000 Missourians. In 2020 alone, the FTC provided \$8.6 million to people in Missouri, including St. Louis.

That is real money for real people harmed by corporate greed. It is food on the table, it is a roof over a head, it is clothing for a child. Another example was the FTC's proposed rule to ban non-compete agreements.

Chair Khan, as was brought up earlier, banning noncompete agreements is estimated to raise wages by over \$200 billion each year and to close racial and gender wage gaps by up to 9.1 percent. Is that correct?

Ms. KHAN. Congresswoman, as we laid out in our notice of proposed rulemaking, those are some of the estimated effects, yes.

Ms. BUSH. Thank you. It is a lot of money in the pockets of workers and Black and Brown people and women, in particular. Can you explain specifically how banning noncompete agreements means workers will get paid more?

Ms. KHAN. So, what our staff did is they looked very closely at the empirical evidence that has now surfaced in light of the different State policies that we have seen.

What we have seen is that states that have limited noncompetes are able to ensure that workers are moving around more freely. Though, unfortunately, we still see that all too often companies are still trying to include noncompetes.

What we have also seen is that being able to switch jobs, being able to move freely between jobs and get better job opportunities is a key mechanism that workers have to use to be able to get higher wages and better employment opportunities.

When you freeze workers in place, when you lock them in place through these noncompetes, that means that they are not able to go across the street, even though the firm across the street is offering them better wages or better working conditions, and that is bad for workers.

Ms. BUSH. Absolutely. Thank you, and that is a real impact that will save lives. Republicans don't like this. The party that is in the pocket of White supremacists and wealthy corporations will talk a big game about fighting for everyday people and then show up to Congress and do whatever their corporate donors want them to do.

That is what these attacks, that is what this is about. So, let me be clear. There is nothing unethical about standing up for workers, consumers, and small businesses. There is nothing unethical about enforcing the law against powerful and destructive companies like Amazon, Meta, and Twitter. There is nothing unethical about putting your principles into practice.

What is unethical is being apologists for the corporate greed that is fleecing our communities. What is unethical is claiming to care about workers, and then selling them out. That is the real ethics scandal here, and we need not forget it.

The bottom line is that corporate monopolies are a recipe for social destruction. Any lawmakers who claim to stand for workers and consumers must advocate against dominance by large private companies that care more about profit than people. We need to aggressively enforce our antitrust laws for the purposes Congress intended.

We also need to move beyond a digital economy dominated by billionaire-owned for-profit companies.

Chair Khan, you have never tried to hide who you are or what you believe, and I admire you for that. I thank you for your leadership, and I look forward to working with you and your agency on these critical issues.

Thank you, and I yield back.

Mr. VAN DREW. [Presiding.] Thank you. I recognize the gentleman from North Carolina, Mr. Bishop.

Mr. BISHOP. Thank you, Mr. Chair.

Ms. KHAN—is this working? Yes, I guess they hear it. Someone pointed out to me that just this morning the FTC—well, it was disclosed the FTC sent a civil investigative demand to OpenAI. Are you familiar with that?

Ms. KHAN. Congressman, this involves nonpublic information, but if it has been publicly reported then it may be accurate. I am hesitant to share anything nonpublic in this—

Mr. BISHOP. It is on Twitter. It seems to be asking among other things for whether ChatGPT or whatever other products they would generate statements about persons. Can you explain the gist of that or what is the regulatory authority of the FTC that it is that civil investigative demand is being issued under?

Ms. KHAN. So, as a general matter, some of the concerns that we are seeing in this AI space is that ChatGPT and some of the other services are being fed a huge trove of data. There are no checks on what type of data is being inserted into these companies.

We have heard about reports where people's sensitive information is showing up in response to an inquiry from somebody else.

We have heard about libel, defamatory statements, flatly untrue things are emerging. That is the type of fraud and deception that we are concerned about.

Mr. BISHOP. So, as a general proposition, and you just said something, you spoke to libel and slander or defamation issues. I am going to come to that, because that is an issue of State law as I understand it.

Is your regulatory reach there defined by the FTC act? Is that the basis under which you guys explore, investigate that stuff with a company like OpenAI?

Ms. KHAN. So, it is absolutely true that we don't directly address those things. We are focused on is their substantial injury to people.

Mr. BISHOP. Yes.

Ms. KHAN. Injury can look like all sorts of things.

Mr. BISHOP. So, like, and you were speaking earlier in communication with the Chair or your colloquy with the Chair about Twitter, the Twitter background of releasing private information.

Was that also subject to your regulatory reach under the FTC act because it was somehow deceptive? Or is there some other statutory source that generally puts you guys in charge of sensitive information about people?

Ms. KHAN. Yes, it is the FTC act that prohibits unfair or deceptive practices and unfair methods of competition. That is primarily the authority we have used in these instances.

Mr. BISHOP. OK, and that is interesting. Just for the people in the public, the operative language of Section 5 that you guys I think are using there and in the context of the noncompete rule that you have come out with, it just says,

... unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful.

Right, that is the language?

Ms. KHAN. That is right.

Mr. BISHOP. So that, it is not really very detailed. Let me ask you for a minute about the noncompete rule. So, you guys have this proposed rule you are seeking comments on. Administrative process, then once those comments are reviewed, you guys will decide, the FTC will decide whether to proceed with a final rule. Is that the way it works basically?

Ms. KHAN. That is correct.

Mr. BISHOP. So, in that case, I litigated these types of contracts in State law for 30 years, and in North Carolina. I know California has a rule that absolutely bans them. There are different renditions of law, some statutory, some made by the courts over time in States all over the country, and there have been for a long, long time.

So, what your rule would do would displace all that State contract law in one fell swoop if it were made final, wouldn't it?

Ms. KHAN. It would create a new floor, yes.

Mr. BISHOP. It would create a what?

Ms. KHAN. Yes, it would be creating a new provision that would be determining that these noncompetes are ruled unlawful.

