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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
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LILA HELMS, MAJORITY STAFF DIRECTOR
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August 22, 2023

The Honorable Lina M. Khan
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Chairwoman Khan:

I write regarding the Federal Trade Commission's ("FTC") use of taxpayer resources to directly coordinate with foreign lawmakers to create new regulations in overseas jurisdictions that target American businesses. Your agency's collusion with foreign governments not only undermines U.S. sovereignty and Congress's constitutional lawmaking authority, but also damages the competitiveness of U.S. firms and could negatively affect the savings of millions of Americans who hold stock in those companies via retirement savings accounts and pension plans.

As you know, the European Union ("EU") recently approved two laws expressly designed to weaken American companies and boost the EU's revenue under the guise of consumer protection and competition. First, the EU passed the Digital Markets Act ("DMA"), which requires certain "gatekeeper"¹ companies to comply with extremely prescriptive obligations, like sharing customer data with third parties, or else risk a fine of up to twenty percent of their annual global revenue.² By virtue of how the law defines "gatekeeper" companies, the DMA targets *American firms*; European and Chinese companies can for the most part operate as usual, if not better, with their competition effectively weakened. Second, the EU approved the Digital Services Act ("DSA"), which imposes certain requirements on all online service platforms. However, it forces heightened requirements—like mandatory participation in external audits and data sharing with government authorities—on so-called "very large online platforms" ("VLOPs"), which are defined as platforms with more than 45 million monthly active EU users.³ U.S. companies own sixteen of the nineteen online platforms

¹ The DMA imposes "gatekeeper" status on a company if it meets three criteria: (1) "has a significant impact on the internal market" (presumed to be met if it is valued at €75 billion or greater); (2) "provides a core platform service" (presumed to be met if the platform has at least 45 million monthly active end users in the EU); and (3) "enjoys an entrenched and durable position, in its operations" (presumed if it has provided a "core platform service" for at least three years). See Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act, 2022 O.J. (L 265) 1.

² See *id.*; *The Digital Markets Act (DMA)*, European Union (accessed on Jun. 29, 2023), <https://www.eu-digital-markets-act.com/>.

³ *The Digital Services Act: Ensuring a Safe and Accountable Online Environment*, European Commission (accessed on Jun. 29, 2023), https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_en.

subject to the DSA’s heightened requirements and would face fines of up to six percent of annual global revenue for violations.⁴ Again, *non-U.S. companies are largely off the hook*.

Taken together, the DMA and DSA objectively discriminate against U.S. companies by imposing enormous regulatory compliance costs and penalties on them, while handing companies from other countries—especially China—a competitive edge. These concerns are real: a recent study determined that “new compliance and operational costs” resulting from the DMA on U.S. companies could range from \$22 billion to \$50 billion.⁵ It also found that 16 percent of European companies surveyed would switch from an American tech provider to a Chinese tech provider because of those anticipated costs.

It is one thing for the EU to target U.S. businesses, however misguided such efforts may be. But it is altogether unthinkable that an agency of the U.S. government would actively help the EU do so. Even the Biden administration has “been clear” that the U.S. government “opposes efforts specifically designed to target only U.S. companies,” like the DMA and DSA.⁶

Yet your agency jumped into these efforts. In March of this year, the FTC announced that it would send agency officials to Brussels to assist the EU in implementing the DMA.⁷ At the time, you said “it is especially critical that we deepen our cooperation with key enforcement partners,” like the EU.⁸ Since then, however, the FTC has provided no detail on what its work in Europe entails. When asked about the announcement during a recent hearing of the House Energy and Commerce Committee, you did not provide any information about your decision to join forces with the EU against U.S. interests, but instead stated that you are “proud of the international cooperation that the FTC has long pursued.”⁹ Indeed, several coincidences indicate that the FTC has long been cooperating with foreign governments to accomplish abroad what it cannot achieve domestically. For example, about a week and a half after you met with the head of the UK’s Competition and Markets authority, the UK blocked Microsoft’s acquisition of Activision Blizzard.¹⁰ And in a 2021 interview, you lamented that “the U.S. has been behind the curve, especially with regards to the

⁴ *Digital Services Act: Commission Designates First Set of Very Large Online Platforms and Search Engines*, European Commission (Apr. 25, 2023), https://ec.europa.eu/commission/presscorner/detail/en/IP_23_2413.

⁵ Kati Suominen, *Implications of the European Union’s Digital Regulations on U.S. and EU Economic and Strategic Interests*, Center for Strategic and International Studies (Nov. 2022), https://csis-website-prod.s3.amazonaws.com/s3fs-public/2023-02/221122_EU_DigitalRegulations-3.pdf?VersionId=04r7zBzS2kHNhsISAqn4NkC6lGNgip7S.

⁶ Foo Yun Chee, *Exclusive U.S. Warns Against IP, Trade Secret Risks in Draft EU Tech Rules – Paper*, REUTERS (Nov. 10, 2021), <https://www.reuters.com/technology/exclusive-us-warns-against-ip-trade-secret-risks-draft-eu-tech-rules-paper-2021-11-10/>.

