



**Comments of**

**TechFreedom**

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**In the Matter of**

*Request for Public Comment Regarding Reducing Anti-Competitive Regulatory Barriers*

FTC-2025-0028-0001

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## INTRODUCTION

In response to Executive Order 14267, the Federal Trade Commission seeks “public comment on how federal regulations can harm competition in the American economy.”<sup>1</sup> The Request for Comment recognizes that, sometimes, “regulations become unnecessarily onerous,” operating “to exclude new market entrants, protect dominant incumbents, and predetermine economic winners and losers.”<sup>2</sup> These burdensome regulations “have the effect of reducing competition, entrepreneurship, and innovation—and thereby holding back the American economy....”<sup>3</sup>

Rules and regulations that punish legitimate business activity pose a significant threat to American dynamism. The Commission used to overtly oppose burdens on legitimate business: for twenty-plus years, under the leadership of both parties, the FTC defined its mission as “Protecting consumers and competition by preventing anticompetitive, deceptive, and unfair business practices through law enforcement, advocacy, and education *without unduly burdening legitimate business activity*.”<sup>4</sup>

That all changed, however, during the Biden administration. In 2022, the Commission published its Strategic Plan for Fiscal Years 2022-2026.<sup>5</sup> The 2022-2026 Strategic Plan deleted “without unduly burdening legitimate business activity” from the FTC’s mission, breaking with twenty-five years of bipartisan tradition.<sup>6</sup> Neutering the mission statement foreshadowed a dramatic shift in the agency’s overall approach to regulation: since then, the Commission has undertaken a variety of initiatives directed squarely at legitimate business

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<sup>1</sup> Request for Public Comment Regarding Reducing Anti-Competitive Regulatory Barriers (Apr. 14, 2025), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P859900AnticompetitiveRegulationsRFI.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P859900AnticompetitiveRegulationsRFI.pdf).

<sup>2</sup> *Id.*

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

<sup>4</sup> Compare FED. TRADE COMM’N, STRATEGIC PLAN UNDER THE GOVERNMENT PERFORMANCE AND RESULTS ACT: FISCAL YEARS 1997—2002 at A-4 (1997), [https://www.ftc.gov/sites/default/files/documents/reports\\_annual/strategic-plan/spfy97fy02.pdf](https://www.ftc.gov/sites/default/files/documents/reports_annual/strategic-plan/spfy97fy02.pdf), with FED. TRADE COMM’N, STRATEGIC PLAN FOR FISCAL YEARS 2018 TO 2022 at 2 (2017), [https://www.ftc.gov/system/files/documents/reports/2018-2022-strategic-plan/ftc\\_fy18-22\\_strategic\\_plan.pdf](https://www.ftc.gov/system/files/documents/reports/2018-2022-strategic-plan/ftc_fy18-22_strategic_plan.pdf) (emphasis added).

<sup>5</sup> See FED. TRADE COMM’N, STRATEGIC PLAN FOR FISCAL YEARS 2022-2026 (2021), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/fy-2022-2026-ftc-strategic-plan-2025-update.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/fy-2022-2026-ftc-strategic-plan-2025-update.pdf).

<sup>6</sup> See *id.* at 4.

activity, such as deriding online advertising as “commercial surveillance”<sup>7</sup> and, more recently, scrutinizing the content moderation practices of Internet platforms.<sup>8</sup>

Current Commission leadership claims to stand for competition, entrepreneurship, and innovation. The Commission should walk the talk and reinstate its original mission statement, including the “without unduly burdening legitimate business activity” clause.

## **I. For Twenty-Five Years, the Commission Pursued its Consumer Protection and Competition Missions While Avoiding Unduly Burdening Legitimate Business Activity**

From 1997, when Congress first required independent agencies to produce strategic plans, until 2022, the Commission continuously defined its mission as: “Protecting consumers and competition by preventing anticompetitive, deceptive, and unfair business practices through law enforcement, advocacy, and education *without unduly burdening legitimate business activity*.”<sup>9</sup> The Commission first formally articulated the agency’s mission in 1997 in compliance with the Government Performance and Results Act of 1993 (GPRA).<sup>10</sup> GPRA established a framework for the federal government to manage and monitor the performance of federal agencies. To comply, agencies must set goals, devise performance metrics, and assess past results. Specifically, GPRA requires agencies to submit “strategic plans” containing “a comprehensive *mission statement* covering the major functions and operations of the agency.”<sup>11</sup> These strategic plans cover five-year periods, and agencies must update the plans every three years.<sup>12</sup>

