

# Overreach, Data Privacy & More: A Rundown of the Fiscal Year 2024 FTC Budget Hearing

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On Tuesday April 18, FTC Chair **Khan**, and Commissioners **Bedoya** and **Slaughter** spent almost three hours responding to criticism and compliments before its House oversight panel. Only occasionally did the hearing cover its title subject – “[Fiscal Year 2024 Federal Trade Commission Budget](#)” – and the reaction was not encouraging for the agency. For most of the hearing the Members and Commissioners debated the FTC’s performance.

Energy and Commerce Committee Members seemed ambivalent about FTC’s [budget](#) request for 300 additional employees, but the hearing did reveal reactions of the panel to recent activity at the FTC. Merger challenges, auto-dealer regulations, and FTC-EU relations are a few activities that came under fire. Privacy enforcement drew some praise but did not escape the heat. Here is our rundown of the biggest issues on the Committee’s radar and the Commissioners’ responses:

## Debating Overreach and Touting Enforcement

Keen Congressional interest was evident from the outset, with both Cathy Rodgers (R-WA), full Committee Chair, and Gus Bilirakis (R-FL) Chair of the Subcommittee on Innovation, Data and Commerce leading the questions. They took the Commissioners to task on numerous fronts. A large contingent of Members either followed suit or offered praise for recent actions and announced intentions.

**Bilirakis** (R-FL) kicked off the meeting highlighting his concerns about overreach, noting the rates at which employees are leaving, the FTC’s focus on matters that are not “mission critical,” and its refusal to provide information to House committees. He implored the Commissioners to “get back to what you do best: support and protect consumers, that is the goal, that is the mission” and work within the constraints Congress has set. Concerns that the current FTC has exceeded congressionally granted authority were generally echoed by Republican Members of the Committee.

Ranking Member **Pallone** (D-NJ) disagreed with the criticism, commending the FTC on managing a large portfolio of issues with fewer than 1,400 employees.

Full Committee Chair Cathy Rodgers (R-WA) echoed Bilirakis with criticisms of the “drastically” reduced accountability and transparency at the FTC. She cited [reports](#) describing Khan as “abusive” and as a “tyrant,” and the lack of assurance given by the FTC to “put the people first.” Other Republican Members joined the chorus and added their own critiques of the Commission.

Generally, Democrats on the Committee, such as Rep. **Schakowsky** (D-IL), expressed support for numerous FTC initiatives. Some called for Congress to restore the FTC’s authority to seek monetary

remedies for deceptive practices under 13(b), which the Supreme Court's decision in [AMG Capital Management, LLC v. FTC](#) gutted.

The Commissioners in their opening statements touted their latest accomplishments, including actions under the Opioid Fraud Prevention Act, the [Health Breach Notification rule](#), and the Military Lending Act, and the [Made in USA](#) rule. Among the highlights were the FTC's complaint against Epic Games, the maker of Fortnite, for allegedly violating COPPA; efforts to prevent junk fees; and [a proposed negative option rule](#). Data and privacy practices came up often, including the FTC's [suit against](#) a data broker for allegedly selling data that tracked people at sensitive locations like doctor's offices and churches.

Responding to assertions of overreach, the Commissioners maintained that every action they have taken was within the authority granted by the FTC Act. They praised their staff and expressed that their greatest concern is the lack of adequate resources to do their jobs. Additionally, after *AMG*, they contended, FTC lacks critical tools for effective enforcement.

### **Burdens on Law-Abiding Business**

Rep. **Walberg** (R-MI) took issue with the FTC's new mission statement for dropping the phrase "without unduly burdening legitimate business" as one of the agency's objectives. The removal, said the Congressman, came at a time when businesses were already struggling with the effects of Covid-19. They didn't need new burdens from FTC. Chair Rodgers also noted the retreat from imposing undue burdens, stating that it removed guardrails essential to good governance. Khan responded that the objective to avoid unnecessary costs remained in the Commission's strategy.

### **Ethics and Morale at the Agency**

Republican Members raised concerns regarding agency ethics, due process, [Republican Commissioners' departures](#), and inadequate transparency at the FTC. Specifically, Rodgers pressed Khan on her refusal to recuse herself from a number of proceedings (one of [which](#) provoked a [dissent](#) from former Commissioner Wilson) and asked Bedoya and Slaughter whether a Commissioner should follow the advice of the FTC's Ethics counsel. The Commissioners all agreed that the ethics counsel's opinion is something they take seriously and stated they were operating within the bounds of the law.

Several Committee Members raised the annual Federal Employee Viewpoint Survey, which reported that the percent of employees at the FTC who strongly agreed that the senior leaders "maintain high standards of honesty and integrity" dropped from 57.6% in [2020](#) to 22.5% in [2022](#). In response, Khan repeatedly praised the staff, assured the Members that she took the results of the survey seriously, and committed to address the root causes of the concerns.

