

Committee on Energy and Commerce
Opening Statement as Prepared for Delivery
of
Chairman Frank Pallone, Jr.

Hearing on “Transforming the FTC: Legislation to Modernize Consumer Protection”

July 28, 2021

Today, we are continuing this Committee’s important work on putting consumers first. For the past few months, this Subcommittee and then the full Committee pushed forward the Consumer Protection and Recovery Act to restore the Federal Trade Commission’s (FTC) basic authority to get stolen money back to consumers. That urgently needed legislation passed the House last week, and I urge the Senate to take up the bill without delay.

With House passage of the Consumer Protection and Recovery Act, we must take the next step—not just fixing what was broken but improving the nation’s foremost consumer protection agency and putting consumers first.

Congress established the FTC in 1914 in response to rapid industrial change. As Teddy Roosevelt said in support of the new agency, a consensus had emerged that federal law was “not adequate to meet the situation” created by “modern business conditions.”

The FTC initially addressed only unfair competition, which led to unjust results for consumers. In 1938, Congress met the moment, enacting the FTC’s now-core section 5 authority to enforce against “unfair or deceptive acts or practices.” By granting the power to stop consumer harms, the FTC’s consumer protection mission was born.

Over time, the FTC needed more authority to execute its mission. In 1973, Congress met that moment by granting the FTC the authority to go into federal court and seek relief for consumers, including under section 13(b) of the FTC Act. These changes led to billions in relief for consumers and a more efficient way to deter illegal conduct. And the legislation passed in the House last week would restore this critical authority after it had been seriously undermined earlier this year by the Supreme Court.

We are now facing another seminal moment for consumer protection. The digital age has fundamentally changed the consumer experience, but the FTC’s mission to protect consumers and honest businesses remains the same.

Congress must meet the moment again. It’s time to bring the FTC into the modern era, to give it the tools and resources to keep up with changes in the market. Much of the legislation before us today would do just that.

Legislation that would provide general rulemaking authority under the Administrative Procedure Act would remove uniquely onerous burdens so the FTC can more efficiently provide

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clear rules of the road to businesses and consumers. Legislative proposals would also give the FTC civil penalty authority, which is critical to impose meaningful consequences on wrongdoers and deter other bad actors. These reforms help industry and individuals and are essential to maximize the FTC's limited resources.

Legislation that ends exemptions on nonprofits and telecommunications common carriers from FTC jurisdiction also helps consumers and businesses. Consumer protection enforcement should be based on the activity, not the entity. As former FTC Chairman William Kovacic told this Subcommittee in February, these "embarrassing anachronisms" no longer make sense, and only diminish the FTC's ability to do its job.

Unfortunately, on the other hand, some proposals before us today would hinder the FTC and ultimately harm consumers. I am concerned by the proposals that would burden staff and drain resources with needless process and reports and effectively obstruct information exchanges between the FTC and other regulators and lawmakers. The bills would undermine the FTC's ability to prevent potential harms or react to unusual, unfair, and deceptive practices. Some of these bills would hurt companies by potentially forcing the FTC to reveal confidential investigations before the FTC has determined whether illegal acts have taken place or whether it will take action against the subjects of the investigations. I believe these proposals would put the FTC on the wrong track.

My Republican Committee colleagues routinely emphasize the need for comprehensive consumer privacy legislation. I agree, and that is why the Committee remains hard at work on privacy. At the same time, however, their legislation would effectively gut the FTC's ability to protect consumers' privacy. Across the board deregulation and a strong federal privacy regime cannot coexist. I can only hope that despite their legislation put forth today, my Republican colleagues share my commitment to a federal privacy law that would actually protect Americans' privacy.

I thank all five Commissioners for appearing before us to help us determine the right path forward for the FTC and for consumers. I also look forward to hearing from our expert witnesses on how to modernize the FTC to best protect consumers and honest businesses.