Mr. BISHOP. So, you would not only—and it would be per se. I know some of the stuff stated in your notice of proposed rule-making that I glimpsed said it would be that you saw these as inherently coercive or the product of unequal bargaining power.

The rule would be per se, except for a very narrow category, the overwhelming majority would be per se, even if the people involved in those contracts wanted to make them, right?

Ms. KHAN. That is the proposal. We did ask as part of our notice of proposed rulemaking some questions about whether there are adjustments we should make.

Mr. BISHOP. OK, and I don't want to get into the minor details because we only got 30 seconds left. Let me just ask you this, because if you take that example or many of the others that have been talked about, you spoke a moment ago about being concerned about concentrations of economic power. I get that.

Isn't there a basis to be concerned about concentration of legal power, lawmaking power? So, you got 30,000 State judges have made those rules, you got 7,558 State legislators, you got lots of Members of Congress, you got multiple chambers in Congress.

The fact that you really as the bare majority on the FTC could make such a ruling, isn't that something that Congress should be concerned about, how much power you wield?

Ms. KHAN. So, we make these determinations pursuant to authority that Congress has given us. When we promulgate rules pursuant to the Administrative Procedure Act, there are a whole set of procedural protections that go into play relating to the comment periods that we have to use to get public input.

There are certain standards of review for judicial review. There are so many checks as part of this process, and it is really quite regular for administrative agencies to be engaging in rulemaking.

Mr. BISHOP. You get to say what is unfair, right?

Ms. KHAN. So, interestingly, Congress, when passing the FTC act, was having a debate. They said should we actually define, should we list out in the statute all the practices that should be unfair.

Congress determined businesses are so innovative, they will find ways to do an end-run around any of the practices we list. Let's allow the FTC to use their expertise to make sure that as markets are evolving, as business trends are evolving, that they can make sure that their statutory authority is keeping pace.

So, this was a determination and decision that Congress made to use that language, and we follow the text of the law.

Mr. BISHOP. Thank you, ma'am, I wish had more time. Yield back.

Mr. VAN DREW. [Presiding.] I recognize the gentlewoman from Vermont.

Ms. BALINT. Thank you, Mr. Chair.

Before I begin my line of questioning, I just want to make note of something. Our Republican colleagues have touched a few times today on the words of a third-party auditor who was deposed as part of the Twitter lawsuit.

I think it is really important to point out for the sake of transparency that this deposition was filed last night, and here we are talking about it today.

I believe in coincidence, I really do, but that is a pretty lucky coincidence that a pretty—that evidence supposedly providing the Republican accusations today was released in such a timely manner. So, I think it is really important to make note of that.

Chair Khan, thank you so much for being here. Thank you for being here to the bitter end. I really appreciate your testimony this morning.

I would like to touch on a extremely timely and controversial issue, which is artificial intelligence. Specifically, I would like your thoughts on generative AI and competition.

It is tough to imagine online platforms gaining even more power, but it seems that Big Tech firms who control their own AI systems and access to cloud data are in a position to do just that. I find that alarming, as do many of my constituents back in Vermont.

So, what I would like to ask you is how could AI technology lead to an even more consolidated internet landscape with even few choices for consumers?

Ms. KHAN. So, Congressman, let me say, first, these moments of technological disruption, when you have these game-changing technologies enter the market, these moments oftentimes provide a lot of opportunity for disruption and for displacing some of the existing incumbents and giants. So, there's always a chance that will be the effect.

I think you're right that, with these technologies, we see inputs required, required here that really favor dominance and favor scale. So, you need huge amounts of compute; you need access to huge amounts of data; the models.

Our staff recently published a blog post laying out what some of these competition concerns could be, but I think you're absolutely right that we all need to be very vigilant to make sure that this potentially transformative technology is not further consolidating market power in ways that could really harm competition.

Ms. BALINT. How would a firm use AI and cloud access to illegally expand their market power? What would that look like?

Ms. KHAN. So, I don't want to get into hypotheticals, but the types of—as we lay out in the blog post—traditionally, the types of concerns that you might have is if firms with market power or conditioning access to one set of technologies and critical inputs, on firms having to also buy other services, those types of tying agreements, and especially when they're having an exclusionary effect, can be concerning under the antitrust laws.

Ms. BALINT. Are you concerned about this issue in relation to the digital markets?

Ms. KHAN. In general, we're very concerned about competition in digital markets, yes.

Ms. BALINT. OK. In my last time here, I also wanted to touch on another issue, which is dark patterns. Amazon Prime has reached a point where it's practically impossible to avoid. FTC recently took Amazon to task for using a series of digital tricks or dark patterns to enroll people in Prime without their consent or to prevent people from canceling their subscription. This is something that I hear a lot from my constituents about.

Last year, the agency reported that, quote,

More and more companies are using digital dark patterns to trick people into buying products and giving away their personal information.

How common is it for online companies to use these dark patterns?

Ms. KHAN. Unfortunately, through our work, we've seen that it is too common; that we see companies using these tricks. Our staff published a report going into detail about the different types of dark patterns that we see, which, in practice, end up tricking or manipulating people into making choices that they're not really seeking to make.

So, we want to make sure that we're fully grasping how these dark patterns are working. We've been bringing onboard a whole set of technologists that are able to kind of dig deep; look under the hood; figure out what's really going on. So, it's going to continue to be an area of focus for us.

Ms. BALINT. Something that you said there really, really struck me. It is, essentially, about taking away people's choice. When you're not transparent about the ways in which consumers are being entrapped into signing up for something or not being able to cancel something, that is taking away their ability to vote with their dollars, essentially, which is something we've heard about in this hearing today.

What effect does this, then, have on competition and privacy and innovation? Just briefly.

Ms. KHAN. So, we want to make sure that companies are competing on honesty. We don't want honest businesses to lose out to firms that are engaging in dark patterns and these types of deceptive practices. So, there's a consumer protection dimension to it, but, as you noted, there's also a competition dimension.

Ms. BALINT. I really appreciate that. Thank you.