In September 1997, the Commission released its first strategic plan under GPRA. The 1997-2002 Strategic Plan defined the FTC’s mission, including the “without unduly burdening

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<sup>7</sup> *Commercial Surveillance and Data Security Rulemaking*, FTC, <https://www.ftc.gov/legal-library/browse/federal-register-notice/commercial-surveillance-data-security-rulemaking> (last visited May 27, 2025).

<sup>8</sup> *See, e.g.*, Request for Public Comment Regarding Technology Platform Censorship (Feb. 20, 2025), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P251203CensorshipRFI.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P251203CensorshipRFI.pdf).

<sup>9</sup> *Compare* FED. TRADE COMM’N, STRATEGIC PLAN UNDER THE GOVERNMENT PERFORMANCE AND RESULTS ACT: FISCAL YEARS 1997—2002 at A-4 (1997), [https://www.ftc.gov/sites/default/files/documents/reports\\_annual/strategic-plan/spfy97fy02.pdf](https://www.ftc.gov/sites/default/files/documents/reports_annual/strategic-plan/spfy97fy02.pdf), *with* FED. TRADE COMM’N, STRATEGIC PLAN FOR FISCAL YEARS 2018 TO 2022 at 2 (2017), [https://www.ftc.gov/system/files/documents/reports/2018-2022-strategic-plan/ftc\\_fy18-22\\_strategic\\_plan.pdf](https://www.ftc.gov/system/files/documents/reports/2018-2022-strategic-plan/ftc_fy18-22_strategic_plan.pdf) (emphasis added).

<sup>10</sup> 5 U.S.C. § 306.

<sup>11</sup> *Id.* at (a)(1) (emphasis added).

<sup>12</sup> *See id.* at (a), (b).

legitimate business activity” clause.<sup>13</sup> The Commission adhered to the spirit of this mission for twenty-five years.<sup>14</sup>

Astoundingly, in 2022, the Commission changed its longstanding mission statement, striking “without unduly burdening legitimate business activity” without so much as a footnote highlighting the deletion<sup>15</sup>—and despite public outcry.<sup>16</sup> The Commission updated the 2022-2026 Strategic Plan in February 2025 “to remove DEI goals and language” but retained the neutered mission statement.<sup>17</sup> The 2022-2026 Strategic Plan is a massive outlier: removing the “without unduly burdening legitimate business activity” clause broke with twenty-five years of bipartisan tradition, foreshadowing a sea change by the agency.

The Commission neither explained the change nor provided any alternative language. Consequently, the revised mission statement raised more questions than it answered: Did the Commission now *intend* to burden legitimate business activity?

Just three years later, the answer appears to be yes: the Commission does *intend* to burden legitimate business activity.<sup>18</sup> Since changing the mission statement, the Commission has

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<sup>13</sup> FED. TRADE COMM’N, STRATEGIC PLAN UNDER THE GOVERNMENT PERFORMANCE AND RESULTS ACT: FISCAL YEARS 1997—2002 at A-4 (1997), [https://www.ftc.gov/sites/default/files/documents/reports\\_annual/strategic-plan/spfy97fy02.pdf](https://www.ftc.gov/sites/default/files/documents/reports_annual/strategic-plan/spfy97fy02.pdf) (emphasis added).

<sup>14</sup> Three years after its first strategic plan, the FTC released the 2000-2005 Strategic Plan with a nearly identical mission statement: “To prevent business practices that are anticompetitive, deceptive, or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; *and to accomplish these missions but not impede legitimate business activity.*” The 2003-2008 Strategic Plan reverted to the original “without unduly burdening” language. Since then, all subsequent FTC Strategic Plans (fiscal years 2006-2011, 2009-2014, 2014-2018, and 2018-2022) have repeated the original 1997 mission statement—with the ever-present “without unduly burdening legitimate business activity” clause up front and center, year after year. See Comments of TechFreedom in Draft FTC Strategic Plan § III, Docket No. FTC-2021-0061 (Nov. 30, 2021), [https://techfreedom.org/wp-content/uploads/2021/11/FTC-2021-0061-0010\\_attachment\\_1.pdf#page=6](https://techfreedom.org/wp-content/uploads/2021/11/FTC-2021-0061-0010_attachment_1.pdf#page=6).

