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UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**Prepared Opening Statement of
Commissioner Rohit Chopra**

**Before the United States Senate
Committee on Commerce, Science, and Transportation**

**Hearing on “Strengthening the Federal Trade Commission’s
Authority to Protect Consumers”**

April 20, 2021

Chair Cantwell, Ranking Member Wicker, and Members of the Committee, thank you for holding this hearing today.

The Supreme Court is expected to issue an opinion soon on whether the Commission can continue to seek monetary relief under Section 13(b) of the FTC Act. I appreciate efforts by Congress to address the uncertainty surrounding the agency’s authority.

Of course, a Section 13(b) “fix” will not fix the FTC’s fundamental problems. Time and time again, when large firms flagrantly violate the law, the FTC is unwilling to pursue meaningful accountability measures.

Take the example of Google, where the company’s repeated law violations over the last decade were frequently met with favorable treatment from the FTC. In 2011, the Commission entered an order against Google to halt its unlawful privacy practices. But, just one year later, the FTC announced that the company was violating the order. Around the same time, there were growing concerns that Google was engaged in a host of troubling anticompetitive practices. But, in 2013, the Commission closed its antitrust investigation into Google, allowing the company to submit a highly unusual non-binding letter of commitments, rather than be subjected to a formal order. In 2014, the FTC announced it caught Google breaking the law again regarding in-app purchases by children. But, it didn’t end there. The FTC then caught Google engaging in years of illegal surveillance of children on YouTube. The Commission’s latest resolution: a highly favorable settlement, where the tech giant was assessed a penalty that still allowed it to profit from its misconduct. Google was even allowed to retain algorithms enhanced by illegally obtained data from kids.¹

¹ Dissenting Statement of Commissioner Rohit Chopra In the Matter of Google LLC and YouTube, LLC, Fed. Trade Comm’n File No. 1723083 (Sept. 4, 2019), <https://www.ftc.gov/public-statements/2019/09/statement-commissioner-rohit-chopra-regarding-youtube>.

While the FTC is quick to bring down the hammer on small businesses, companies like Google know that the FTC is simply not serious about holding them accountable. Congress and Commissioners must turn the page on the FTC's perceived powerlessness.

First, we must make clear that FTC orders are not suggestions. Google is not the only company to engage in repeat offenses. In 2012, after the FTC finalized an order with Facebook about its privacy abuses, the company violated the agreement almost immediately – and continued violating it over and over again. But in 2019, Facebook was able to extract a settlement from the FTC that gave the company a lot to celebrate. The FTC did not require Facebook to make any material changes to its business model or its user surveillance. The FTC even handed out special immunity provisions for Facebook's top executives and broad releases for unknown violations. The settlement was a devastating setback for consumer privacy.²

Congress and the Commission must implement major changes when it comes to stopping repeat offenders. In addition, since the Commission has shown it often lacks the will to enforce agency orders, Congress should allow victims and state attorneys general to seek injunctive relief in court to halt violations of FTC orders.³

Second, we must make sure that the FTC is meaningfully deterring wrongdoing in the first instance. The Commission often agrees to no-money no-fault settlements, even in cases of egregious misconduct, like fake review and Made-in-USA fraud, where bad actors simply agree to follow the law going forward. And when the FTC does seek money from wrongdoers, it is often insufficient. That is because under Section 13(b), if a bad actor steals \$1 million, the most they can be required to pay is \$1 million. This is not really a deterrent, particularly when the probability of getting caught by the FTC is very low. Commissioners can take action now to trigger additional remedies, such as penalties and damages, for certain misconduct without imposing any new requirements on businesses.⁴ In addition, Congress can authorize the FTC to seek civil penalties in a broader range of cases, including for knowing violations of Section 5 and other dishonest or fraudulent conduct.

Last, but not least, we must address the abuse of Section 230 of the Communications Decency Act. Tech companies aggressively exploit Section 230 to evade accountability. Even when the immunity does not or should not apply, the lack of clarity taxes public resources and slows down enforcement. I am particularly concerned that e-commerce marketplaces are becoming a haven for counterfeit and unsafe goods, including fake PPE and medicines to treat COVID-19, while platforms wipe their hands of responsibility for the harm that results.

² Devin Coldewey, *9 reasons the Facebook FTC settlement is a joke*, TECHCRUNCH (July 24, 2019), <https://techcrunch.com/2019/07/24/9-reasons-the-facebook-ftc-settlement-is-a-joke/>; Dissenting Statement of Commissioner Rohit Chopra Regarding the Matter of Facebook, Inc., Fed. Trade Comm'n File No. 1823109 (July 24, 2019), <https://www.ftc.gov/public-statements/2019/07/dissenting-statement-commissioner-rohit-chopra-regarding-matter-facebook>.

³ Under the Packers and Stockyards Act, which is modeled after the FTC Act, farmers, ranchers, and others can seek injunctions for violations of orders regarding unfair, deceptive, and other unlawful practices. *See* 7 U.S.C. § 216.

⁴ *See* Prepared Remarks of Rohit Chopra at Truth in Advertising (Jan. 11, 2021), <https://www.ftc.gov/public-statements/2021/01/prepared-remarks-commissioner-rohit-chopra-truth-advertising-event-0>; Rohit Chopra & Samuel A.A. Levine, *The Case for Resurrecting the FTC Act's Penalty Offense Authority*, 170 U. PA. L. REV. (forthcoming 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721256.

Members of this Committee have put forth a number of proposals for Section 230 reform, including removal of the immunity in actions by civil law enforcement. I strongly support Congressional efforts to rein in these excesses, which can put brick-and-mortar small businesses and local newspapers at a competitive disadvantage.

In conclusion, COVID-19 and the endless scandals involving large technology firms have reminded us that we must work together to ensure the FTC uses all of its tools to protect American families and honest businesses from abuse.

Thank you and I look forward to your questions.