

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<https://oversight.house.gov>

November 20, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Dear Chair Khan:

The Committee on Oversight and Accountability is writing to request information from the Federal Trade Commission (FTC or Commission) regarding FTC failures to safeguard confidential corporate information in the premerger process and improper litigation practices. Specifically, the Committee is seeking additional context about the FTC's repeated disclosures of confidential corporate information during the Commission's investigation into Amgen Inc.'s (Amgen) merger with Horizon Therapeutics (Horizon).¹ This conduct appears to be part of a wider pattern whereby the FTC is making mockery of its own mission and responsibilities under the law.

In May 2023, the FTC filed a lawsuit opposing Amgen's merger.² The FTC improperly disclosed Amgen's and Horizon's confidential corporate information on four separate occasions, including two instances involving two state attorneys general.³ The Committee finds it especially troubling that the improper disclosures of confidential information by the FTC appear to have benefited its underlying aims by encouraging the attorneys general to join the litigation.⁴

In December 2022, Amgen proposed an acquisition of Horizon, an Ireland-based pharmaceutical company.⁵ In May 2023, six months after Amgen's announcement, the FTC filed a lawsuit to block the vertical merger due to alleged concerns that Amgen would use rebates on their existing drugs to pressure insurance companies and pharmacy benefit managers into recommending Tepezza and Krystexxa.⁶

¹ Amgen, Inc., No. 9414 (F.T.C., July 5, 2023) (Respondents' Unopposed Motion for an Order to Address Unauthorized Disclosures).

² Press Release, FTC Sues to Block Biopharmaceutical Giant Amgen from Acquisition That Would Entrench Monopoly Drugs Used to Treat Two Serious Illnesses, Fed. Trade Comm'n (May 16, 2023).

³ *Supra*, n. 1 at 1-3.

⁴ See David Shepardson, *California, other states join FTC bid to block Amgen deal*, Reuters (June 22, 2023).

⁵ Press Release, Amgen, Rule 2.7 Announcement: Amgen Inc to Acquire Horizon Therapeutics plc (Dec. 12, 2022); Press Release, Amgen, Announcement for the Purposes of Rule 2.12 of the Irish Takeover Panel Act (Dec. 2, 2022).

⁶ *Supra*, n. 2.

FTC disclosed confidential information produced by Amgen and Horizon several times during the FTC's investigation into the proposed merger.⁷ Amgen and Horizon's confidential information was supposed to be protected under the Federal Trade Commission Act.⁸ Yet, the FTC violated this protection on at least four separate occasions.⁹ First, the FTC failed to properly redact the administrative complaint, instead using black highlighting to cover the information.¹⁰ Redacted portions of the administrative complaint reference internal Horizon presentations, documents, predictions on FDA approval, patent expiration dates, and research projects.¹¹ Any person who copied and pasted the complaint into another file could access the confidential information.¹² Those who downloaded the complaint before its removal continue to have, and may share, this sensitive information.¹³

Amgen was notified on June 26, 2023 that FTC Complaint Counsel sent materials with confidential information to the state attorneys general of Wisconsin and California.¹⁴ The FTC admitted to inadvertently disclosing attorney work-product referencing Amgen and Horizon Hart-Scott-Rodino (HSR) information to California, which is provided by companies during the premerger notification process, and an unredacted copy of its federal complaint and attorney-work product referencing Amgen and Horizon HSR information to Wisconsin.¹⁵ HSR filings contain highly sensitive information, including information about the transaction, the businesses involved, and information relating to their subsidiaries, revenues, and potential competitive overlaps or the lack thereof.¹⁶ The FTC again failed to redact confidential information of third parties in the preliminary injunction litigation brought by the FTC in the U.S. District Court for the Northern District of Illinois.¹⁷ Soon after the confidential information was suspiciously released, California and Wisconsin joined the litigation on June 22, 2023.¹⁸

In August 2023, the FTC and Amgen reached a proposed consent order and the FTC withdrew its lawsuit.¹⁹ Nonetheless, the FTC's concerning litigation practices and apparent inability to properly handle confidential information in the Amgen case raise serious questions about the Commission's exercise of its authorities. Left unaddressed, these actions could have a chilling effect on the willingness of companies to engage the Commission in non-adversarial reviews of proposed mergers thereby creating more resource-intensive litigation paid for by

⁷ Amgen, Inc., No. 9414 (F.T.C., July 7, 2023) (Order Granting Respondents' Unopposed Motion for Order to Address Unauthorized Disclosures of Respondents' Confidential Information).

⁸ *Supra*, n. 1 at 1 (citing to §§ 46(f) and 57b-2, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 552(b)(3), (b)(6) and (b)(7)).

⁹ *Id.* at 1-3.

¹⁰ *Id.* at 2.

¹¹ Amgen, Inc., No. 9414 (F.T.C., June 22, 2023) (Complaint).

¹² *Supra*, n. 1 at 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* (citing to Exhibit B, Letter from Nathan Brenner, FTC, Bureau of Competition, to David R. Marriott, Cravath, Swaine & Moore LLP (June 26, 2023)); *What is the Hart-Scott-Rodino Act?*, Thomson Reuters.

¹⁶ *What is the Hart-Scott-Rodino Act?*, Thomson Reuters.

¹⁷ *Supra*, n. 1 at 3.

¹⁸ *See supra*, n. 4.

¹⁹ Amgen, Inc., No. 9414, at 2 (F.T.C., Sept. 1, 2023) (Agreement Containing Consent Order).

The Honorable Lina Khan

November 20, 2023

Page 3 of 3

taxpayers. Corporations and consumers required to engage with the FTC deserve to be confident that the FTC takes its own legal obligations seriously, including its duty to safely guard private information from unlawful public disclosure. The FTC's failure to properly handle information defies its mission "to protect consumers and promote competition,"²⁰ and risks undermining regulatory reporting requirements and the companies that follow them in good faith.

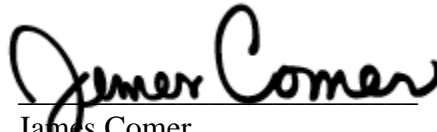
To assist the Committee in better understanding the FTC's investigation of Amgen's acquisition of Horizon and the Commission's apparent misuse of confidential information, please provide the following documents and information no later than December 4, 2023:

1. All communications between the FTC and the attorneys general of California and Wisconsin pertaining to this litigation and the disclosure of Amgen or Horizon's confidential information;
2. All records relating to meetings or phone calls between the FTC and the attorneys general of California and Wisconsin between January 1, 2023 and September 1, 2023. To the extent that records do not contain this information, please provide additional information sufficient to show date, time, attendee(s), location, and topics; and
3. All communications regarding the FTC's effort to rectify the disclosure by FTC Complaint Counsel of confidential information produced by Amgen and Horizon during the FTC's investigation.

To arrange for the delivery of responsive documents or ask any related follow-up questions, please contact the Committee on Oversight and Accountability staff at (202) 225-5074.

The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. Thank you in advance for cooperating with this inquiry.

Sincerely,



James Comer

Chairman

Committee on Oversight and Accountability

cc: The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability

²⁰ Federal Trade Commission, *Mission Statement*.