

Congress of the United States
Washington, DC 20510

The Honorable Lina Khan
Chairwoman
U.S. Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

May 24, 2022

Dear Chair Khan:

We write to express concerns about the Federal Trade Commission's (FTC) approach to reviewing Elon Musk's \$44 billion purchase of Twitter given the recent politicization at the FTC.

Big Tech has been relentlessly attacking free speech over the past several years, and Twitter specifically has gained a reputation for heavy-handed censorship of conservative views that are not popular in Silicon Valley. These censorship activities undermine our country's First Amendment principles and poison public discourse. Mr. Musk has proposed reversing Twitter's harsh and one-sided content moderation policies and replacing them with a more measured approach that only removes clearly unlawful tweets and user accounts.¹

We are concerned that the politicization seen at the FTC during the Biden Administration will slow or even halt Twitter's moves toward more free speech under the leadership of Elon Musk. Since the start of the Administration, the Biden FTC has taken radical measures that abandon traditional procedures and norms of civility and bipartisanship, while pushing the limit of the statutory bounds Congress placed on it. Measures such as suspending early termination of merger review transactions with no competitive concerns for well over a year,² using a zombie vote to adopt prior approval for merging parties and divestiture buyers on future transactions for 10 years,³ and frequent use of pre-consummation warning letters have damaged the FTC's reputation as an unbiased enforcement agency.⁴

¹ Elon Musk, Twitter post, April 26, 2022, 3:33 p.m.,

<https://twitter.com/elonmusk/status/1519036983137509376?s=20&t=PB7uC6fFnUJHXjd5ZCtrFA>.

² Press Release, Fed. Trade Comm'n, FTC, DOJ Temporarily Suspend Discretionary Practice of Early Termination (Feb. 4, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/02/ftc-doj-temporarily-suspend-discretionary-practice-early-termination>.

³ Dissenting Statement of Commissioners Christine S. Wilson and Noah Joshua Phillips Regarding the Statement of the Commission on Use of Prior Approval Provisions in Merger Orders (Oct. 29, 2021), https://www.ftc.gov/system/files/documents/public_statements/1598095/wilson_phillips_prior_approval_dissenting_statement_102921.pdf.

⁴ Holly Vedova, Dir., Bureau of Competition, Adjusting merger review to deal with the surge in merger filings, FED. TRADE COMM'N COMPETITION MATTERS BLOG (Aug. 3, 2021), <https://www.ftc.gov/enforcement/competition-matters/2021/08/adjusting-merger-review-deal-surge-merger-filings>.

Even worse, the lack of transparency surrounding withdrawn enforcement guidance without replacing it with new rules of the road and moving away from the traditional “consumer welfare standard⁵” have led to fears of politicization of the FTC. These fears are validated when the FTC appears to take direction from the White House and partisan third-party organizations. Just a few months ago, the FTC heeded the White House’s call to investigate oil and gas companies for price gouging to distract from the Administration’s own policies that clamp down on domestic production.⁶ Even more recently, the Open Markets Institute’s call to block Mr. Musk’s purchase of Twitter coincided with your own investigation of the deal.⁷

Decisions related to Twitter’s governance will shape digital free speech in the years to come. In light of our concerns regarding the FTC’s politicization, and the risk that partisan pressures will encourage the FTC to continue exceeding its statutory authorities, we ask that you provide us with the following information:

1. All documents and communication between or among the Federal Trade Commission and any third-party organizations referring or relating to Mr. Musk’s purchase of Twitter;
2. All documents and communication between or among the Federal Trade Commission and members and staff of the White House Competition Council referring or relating to Mr. Musk’s purchase of Twitter;
3. All documents and communications, including all plans, proposals, or other communications, referring or relating to the FTC’s purpose in making inquiries related to Mr. Musk’s purchase of Twitter that deviate from typical reviews;

We ask that you respond to this inquiry no later than May 31st, 2022.

⁵ [The New Progressives Fight Against Consumer Welfare - WSJ](#)

⁶Letter to President Biden Calling Out Administration for Distracting from Disastrous Energy Policies, November 29, 2021, <https://fitzgerald.house.gov/media/press-releases/fitzgerald-armstrong-lead-house-colleagues-calling-out-biden-administrations>.

⁷ <https://republicans-judiciary.house.gov/wp-content/uploads/2022/05/2022-05-04-JDJ-to-FTC-Musk-purchase.pdf>.

Sincerely,



Scott Fitzgerald
Member of Congress



Jim Jordan
Ranking Member



Louie Gohmert
Member of Congress



Andy Biggs
Member of Congress



Dan Bishop
Member of Congress