

April 14, 2023

The Honorable Gus Bilirakis
Chairman
Subcommittee on Innovation, Data, and Commerce
House Energy and Commerce Committee
Washington, D.C. 20515

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Innovation, Data, and Commerce
House Energy and Commerce Committee
Washington, D.C. 20515

Dear Chairman Bilirakis and Ranking Member Schakowsky,

In advance of the Subcommittee's April 18, 2023 hearing, entitled, "Fiscal Year 2024 Federal Trade Commission Budget," the Consumer Technology Association (CTA)[®] writes to you to explain our opposition to the FTC's budget request. This request amounts to a remarkable 400% increase over the 2023 appropriation, at a time when the agency is exhibiting significant mismanagement, and subjecting US companies to ideologically-based attacks that harm consumers and American competitiveness.

CTA is North America's largest technology trade association. Our members are the world's leading innovators – from startups to global brands – helping support more than 18 million American jobs. CTA owns and produces CES[®], the world's most influential tech event. CTA members, 80% of which are startups or small and medium-sized businesses, operate in a competitive market, to produce innovative products that benefit consumers and power the economy.

CTA acknowledges that the FTC faces significant challenges. In 2022, agency data shows consumers reported losing almost \$8.8 billion to scams, a more than 30% increase over the prior year.¹ In total, last year, the FTC's Consumer Sentinel Network, received more than 5.1 million complaints.

Despite this mounting caseload of fraud, identity theft and related cases, the FTC appears more interested in attacking U.S. tech companies, to the detriment of consumers who have benefitted from an unparalleled explosion of innovative, online-based products and services.

Among the more egregious examples of these ideological attacks on large companies include the Chair overruling a staff recommendation not to take preemptive legal action against a successful American tech company; a new competition policy that reversed decades of antitrust being focused with bipartisan support on what's best for consumers and instead shifting to protect legacy competitors; the

¹ *New FTC Data Show Consumers Reported Losing Nearly \$8.8 Billion to Scams in 2022*, Federal Trade Commission, <https://www.ftc.gov/news-events/news/press-releases/2023/02/new-ftc-data-show-consumers-reported-losing-nearly-88-billion-scams-2022>.

withdrawal of the agency’s vertical merger guidelines; and, most recently, proposed rules to effectively ban all non-compete clauses, despite not being grounded in the FTC’s authority or the law.

In justifying its FY24 request for an additional \$90 million for “protecting competition,” the agency explains that “[t]he merger workload – including resource-intensive and fast-paced merger litigation against major corporations – diverts resources from the Commission’s efforts to reinvigorate and refocus its commitment to identifying and challenging anticompetitive conduct in complex and increasingly pervasive technology markets for which the Bureau has designated significant resources.”

In reality, the Commission has squandered countless staff hours and budget resources on headline-grabbing antitrust lawsuits based on novel legal theories that are quickly thrown out of court. In a recent interview, the Chair took the bizarre position that that these costly courtroom losses are actually beneficial because they “signal to Congress” that antitrust laws need to be changed.²

At the same time, mismanagement by its current leadership has caused extraordinary turnover of senior career staff. A recent press report found that 71 senior FTC staff attorneys left between 2021 and 2022, the highest number of departures for this category during a comparable two-year period since 2000.³

This mass exodus has been accompanied by a precipitous drop in staff morale and trust in leadership’s honesty and integrity. The results of the Office of Personnel Management’s Federal Employee Viewpoint Survey are troubling:⁴

- In 2020, 87% of responding FTC employees affirmed that “senior leaders maintain high standards of honesty and integrity”; that number plummeted to 49% in 2022.
- In 2020, 83% of surveyed FTC employees affirmed that they have a “high level of respect” for the FTC’s senior leaders; in 2022 that number declined to 44% of employees.
- In 2020, 80% of FTC survey respondents agreed that “senior leaders generate high levels of motivation and commitment in the workforce”; affirmation of this statement dropped to just 36% in 2022.

The FTC has historically ranked as one of the top mid-size government agencies for workers, according to employee surveys. Yet, under the current Chair, the agency’s ranking plummeted to 22nd in 2021.⁵

An effective and well-administered FTC is a cornerstone of a strong and vibrant American economy. Over decades and through successive administrations, the FTC has served our nation and attracted the best and brightest career staff. The agency has long had a bipartisan reputation as a substantive and

² *Why Losing to Meta in Court May Still Be a Win for Regulators*, The New York Times (Dec. 7, 2022) <https://www.nytimes.com/2022/12/07/technology/meta-vr-antitrust-ftc.html>.

³ *FTC Lawyers Leave at Fastest Rate in Years as Khan Sets New Tone*, Bloomberg Law (Mar. 16, 2023) <https://news.bloomberglaw.com/antitrust/senior-ftc-staff-departures-spike-as-ambitious-agenda-looms>.

⁴ *Sinking FTC workplace rankings threaten Chair Lina Khan’s agenda*, Washington Post (July 13, 2022) <https://www.washingtonpost.com/technology/2022/07/13/ftc-lina-khan-rankings/>; Letter of Commissioner Christine S. Wilson to President Biden (Mar. 2, 2023) https://www.ftc.gov/system/files/ftc_gov/pdf/p180200wilsonresignationletter.pdf.

⁵ *Sinking FTC workplace rankings threaten Chair Lina Khan’s agenda*, Washington Post (July 13, 2022) <https://www.washingtonpost.com/technology/2022/07/13/ftc-lina-khan-rankings/>.

thoughtful regulatory guardian, as Commissioners of both parties worked together to protect consumers and promote competition.

While rising inflation and competitive threats from rival nations dominate headlines, the FTC in its budget request appears more focused on policies that would harm American competitiveness and hobble innovation and entrepreneurship. Unlike the millions of annual FTC complaints requesting action to tackle fraud and identify theft, there is little evidence that consumers are similarly clamoring for the FTC to take away their access to the innovative features and functions of technology products that they love and use in their everyday lives.

Given the current FTC leadership's pattern of disregarding agency norms, deep employee dissatisfaction and departure from decades of antitrust law, the Subcommittee should carefully scrutinize the agency's request for a significant increase in appropriated funding.

Sincerely,

A handwritten signature in black ink that reads "Gary Shapiro". The signature is written in a cursive, flowing style.

Gary Shapiro
President and CEO
Consumer Technology Association

Cc: Chair McMorris Rodgers, House Energy and Commerce Committee
Ranking Member Pallone, House Energy and Commerce Committee
Members of the Subcommittee on Innovation, Data, and Commerce, House Energy and Commerce Committee