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Written Testimony for U.S. Senate, Committee on Appropriations
Subcommittee on Financial Services and General Government

Chairman Van Hollen, Ranking Member Hyde-Smith, and Members of the Subcommittee,

We are writing on behalf of Lincoln Network to encourage this Subcommittee to provide additional funding to the Federal Trade Commission (FTC) and to direct funds for the hiring of additional staff technologists.

In March, Congress passed the Consolidated Appropriations Act that appropriated \$376.5 million to the FTC for FY 2022.¹ The FTC requested that this Subcommittee appropriate \$490 million for FY 2023, an increase of \$139 million.²

The report language from the House Appropriations Committee for FY 2023 recommended fully funding the FTC's requested budget at \$490 million.³ This report also encourages the Commission to address several concerns related to the technology industry, including deceptive data collection practices, fraud related to cryptocurrencies, online misinformation, and online privacy for children. Addressing these concerns requires deep technical expertise that is currently lacking at the FTC.

In its own appropriations bill, the Subcommittee should fully fund the FTC's FY 2023 budget request and specify that a significant portion of this funding should go toward bolstering technical expertise at the Commission.

Background

The FTC, in conjunction with the Department of Justice Antitrust Division, is primarily responsible for enforcing laws related to unfair and deceptive business practices and other anticompetitive activity. Over the past few decades, the Commission has increasingly exercised its authority over the technology industry. The Commission regularly scrutinizes the business practices of tech firms and reviews mergers and acquisitions in the technology sector. As the size and complexity of the tech industry have grown, it is essential that the FTC has sufficient technical expertise to properly evaluate consumer impacts in this sector.

¹ Consolidated Appropriations Act, 2022, Pub. L. 117-103 (2022).

² Federal Trade Commission, *Federal Trade Commission Fiscal Year 2023 Congressional Budget Justification* (March 2022), p. 8,
https://content.mlex.com/Attachments/2022-04-04_X75ZUQW17T5GT2LS/FTC%20-%20FY23%20CBI.pdf.

³ Financial Services and General Government Appropriations Bill, 2023, p. 69-72, (2022),
<https://docs.house.gov/meetings/AP/AP00/20220624/114951/HMKP-117-AP00-20220624-SD002.pdf>.

Recently, the FTC has taken dozens of enforcement actions against tech firms, particularly regarding user privacy and data security practices.⁴ The Commission has settled cases against Google, Facebook, Twitter, and several other tech companies recently for privacy violations and for violating previous orders. Perhaps most significantly, the FTC is currently engaged in litigation against Facebook (now Meta), alleging that the company has abused its “monopoly power” to implement “an anticompetitive scheme that prevented differentiated and innovative firms from gaining scale, thus enabling Facebook to maintain its dominance.”⁵ All of these actions require the Commission to have a firm grasp of the technical issues at play in addition to legal and economic factors.

The FTC’s technical expertise, while great, tends to lag behind other global enforcement agencies. For example, the FTC’s Division of Privacy and Identity Protection has 40–45 employees. The United Kingdom’s and Ireland’s enforcement agencies have over 700 and 150 employees, respectively.⁶ While this comparison is imperfect, comparing one Division to entire foreign agencies, this analysis highlights that the FTC’s technical staff deserves to be fully funded.

Increasing technical expertise at the FTC will not necessarily result in more cases being brought against tech firms. The primary value-add for investing in technical expertise at the Commission is to help its lawyers and economists more accurately evaluate potential consumer harms, establish enforcement priorities, and develop technological solutions to operational challenges.

The Need for Technical Expertise at the FTC

The FTC has long recognized the need for expanded technical capacity, both for enforcement and general operations. In its FY 2023 budget request, the Commission asked Congress to increase its appropriation by \$65.4 million to hire 300 additional full-time equivalent employees. Among other areas, this increase would go to support increasing technology enforcement capacity and developing technological solutions to casework and litigation challenges.⁷ With regard to enforcement, the Commission further explained:

⁴ Federal Trade Commission, *FTC Report to Congress on Privacy and Security*, (Sept. 13, 2021), p. 2 (focusing on efforts on health apps; accuracy of data for housing, employment, and credit; videoconferencing; and education technology, https://www.ftc.gov/system/files/documents/reports/ftc-report-congress-privacy-security/report_to_congress_on_privacy_and_data_security_2021.pdf).

⁵ *Federal Trade Commission v. Facebook, Inc.*, 1:20-cv-03590-JEB (2021).

⁶ *Ibid.*, p. 7.

