

Questions for the Record from Mr. Ben Cline for Ms. Jeanne Bumpus  
Hearing on Compliance with Committee Oversight  
November 30, 2023

---

Your testimony to the Subcommittee on November 30, 2023, revealed, as was the case on March 29, 2023, that you are not informed as to the status of the FTC's response to Committee oversight. In particular, you are still unable to give any definitive information as to the status of document collection, document review, and production. You testified both on March 29, 2023, and November 30, 2023, that the Committee's oversight of the FTC is a proper function of the Committee and that the FTC is committed to responding to Committee oversight. But under Chair Khan the FTC has been consistently slow-walking and stonewalling in response to this Committee. In November nearly two weeks prior to your testimony, the Committee notified the FTC that the Subcommittee would be seeking a granular status update, which you were unable to provide. Thus, for the record, please answer the following questions:

1. Did the FTC authorize you to testify on November 30, 2023?
  - a. If so, did the FTC vote to authorize your testimony?
  - b. If yes, then please explain why you did not request the information, and why you were not provided the information, before coming to testify.
  - c. Did you convey to anyone at the FTC the Committee's specific request for a status update? If so, who?
  - d. Did the FTC assess your knowledge of the status of the FTC's responses to the Committee's oversight requests? If so, who at the FTC assessed your knowledge?
  - e. Did the FTC instruct you on how to testify with respect to Committee questions as to the status of any particular oversight requests? If so, who gave you this instruction?
  - f. Did you ever express to anyone at the FTC that you did not know the answers to the questions the Committee informed the FTC that members had interest in?
    - i. If not, why not?
    - ii. If yes, then please explain why you were unable to provide answers at the hearing.
  - g. Did anyone at the FTC refuse to provide you with updates as to the status of the FTC's responses to the Committee's oversight requests? If so, who?
2. On November 30, 2023, you were asked to identify the custodians of material responsive to Committee requests but were unable to provide an answer, and testified that you would "take it back." Who at the FTC will you contact to inquire as to the identity of the

custodians of materials responsive to Committee oversight requests? Please identify all the individuals you will contact.

3. Why did you appear before the Subcommittee unprepared to testify about the status of the FTC's response to the Committee's oversight related to the FTC's merger enforcement?
4. Why did you appear before the Subcommittee unprepared to testify about the status of the FTC's response to the Committee's oversight related to the FTC's proposed non-compete rulemaking?
5. Who at the FTC did you meet with prior to testifying about the status of the FTC's responses?
  - a. When did you meet?
  - b. For how long did you meet?
  - c. What did you discuss?
  - d. Did you discuss the questions you knew would likely arise at the hearing on November 30?
6. If information on the status of responses to a particular request is being withheld from you, who has decided this information should be withheld from you?
7. Were you told why you would not be given the information you asked for?
8. With respect to the House Judiciary Committee's pending requests: do you have regular meetings with FTC staff about these requests?
9. If so, who attends these meetings?
10. If such meetings occur, how often do they occur?
11. If such meetings occur, what is their typical duration?
12. What other means, such as email or other communication, do you rely on to gain status updates?

Questions for the Record from Mr. Nathaniel Moran for Ms. Jeanne Bumpus  
Hearing on Compliance with Committee Oversight  
November 30, 2023

---

The FTC's production of responsive information related to the Committee's inquiry about merger enforcement under Chair Khan has been limited and uninformative. The Commission's failure to win when litigating merger challenges, as well as repeated reports and evidence of poor internal management and waste of resources, elevates the importance of oversight to inform Congress's potential legislative reforms concerning merger enforcement. The lack of substantive production calls into doubt whether the FTC is taking the Committee's oversight seriously and giving it the attention it deserves. Accordingly, please respond to the following questions:

1. The FTC confirmed receipt of the Committee's April 5, 2023, letter regarding the FTC's approach to mergers. Were FTC staff told to preserve potentially responsive documents and communications pursuant to the Committee's April 5, 2023, request?
  - a. If so, when were FTC staff informed to preserve potentially responsive documents and communications?
2. How much time did the FTC permit staff to search for and collect documents and communications responsive to the Committee's April 5, 2023, requests?
3. Identify by name and title the person or persons responsible for supervising the gathering and review of documents and communications responsive to the Committee's April 5, 2023, requests.
4. List the dates of all communications related to the collection of documents sent by the person(s) supervising the gathering of documents and information responsive to the Committee's April 5, 2023, requests.
5. Describe the process and rationale by which documents and communications were collected by the individuals identified as having responsive materials, in response to the Committee's April 5, 2023, requests.
6. Describe the process and rationale by which documents and communications responsive to the Committee's April 5, 2023, requests were reviewed prior to transmission to the Committee.
7. Provide the number of individuals who participated in the review of documents and communications responsive to the Committee's April 5, 2023, requests prior to transmission to the Committee.
8. Describe the process and rationale by which redactions have been made to documents and communications responsive to the Committee's April 5, 2023, requests.
9. Describe the process and rationale by which documents and communications otherwise responsive to the Committee's April 5, 2023, requests have been determined to contain

privileged information and subsequently withheld from the Committee. Please describe the number of documents and communications withheld from the Committee to date.

