

ONE HUNDRED SEVENTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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Majority (202) 225-2927
Minority (202) 225-3641

August 16, 2021

The Honorable Rohit Chopra
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Hon. Chopra:

Thank you for appearing before the Subcommittee on Consumer Protection and Commerce on Wednesday, July 28, 2021, at the hearing entitled “Transforming the FTC: Legislation to Modernize Consumer Protection.” I appreciate the time and effort you gave as a witness before the Committee on Energy and Commerce.

Pursuant to Rule 3 of the Committee on Energy and Commerce, members are permitted to submit additional questions to the witnesses for their responses, which will be included in the hearing record. Attached are questions directed to you from certain members of the Committee. In preparing your answers to these questions, please address your response to the member who has submitted the questions in the space provided.

To facilitate the printing of the hearing record, please submit your responses to these questions no later than the close of business on Friday, August 27, 2021. As previously noted, this transmittal letter and your responses, as well as the responses from the other witnesses appearing at the hearing, will all be included in the hearing record. Your written responses should be transmitted by e-mail in the Word document provided to Ed Kaczmariski, Policy Analyst, at ed.kaczmariski@mail.house.gov. To help in maintaining the proper format for hearing records, please use the document provided to complete your responses.

The Honorable Rohit Chopra

Page 2

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Ed Kaczmariski with the Committee staff at (202) 225-2927.

Sincerely,

A handwritten signature in blue ink that reads "Frank Pallone, Jr." in a cursive style.

Frank Pallone, Jr.
Chairman

Attachment

cc: The Honorable Cathy McMorris Rodgers
Ranking Member
Committee on Energy and Commerce

The Honorable Jan Schakowsky
Chair
Subcommittee on Consumer Protection and Commerce

The Honorable Gus Bilirakis
Ranking Member
Subcommittee on Consumer Protection and Commerce

Attachment—Additional Questions for the Record

**Subcommittee on Consumer Protection and Commerce
Hearing on
“Transforming the FTC: Legislation to Modernize Consumer Protection”
July 28, 2021**

The Honorable Rohit Chopra, Commissioner, Federal Trade Commission

The Honorable Larry Bucshon (R-IN)

1. Credit repair organizations market their services to consumers by promising to “clean up their credit report” by disputing information that is deemed harmful to the consumer’s credit profile. These companies charge consumers fees for sending letters to creditor and filing direct disputes with credit reporting agencies. All of these services could be done by consumers at a fraction of the cost.
 - a. What is the Commission doing to encourage or educate consumers on how to take these steps on their own instead of potentially wasting money on fees?

RESPONSE: While many people associate credit checks with applications for credit, it is becoming increasingly common for landlords, employers, and others to request a consumer’s credit report.

The Commission makes available consumer education materials to assist the public when it comes to credit repair. These materials are available online, and printed versions can be requested free of charge. (See, for example, <https://www.consumer.ftc.gov/articles/0058-credit-repair-how-help-yourself>)

2. Credit repair organizations may encourage consumers to utilize identity theft claims in order dispute credit report tradeline information, sometimes even when it is accurate and correct, this leads to a larger number of false identity theft claims which can detract from the ability of consumers who are legitimately suffering identify theft to access resources and attention to help their claims.
 - a. What controls are in place to prevent these false identity theft claims from making it harder for real victims of identity theft from using of the various direct dispute or complaint portals offered by the Commission or the CFPB?

RESPONSE: As a general matter, the Commission does not require comprehensive identity verification by individuals filing as identity theft victims. Because victims’ identities have been stolen, designing controls can be challenging. It is important that our law enforcement complaints and related portals be accessible, but it is worthwhile for the Commission to routinely

assess how these portals can be misused by bad actors and take appropriate steps to mitigate the impacts of this misconduct.

The Honorable Kelly Armstrong (R-ND)

1. In “Nixing the Fix: An FTC Report to Congress on Repair Restrictions”, the Commission mentions stakeholder concerns regarding modifications to remove, impair, or disable federally-required emissions control equipment. Putting aside considerations of whether such activity would be classified as a modification or repair in specific circumstances, does the Commission plan to consult with the Environmental Protection Agency to fully understand whether providing access to embedded software would affect the regulation of federally-required emissions control equipment?

RESPONSE: Americans face repair restrictions on a broad range of devices and equipment. In many cases, other agencies have unique expertise on these devices and equipment. For example, the FTC has worked with the National Highway Traffic Safety Administration on consumer issues related to automobiles. I appreciate your suggestion on coordinating with the Environmental Protection Agency – the Commission would benefit from discussions with the EPA on the issues you have raised.

2. In “Nixing the Fix: An FTC Report to Congress on Repair Restrictions”, footnote 18 states that “Commissioner Wilson and Commissioner Phillips note that the report excludes from the scope of its coverage an analysis of manufacturers’ intellectual property rights, which may provide legitimate justification for some repair restrictions.” How will the Commission address such legitimate assertions of intellectual property rights?

RESPONSE: The Magnuson-Moss Act prohibits certain tying arrangements when a manufacturer offers a warranty. In other words, manufacturers cannot force consumers to pay for a specific service in transactions covered by the Act. Legitimate assertions of intellectual property rights do not trigger liability under the laws enforced by the Commission. For instance, in the Commission report on repair restrictions, Commission staff uncovered evidence that manufacturers and sellers may be restricting competition for repair services in a number of ways, including by asserting patent rights and enforcement of trademarks in an unlawful, overbroad manner.

While efforts by dominant firms to restrict repair markets are not new, changes in technology and more prevalent use of software has created fresh opportunities for companies to limit independent repair. I believe the Commission must use its full range of tools to ensure that manufacturers and sellers are not relying on overbroad

assertions of intellectual property rights as a pretext for monopolistic or exclusionary conduct.