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MARKUP OF:

H.R. _____, THE FTC PROCESS AND TRANSPARENCY REFORM ACT OF 2016;

H.R. 5111, THE CONSUMER REVIEW FAIRNESS ACT;

H.R. 5092, THE REINFORCING AMERICAN-MADE PRODUCTS ACT; AND

H.R. 5104, THE BETTER ONLINE TICKET SALES (BOTS) ACT

WEDNESDAY, JUNE 8, 2016

House of Representatives,

Subcommittee on Commerce, Manufacturing, and Trade,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 5:24 p.m., in Room 2123, Rayburn House Office Building, Hon. Michael C. Burgess, M.D., [chairman of the subcommittee] presiding.

Present: Representatives Burgess, Lance, and Schakowsky.

Staff Present: Will Batson, Legislative Clerk, Energy and

Power, Environment and the Economy; Rebecca Card, Assistant Press Secretary; Karen Christian, General Counsel; James Decker, Policy Coordinator, Commerce, Manufacturing, and Trade; Paige Decker, Executive Assistant; Graham Dufault, Counsel, Commerce, Manufacturing, and Trade; Melissa Froelich, Counsel, Commerce, Manufacturing, and Trade; Giulia Giannangeli, Legislative Clerk, Commerce, Manufacturing, and Trade; Jay Gulshen, Staff Assistant; Paul Nagle, Chief Counsel, Commerce, Manufacturing, and Trade; Tim Pataki, Professional Staff Member; Graham Pittman, Legislative Clerk; Dan Schneider, Press Secretary; Olivia Trusty, Professional Staff, Commerce, Manufacturing, and Trade; Gregory Watson, Legislative Clerk, Communications and Technology; Michelle Ash, Minority Chief Counsel, Commerce, Manufacturing, and Trade; Jen Berenholz, Minority Chief Clerk; Caroline Paris-Behr, Minority Policy Analyst; and Matt Schumacher, Minority Press Assistant.

Mr. Burgess. The Commerce, Manufacturing, and Trade Subcommittee will come to order.

Good afternoon, and welcome to the subcommittee markup on the discussion draft to amend the Federal Trade Commission Act.

Two weeks ago, we held a legislative hearing that focused on a number of bills that flowed from our disrupter series of hearings. We heard from witnesses who are experts in the Federal Trade Commission's processes and from industries impacted.

Clearly, there's always room for improvement. Tomorrow, we will vote on several of the proposals that were considered at the hearing.

Before we get to the bills that are moving forward, I would like to highlight one bill that is not being considered today. H.R. 4460, the Youth Sports Concussion Act, would address one aspect of the critical issue of protecting children from concussive traumatic brain injury during sports.

There are issues that still need to be worked through on that bill before it is ready for markup, but I am happy that for the first time there are significant discussions. And that work will continue, but it is not ready and will not be included for tomorrow's markup.

I also think it is important that we look at the standards process for safety equipment, particularly helmets, and ask if it is working and are new technologies being incorporated into the standards. There is a lot of research and innovation that is coming into the space, but if the standards don't change, then the protection won't change either.

As the Federal Trade Commission testified before this

subcommittee in 2014, we should be -- and quoting here -- "mindful of the need to tread carefully so as to avoid inadvertently killing research or impeding the development of new technologies and products that truly do provide concussion protection," close quote.

I do thank the Federal Trade Commission for their work in this area, and I hope that these are concepts that, in fact, can be incorporated into this work in the future.

We also appreciate the Federal Trade Commission's engagement. We appreciate their testimony 2 weeks ago. We propose to adopt some of the Federal Trade Commission's suggestions. For example, the FTC suggested clarifications that the Sunshine Act processes still be used in certain circumstances. So we are happy to address that change as well as adopt former Commissioner Wright's suggestion to lower the threshold number of commissioners to two.

We also listened carefully to the Federal Trade Commission's concerns with other processes and transparency bills. The Federal Trade Commission has argued that providing the additional clarity and transparency required in the bills may be a tall task for the agency.

So we have tried to ensure that clerical errors don't end investigations, that an annual policy agenda is a starting place, not an ending place, and we have lessened the burden associated with bringing the good work done by the Federal Trade Commission economists, who are regularly praised as the best in government, to bring their work into light.