I yield back.

Mr. VAN DREW. [Presiding.] Thank you.

I recognize the gentleman from Oregon.

Mr. BENTZ. Thank you, Mr. Chair.

Thank you for being here today and for your patience. I disagree with the "bitter end" phraseology that was used. I think the entire conversation has been extraordinarily interesting, and I appreciate your being here to share your thoughts.

I'll set this up with a standard question. Do you agree with the following statement from former Commissioner Wilson?

The agency lacks the expertise (and, in some cases, the jurisdiction) to pursue the additional societal goals embodied in the Strategic Plan.

Jumping just to the phrase "unwarranted health, safety, and privacy risks"—I'm actually looking at the plan right now. "For example, unwarranted health, safety, and privacy risks," tell me how that, those became part of the focus of the FTC? Because that seems to be an expansion of what the FTC used to focus on. Or maybe I'm wrong. That's how my question is set up, my first one.

Ms. KHAN. So, I think you said, "unwarranted safety, health, and privacy risks," is that right?

Mr. BENTZ. Yes. Actually, I'm just reading from,

The FTC focuses on investigating and litigating conduct that causes or is likely to cause substantial injury to the public. This includes not only monetary injury, but also, for example, unwarranted health, safety, and privacy risks.

Ms. KHAN. So, the statute says that an unfair practice is one that causes—one of the problems is substantial injury. Substantial injury is not defined, but, for years now, the FTC has interpreted that, and courts have ratified that, to mean not just monetary harm, not just losing money, but certain types of harm to wellness and safety and health. So, some of the deceptive advertising cases—

Mr. BENTZ. Are you referring to courts? Is that what you said?

Ms. KHAN. That's right.

Mr. BENTZ. OK. So, just because I want to move on, if you could provide me with the cases that you're referring to, please? So that I can see the courts that you're relying on for that, that effort.

Now, let me slide that aside and let me go to the next issue. This is one, of course, that you brought up in your famous paper, the "Amazon's Antitrust Paradox." The issue is—and forgive me; I'm not an expert in this space. I didn't even take this class in law school. So, my question—antitrust—so, my question is: What, if not the consumer welfare standard, what standard? I'm, basically, lifting this right out of Bork's book—about 25 hours I'll never get back that I went and spent reading it. My question to you is: If not that standard, what standard are you going to apply? Do you still apply just that sole standard in determining the challenges that bigness creates?

Ms. KHAN. So, we applied the text of the statutes that Congress passed, and we look closely at the language in the statutes that Congress passed, consistent with legal precedent. There are some case holdings related—

Mr. BENTZ. If I may—

Ms. KHAN. Yes.

Mr. BENTZ. If I recall correctly, before Bork's learned treatise, there was mishmash of legal precedent. You could select among almost any standard. That's one of the reasons he was so clear in stating what he thought would be the proper standard. That is the best for the consumer.

So, I'm asking you, if you're going to move away from that standard—what he so artfully articulates in his book—what is the new standard?

Ms. KHAN. So, we're focused on the law, including the case law, not on a—

Mr. BENTZ. Wait, wait, wait, wait, wait, wait.

Ms. KHAN. Yes.

Mr. BENTZ. I just pointed out that, before Bork, there was any number of standards. Just grab one. So, when you say you're looking at "the law," which law?

Ms. KHAN. The Sherman Act, the Clayton Act, the FTC Act, the Safe Harbor Act—

Mr. BENTZ. OK. Those are extraordinarily—they were, they were written to be very broad and to give you the power to try to control this, this economy that we've got. Bork went in and tried to find some sort of a—create some sort of a standard against which you could measure your actions. His ideas were accepted.

I think your article—this way better than anybody in this room. So, my question is, what's the new standard? Don't, please don't

take me into the law and don't do that. Tell me, what do you have that's better than what Bork suggested?

Ms. KHAN. So, in instances where the Supreme Court has said, for example, that the Sherman Act should be interpreted consistent with consumer welfare, of course, we look closely at that. The Sherman Act is not the only statute, right? For the FTC, we're charged with prohibiting unfair methods of competition. I think it's incredibly important for us to honor Congress' intent in creating multiple—

Mr. BENTZ. Wait, wait, wait, wait, wait. Stop. You're a lot of generalizations. What's the standard that you are suggesting to take the place of the consumer welfare? What is your standard? Please don't give me generalizations.

Ms. KHAN. So, the standard depends on the statute that we're enforcing because each statutory scheme is slightly different. When we're enforcing the FTC Act, the words of the FTC Act are "unfair methods of competition." That's the standard we're enforcing. We laid out a policy statement last year that laid out in very clear and in great detail what that standard means, reflecting a century of case law.

Mr. BENTZ. So, I'm out of time, but I will look at your explanation, and I appreciate your time here today. Thank you.

Mr. VAN DREW. [Presiding.] We are going to take a five-minute recess, and we're going to strictly adhere to that. It will be five minutes.

[Recess.]

Mr. VAN DREW. [Presiding.] I recognize the gentlelady from Texas—Florida. I'm sorry. My God.

Ms. LEE. Thank you, Mr. Chair.

Mr. VAN DREW. [Presiding.] Both the Texas folks and the Florida folks are going to get mad at me now.

[Laughter.]

Ms. LEE. Thank you, Mr. Chair.

Good afternoon, Chair Khan. I'd like to focus our attention on the recent Notice of Rulemaking and proposed changes to the premerger notification form requirements and instructions. So, this new proposed rule would require submission of substantial additional documents from what is currently the status quo, including draft agreements and term sheets, as opposed to just the final proposal for review; information about creditors, minority shareholders, officers, directors; and information on labor markets; data about workforce, including geographic information about employees, and details about prior penalties and findings by the NLRB, is that right—among other things?

Ms. KHAN. Yes, we issued a proposal of suggestions for additional information that we'd be getting.

