



May 25, 2021

The Honorable Rosa L. DeLauro
Chairwoman, U.S. House Committee
on Appropriations
H-307 The Capitol
Washington, DC 20515

The Honorable Kay Granger
Ranking Member, U.S. House Committee
on Appropriations
1036 Longworth House Office Building
Washington, DC 20515

The Honorable Mike Quigley
Chairman, Subcommittee on Financial
Services and General Government
U.S. House Committee on Appropriations
2000 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Steve Womack
Ranking Member, Subcommittee on Financial
Services and General Government
U.S. House Committee on Appropriations
2000 Rayburn House Office Building
Washington, D.C. 2051

Dear Chairs Delauro and Quigley and Ranking Members Granger and Womack:

We write to you to request a substantial commitment to rebuilding the Federal Trade Commission — the nation’s foremost commercial regulator — through a FY 2022 appropriation of at least \$877,500,000 — two-and-a-half times their current budgetary allocation. For far too long, Congress has failed to sufficiently fund the FTC to do the massive job with which it is tasked. The agency is overdue for an influx of resources to help it play catch-up to the modern economy.

Currently, the FTC only has 1100 FTEs total to pursue both its competition and consumer protection missions.¹ This number has been roughly flat over the past twelve years, and actually represents a decrease from 1746 FTEs in 1979. Put another way, since that time, the economy has grown nearly three times while the FTC’s capacity has decreased 37 percent. In the past year alone, merger filings that the FTC is responsible for reviewing to assess the potential for anticompetitive effects are up 60%.²

¹ *FTC Appropriation and Full-Time Equivalent (FTC) History*, Fed. Trade Comm’n (last visited Apr. 16, 2021), <https://www.ftc.gov/about-ftc/bureaus-offices/office-executive-director/financial-management-office/ftc-appropriation>.

² Prepared Statement of Federal Trade Commission Acting Chairwoman Rebecca Kelly Slaughter, Before the Subcommittee on Antitrust, Commercial and Administrative Law Of the Judiciary Committee, United States House of Representatives, Reviving Competition, Part 3: Strengthening the Laws to Address

The FTC has been roundly criticized in recent years for failing to aggressively police illegal and anti-consumer behavior, especially on the competition side.³ However, in recent years, as it has started to challenge more anticompetitive practices and mergers, litigation costs have skyrocketed, as the FTC has been forced to retain expensive outside experts in order to back up their complaints.⁴ This dramatic rise in costs is no doubt in large part responsible for the agency's current hiring freeze and other internal cost-cutting measures.⁵ FTC critics across the ideological spectrum⁶ have urged the FTC to litigate more cases in order to clearly establish the limits of the law (rather than relying on unadjudicated and negotiated consent decrees). If the FTC is to do that, it will need the muscle to compete with far better resourced companies in court.

Giant technology companies increasingly dominate the marketplace, and the FTC is expected to have the technical expertise and sophistication to meaningfully check these companies. In 2015, the Commission created the Office of Technology Research and Investigation as a way of levelling the playing field and empowering the FTC to better tackle abuses from technology companies.⁷ The stated purpose of OTECH was to:

provide expert research, investigative technique and further insights to the agency on technology issues involving all facets of the FTC's consumer protection mission, including privacy, data security, connected cars, smart homes, algorithmic transparency, emerging payment methods, big data, and the Internet of Things.

Monopoly Power (March 18, 2021), https://www.ftc.gov/system/files/documents/public_statements/1588320/p180101_prepared_statement_of_ftc_acting_chairwoman_slaughter.pdf.

³ Lauren Feiner, *After Suing Facebook, The FTC Has a Chance to Show Critics It's Not Toothless*, CNBC (Dec. 19, 2020),

<https://www.cnbc.com/2020/12/19/ftc-has-a-chance-to-show-critics-its-not-toothless-with-new-facebook-lawsuit.html>; Tony Romm, *Can Washington Keep Watch Over Silicon Valley? The FTC's Facebook Probe is a High-Stakes Test*, Wash. Post (Feb. 20, 2019),

<https://www.washingtonpost.com/technology/2019/02/20/can-washington-keep-watch-over-silicon-valley-ftcs-facebook-probe-is-high-stakes-test/>.

⁴ Dave Perera and Jenna Ebersole, *US FTC Expert Witness Costs Consistently Higher than Anticipated*, MLex (Mar. 31, 2020),

<https://mlexmarketinsight.com/news-hub/editors-picks/area-of-expertise/antitrust/us-ftc-expert-witness-costs-consistently-higher-than-anticipated>.

