

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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July 28, 2021

The Honorable Jan Schakowsky
Chair
Consumer Protection & Commerce
Subcommittee
U.S. House of Representatives
Washington, DC 20515

The Honorable Gus Bilirakis
Ranking Member
Consumer Protection & Commerce
Subcommittee
U.S. House of Representatives
Washington, DC 20515

Dear Chair Schakowsky and Ranking Member Bilirakis:

The U.S. Chamber of Commerce appreciates the opportunity to provide our perspective to the House Energy and Commerce Committee's Subcommittee on Consumer Protection and Commerce, in advance of the hearing, "Transforming the FTC: Legislation to Modernize Consumer Protection." We have significant concerns about the Federal Trade Commission's current approach and wish to provide our feedback on current FTC activity for this oversight hearing and on legislation the committee will be considering during the July 28 hearing.

The Chamber supports efforts to provide meaningful transparency to the Commission as it makes sweeping policy decisions, but the business community is concerned about the FTC's current "take votes now, talk policy later" approach. This is particularly disturbing in light of the recent Supreme Court decision *AMG Capital Management, LLC v. FTC* in which the Court held that the Commission had long exceeded its statutory enforcement authority.

The Chamber finds it troubling that an agency which has already been willing to exceed its enforcement authority has now voted to expedite its rulemaking authority. The FTC is now using this approach to change bipartisan FTC policy without enabling the public to see its proposals or provide meaningful comment before decisions are made.

The Chamber supports H.R. 4564, which would provide needed transparency to the FTC's operations. This bill would enable the public to see the text of FTC orders and decisions online a month before meetings. This good policymaking practice has been adopted on a bipartisan basis at the Federal Communications Commission, which posts the proposed text of orders and proposed rulemakings three weeks in advance of open meetings. An FTC Open Meeting does not provide transparency unless it provides the public with meaningful notice and opportunity to comment. Such meaningful notice and comment were not afforded by the FTC during its two open meetings held in July.

The Chamber has significant concerns with other bills the committee is considering, such as H.R. 3067 and H.R. 4447. These bills would remove guardrails required of the Commission when making rules concerning unfair and deceptive trade practices. The Federal Trade Commission, first and foremost, was established to serve as an enforcement authority that examined conduct on a case-by-case basis. Such legislation would empower the FTC with broad rulemaking authority over “unfair and deceptive trade practices.” Removing safeguards around rulemakings based on a vague mandate while the Commission seeks to expand its enforcement authority creates disturbing precedent. The FTC would be allowed to effectively legislate and enforce cases with little public input.

The recent partisan vote at the July 1 Open Meeting that stripped the FTC’s administrative law judges of their role of presiding officers in rulemaking hearings only adds to our concerns. That authority is handed over to the Chair which has the potential to erode the independence of the lead FTC rulemaking arbiter. The lead arbiter determines which issues in a rulemaking are up for debate and who may publicly participate in a hearing.

Although the business community feels it is vital that the FTC has the tools it needs to address actual harm to consumers, Congress should work on defining harm and protecting consumers. This should be pursued through vehicles like federal privacy legislation. Congress should also provide greater oversight over the direction that Commission has taken to lessen transparency.

Sincerely,



Neil L. Bradley

cc: Members of the House Energy and Commerce Committee’s Subcommittee on Consumer Protection & Commerce