⁷ *Justice Department, Federal Trade Commission and European Commission Hold Third U.S. -EU Joint Technology Competition Policy Dialogue*, U.S. Department of Justice (Mar. 30, 2023), <https://www.justice.gov/opa/pr/justice-department-federal-trade-commission-and-european-commission-hold-third-us-eu-joint-0>.

⁸ *Id.*

⁹ *Innovation, Data, and Commerce Subcommittee Hearings: “Fiscal Year 2024 Federal Trade Commission Budget,”* (Apr. 18, 2023), <https://energycommerce.house.gov/events/innovation-data-and-commerce-subcommittee-hearing-fiscal-year-2024-federal-trade-commission-budget>.

¹⁰ *First on CNBC: CNBC Transcript: Activision Blizzard CEO Bobby Kotick Speaks with CNBC’s “Squawk Box” Today*, CNBC (Apr. 27, 2023), <https://www.cnbc.com/2023/04/27/first-on-cnbc-cnbc-transcript-activision-blizzard-ceo-bobby-kotick-speaks-with-cnbc-squawk-box-today.html>.

European Commission” and stated that you have been “in close touch” with the European Commission.¹¹

Even worse, the FTC is asking *American taxpayers* for \$590 million in funding—\$160 million more than last year—so the agency can do things like send staff abroad to enforce *European regulations* targeting *American companies*.¹² Even the FTC’s 2024 budget request acknowledges that FTC staff has “participated in outbound exchanges” with the EU’s “competition agenc[y].”¹³

To better understand the FTC’s cooperation with the EU’s efforts to regulate U.S. businesses, please provide written responses and documents responsive to the following questions no later than September 5, 2023.

1. How many *total* FTC employees, contractors, and agents has the FTC has sent to Europe since June 2021?
 - a. Indicate the number of FTC employees, contractors, and agents that have performed any FTC-related work in Europe *each month* since June 2021.
 - b. Provide the titles of all FTC employees, contractors, and agents whom the FTC has sent to Europe since June 2021.
 - c. Indicate the number of FTC employees, contractors, and agents the FTC has designated as a “detailee” to any government office or agency in Europe since June 2021.
 - d. Provide the titles of all FTC employees, contractors, and agents whom the FTC has designated as a detailee to any government office or agency in Europe since June 2021.
 - e. Provide the specific locations in Europe (including offices and agencies, where applicable) to which each of the FTC employees, contractors, and agents identified in (b) and (d) were sent.
 - f. Describe the purpose of sending those employees, contractors, detailees, and/or agents to Europe, and to Brussels in particular. In doing so, please describe, as specifically as possible, the project(s) that each employee, contractor, detailee and agent worked on, is working on, or intends to work on, while in Europe, and Brussels specifically.

¹¹ *Lina Khan: US Antitrust Takes Big Steps – How to Read That in Europe*, Concurrences (Feb. 2021), <https://www.concurrences.com/en/review/numeros/no-1-2021/interview/98400>.

¹² *Federal Trade Commission, Congressional Budget Justification Fiscal Year 2024*, FTC (Mar. 13, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/p859900fy24cbj.pdf.

¹³ *Id.*

- g. Describe, in detail, any work that FTC employees, contractors, detailees, and/or agents are performing in Europe, and Brussels in particular, that concerns the DMA or DSA.
2. Provide the monthly expenses the FTC has incurred to send FTC employees, contractors, detailees, and/or agents to Europe, and Brussels in particular, since June 2021.
 - a. What is the average nightly hotel cost for an FTC employee, contractor, detailee, or agent to stay in Brussels?
3. In September 2022, the EU opened an office in San Francisco, California to “reinforce the EU’s cooperation with the United States on digital diplomacy and strengthen the EU’s capacity to reach out to key public and private stakeholders, including policy makers, the business community, and civil society in the digital technology sector.”¹⁴ How many total FTC employees, contractors, and agents have visited the EU’s office in San Francisco since September 2022?
 - a. Indicate the number of FTC employees, contractors, and agents that have visited the EU’s office in San Francisco *each month* since September 2022.
 - b. Provide the titles of all FTC employees, contractors, and agents who have visited the EU’s office in San Francisco since September 2022.
 - c. Describe in detail the purpose of each visit by an FTC employee, contractor, or agent to the EU’s office in San Francisco since September 2022.
4. Produce all documents and communications between any FTC employee, contractor, detailee, and/or agent and any official of the EU or any foreign country regarding the DMA or DSA.

Thank you for your attention to this matter.

Sincerely,



Ted Cruz
Ranking Member

¹⁴ EEAS Press Team, *US/Digital: EU Opens New Office in San Francisco to Reinforce Its Digital Diplomacy*, European Union External Action (Jan. 9, 2022), https://www.eeas.europa.eu/eeas/usdigital-eu-opens-new-office-san-francisco-reinforce-its-digital-diplomacy_en.