<sup>15</sup> See FED. TRADE COMM’N, STRATEGIC PLAN FOR FISCAL YEARS 2022-2026 at 4 (2021), <https://www.regulations.gov/document/FTC-2021-0061-0001> (The FTC’s Mission).

<sup>16</sup> See, e.g., TechFreedom, *supra* note 14; Kelley Drye, Comment on FTC’s Draft Strategic Plan for 2022-2026 (Nov. 24, 2021), <https://s3.amazonaws.com/cdn.kelleydrye.com/content/uploads/blogs/ad-law-access/2021/11/Comment-on-FTC-Strategic-Plan.Kelley-Drye-Warren.pdf>.

<sup>17</sup> FED. TRADE COMM’N, STRATEGIC PLAN FOR FISCAL YEARS 2022-2026 (FEBRUARY 2025 UPDATE) (2025), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/fy-2022-2026-ftc-strategic-plan-2025-update.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/fy-2022-2026-ftc-strategic-plan-2025-update.pdf).

<sup>18</sup> See John E. Villafranco & William C. MacLeod, *The Deletion of “Legitimate Business Activity” from the FTC’s Strategic Plan*, KELLEY DRYE (Nov. 29, 2021), <https://www.kelleydrye.com/viewpoints/blogs/ad-law-access/the-deletion-of-legitimate-business-activity-from-the-ftcs-strategic-plan> (“In recent months, we have seen (1) repeated references to accepted forms of online behavioral advertising as ‘surveillance,’ (2) an objective to impose more ‘substantive limits rather than procedural protections’ on business practices through Magnuson-Moss rulemaking and FTC orders; (3) the rescission of the FTC’s 2015 Competition Policy Statement because its focus on cost-benefit analysis and competitive markets is considered by this Agency to be too narrow; and (4) the imposition of prior approval requirements for mergers, including ‘before closing any future transaction affecting each relevant market for which a violation was alleged.’”).

sought to: ban noncompete agreements despite courts leaving that authority to the states;<sup>19</sup> hold AI developers liable for malicious actors misusing their tools in contravention of Section 230;<sup>20</sup> and bully online platforms into changing their content moderation practices in violation of the First Amendment.<sup>21</sup> By failing to protect legitimate business activity, the Commission has de-legitimized the entire agency.

## **II. Avoiding Unduly Burdening Legitimate Business Activity Is a Key Balancing Factor in the Commission’s Overall Analysis of Consumer Protection and Competition Law**

The Commission’s Strategic Plans, which articulate the FTC’s mission, “reflect the agency’s cumulative experience in identifying cost-effective ways to implement its consumer protection and competition missions, while also eliminating or minimizing burdens on legitimate business activities.”<sup>22</sup> Experts agree with this balanced approach: “The FTC’s mission statement envisions a balancing between protecting consumers and competition by preventing anticompetitive, deceptive, and unfair business practices while, at the same time, taking steps to ensure that the regulatory burden does not bog down legitimate business activity.”<sup>23</sup> A balanced, cost-effective approach is especially important now: “American companies are facing historic challenges with inflation, strained supply chains and worker shortages, while the FTC is going rogue and engaging in regulatory overreach that is accelerating uncertainty and threatening our fragile economic recovery.”<sup>24</sup>

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<sup>19</sup> Non-Compete Clause Rule, 16 C.F.R. § 912 (2024). *See also* Non-Compete Clause Rule, Notice of Proposed Rulemaking, 88 Fed. Reg. 3482 (proposed Jan. 19, 2023) (to be codified at 16 C.F.R. 910), <https://www.federalregister.gov/documents/2023/01/19/2023-00414/non-compete-clause-rule>.

<sup>20</sup> *See* Trade Regulation Rule on Impersonation of Government and Business, 16 C.F.R. § 461 (2024). *See also* Comments of TechFreedom in Impersonation Rule, Docket No. 2024-03793 (Apr. 30, 2024), <https://techfreedom.org/wp-content/uploads/2024/05/TechFreedom-Comments-FTC-Impersonation-of-Government-and-Business.pdf> (“The proposed rule could be inconsistent with, and therefore preempted by, 47 U.S.C. § 230(c)(1) in two ways.”).

