

Congress of the United States  
House of Representatives  
Washington, DC 20515-0403

January 9, 2024

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

Dear Chairwoman Khan:

I appreciate the discussions that we have held in the past, including your testimony before the Financial Services and General Government Subcommittee. While I have shared my concerns with you regarding the Federal Trade Commission (FTC) during these conversations, I am disappointed in the regulatory direction that you continue to take. Ensuring consumers are not subjected to fees for goods and services that they are not aware of is proper. However, the approach that the FTC has taken with the Notice of Proposed Rulemaking (NPRM) on junk fees<sup>1</sup> is overly broad and one that could have deep and significant impacts on the supply and demand of commerce that churns the American economy.

In the fall of 2022, the FTC released an Advance Notice of Proposed Rulemaking (ANPRM)<sup>2</sup> that was the foundation for all future FTC junk fee actions. In this original blueprint, instead of taking a cautious approach, the FTC predetermined its outcome with a broad brush by not only identifying by name numerous target industries, but also by stating that “junk fees appear to be prevalent in many sectors.”<sup>3</sup> From the beginning, the FTC swept numerous industries into one category and implicitly labeled them bad actors. Regulating multiple sectors by the lowest common denominator deserves circumspection. Yet, in the November 2023 proposed rulemaking, the next step in the regulatory process, the FTC goes even further and adds more industries into the mix, namely the entire restaurant ecosystem.<sup>4</sup>

Sadly, the FTC analyzed this approach and recklessly decided a limited method was unwarranted. When discussing whether the rule should be narrowed, the FTC states “[T]he Commission believes, however, that limiting the proposed rule to specific sectors that have received extensive attention would leave the door open to widespread unfair or deceptive practices in other sectors.”<sup>5</sup> Importantly, “leave the door open” implies wrongdoing over an

<sup>1</sup> Trade Regulation Rule on Unfair Or Deceptive Fees, 88 Fed. Reg. 77,420 (Nov. 9, 2023).

<sup>2</sup> Unfair or Deceptive Fees Trade Regulation Rule Commission Matter No. R207011, 87 Fed. Reg. 67,413 (Nov. 8, 2022).

<sup>3</sup> *Id.* at IIA.

<sup>4</sup> *Supra* note, 1 at IIA2B3.

<sup>5</sup> *Id.* at VIIB.

evidence-based approach. This is unfortunately the outcome that is expected when far-reaching government rules are proposed indiscriminately across the board.

Beyond implicating entire industries of wrongdoing, the FTC's own regulatory cost estimates prove that an all-industry method could have far-reaching consequences by stating "[B]ecause the proposed rule is sector-neutral and economy-wide, all firms will be affected to some degree."<sup>6</sup> The Federal Government should not employ a regulatory strategy that harbors such blatant overreach. Admitting this outright, the FTC states "[T]he total costs of the proposed rule are uncertain because it is unclear how, across a variety of industries, firms would adjust prices, change their price displays and disclosures, and upgrade their systems in response to the proposed rule."<sup>7</sup>

As I stated earlier, hardworking American taxpayers should not be subjected to fees that they have not agreed to, but in the same vein, they also should not be exposed to a regulatory regime that is unable to define its total costs.

The strongest American economy is one that allows freedom of choice by consumers. Market participants have the power to elevate the best products and services over inferior offerings. If prices are determined to be too significant, it is up to the consumer to define an alternative approach. The market should determine winners and losers, not the Federal Government. I am fearful that this is the road the FTC is proposing to go down.

It is for these reasons that I respectfully request that you rethink this rulemaking approach. American consumers and American businesses deserve a more responsible method that measures scope and costs appropriately and accordingly.

Sincerely,



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Steve Womack  
Chairman  
Financial Services and General Government Subcommittee  
House Appropriations Committee

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<sup>6</sup> *Id.* at C1E.

<sup>7</sup> *Id.* at F.