Another key area would be foreign subsidies. So, Congress told us to get information about whether firms that are looking to merge are getting subsidies from China or other countries—

Ms. LEE. So, thank you. In summary, this proposed rule would substantially expand the types and volumes of documents and information that are being submitted as part of this premerger review process, correct?

Ms. KHAN. That's right.



Ms. LEE. OK. We also know that this rule, this new rule, if adopted, would substantially affect the time and the cost associated for entities who want to participate and make submissions under the premerger review process. Correct?

Ms. KHAN. Yes, people would have to comply with the new form which is seeking additional information.

Ms. LEE. Right. Your agency, in fact, has estimated that this would increase by over 100 hours the time necessary to compile compliance documents to make this submission, and in some cases, in some of the more complex or larger cases, even much more than the 100 hours. Correct?

Ms. KHAN. These are some of the estimates in the NPRM, yes.

Ms. LEE. Yes. The internal estimate also identified a cost estimated at \$350 million impact for the change in the rule for compliance, is that right?

Ms. KHAN. That's on the higher end. I will say, a lot of this will depend on the complexity of the transaction. If you're seeing a merger between two fairly small firms that don't have any complex holdings or that sort of thing, I imagine it would be much less.

Ms. LEE. You just raised a very interesting point, and it was one of the things that I wanted to ask about. So, if we know, going in, that the time and the cost now associated with this premerger review process—the time is going to increase; the cost is going to increase—won't this affect the businesses that are at the lowest end of the reporting thresholds the most? Would they be the least able to incur those costs and time without affecting their overall margins?

Ms. KHAN. So, again, it really will depend on the complexity of the merger. If it's a fairly simple transaction, I imagine it will be much easier to comply.

I should also note, this is all about what firms need to produce on the front end. It's our belief that, by getting more information on day one, that will allow us to more efficiently and effectively administer the laws in ways that could create more certainty for businesses on the back end. We're able to—

Ms. LEE. At the conceptual level, the large corporations—the ones, in fact, that I believe you're probably the most concerned about—the very largest corporations are the ones who are the most capable of saying, "Yes, let's bring in our outside counsel and spend a few couple more hundred hours," or "Let's allocate additional costs to go through this process." They will be the ones who could most easily absorb this change, as opposed to the smaller entities at the lower end of that threshold.

Now, let's go here: So, by expanding the types of documents by the types of information that you all are reviewing in assessing whether a merger should be approved and allowed to proceed, you're really expanding the bases upon which the FTC could choose to approve, seek more information, or disapprove, are you not?

Ms. KHAN. We're still squarely focused on whether the merger may substantially lessen competition or tend to create the monopoly. That remains our legal standard. We're seeking—

Ms. LEE. How is it that some of the information that you're requesting, though, such as demographic information about employees, or information about shareholders and officers, how would that

relate back to that core mission that you all have been pursuing prior to now?

Ms. KHAN. So, issues relating to officers or things like, potentially, overlapping directorates, those can affect, for example, Section 8 of the Clayton Act in terms of if you have interlocking directorates. So, those are some issues in which they're squarely within the confines of the antitrust laws.

Ms. LEE. So, let me ask this then: The proposed rule, it's something that you all have, have developed, in essence, because you believe that it would have a significant impact, correct, on mergers, on the health of the economy, on businesses? You're pursuing this because you think it's meaningful. Correct?

Ms. KHAN. We're pursuing it because we think it will allow the FTC to administer the laws that Congress has charged us with more effectively and efficiently.

Ms. LEE. So, you believe it's consequential?

Mr. VAN DREW. Go ahead. The last question.

Ms. KHAN. We think it will be meaningful to enable the FTC to do its job, yes.

Ms. LEE. Without a specific mandate from Congress to engage in this behavior. Correct?

Ms. KHAN. I disagree with that. The Hart-Scott-Rodino Act allows the agencies to get information on the front end, when firms governed by this law are required to do so. We're acting pursuant to that authority.

Mr. VAN DREW. [Presiding.] The time has expired.

Ms. LEE. Thank you, Mr. Chair. I yield back.

Mr. VAN DREW. [Presiding.] I recognize the gentlelady from Indiana.

Ms. SPARTZ. Thank you, Mr. Chair.

Thank you, Commissioner Khan, for being here. So, I wanted to bring two issues, and I would like you to respond.

First, I belong to a group of people, even though I very much agree with Mr. Tiffany that the majority of monopoly problems which are significant, because we created these monopolies, incentivizes monopoly. Unfortunately, we created more companies now too big to fail. All the laws that we try to deal with them, including the Dodd-Frank Act, which I was actually one of the implementers when I worked in public accounting, now created this institution even bigger. Now, we're going to be dealing with that.

I also understand those are, too, now, some of the areas where we have now problems so big that it involves us to look at the barriers of entry, like healthcare, and then, look in what are we going to deal now these monopolies that are distorting the market and using their aggressive behaviors to suppress consumers, to suppress competitors, and really not delivering value, because they can. They are not a natural monopoly. We created it. We have to look at that.

So, I think your agency has an important function, but, unfortunately—and I want you to really respond—that we have a lot of concerns from the Republican side, and that the agency is being politicized and the agency is being used to really—the hammer and sickle and to actually to pick, kind of in a fashion to pick losers and winners.

It's becoming a problem. If you look at your even the missions that you set and the objectives you set, where we really need to have more work together for consumer protection and competition. You want your agency shapes distribution of power. I truly don't believe that is the agency's—I think the agency should be dealing with the real abusers in the system that want to not have competition, use monopolistic power. So, even in the statements, it's a problem.

I would like—I think we have one common ground, that it seems like a lot of times we have a lot of talk on healthcare, but when we come to the action—it's even recently—we put it on the table with President Biden's Administration on dealing with with site-neutral-type payments and hospitals that's been gypping Medicare—total abuse of power. Allowing them to buy private practices; allowed them to put these doctors in crazy noncompetes, enslave them. Building Taj Mahals, not paying taxes. Investing billions in Wall Street and paid billions to executives by subsidies that now our country's going bankrupt on, because we're sort of outspending on healthcare and not delivering value.