10. Provide details about the types of privilege, if any, that the FTC is asserting over documents being withheld from the Committee pursuant to the Committee's April 5, 2023, requests.
11. List by name the custodians who were identified by the FTC as potentially having "documents and communications referring or relating to the decision to withdraw the Trump Administration's 2020 vertical merger guidelines," request number 4 from the Committee's April 5, 2023, list of requests.
12. List by name the custodians who were identified by the FTC as potentially having "documents and communications, including any on personal devices and any communications with the Executive Office of the President or CFPB Director Rohit Chopra, relating to the FTC's policy concerning early terminations," request number 7 from the Committee's April 5, 2023, list of requests.
13. List the number of documents and communications that have been collected, broken out by custodian, pursuant to the Committee's April 5, 2023, requests that have not been transmitted to the Committee.
14. List the number of pages corresponding with each of the above identified documents which have not been transmitted to the Committee.

Questions for the Record from Ms. Laurel Lee for Ms. Jeanne Bumpus  
Hearing on Compliance with Committee Oversight  
November 30, 2023

---

On January 5, 2023, the FTC proposed an unfair methods of competition rulemaking to effectively ban nearly all employer-employee non-compete agreements in the United States. The Committee has sought information on the FTC’s proposed rulemaking since February 14, 2023, and very little meaningful information has been produced. The Committee has learned that the FTC heavily relied on a staffer from the CFPB to lead and supervise the drafting of the rule, which raised more questions and concerns about the manner in which this effort was undertaken at the FTC.

After Chair Khan testified before the Committee on the Judiciary on July 13, 2023, I asked several questions about the FTC’s efforts in this rulemaking, as well as the relationship between the FTC and CFPB in this rulemaking. Chair Khan’s responses failed to explain the way this effort was undertaken and evaluated at the FTC and its legality, other than declaring that she “believes” she has authority to pursue it.<sup>1</sup>

Notwithstanding subsequent productions to the Committee – which mostly contained already publicly available information or blank pages of schedulers, and very little substantive material – the FTC still has not complied with the Committee’s requests after nearly 10 months. Accordingly, please provide responses to the following:

- 1) The FTC confirmed receipt of the Committee’s February 14, 2023, letter regarding the FTC’s notice of proposed rulemaking about non-compete agreements. Were FTC staff told to preserve potentially responsive documents pursuant to the Committee’s February 14, 2023, requests?
  - a. If so, when were FTC staff told to preserve potentially responsive documents and communications?
- 2) How much time did the FTC give staff to search for and collect documents and communications responsive to the Committee’s February 14, 2023, requests?
- 3) Identify the person or persons responsible for supervising the gathering of documents and communications responsive to the Committee’s February 14, 2023, requests. Please identify the person or persons by name and title.
- 4) List the dates of all communications related to the collection of documents sent by the person(s) supervising the gathering of responsive documents and communications responsive to the Committee’s February 14, 2023, requests.

---

<sup>1</sup> See Lina M. Khan, QFR Responses, 17 (Aug. 21, 2023).

- 5) Describe the process by which documents were collected by the individuals identified as having responsive documents and communications, in response to the Committee's February 14, 2023, requests.
- 6) Describe the process by which documents responsive to the Committee's February 14, 2023, requests were reviewed prior to transmission to the Committee.
- 7) How many individuals participated in the review of documents responsive to the Committee's February 14, 2023, requests prior to transmission to the Committee?
- 8) Describe the process and rationale by which redactions have been made to documents responsive to the Committee's February 14, 2023, requests.
- 9) Describe the process and rationale by which documents otherwise responsive to the Committee's February 14, 2023, requests have been determined to contain privileged information and subsequently withheld from the Committee.
- 10) Please detail the types of privilege the FTC is asserting to justify documents being withheld from the Committee pursuant to the Committee's February 14, 2023, requests.
- 11) When will the Committee receive a privilege log relative to documents and communications the FTC has withheld to date? Please explain why a privilege log has not been provided to the Committee to date.
- 12) List by name the custodians who were identified by the FTC as potentially having "documents and communications referring or relating to the conclusion that the FTC has the legal authority to engage in this rulemaking, including any description of how to reconcile this rulemaking with the Supreme Court's decision in *West Virginia v. EPA*," request number 1 from the Committee's February 14, 2023, list of requests.
- 13) List by name the custodians who were identified by the FTC as potentially having "documents and communications referring or relating to any analysis of the FTC's litigation risk associated with this rulemaking," request number 2 from the Committee's February 14, 2023, list of requests.
- 14) List by name the custodians who were identified by the FTC as potentially having "documents and communications referring or relating to the FTC's economic analysis associated with this rulemaking, including the rule's costs and any decisions about how much or how little weight the FTC should give any study, source, or other piece of evidence," pursuant to request number 3 from the Committee's February 14, 2023, list of requests.
- 15) List by name the custodians who were identified by the FTC as potentially having "communications between the FTC and any outside parties referring or relating to this rulemaking, including, but not limited to, the Executive Office of the President," request number 4 from the Committee's February 14, 2023, list of requests.

- 16) List the number of documents that have been collected, broken out by custodian, pursuant to the Committee's February 14, 2023, requests 1-4, and have not been transmitted to the Committee.
- 17) List the number of pages corresponding with each of the above identified documents which have not been transmitted to the Committee.
- 18) Has the FTC completed its search of the Chair's and all other FTC senior leaders' files and electronic devices regarding responsive communications with anyone at the CFPB or other outside parties regarding the non-compete rulemaking?
  - a. If not, why not?
  - b. If so, what volume of communications have been gathered?
  - c. Why have you not produced all such communications to the Committee?
  - d. What is the reason for withholding such documents?
  - e. What are the dates of such communications?