### **Civil Penalty Warning Letters**

Last week, the [FTC sent notices](#) to nearly 700 companies, warning them that deceptive or unsubstantiated product claims could result in large civil penalties – more than \$50,000 a violation. Rodgers and Reps. Walberg and **Pence** (R-IN) took umbrage, saying it implied that those companies had done something wrong. Both regarded the public listing of the companies as a dangerous exercise of intimidation and overreach.

### **Data Privacy**

A number of representatives, both Republican and Democrat, called out the need for comprehensive

data legislation. Many Members and the Commissioners supported tougher rules for big tech, reducing data collection rather than relying on notice and consent, and prohibiting data collection as a condition for use of services, especially educational services.

Notably, Rodgers called out the need for Congress to enact a national standard with regard to privacy and comprehensive data legislation so that a single agency is not acting unilaterally. She criticized the Commissioners for launching the [commercial surveillance and data security rulemaking](#) and asked if FTC would abandon it if Congress passed a bill, to which Khan said yes and that the FTC stands ready to act on Congressional direction with regard to data privacy.

## Other Issues

Unpaid Experts. Rep. **Cammack** (R-FL) asked about the audit of the [FTC's Unpaid Consultant and Expert Program](#). Khan explained that the FTC needs access to these consultants for expertise on things such as technical matters. Cammack, among others, was concerned that these positions are being over used and not properly advertised to potential applicants. Khan maintained that the FTC was operating within the bounds of the law.

COPPA. The FTC is still reviewing the Children's Online Privacy Protection Act (COPPA) rule, according to Chair Khan. The FTC initiated the rule review in 2019. We have reported on the progress [here](#).

The INFORM Consumers Act. In her opening remarks, **Rep. Schakowsky** touted the Committee's bipartisan efforts to pass the INFORM Consumers Act (effective in June 2023), which gives the FTC new authority to hold online marketplaces accountable for policing fraud on their platforms.

Franchise Concerns. Rep. **Bucshon** (R-IN) raised concerns over the FTC's Request for Information regarding franchises and his suspicion that it was advancing pro-union policies. Khan explained that the FTC's efforts relate to small business owners.

Digital Markets Act. Reps. **Duncan** (R-SC) and **Armstrong** (R-ND) denounced reports that the FTC was helping the European Commission to secure compliance with the [Digital Markets Act](#) and working with other EU authorities to block deals by U.S. businesses. They requested specifics on the FTC's international activities. Khan responded that the FTC has long collaborated with allies, but she did not dispute the characterization of the current efforts. Since the hearing, an editorial in the Wall Street Journal, "[The FTC Is Working With the EU to Hamstring U.S. Companies](#)" described a [letter](#) from the Chamber of Commerce accusing the FTC and the DOJ of refusing to "support due process and procedural fairness norms in competition investigations." There is no doubt that the FTC and the DOJ will be fielding more questions from Congress as to whether their international activities are undermining US policy.

Motor Vehicle Dealers Trade Regulation Rule. Rep. **Fulcher** (D-ID) asked whether the FTC had considered that the rule may make the car buying process more expensive for consumers. He was concerned that the FTC did not document or source its estimates regarding the benefits of the rule or consider the costs to both consumers and businesses in the form of extra paperwork. Khan said that the FTC rulemakings always include a cost benefit analysis from the Bureau of Economics and she was sure it would be done here as well.

Right to Repair. Rep. **Dunn** (D-FL) praised the [FTC's report](#) on Nixing the Fix, which explored potential anticompetitive practices restricting owners' rights to repair goods.

Antitrust Concerns. Members of the Committee expressed concerns over misdirected merger enforcement and recent losses the FTC had suffered in challenges of vertical acquisitions and

nascent competitors. Others, particularly Republican Members, accused the FTC of spending too many resources going after esoteric antitrust violations. Democrats highlighted concerns over vertical integration hurting small business pharmacies and grocery stores. Oddly, the Commission's most ambitious undertaking on the competition side, the [Proposed Rule](#) banning noncompete agreements, escaped scrutiny.

### **Attendees**

Representatives: Bilirakis (R-FL), Schakowsky (D-Ill.), Rodgers (R-WA), Pallone (R-NJ), Bucshon (R-IN), Kelly (D-IL), Walberg (R-MI), Castor (D-FL), Duncan (R-SC), Blunt Rochester (D-DE), Dunn (D-FL), Soto (D-FL), Allen (R-GA), Clarke (D-N.Y.), Fulcher (D-ID), Dingell (D-MI), Harshbarger (R-TN), Trahan (D-MA), Armstrong (R-ND), Cammack (D-FL), Pence (D-IN), Lesko (R-AZ), Carter (R-GA), Joyce (R-PA).

Witnesses: Chair Lina Khan, Commissioner Rebecca Slaughter, Commissioner Alvaro Bedoya.

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That's our summary for now. Stay tuned as we continue to track updates from the FTC.