

ONE HUNDRED SEVENTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

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May 4, 2022

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan:

The day after Twitter’s board of directors agreed to sell Twitter to Mr. Elon Musk, the Open Markets Institute (OMI), an extreme left-wing political advocacy organization,¹ called on Biden regulators at the Federal Trade Commission (FTC), the Federal Communications Commission (FCC), and the Justice Department to “block” the purchase.² We are concerned that OMI—where you were previously employed as Legal Director³—may be trying to leverage its close relationship with you to take action to further limit free speech online. The author of OMI’s statement has called you a “dear friend,” a “close colleague,” and someone who “understands the nature of the crisis and how to use existing law and authority to master it.”⁴

¹ One commentator has noted that “OMI’s loudest voices are largely unencumbered by economic or legal education” Nancy Scola, *How a liberal think tank is driving 2020 Dems to crack down on Big Tech*, POLITICO (June 14, 2019), <https://www.politico.com/story/2019/06/14/open-market-institute-silicon-valley-monopolies-1507673>. And it has been reported that the author of OMI’s statement recently participated in the Antitrust Section Spring Meeting of the American Bar Association and “rattled off a list of social ills, including outsized influence of tech companies, environmental problems and wealth inequality.” Christine S. Wilson, *Marxism and Critical Legal Studies Walk into the FTC: Deconstructing the Worldview of the Neo-Brandeisians*, REMARKS FOR THE JOINT CONFERENCE ON PRECAUTIONARY ANTITRUST: THE RULE OF LAW AND INNOVATION UNDER ASSAULT 5 (Apr. 8, 2022) (citation omitted), https://www.ftc.gov/system/files/ftc_gov/pdf/Marxism%20and%20Critical%20Legal%20Studies%20Walk%20into%20the%20FTC%20Deconstructing%20the%20Worldview%20of%20the%20Neo-Brandeisians.pdf. He “told attendees that “[t]his all—to a great degree—[is] your doing. It is your doing because you conspired to use a false science, an idiot science, to blind the law to dangerous concentrations of power, to blind the citizenry to the fist of monopoly.”” *Id.* (first alternation in original) (citation omitted).

² See generally Press Release, OMI Statement on Elon Musk and Twitter (Apr. 26, 2022), <https://static1.squarespace.com/static/5e449c8c3ef68d752f3e70dc/t/6268076a3b1aa57fbcb0487/1650984811013/OMI+Musk+and+Twitter.pdf>.

³ See Press Release, Lina Khan’s Confirmation as Commissioner on the Federal Trade Commission is Momentous (June 15, 2021), <https://www.openmarketsinstitute.org/publications/lina-khans-confirmation-as-commissioner-on-the-federal-trade-commission-is-momentous>.

⁴ *Id.*

OMI claims without evidence that Mr. Musk's purchase is a "threat to free communications and debate in the United States."⁵ In reality, Mr. Musk has proposed "softening [Twitter's] stance on content moderation," which will increase speech, and he has said that "Twitter should be more cautious when deciding to take down tweets or permanently ban users' accounts."⁶ OMI's desire to restrict and suppress free speech online helps explain why it supports a package of ill-advised Democrat-led antitrust bills that will lead to more censorship, and thus less speech, in the digital arena.⁷

OMI appears to believe that the FTC will be receptive to its cavalier effort to influence a federal agency that is run by its former employee. It is true that the Biden FTC is moving to promote progressive values that undermine capitalism and threaten innovation.⁸ And under your leadership, the Biden FTC has sought to "recast[] antitrust law into a tool to enable government to control capitalism,"⁹ which disrupts free markets and is inconsistent with fundamental American freedoms. Perhaps this is why OMI seems to think it may have a friendly ear in the FTC.

To assist the Committee in its oversight of the FTC, please provide a written response to the following questions:

1. Did you or anyone else at the FTC solicit or play any role in drafting OMI's statement?
2. Has the FTC taken any actions in response to the statement released by OMI?

Please answer these questions as soon as possible but no later than 5:00 p.m. on May 18, 2022.

⁵ Press Release, *supra* note 2, at 2.

⁶ Cara Lombardo et al., *Twitter Accepts Elon Musk's Offer to Buy Company in \$44 Billion Deal*, WALL ST. J. (Apr. 25, 2022).

⁷ See Press Release, Open Markets Applauds New Bipartisan Legislation to Rein in Big Tech as Important First Step (June 11, 2021), <https://www.openmarketsinstitute.org/publications/open-markets-applauds-new-bipartisan-legislation-to-rein-in-big-tech-as-important-first-step>; Rep. Jim Jordan & Mark Meadows, Opinion, *Rep. Jim Jordan & Mark Meadows: Big Tech merged with Big Government – radical Dems' bills would transform US*, FOX NEWS (June 22, 2021) ("Make no mistake, Big Tech is out to get conservatives and must be reined in. But these bills do nothing to fight Big Tech's anti-conservative bias and censorship. These Democrat bills will only make things worse. If you think Big Tech is bad now, just wait until Apple, Amazon, Facebook and Google are working in collusion with Big Government.").

⁸ See, e.g., Draft FTC Strategic Plan for FY 2022-2026, FTC, at 21 (Oct. 2021) (listing the objective to "[a]dvance racial equity, and all forms of equity, and support underserved and marginalized communities through the FTC's competition mission"); Bryan Koenig, *'Nontraditional Questions' Appearing In FTC Merger Probes*, LAW 360 (Sept. 24, 2021) ("[W]hen quizzed about the need for the less traditional input, 'staff have been unable to articulate how these issues relate to the agency's mission to promote competition, leaving the outside world guessing as to the role they play in agency decision making . . .'" (citation omitted)), <https://www.law360.com/articles/1425218>.

⁹ Robert Bork Jr., *Why Free Thinkers Need to Block Lina Khan's FTC Nomination*, REAL CLEAR MARKETS (June 15, 2021), https://www.realclearmarkets.com/articles/2021/06/15/why_free_thinkers_need_to_block_lina_khans_ftc_nomination_781419.html.

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Furthermore, this letter serves as a formal request to preserve all records and materials relating to Mr. Musk's pending acquisition of Twitter. You should construe this preservation notice as an instruction to take all reasonable steps to prevent the destruction or alteration, whether intentionally or negligently, of all documents, communications, and other information, including electronic information and metadata, that is or may be potentially responsive to this congressional inquiry. This instruction includes all electronic messages sent using your official and personal accounts or devices, including records created using text messages, phone-based message applications, or encryption software.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is written in a cursive, flowing style.

Jim Jordan
Ranking Member

cc: The Honorable Jerrold L. Nadler, Chairman
The Honorable Noah J. Phillips, Commissioner, Federal Trade Commission
The Honorable Rebecca K. Slaughter, Commissioner, Federal Trade Commission
The Honorable Christine S. Wilson, Commissioner, Federal Trade Commission