

Congress of the United States
Washington, DC 20510

August 4, 2021

Mr. Andy Jassy
Chief Executive Officer
Amazon Services, Inc.
410 Terry Avenue North
Seattle, WA 98109

Mr. Mark Zuckerberg
Chief Executive Officer
Facebook, Inc.
1 Hacker Way
Menlo Park, CA 94025

Dear Mr. Jassy and Mr. Zuckerberg:

We are writing regarding the ongoing attempts by Amazon Services, Inc. (Amazon) and Facebook, Inc. (Facebook) to strip Federal Trade Commission (FTC) Chair Lina Khan of her authority to enforce antitrust law.¹ Amazon and Facebook both recently filed petitions seeking the recusal of Chair Khan from multiple ongoing and potential future antitrust matters involving the companies,² claiming she lacks objectivity due to her former criticisms of your business practices. Your efforts only add to the perception that you are attempting to bully your regulators, disarm the FTC, and avoid accountability rather than to strengthen ethics standards, and you should cease these efforts immediately.

On June 15, 2021, Lina Khan – a law professor, former FTC staffer, and U.S. antitrust expert³ – became an FTC Commissioner after the Senate confirmed her in a bipartisan vote. President Biden appointed her to lead the agency as Chairwoman shortly thereafter.⁴ Two weeks later, reports surfaced that Amazon had submitted a 25-page petition to the FTC demanding that Chair Khan recuse herself “from any antitrust investigation, adjudication, litigation, or other proceeding in which Amazon is a subject, target or defendant” because “the FTC, under Chair Khan’s leadership, would not be a neutral and impartial evaluator of the evidence developed in any antitrust investigation against Amazon or in deciding whether to bring enforcement actions against the company.”⁵ On July 14, 2021, Facebook made a similar demand, arguing that Chair Khan be recused from “participating in any decisions concerning whether and how to continue the FTC’s antitrust case against the company” on the basis that “well before becoming a

¹ Slate, “The tech giants are trying to derail one of their biggest threats before she gets started. Could it work?” Aaron Mak, July 16, 2021, <https://slate.com/technology/2021/07/facebook-amazon-lina-khan-recusal-ftc.html>.

² *Id.*; New York Times, “13 Ways the Government Went After Google, Facebook and Other Tech Giants This Year,” Daisuke Wakabayashi, Mike Isaac, Karen Weise, Jack Nicas, and Sophia June, December 16, 2020, <https://www.nytimes.com/interactive/2020/technology/tech-investigations.html>; New York Times, “U.S. and States Say Facebook Illegally Crushed Competition,” Cecilia Kang and Mike Isaac, December 9, 2020, <https://www.nytimes.com/2020/12/09/technology/facebook-antitrust-monopoly.html>.

³ New York Times, “Lina Khan, a progressive trustbuster, displays get-tough approach to tech in confirmation hearing,” Cecilia Kang, April 21, 2021, <https://www.nytimes.com/2021/04/21/business/lina-khan-ftc.html>.

⁴ New York Times, “Biden Names Lina Khan, a Big-Tech Critic, as F.T.C. Chair,” Dave McCabe and Cecilia Kang, June 15, 2021, <https://www.nytimes.com/2021/06/15/technology/lina-khan-ftc.html>.

⁵ Recusal petition by Amazon.com, Inc. to the U.S. Federal Trade Commission, Motion to recuse Chair Lina M. Khan from involvement in certain antitrust matters involving Amazon.com, Inc., <https://s.wsj.net/public/resources/documents/AMZN%20petition%20re%20Khan.pdf>.

Commissioner, [she] had already decided the material facts relevant to Facebook’s liability in the Commission’s pending antitrust lawsuit and already reached legal conclusions that Facebook was liable under antitrust laws.”⁶ Facebook is currently defending an FTC lawsuit for “[maintaining] its monopoly position by buying up companies [photo-sharing app Instagram and messaging service WhatsApp]⁷ that present competitive threats and by imposing restrictive policies that unjustifiably hinder actual or potential rivals that Facebook does not or cannot acquire.”⁸

It remains to be seen whether the FTC will decide to handle such matters through in-house administrative proceedings or through federal court.⁹ If the latter occurs, then Chair Khan would be “handing over the ability to rule on the outcome of the case to a federal judge”¹⁰ – likely rendering these recusal requests moot, particularly in cases in which the FTC launched its prosecution before Chair Khan’s tenure. Despite this uncertainty, both of your companies have engaged in a coordinated attack to discredit Chair Khan on ethics grounds, even – in the case of Amazon – going so far as to request immunity from any future antitrust investigations.¹¹

The real basis of your concerns appears to be that you fear Chair Khan’s expertise and interpretation of federal antitrust law. To argue that federal ethics laws preclude Chair Khan from exercising her expertise is illogical and inconsistent with the plain language of the relevant statutes and with FTC ethics officials’ interpretations of recusal requirements. Indeed, federal ethics laws clearly define the conflicts of interest that would require recusal: “any arrangement concerning prospective employment [or] a financial interest.”¹² Office of Government Ethics regulations contain additional guidance on these potential conflicts, calling for recusal when “an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter.”¹³

Chair Khan has no such conflicts. She was clear and direct in her Senate confirmation hearing, stating, “I have none of the financial conflicts or personal ties that are the basis for

⁶ Recusal petition by Facebook, Inc. to the U.S. Federal Trade Commission, Petition for recusal of Chair Lina M. Khan from involvement in the pending case against Facebook, Inc., <https://about.fb.com/wp-content/uploads/2021/07/Facebook-Inc.s-Petition-to-Recuse-Chair-Khan.pdf>.