They didn't want to deal with that. Then, you have a challenge now because a lot of these answers is nonprofits, which is really it doesn't even have guidance. Like the next business I'm going to have, is going to be tax-exempt. You don't have a full jurisdiction to deal with these entities, and no one has. I would like you to deal with that.

Now, my colleagues here have concerns. Now, we have, actually, a bipartisan bill, but a lot more people here feel concerned with you, that you are not going to be enforcing it properly and will use it as a power to actually pick losers and winners again.

So, I wanted you to see how you can respond with what you are doing in this area. I think there is a PBM probably common ground. We have that area. If we look at that, 50–60 percent expanders hospitals and physicians. Five to 10 is actually only spent on drugs. So, this is a huge amount of money.

How would you respond what you are doing on that and how you would address some of these Republican concerns? Because I think your agency has some functions, but, unfortunately, everything gets so politicized. A lot of people here on my side of the aisle don't feel comfortable to give any more power to your agency.

Ms. KHAN. Thanks for the question, Congresswoman. You're absolutely right, we have a whole set of workstreams underway relating to healthcare markets. We're concerned about instances, in which, monopolistic practices or a lack of competition in healthcare markets may be raising prices for consumers, may be depriving them of access to quality healthcare.

Our teams have for many years now been challenging hospital mergers, where they've determined that the merger would either raise prices or lessen competition in ways that was harming patients.

We have work underway, as we talked about extensively today, relating to PBMs and the potential conflicts of interest that are created through their vertical integration, as well as issues that may be created through the rebate schemes that they have in place.

We also have work looking more directly at drug prices and whether mergers and acquisitions done by pharmaceutical companies may be inhibiting innovation, may be keeping lower-cost alternatives out of the hands of American patients.

So, that's all work that we have underway and we're working hard to move quickly on all that.

Ms. SPARTZ. My time has expired. We still need to figure out how you can address concerns of my colleagues.

I yield back.

Mr. VAN DREW. [Presiding.] The gentlelady yields back.

I recognize the gentleman from Texas.

Mr. GOODEN. Thank you, Madam Chair. It's good to have you here today. I'd like to talk about the Horseracing Integrity and Safety Act's—well, it's called the Horseracing Integrity and Safety Authority, which Congress created and put under your Commission's rulemaking authority. I know you didn't ask for this, but you got it.

I've got some questions. They're not complaints directed toward you or your leadership, but I just would like to say that I'm very disappointed in how they have operated. The HISA was intended to improve safety and fairness in horseracing. It's fallen short of its promises.

Some of the issues I have, I'm not even sure you're aware of. When I'm done, I want to ask, so we can sit down and talk about it more.

The FTC has allowed them to operate in a way that they are making rules, I believe, without the authority, or without any oversight. There's also a budget of \$66 million. My question is, does the FTC monitor how these funds are being spent and who the recipient of their budget funds is going to?

Ms. KHAN. So, the statutory scheme lays out the relationship between the FTC and this kind of self-regulatory organization. You're right that we didn't ask for this authority. To be honest, it's been a bit of a challenge for us fully implementing it. We don't have real deep expertise in this area.

On your specific question, to be honest, I'm not totally sure. I don't think we have that authority to be overseeing how they use their money.

Mr. GOODEN. OK.

Ms. KHAN. I'm happy to get back to you on that.

Mr. GOODEN. Separately, if the FTC enforcement staff was investigating an antitrust case and thought it needed to conduct a search of a business' premise, would the FTC need a search warrant for that search?

Ms. KHAN. Presumably, though I do know that, I believe it's Section 9 of the FTC Act, does give the FTC ability to engage in some of that activity as well.

Mr. GOODEN. All right. I would just let you know that this authority under your supervision can conduct a search without a warrant. They can also impose an immediate suspension on horses, trainers, and owners, if there's any evidence of suspicion of doping.

One of the reasons they were created was because of the deaths in the horseracing in the past. We've seen just this year that even more deaths have happened. I would make a case that this author-

ity is poorly run and operating in a way that I suspect, if all of you really knew, you would disapprove of. I would like to sit and talk with all of you about that after this hearing down the road.

Moving on, I want to talk about some of the mergers and the policies with respect to those. I'm specifically curious—because I'm looking at a letter that Senator Warren sent you in January of this year about some pharmaceutical mergers—how much interaction does her staff or her have with you with respect to these? Do they have influence with the direction all of you go on some of these investigations?

Ms. KHAN. Congressman, we hear routinely from Members of Congress. We get letters week after week, including from many Members of this Committee. We take all that under advisement and want to understand what are the Members' concerns.

Any law enforcement decisions that we're making, we're making on an independent basis, based on the facts and law before us.

Mr. GOODEN. Well, I'm looking at, particularly, the Amgen and Horizon merger, which I understand was moving along pretty, pretty well. It's different than some of these mergers that she mentions in this letter that I'm reading, and I know all of you probably have a copy of. I'll get you one, if you don't.

Horizon is an Irish company. It's kind of a special case because it inverted in 2014 by acquiring this Irish company. So, they actually left the U.S. for tax benefits. Now, Amgen, as I understand it, is looking to acquire this company. They're involved in totally different drugs. What this would do is actually bring a company back to the United States, which I believe is a goal that we all share, is bringing industry here at home.

So, I would also ask, especially since it seems to have been stopped right after Senator Warren sent this letter, if I could sit down with you all at some point and we talk about this one as well. Can we commit to doing that?

Ms. KHAN. We'll be happy to have a followup conversation with you, yes, Congressman.

Mr. GOODEN. I appreciate your work and thank you very much for being here.

I yield back.

Mr. VAN DREW. [Presiding.] The gentleman yields back. We are going to take a recess. We have to vote. As soon as votes are completed, we will be back. Thank you. You're going to get a long recess now.

[Recess.]

Mr. VAN DREW. [Presiding.] Call the meeting back into order.