On the whole, this set of reforms will increase transparency,

improve congressional oversight, and, thus, better protect consumers. At the same time, we are doing everything we can to encourage the areas of our economy that show the potential for job growth. Our constituents are still asking, where are the jobs? And when the Federal Trade Commission saddles a startup company with a consent decree that is more than four times as long as what the Federal Communications Commission or the Consumer Financial Protection Board does, that doesn't help consumers, and it certainly hurts jobs.

We may not reach consensus today or tomorrow. However, the debate underscores that we all seek the same balance: to ensure that consumers are protected from unfair or deceptive acts or practices while safeguarding the access to low-cost and innovative products and services.

Other bills will look at specific concerns. The Reinforcing American-Made Products Act recognizes the Federal Trade Commission's work on made-in-USA labeling and establishes it as a nationwide standard.

Differing standards between States as to what is an American product has not been a helpful approach. This legislation would be especially impactful. For example, there is a company in my district, Justin Boots, which makes handcrafted leather cowboy boots. The various patchwork of State standards of made-in-America regulations throughout the country have made it difficult for Justin Boots to sell its product in all 50 States. And I look forward to supporting legislation that will unburden this company from the red tape imposed

on it through these regulations.

We also address consumer reviews and event ticketing.

I would also remind the members of the subcommittee that we are at the subcommittee markup in the process and, as always, remain open to exploring changes to bring additional bipartisan support for these bills.

Innovation and transparency will be the hallmark that will help us realize the potential of all of the disruptive technology created in this country. These bills are a measured step forward, and I am glad we are taking the next step tomorrow at the markup.

I will yield back the balance of my time and recognize the ranking member of the subcommittee, Ms. Schakowsky, 5 minutes for an opening statement, please.

Ms. Schakowsky. Thank you, Chairman Burgess.

Today kicks off the subcommittee's first markup since last July.

As with our recent legislative hearing, all the bills we will consider today relate to the Federal Trade Commission, the Federal agency charged with defending competition and protecting consumers from unfair and deceptive practices.

The FTC is critical to consumers and businesses. Last year, the FTC generated over \$700 million in savings for consumers through its consumer protection efforts and \$33.4 billion through its competition efforts. It plays a key role in promoting consumer privacy as new technologies evolve.

The FTC has proven time and again that it actually really works

for consumers. Our subcommittee should be working to strengthen this agency, not disrupt.

My Democratic colleagues have introduced bills to help consumers, empowering the FTC to go after deceptive practices by telecom companies and sham nonprofits. However, those bills, as well as other Democratic FTC bills, were excluded from the agenda.

Meanwhile, the majority's FTC Process and Transparency Reform Act goes in the opposite direction. Instead of protecting consumers, the bill prioritizes the interests of companies that victimize consumers.

This bill, a repackaging of the eight Republican bills we considered last month, undermine FTC under the guise of so-called, quote, "process reform," unquote, and the bill ties the FTC's hands at every step in the process. It makes it harder for the FTC to prove violation of the law. It would provide a safe harbor for companies that comply with FTC guidance but restrict the FTC from using noncompliance as proof that the law was violated. Companies that take advantage of consumers shouldn't have it both ways. Guidance should not be treated as the law, and it definitely should not be treated as the law only when it works to the advantage of those companies.

The bill also limits the FTC's ability to bring cases that prevent noneconomic harm. This is especially bad for consumer privacy cases. In 2012, the FTC previously took action against rent-to-own companies that remotely accessed location data and Web cams on computers they rented out. Those companies could track consumers and take pictures inside their homes.

The FTC took action and brought these companies under a consent agreement. But, as we heard in testimony during our recent hearing, this sort of case could be harder to bring under if Republicans' so-called process reform were enacted.

Not only would the bill make it harder for the FTC to bring cases, but it would also cut the maximum length of consent decrees. The FTC relies on consent decrees to protect consumers from repeated bad behavior by companies. Imagine life if consent agreement in the case I just mentioned would expire in as little as 5 years. That would again leave families at risk of peeping rental companies. That is the direction the bill moves in.

In general, this bill would bog down the FTC by forcing it to more frequent review and renew its actions through provisions requiring annual reports, annual plans, and the termination of investigations after a given period. When the FTC would try to take action under its now narrowed authority, it would have to wait for a time-consuming economic analysis even on minor actions. And, bizarrely, Congress would have less ability to get recommendations from the FTC than State and local governments.