⁷ Reuters, Facebook seeks U.S. FTC Chair Lina Khan’s recusal in antitrust case,” Diane Bartz and Elizabeth Culliford, July 14, 2021, <https://www.reuters.com/legal/litigation/facebook-asks-us-ftc-chair-lina-khans-recusal-2021-07-14/>.

⁸ U.S. Federal Trade Commission vs. Facebook, Inc., U.S. District Court Case No: 1:20-cv-03590, public redacted version of document filed under seal, https://www.ftc.gov/system/files/documents/cases/051_2021.01.21_revised_partially_redacted_complaint.pdf.

⁹ Slate, “How to Save the Case Against Facebook,” Sandeep Vaheesan, June 30, 2021, <https://slate.com/technology/2021/06/facebook-ftc-monopoly-antitrust.html>.

¹⁰ CNBC, “Big Tech is trying to disarm the FTC by going after its biggest weapon: Lina Khan,” Lauren Feiner, July 15, 2021, <https://www.cnbc.com/2021/07/15/amazon-facebook-trying-to-disarm-the-ftc-by-going-after-its-biggest-weapon-lina-khan.html>.

¹¹ *Id.*

¹² 18 U.S.C. § 208

¹³ 5 C.F.R. § 2635.502

recusal under federal ethics laws, and I would be approaching these issues with an eye to the underlying facts and the empirics and really be following the evidence.”¹⁴ There is no basis for her recusal under the current federal ethics statute or FTC precedent.¹⁵ Your efforts to sideline Chair Khan appear to be nothing more than attempts to force an FTC stalemate that would allow you to evade accountability for any anti-competitive behavior.¹⁶

If you are serious about ending conflicts of interest in Washington, you can show your sincerity by supporting legislation that makes federal ethics rules and enforcement even more stringent.¹⁷ Otherwise, your efforts to sideline key federal regulators simply act as further evidence that you will go to all lengths to ward off necessary scrutiny of your immense market power. We urge you to cease these actions and allow federal officials to do their jobs and uphold federal antitrust law.

In addition, in order to ensure that your own respective legal and governmental efforts are meeting appropriate ethics standards and are free of conflicts of interest, we request answers to the following questions by Wednesday, August 18, 2021:

1. How many of your current attorneys, if any, whether in-house or outside counsel, have formerly worked at the Federal Trade Commission, the Department of Justice, or the office of the Attorney General of a state?
 - a. Please identify for each of these attorneys:
 - i. which office they previously worked in;
 - ii. their role and the duration of their former position;
 - iii. when their employment at your company began;
 - iv. whether they participated or otherwise were involved in any investigation, litigation, or other legal matter related to your company while working for their former governmental employers; and
 - v. whether they are participating in or involved in any legal defense concerning an investigation of your company by their former employing federal agency.
2. What, if any, protocols or guidelines has your company established to ensure that these attorneys do not participate in improper conversations or engagements with their former governmental employers?
3. What, if any, protocols or guidelines has your company established to ensure that these attorneys recuse themselves when appropriate?

¹⁴ U.S. Senate Committee on Commerce, Science, & Transportation, “Nomination Hearing,” April 21, 2021, <https://www.commerce.senate.gov/2021/4/nomination-hearing>. Specific remarks occur at 02:45:16.

¹⁵ Washington Post, “Amazon seeks recusal of FTC Chair Khan, a longtime company critic,” Jay Greene and Rachel Lerman, June 30, 2021, <https://www.washingtonpost.com/technology/2021/06/30/amazon-khan-ftc-recusal/>.


¹⁶ Reuters, Facebook seeks U.S. FTC Chair Lina Khan’s recusal in antitrust case,” Diane Bartz and Elizabeth Culliford, July 14, 2021, <https://www.reuters.com/legal/litigation/facebook-asks-us-ftc-chair-lina-khans-recusal-2021-07-14/>.

¹⁷ Anti-Corruption and Public Integrity Act, S.5070, <https://www.congress.gov/bill/116th-congress/senate-bill/5070?q=%7B%22search%22%3A%22anti-corruption+and+public+integrity%22%7D&s=3&r=1>.


4. How many of your current employees or lobbyists have formerly worked as members of Congress or as congressional staffers?
5. What protocols or firewalls have you established to ensure that each former congressional employee does not participate in improper conversations or engagements with the U.S. government?
6. What protocols have you established to ensure that all former federal employees recuse themselves when appropriate?

Thank you for your attention to these matters.

Sincerely,




Elizabeth Warren
United States Senator



Pramila Jayapal
Member of Congress



Richard Blumenthal
United States Senator



Cory A. Booker
United States Senator