We will start with the gentleman from Texas, Mr. Moran.

Mr. MORAN. Thank you, Mr. Chair.

Ms. Khan, I would like to talk to you about something you said earlier today when you were talking with Mr. Massie. You said, quote,

We do things to make sure that the market has clarity .... To make sure that the market has clarity.

Was the quote I wrote down from you?

I was glad you brought that up because the 2nd Circuit, as you know, back in 1984, said of the FTC, quote,

The Commission owes a duty to define the conditions under which conduct would be unfair, so that businesses will have an inkling as to what they can lawfully do, rather than be left in a State of complete unpredictability.

By moving away from the consumer welfare standard, I would posit that the FTC has, effectively, created a moving goalpost standard. Mr. Bentz pressed you on that with several questions, and you just said, “Well, basically, it kind of depends case-by-case. We’re going to look at different laws.” Is that, effectively, the summary of what you said and the guidance that was provided last year in the policy statement regarding the scope of unfair methods of competition under Section 5 of the FTC?

Ms. KHAN. So, Section 5 of the FTC Act is a different statutory scheme than the Sherman Act. So, we look at case law that’s specific to Section 5 and specific to the FTC Act, when interpreting that provision.

Mr. MORAN. With respect to that November 10, 2022, dissenting statement of Commissioner Christine Wilson as it relates to that, Section 5 of the FTC and the policy statement, she stated this, quote:

Unfortunately, instead of providing meaningful guidance to businesses, the policy statement announces that the Commission has the authority summarily to condemn, essentially, any business conduct it finds distasteful.

Did it concern you that one of the Commissioners would issue such a statement and reach such a conclusion?

Ms. KHAN. So, the benefits of having a multi-member Commission are that we can have that discussion and debate and disagreement, and we always take seriously input that we’re getting from other Members of the Commission.

As you’ll in the policy statement itself, it has—well, it reflects decades of case law that our team took a very close look at to make sure that we were hewing very closely to the text of the statute, as well as the relevant precedent.

Mr. MORAN. With respect to the early terminations issue that Mr. Bentz talked to you about earlier, I sent you a letter earlier this year about that issue, and you wrote, in response, that “Granting early terminations” causes—or “consumes agency resources.” Can you explain how reinstating the early terminations diverts agency resources?

Ms. KHAN. Sure. So, our staff is reviewing merger filings. They’re in the process of litigating. They’re investigating. When they are looking at the HSR filings, their primary goal, our statutory mandate, is to be identifying transactions that may violate the Clayton Act or any of the other antitrust laws. Granting early termination is a discretionary function. So, we decide to put resources toward the mandatory functions in the statute over the discretionary ones.

Mr. MORAN. For years, that early termination policy allowed the FTC to allow mergers and acquisitions of a small size or size where there was really no competition issue really presented, for you to go ahead and give surety to those businesses that they could proceed with those mergers and acquisitions. That’s no longer the case in the FTC, right?

You’re holding businesses in limbo because you’re giving them these letters and saying, “Well, we’re going to look at it. We’re not sure.” Then, businesses have trouble moving forward with those

mergers and acquisitions because sometimes the financing is tied up in the timeframe that they need a quick M&A. Is that, is that true or that untrue?

Ms. KHAN. So, Congressman, the context here is, we're talking about 30 days the firms have to wait before they are able to consummate if they don't hear from the agencies. In the past, maybe firms would have gotten early termination on day 25. Now, they're not getting it. After day 30, they're able to consummate.

So, we've decided that, as a matter of where we're allocating our resources, it's a better use of resources to be identifying which transactions may be creating problems for consumers, for workers, for honest businesses, rather than prioritize the kind of five days that firms may have gotten in the past.

Mr. MORAN. It seems that a lot of the resources, when you talk about allocation of resources, have been going toward new rule-making in the FTC, rather than actually working through some of these issues that you guys are looking at—some of which you should be looking at; some of which you probably shouldn't be looking at.

Is that the reason why, in 2020, the FTC brought 31 challenges to mergers, which was a two-decade high, but, in 2021, the year you became Chair, the FTC took only 15 actions against mergers and, in 2022, only 17 actions? Is that because you're focused too much on rulemaking and all your resources are allocated in that direction?

Ms. KHAN. So, there are no real—we have looked—we've proposed a rule to update the HSR form in the Bureau of Competition, but, aside from that, the vast majority of resources are focused on enforcement.

I think some of those numbers you mentioned are outdated. Our team would be happy to provide you with updated numbers. Our enforcement is squarely in line with prior years.

Mr. MORAN. Thank you. I yield back.

Mr. VAN DREW. [Presiding.] The gentleman yields back.

I recognize Mr. Hunt from Texas.

Mr. HUNT. Thank you, Mr. Chair.

Thank you for being here, ma'am. I really appreciate your time. I know it's been kind of a long day. The first question for you is, on July 13, 2022, the FTC proposed the motor vehicle dealers trade regulation rule. Are you familiar with this rule?

Ms. KHAN. Yes.

Mr. HUNT. OK. Did the FTC conduct a cost-benefit analysis for this rule and determine what costs of implementing this rule might be? What did the cost-benefit analysis conclude, if you can recall?

Ms. KHAN. So, we did have to conduct that analysis, pursuant to the Administrative Procedure Act, and the Notice of Proposed Rule-making lays out some of that preliminary analysis.

Mr. HUNT. Any idea on the cost?

Ms. KHAN. I'm not recalling off the top.

Mr. HUNT. OK. I'd like to ask for unanimous consent, sir, to enter this into the record. This is a research study that's done by the Center for Automotive Research, which conducted a full cost-benefit analysis of this rule and determined that the rule would impose a cost of \$38 billion with a "b" over the next 10 years.

Mr. VAN DREW. [Presiding.] Without objection.

Mr. HUNT. Thank you.

Ms. KHAN. This is a study done by some outsiders, you said, or this is the FTC analysis?

Mr. HUNT. No, this is, actually, an outsider, the Center of Automotive Research.