Stretching the agency's resources would mean less protection for consumers and, therefore, more victims of deceptive advertising and unfair business practices. I opposed these anticonsumer proposals separately. I continue to oppose them now that they are packed together. It is time to get our priorities straight, reject this bill, and put consumers first.

We will also be considering three other bills in this markup. H.R. 5111, the Consumer Review Fairness Act, protects the ability of consumers to leave reviews of products and services on Web sites. H.R. 5104, the BOTS Act, would help prevent bots from buying up tickets sold online before consumers can access them. And H.R. 5092, the Reinforcing American-Made Products Act, creates a nationwide standard for the made-in-U.S. label.

With some modifications, I think the Consumer Review Fairness Act and BOTS Act could help solve real problems and build on the FTC's mission to defend competition and protect consumers. And I hope we can find a way forward on H.R. 5092 that will solve the problem for manufacturers and preserve California's current enforcement authorities. I look forward to working with the chairman and other members of this committee to improve these bills.

Thank you, Mr. Chairman, and I yield back.

Mr. Lance. [Presiding.] I thank the ranking member.

And I now have an opening statement.

Tomorrow, we are marking up the FTC Process and Transparency Reform Act of 2016 and several industry-specific bills related to the FTC, including H.R. 5111, the Consumer Review Fairness Act, which I have introduced with Congressman Kennedy of Massachusetts as my cosponsor.

The FTC Process and Transparency Reform Act is the product of the subcommittee's ongoing disrupter series, where we have heard from stakeholders in several new, emerging, and adapting markets on the

various technologies and innovations that have disrupted their respective industries. This has ranged from topics such as connected vehicles and the Internet of Things to 3D printing.

This brings together eight separate bills introduced by members of the subcommittee, all aimed at bringing the Federal Trade Commission into the 21st century and providing an atmosphere that does not hinder innovation while still protecting consumers. I commend Chairman Upton and Chairman Burgess for their leadership in moving this ambitious package forward.

I am also pleased that we are considering my bill, the Consumer Review Fairness Act.

The advent of Web sites and apps such as Yelp and TripAdvisor that publish crowd-sourced reviews of local businesses and restaurants has made it easier than ever for consumers to make informed choices on which business or service to use. Easy access to reliable product and service evaluations has reduced transaction costs and has helped contribute to an enormous consumer surplus estimated in the hundreds of billions of dollars.

Unfortunately, a number of businesses have become frustrated by what they perceive as unfair criticism, and some have turned to a questionable legal remedy known as nondisparagement clauses, often buried in nonnegotiable form contracts. These clauses prohibit their consumers from writing negative reviews about their businesses, stifling consumers' freedom of speech.

It is essential that we protect consumers' right to free speech

and remove any doubt in potential consumers' minds that the reviews they are reading online are anything other than fair and accurate.

While there is a patchwork of State and local laws aimed at combating these clauses, there is not yet a national framework. The Consumer Review Fairness Act would void nondisparagement clauses in form consumer contracts. It would also provide the FTC with the enforcement tools needed to combat the bad actors who try to use these onerous clauses.

I am pleased that we are moving one step closer to joining the Senate in passing this important legislation to protect consumers' freedom of speech.

I yield back the balance of my time.

Is there any other member of the committee who would like to be heard?

The chairman calls up H.R. 5111, the Consumer Review Fairness Act, and asks the clerk to report.

The Clerk. H.R. 5111, to prohibit the use of certain clauses in form contracts that restrict the ability of a consumer to communicate regarding the goods or services offered in interstate commerce that were the subject of the contract, and for other purposes.

Mr. Lance. Without objection, the first reading of the bill is dispensed with.

[The bill follows:]

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Mr. Lance. And the bill will be open for amendment at any point.

Ms. Schakowsky. Let's pass it now.

Mr. Lance. So ordered.

I would get in trouble if we were to do that.

For the information of members, we are now on H.R. 5111, the Consumer Review Fairness Act, and the subcommittee will reconvene at 10 o'clock tomorrow morning.

I remind members that the chair will give priority recognition to amendments offered on a bipartisan basis.

I look forward to seeing all of you tomorrow.

Without objection, the subcommittee stands in recess.

[Whereupon, at 5:39 p.m., the subcommittee recessed, to reconvene at 10:00 a.m., Friday, June 10, 2016.]