⁷ Federal Trade Commission, *Federal Trade Commission Fiscal Year 2023 Congressional Budget Justification* (March 2022), p. 10, https://content.mlex.com/Attachments/2022-04-04_X75ZUOW17T5GT2LS/FTC%20-%20FY23%20CBI.pdf.

In FY 2020, the Commission established the Bureau of Competition’s Technology Enforcement Division (TED) to reinvigorate and refocus BC’s commitment to identifying and challenging anticompetitive mergers and conduct in complex and increasingly pervasive technology markets. While pursuing this work, FTC staff are severely outmatched by the resources that dominant technology firms can deploy, such that the number of attorneys and experts working for defendants can outmatch FTC by ten to one.⁸

Federal agencies are often outgunned when engaging in enforcement actions against tech firms. Giving the FTC the resources it needs to hire more technical experts for the TED and other tech-focused departments would undoubtedly help it more effectively and efficiently police anticompetitive activity in tech markets.

The Need for Qualified Economists at the FTC

The Bureau of Economics is crucial to the Commission’s antitrust and consumer protection missions. It “helps ... evaluate the economic impact of ... actions by providing economic analysis for competition and consumer protection investigations and rulemakings.”⁹ The Bureau employs numerous Ph.D. economists, research analysts, accountants, and other staff necessary to support the analysis it provides to the Commission.¹⁰ Throughout the decades, the Bureau’s responsibilities have increased to include analysis supporting antitrust investigations, merger review, and support for other types of investigations and cases.

In addition to increased technical staffing levels, the FTC’s budget justification requests that Congress provide funding for 20 full-time employees to “provide increased support and economic analysis ... and to increase the amount of economic analysis that guides the Commission’s consumer protection and competition policies and enforcement.”¹¹ Within the justification document, the Commission expresses a desire for the prospective full-time employees to be economists focused on antitrust, including “merger and nonmerger enforcement investigations and litigation, and research to help the FTC focus antitrust enforcement to maximize the agency’s ability to maintain competitive markets.”¹²

The Commission’s primary role is protecting consumers, not solely competition. Even the competition model should ask the question of whether the presence or absence of competition

⁸ Ibid.

⁹ Federal Trade Commission, “Bureau of Economics,” <https://www.ftc.gov/about-ftc/bureaus-offices/bureau-economics>.

¹⁰ Michael Salinger and Paul Pautler, “The Bureau of Economics at the US Federal Trade Commission,” Federal Trade Commission, April 2006, <https://www.ftc.gov/sites/default/files/attachments/careers-bureau-economics/06beover.pdf>.

¹¹ See *2023 Budget Justification*, p. 9–10.

¹² Ibid., p. 13.

harms consumers. The Commission and Bureau should be focused on ensuring that government practices do not harm consumers by restricting entry, limiting competition, chilling innovation, or restricting choices.¹³

Given the Bureau's nature supporting the Commission's work, the core request seems appropriate. However, this Subcommittee should focus on the Bureau and Commission's broader work. While additional staff should help the Commission's antitrust efforts, this Subcommittee should make it clear that any new staff should be used to support the Bureau's broader mission of protecting consumers.

Recommendations

This Subcommittee should fully fund the FTC's FY 2023 Budget Request.

As we have argued previously, complex technical challenges and increased workloads at the FTC necessitate additional resources.¹⁴ Just as their House counterparts did, this Subcommittee should fully fund the FTC's FY 2023 budget request of \$490 million. While funding alone is insufficient, granting the Commission the resources to expand its technical capacity would result in more effective supervision of tech markets and more efficient operations at the FTC.

This Subcommittee should include language in the FY 2023 appropriations bill that directs funds toward hiring additional technical staff.

The need for additional technical capacity at the FTC is clear and immediate, and it is incumbent upon appropriators to ensure that the Commission has the resources it needs to address this challenge. Specifically, this Subcommittee should direct the necessary funds of the \$65.4 million requested for additional, full-time employees toward hiring individuals with technical or economics expertise. These new roles could help close capacity gaps within the Technology Enforcement Division, Division of Privacy and Identity Protection, Office of Technology Research and Investigation, Bureau of Economics, regional offices, and other relevant parts of the FTC. In all cases, this Subcommittee should also ensure that the Commission remains committed to its original and statutory purposes of protecting consumers, with a focus both on government practices and private sector practices that harm consumers.

¹³ Paul A. Pautler, "A History of the FTC's Bureau of Economics," September 8, 2015, p. 82, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2657330.

¹⁴ "Providing Resources for the Federal Trade Commission to Promote Healthy Digital Markets and U.S. Leadership in Technology Governance" (2021), <https://lincolnpolicy.org/wp-content/uploads/2021/02/FTC-approps-letter-final.pdf>.