Ms. KHAN. I'm not familiar with it. I know we got a lot of comments on the rule. So, our teams are looking at those closely, and maybe this was one of those.

Mr. HUNT. So, what we will do is we will send this to you. I would implore you to take a look at it. Now that you have a copy of it, I would love for you to reconsider that burden and that cost that it would actually place on the American people, if you don't mind.

Ms. KHAN. Happy to. I will say, generally, the auto rule that we've proposed is designed to address junk fees, bait-and-switch tactics, some of the harms that consumers time and time again have been encountering in these contexts.

We received over 100,000 complaints from consumers over the last few years relating to some of these deceptive practices in the auto-purchasing context. So, that's what our rule is really designed to address.

Mr. HUNT. OK. Understood. I think this is kind of what our goal is, is to make sure that we prevent any undue burden on the American people. Obviously, the issue that you just addressed and, also, most importantly, just cost, because right now we, as a country, are suffering immensely with inflation, and we've been saying so. I want to make sure that we do protect the American voter here in this country.

Switching gears, the FTC has made a mandate protecting consumers and their privacy. Under that mandate, do you think it's appropriate for the FTC to compel a company to collect and retain consumer data, including their personal identifiable information?

Ms. KHAN. Is there a particular context you're thinking about, Congressman—

Mr. HUNT. There is a particular context, but I was just kind of wondering what your overall feel of this issue is. I can't, I can't exactly say who asked this question for their, for their own anonymity. I was just wondering what your overall feel is about including their data that has their personal information in it, as the FTC.

Ms. KHAN. Overall, the goal of our data privacy and security is to protect the privacy and security of Americans' data. What ultimate remedy or relief we're seeking is, generally speaking, designed to minimize the data being collected. I'm not sure what specific instance you're referencing.

Mr. HUNT. I understand. The last question, do you think it's appropriate to suspend the collection of this data in the name of protecting consumer data as a whole?

Ms. KHAN. Again, we'd be happy to look at any specific matter that you're considering. A key goal of some of our recent privacy work has been data minimization to really limit what data is being collected in the first instance, because we've seen that's the best way to minimize the risk of privacy breaches and security breaches.



Mr. HUNT. Thank you very much. Thank you for your time. I yield back the rest of my time. Thank you.

Mr. VAN DREW. [Presiding.] The gentleman yields.

I recognize the gentleman from South Carolina for five minutes.

Mr. FRY. Thank you, Mr. Chair.

Ms. Khan, thank you for being here. I know it's been a long day. Now, the FTC's mission is to protect the public from deceptive and unfair trade practices and from unfair methods of competition. Even on your website, the FTC's work to protect consumers and promote competition touches the economic life of all of us. I'd say the FTC is charged with a very important mission and have for a long time.

A Bloomberg report recently found that 71 attorneys left the agency in a two-year period between 2021–2022. This is the highest number of departures in 20 years. That being said, it's pretty tough, I would imagine, to protect the American consumer and promote competition when your staff is leaving.

As you know, Congress receives Federal Employee Viewpoint Surveys, or FEVSes, to inform us on how agencies are functioning. In 2020, 87 percent of FTC employees agreed that senior leaders maintain high standards of honesty and integrity. In two years, that dropped to 53 percent, and also, in 2022, to 49 percent.

Similarly, in 2020, 83 percent of FTC employees agreed that they have the highest level of respect for FTC's senior leaders. Again, in 2021, that dropped to 49 percent, and in 2022, to 44 percent.

In 2020, again, 80 percent of FTC respondents agreed that senior leaders generate high levels of motivation and commitment in the workforce. Under your leadership, that has dropped to 42 percent in 2021 and 40—or 36 percent, alarmingly, in 2022.

So, I think my question, quite frankly, is, why is it so unpopular to work at the FTC?

Ms. KHAN. So, we have fantastic career staff who day-in and day-out are fighting for the American people and looking to protect them from unlawful business practices.

I take those survey results seriously, and we've been engaged in taking a series of steps to make sure that the FTC is a great place to work. I've been really thrilled that, over the last couple of years, we've been able to onboard hundreds of new employees at the FTC.

Just the other month, we launched a new Office of Technology. Within a matter of a week, we got 600 applications—technologists, these are data scientists, data engineers, highly qualified people who want to come work at the FTC to make sure that we're able to use their technological expertise, as we continue to do our work to protect the American public.

Mr. FRY. Well, Chair, I would imagine, with the high number of vacancies that have been as the result of the last two years, that you would be hiring more people, in addition to the 33 percent increase in your budget. So, I would imagine that there is a drive to hire people just in general to fill those spots.

I think my concern is the unhappiness of people within the agency and why that is. Would you care to comment on that?

Ms. KHAN. Yes, I take that very seriously, and we've engaged in a lot of conversations and meetings to understand what some of the source of those issues were. We've been able to implement a set of

steps, including streamlining decisionmaking, expanding communications around priorities. We clarified what our workplace flexibility policies would be. I'm hopeful that each of those steps has contributed.

Mr. FRY. Yes, and, Chair, please don't take my comments as me attacking you or your agency, but it is of concern to me when I read that. Of course, my colleagues up here have echoed a lot of policy frustrations with your organization and maybe you. When I'm reading about the employee satisfaction the FTC serves such a vital purpose in our country. It's just really alarming to see it go from one of the top-performing agencies of employee satisfaction to really the bottom in a two-year period. It's just really alarming.

So, what do you think that you've learned? You've been here for two years, and you've seen some tumultuous times. Do you think you've learned anything as a result of maybe your leadership or leadership around you on how to handle this and correct it?

Ms. KHAN. So, as I said, we undertook a set of steps to make sure we were appropriately streamlining decisionmaking, expanding communications with staff across the agency.

In terms of learnings, I've had the privilege of seeing firsthand just how hard FTC staff are working day-in and day-out. Oftentimes, they're having to go up against companies that are—whose resources really dwarf ours, and there's a clear mismatch in resources, but we're still able to go toe-to-toe on talent. That just reflects the sheer talent and dedication of our staff.