<sup>21</sup> *See supra* note 8.

<sup>22</sup> *See* FED. TRADE COMM’N, STRATEGIC PLAN UNDER THE GOVERNMENT PERFORMANCE AND RESULTS ACT: FISCAL YEARS 1997—2002 at A-11 (1997), [https://www.ftc.gov/sites/default/files/documents/reports\\_annual/strategic-plan/spfy97fy02.pdf](https://www.ftc.gov/sites/default/files/documents/reports_annual/strategic-plan/spfy97fy02.pdf).

<sup>23</sup> Svetlana S. Gans and John E. Villafranco, *Without Burdening Legitimate Business Activity: Recent Proposals to Improve the FTC’s Investigative Process and Transparency*, THE ANTITRUST SOURCE, at 10 (Aug. 2019), <https://www.kelleydrye.com/getattachment/1ce89d88-7220-4ac8-a8ab-05912a52cba8/attachment.aspx>.

<sup>24</sup> Villafranco & MacLeod, *supra* note 18. *See also* Dissenting Statement of Commissioner Christine S. Wilson Regarding the Federal Trade Commission Strategic Plan for Fiscal Years 2022-2026 (Aug. 26, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Wilson%20dissenting%20statement%20-%20strategic%20plan%20for%20FY22-26%20-%20final.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Wilson%20dissenting%20statement%20-%20strategic%20plan%20for%20FY22-26%20-%20final.pdf) (“In other words, the new Strategic Plan will result in higher prices, suppressed production, fewer choices, and dampened innovation.”).

Former FTC Commissioner Maureen Ohlhausen aptly summarized the importance of “without unduly burdening legitimate business” to the agency’s mission:

Looking ahead, the FTC should focus its efforts on preventing clear harm to consumers. In the consumer protection area, this means continuing to prioritize the pursuit of fraudulent conduct that costs consumers real money, especially in tough economic times. In enforcing the antitrust laws, this means focusing on anticompetitive conduct and transactions that cause or threaten to cause significant consumer harm. In both areas, *a focus on consumer harm can help avoid unduly burdening legitimate business*—particularly in high-tech and other rapidly innovating industries that expand consumer choice and spur job growth. When we concentrate our scarce agency resources instead on speculative harms or harm to individual competitors, we may end up making consumers and competition worse off.<sup>25</sup>

A balanced regulatory approach focused on protecting consumers and competition “without unduly burdening legitimate business activity” is key to the Commission’s overall goal of protecting, rather than burdening, beneficial and procompetitive business conduct. The Commission’s unfairness authority expressly requires balancing harm to consumers against “countervailing benefits to consumers or to competition.”<sup>26</sup> Historically, “the FTC has recognized that legitimate business activity benefits consumers and competition, and has consistently made a public commitment to preserve it.”<sup>27</sup> Reinstating the original mission statement is the first step towards reestablishing the Commission’s top priority of protecting consumers and competition.

### **III. Conclusion**

Soon, under GPRA, the Commission must release for comment a draft of its 2026-2030 Strategic Plan. In the new Strategic Plan, the Commission should reinstate its original mission statement, including the “without unduly burdening legitimate business activity” clause. The Commission should return to pursuing a balanced regulatory approach which allows, not burdens, procompetitive conduct.

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<sup>25</sup> Commissioner Maureen K. Ohlhausen, *The Federal Trade Commission at 100: Recommendations for Improving Agency Performance* at 108 (Sept. 10, 2014), [https://www.ftc.gov/system/files/documents/public\\_statements/581651/140910kovacictribute.pdf](https://www.ftc.gov/system/files/documents/public_statements/581651/140910kovacictribute.pdf) (emphasis added).

<sup>26</sup> 15 U.S.C. § 45(n).

<sup>27</sup> *The FTC’s Mission Statement for 2022-2026: “Legitimate Business Activity” Still Missing in Action*, KELLEY DRYE (Aug. 31, 2022), <https://www.kelleydrye.com/viewpoints/blogs/ad-law-access/the-ftcs-mission-statement-for-2022-2026-legitimate-business-activity-still-missing-in-action>.

Respectfully submitted,

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