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September 18, 2024

The Honorable Gus Bilirakis
Chairman
Subcommittee on Innovation, Data, and Commerce
House Energy and Commerce Committee
Washington, D.C. 20515

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Innovation, Data, and Commerce
House Energy and Commerce Committee
Washington, D.C. 20515

Dear Chairman Bilirakis and Ranking Member Schakowsky,

The Consumer Technology Association (CTA)[®] applauds the Subcommittee for convening its September 19, 2024, hearing, entitled, “Federal Trade Commission Practices: A Discussion on Past Versus Present.”

CTA is North America’s largest technology trade association. Our members are the world’s leading innovators – from startups to global brands – helping support more than 18 million American jobs. CTA owns and produces CES[®], the world’s most powerful tech event. CTA members, 80% of which are startups or small and medium-sized businesses, operate in a competitive market, to produce innovative products that benefit consumers and power the economy.

Across successive administrations, the FTC held a bipartisan reputation as a substantive and thoughtful regulatory guardian, working to protect consumers from deceptive or unfair business practices, while prioritizing consumer welfare as a basis for antitrust enforcement.

Unfortunately, the FTC under its current leadership has deviated from these established norms, resulting in an agency facing deep employee dissatisfaction and the departure from decades of antitrust law. To return the FTC to its historical role as an effective and well-administered agency, CTA offers the following recommendations.

The FTC Should Prioritize Combating Rising Fraud Cases

By the FTC’s own admission, consumers lost more than \$10 billion to fraud in 2023, a 14% increase over the prior year. These scams erode consumer confidence and can result in significant financial losses, which in turn harms the U.S. economy.

Fraud not only impacts consumers. Last year, businesses lost more than \$750 million to imposter scams. CTA itself has been a victim of impersonation fraud on numerous occasions, creating reputational risks both for our organization and the CTA members whose brands are exploited.

Yet the current FTC leadership continues to prioritize headline grabbing lawsuits targeting American innovators. Instead of spending costly resources on litigation, CTA recommends the agency reprioritize funds towards protecting consumers and businesses from fraudulent activities.

The FTC Should Stop Collaborating with Foreign Rivals to Harm U.S. Innovators, Jobs

With the FTC losing multiple battles in U.S. courts, the agency has taken their cases to other countries, hoping those governments will do what the U.S. legislative and judicial branches of government have not—change or reinterpret antitrust law. For example, the FTC worked with European Union officials to block Amazon’s proposed acquisition of iRobot, a smart vacuum cleaner manufacturer facing increasing competition from China. The “close contact” between the FTC and EU was confirmed by the European Commission’s Executive Vice-President for a Europe Fit for the Digital Age, and Commissioner for Competition, Margrethe Vestager in a January 2024 press release.

Instead of attacking American companies abroad, CTA believes the FTC should return to the fundamentals of U.S. antitrust law, economics, and protect consumers, not competitors.

The FTC Should Implement a Formal Recusal Process to Promote Transparency, Predictability & Accountability

CTA urges the FTC to implement a formal process to make the resolution of Commissioner recusal motions transparent and subject to clear standards that are consistent with applicable law. Companies subject to the FTC’s enforcement powers and rulemaking authority deserve a clear and legally supported answer when they take the significant step of filing a formal motion seeking a Commissioner’s recusal.

Last year, CTA supported the U.S. Chamber of Commerce’s Petition for Rulemaking to amend the FTC’s rule regarding disqualification of Commissioners. To date, no action has been taken by the FTC to address the concerns raised by this petition.

The FTC Should Clarify the Amended Amplifier Rule Does Not Have Retroactive Effect

In June 2024, the FTC adopted changes to its “Amplifier Rule,” which originated 50 years ago, to help consumers compare amplifier power output claims. In an unprecedented move in conflict with judicial precedent, FTC staff interpreted the rule to apply retroactively.

In taking such an interpretation, retroactive enforcement would impose significant costs on manufacturers to re-test, repackage, and alter the disclosures for existing designs, and could lead to consumer confusion stemming from re-rating existing products.

Last month, CTA petitioned the agency to confirm that the amended Amplifier Rule is not intended to have retroactive effect and thus applies only to those products designed, tested, and manufactured on or after the August 12, 2024, effective date. To date, the FTC has not issued a Public Notice, which would allow for public comment and ultimate resolution of the petition.

The FTC Must Consider the Interests of Small Businesses During Regulatory Review

Under the Regulatory Flexibility Act, any federal agency that engages in a regulatory action must consider the potential impact that regulatory action has on small businesses. During a recent FTC rulemaking, which proposed changes to the Hart-Scott-Rodino Act (HSR) filing rules, CTA believes the FTC erred in certifying that the proceeding would not substantially impact small businesses.

By erroneously conflating the size of the transaction with the size of the businesses that are often subject to reporting requirements under HSR, the FTC did not produce the required initial regulatory flexibility assessment. In failing to do so, the FTC did not properly put small businesses on notice to participate in a rulemaking that would substantially impact them. CTA urges the FTC to vacate the current rulemaking process for updating the HSR reporting requirements.

Conclusion

CTA appreciates the opportunity to share this statement for the record. We stand ready to work with the Subcommittee to advance reforms that would benefit consumers and businesses alike, and return needed transparency, predictability, and accountability to the FTC.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Shapiro". The signature is fluid and cursive, with the first name "Gary" being more prominent than the last name "Shapiro".

Gary Shapiro
CEO
Consumer Technology Association

Cc: Chair McMorris Rodgers, House Energy and Commerce Committee
Ranking Member Pallone, House Energy and Commerce Committee
Members of the House Energy and Commerce Committee