Mr. FRY. Well, good, and I hope that these issues correct. There's a lot—I think Mr. Gaetz talked about an important issue about creepy data collection that's going on, and you've hit on that all day.

The mission is important, but you have to correct the ship. You have to correct the type of management that you perform, and I think that starts with you and it starts with your team. Because I don't want to read about toxic environments or people feeling like they're not heard or mismanagement at the highest levels. There has been a lot of ups and downs with the FTC over the last two years, and I'm hopeful that you can correct that.

Thank you, Mr. Chair. I yield back.

Mr. VAN DREW. [Presiding.] The gentleman yields back.

I yield five minutes to myself. I just wanted to take up a little bit where Congressman Biggs and Congressman Johnson were speaking, talking about the diversity, equity, inclusion issue that Commissioner Slaughter has, evidently, championed.

Do you believe—and I know it's hard, but if you could just give me a yes-or-no answer—do you believe that should be a major and significant part of antitrust enforcement? Do you believe that's your job?

Ms. KHAN. So, our job is to enforce the antitrust laws, which prohibit unfair methods of competition or deals that substantially lessen competition or tend to create a monopoly. We endeavor to do that work to protect everybody—

Mr. VAN DREW. So, what does that have to do with diversity, equity, and inclusion?

Ms. KHAN. I'm not really sure. Could you share more about what you specific concerns are?

Mr. VAN DREW. Well, Commissioner Slaughter has said—and we have quotes—that this needs to be and have a major role in anti-trust enforcement; that’s a very major piece of it; that it’s part of it. Do you agree with that or not?

I didn’t think—in all honesty, there are agencies who have that job and that responsibility; I didn’t believe that yours did. I was just concerned. Are we going to—as it is, you’re short of resources. We can’t do all the things we want to do to protect the consumer. I don’t know why we would divert resources, time, energy, and people power to actually going forward with that.

Ms. KHAN. Yes, look, I won’t speak on behalf of my colleague. Again, what I think about is the ways in which concentration of economic power and monopoly power hurts everybody.

Mr. VAN DREW. I understand.

Ms. KHAN. We need to keep that in mind, as we’re using these tools and making sure we’re protecting all parts of the American public from these practices.

Mr. VAN DREW. I agree. I’m concerned—and I’m just picking up where Congressman Fry left off on the State of morale at the FTC since you began your tenure. Examples such as hiring a Chief of Staff described as “frequently creating friction with an aggressive managerial style” or choosing an Associate Director for Litigation in the Bureau of Competition with less than two years of legal experience before joining your office as a high-ranking member. Can you speak on that for just a moment?

Ms. KHAN. Yes. I’m really lucky to have a fantastic senior leadership—

Mr. VAN DREW. You do have good staff. I’m sorry to interrupt you, but you do have a good staff. Some things—let me say this, just to maybe clarify this more: On the matter of agency morale, the Bureau of Competition, which you’re familiar with, whose mission is to enforce the Nation’s antitrust laws—one of your top priorities, I believe it is—saw its engagement and satisfaction score drop by 33 percent since you began your tenure. Do you think that’s a result of your leadership style? Is it a result of something else? Are there other factors that are affecting FTC employees?

You do have a lot of great people there, but the point is a lot of those great people have also expressed that they’re not happy. Why?

Ms. KHAN. I couldn’t agree more that it’s important for us to understand what some of the sources of those numbers are. As we’ve been looking to do—and I should also note, for the Bureau of Competition, in particular, over the last couple of years they’ve been on the front lines of a surge in merger filings. I mean, year over year, they were seeing a 70 percent increase in the number of filings coming in, while their numbers are—

Mr. VAN DREW. I understand that, but they’re not happy. We have a lot of people that work very hard, but they’re happy.

Ms. KHAN. Just to commend them, of course. So, we’ve been looking to understand, again, what more can we be doing to organize—

Mr. VAN DREW. So, you’re working on this?

Ms. KHAN. Correct.

Mr. VAN DREW. OK. You think it’s going to get better?

Ms. KHAN. I’m hopeful.

Mr. VAN DREW. OK. I wanted to talk about unpaid consultants for a moment, which the Office of the Inspector General—this was not me saying this; the Inspector General said this—labeled as, quote, “unprecedented.”

The Inspector General report from last year said you didn’t give these consultants clear guidance or limits—I’m not saying it; this is not a Republican saying it or a Democrat, or anybody else—on their work, and that there was concern that these practices may, quote, “violate policies for Federal agencies” that stipulate that such agencies—these hires are not allowed to play an inherently, quote, “an inherently governmental function.”

Can you tell us how many of these consultants are working at the FTC, what they’re doing, and how often you meet with them?

Ms. KHAN. So, there is Federal authority allowing government agencies to make use of some of these consultants, especially in areas where we don’t have existing expertise—

Mr. VAN DREW. Respectfully, I understand that. We’re running out of time. Why did the Inspector General sound an alarm, though?

Ms. KHAN. The Inspector General’s report identified certain areas where we could be tightening up our processes and procedures to make sure we’re mitigating against risk. We followed very closely the IG’s recommendations and have been moving forward to implement those recommendations.

Mr. VAN DREW. OK. I have items for the record. I have two articles from the Americans for Tax Reform titled, quote, “Lina Khan Has Some Explaining to do,” as well as Khan reveals that she, quote, “handpicked controversial unpaid consultants.”

Mr. VAN DREW. [Presiding.] Thank you for your answers.

I’m going to yield back.

With that, I think that will conclude today’s hearing. We thank our witnesses for appearing before the Committee. We thank you for being here.

Without objection, all Members will have five legislative days to submit additional written questions for the witnesses or additional materials for the record.

Without objection, this hearing is adjourned.

[Whereupon, at 2:54 p.m., the Committee was adjourned.]

All materials submitted for the record by Members of the Committee on the Judiciary can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=116199>.