



Office of Commissioner
Rohit Chopra

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

PREPARED REMARKS OF COMMISSIONER ROHIT CHOPRA

Regarding the Adoption of the Repeat Offender Enforcement Resolution

July 1, 2021

I will vote in favor of the package of Commission investigative package to authorize the use of civil investigative demand, subpoenas, and compulsory process to allow FTC staff to detect unlawful activity in the economy, including as it relates to COVID-19, health care, digital platforms, and mergers. Our vote today relieves our staff of significant burdens and delays when seeking to conduct a thorough investigation.

For decades, the Commission has issued a substantial number of resolutions to authorize the use of compulsory process to help detect unlawful activity as it pertains to certain conduct, industries, and vulnerable populations. Overwhelmingly, these resolutions have been approved unanimously, including by many of my colleagues in recent years, in support of our mission and our staff. The resolutions are crafted to ascertain violations of law enforced by the Federal Trade Commission, including Section 5 of the FTC Act. Congress and the courts have generally described Section 5 as prohibiting conduct that is unfair, deceptive, anticompetitive, collusive, coercive, predatory, exploitative, or exclusionary.

One enforcement resolution particularly stands out, and I strongly support making clear that Commissioners will turn the page on our approach to repeat offenders.

FTC orders are not suggestions, but many bad actors see them as such. After the FTC voted to finalize an order in 2012 barring Facebook from engaging in certain unlawful acts with respect to privacy and data protection, the company appears to have violated that order almost immediately, over and over and over again. The FTC's failure to enforce this order and quickly investigate potential violations had devastating consequences, the most well-known being the Cambridge Analytica privacy breach, leading to incalculable harms.

Commissioners spanning multiple administrations have long been quick to bring down the hammer on small businesses and one-off scams when they violate orders. But when it comes to large, dominant firms, Commissioners have deprived our staff of the tools and resources to properly protect the public. The repeat offender enforcement resolution authorizes Commission staff to use compulsory process to investigate companies subject to Commission orders.

While past Commission orders allow our staff to request certain types of information from the company itself to determine whether it is complying with the order, Commissioners have not previously authorized agency staff to compel information from third parties. In addition,

Commissioners have not given our staff the explicit authorization to investigate other potential misconduct, including those adjacent to the original law violation.

Today's reforms will increase the capacity for agency staff to protect the public from repeat offenders and is another step toward restoring the agency's legitimacy and credibility.