⁵ Alex Kantrowitz, *'A Breathtaking Constraint on Capacity': Internal FTC Memo Announces Major Cuts Ahead of Tech Giant Auction*, Big Technology (Nov. 19 2020),

<https://bigtechnology.substack.com/p/a-breathtaking-constraint-on-capacity>.

⁶ Tom Struble, *Reforming the Federal Trade Commission Through Better Process*, RStreet (Dec. 5, 2017),

<https://www.rstreet.org/2017/12/05/reforming-the-federal-trade-commission-through-better-process/>; Dissenting Statement of Commissioner Rohit Chopra, Regarding Zoom Video Communications, Inc., Fed. Trade Comm'n, (Nov. 6, 2020),

https://www.ftc.gov/system/files/documents/public_statements/1582914/final_commissioner_chopra_dissenting_statement_on_zoom.pdf.

⁷ *FTC Seeks Technologists for New Research, Investigations Office*, Fed. Trade Comm'n (Mar. 23, 2015), <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-seeks-technologists-new-research-investigations-office>.

Despite this wide-ranging mission, no new FTEs were appropriated to fund this office, so it was largely staffed by shifting personnel from other parts of the office. Even today, OTECH only has a handful of employees to support all five Departments in the Bureau of Consumer Protection (there is no analogous Office within the Bureau of Competition at all).

Similarly, acting Chairwoman Rebecca Slaughter recently announced the creation of an Office of Rulemaking to take advantage of dormant and unused authorities to issue more clear and substantive guidance to companies on what behaviors violate the law.⁸ The FTC has not received additional funds to do this work, so again will have to shift resources from other priorities.

The scope of the FTC's responsibilities have also continued to expand over time, as other specialized agencies have abdicated responsibilities and instead deferred industry supervision to the FTC's general purpose authority. In 2017, the Federal Communications Commission voted to reverse its net neutrality order, reclassifying broadband internet as an "information service," and delegating to the FTC to enforce some semblance of net neutrality under its unfairness and deceptive practices authority.⁹ Similarly, NHTSA under Secretary of Transportation Chao forebore using its authority to require reasonable data security and privacy protections in automated vehicles, instead stating that the FTC should police such attributes under its (much weaker) statutory framework.¹⁰

We are at a crossroads in this country, as America wakes up to the fact that we have failed to rein in companies large and small that take unfair advantage of consumers. Congress has waited far too long to stand up to companies that cavalierly deign the law beneath them, knowing the likelihood of enforcement or consequences is low. The time has come to restore the balance of power between corporations and consumers. If that is going to happen, consumer protection authorities are going to need to be funded and empowered to act to protect consumers and hold bad actors accountable for their behaviors. As it is, the FTC has been left to wither on the vine for decades, being set up to fail in its crucial mission to serve consumers.¹¹

An appropriation of \$877,500,000 would demonstrate that Congress recognizes that the FTC needs to be substantially reinvigorated in order to do its job. Indeed, far greater amounts

⁸ *FTC Acting Chairwoman Slaughter Announces New Rulemaking Group*, Fed. Trade Comm'n (Mar. 25, 2021), <https://www.ftc.gov/news-events/press-releases/2021/03/ftc-acting-chairwoman-slaughter-announces-new-rulemaking-group>.

⁹ *FCC Acts to Restore Internet Freedom*, Fed. Commc'ns Comm'n (Dec. 14, 2017), <https://ecfsapi.fcc.gov/file/1214265187067/DOC-348261A1.pdf>; Declaratory Ruling Report and Order, and Order, In the Matter of Restoring Internet Freedom, WC Docket No. 17-108 (Jan. 4, 2018), <https://ecfsapi.fcc.gov/file/0104079319406/FCC-17-166A1.pdf>.

¹⁰ Joseph Jerome, *Automated Vehicles Guidance Punts Privacy to the FTC and Congress*, Ctr. for Democracy and Technology (Sept. 22, 2017), <https://cdt.org/insights/nhtsa-automated-vehicles-guidance-punts-privacy-to-the-ftc-and-congress/>.

¹¹ Justin Brookman, *Facebook Fine Reveals Congress Has Set Up FTC to Fail*, The Hill (Aug. 4, 2019), <https://thehill.com/opinion/cybersecurity/456049-facebook-fine-reveals-congress-has-set-up-ftc-to-fail>.

would well be justified given the scope of its work and the crucial role that it plays in defending American consumers.

We appreciate your attention to this letter, and are happy to discuss further with your staff at their convenience. We can be reached at Justin.Brookman@consumer.org and Anna.Laitin@consumer.org.

Sincerely,

Justin Brookman
Director, Technology Policy

Anna Laitin
Director, Financial Fairness and Legislative Strategy

cc: Members of the U.S. House Committee on Appropriations