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**Oral Remarks of
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Commerce of the Committee on Energy and Commerce**

Hearing on "Transforming the FTC: Legislation to Modernize Consumer Protection"

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Chair Schakowsky, Ranking Member Bilirakis, and members of the Subcommittee, I am pleased to appear before you to discuss the 16 bills under consideration by the Subcommittee. My testimony today will identify several key issues currently facing the Commission and share initial views on some of the bills currently being considered.

Congress created the Federal Trade Commission to serve as a guardian for fair competition and to protect consumers, workers, and honest businesses from unfair or deceptive trade practices. This statutory charge has never been more important, yet the Commission today faces notable challenges in carrying out its mission. I'll briefly describe three problems that are currently shaping the agency's work.

First, as this Subcommittee is well aware, the Supreme Court's decision last year in *AMG* dealt a serious blow to the FTC's ability to seek refunds for defrauded victims and to disgorge ill-gotten gains. Across the Commission's work, the loss of Section 13(b) is leading to windfalls for lawbreakers.

For example, after a major pharmaceutical company engaged in a multiyear scheme to keep drug prices high by choking off generics, a court ordered it to return \$448 million to victims. The Supreme Court's interpretation of Section 13(b) has meant that the pharmaceutical company was later instead allowed to pocket these illegal profits.¹ Altogether, *AMG* has jeopardized over \$2 billion in potential relief to victims in pending cases. Beyond monetary relief, the FTC now also faces challenges in seeking an injunction to halt wrongdoing, curtailing the Commission's ability to challenge past abuses.

I am committed to using the full range of FTC's tools to crack down on unlawful conduct. But restoring our full Section 13(b) authority is critical, and I am grateful that the full

¹ *F.T.C. v. AbbVie Inc.*, 976 F.3d 327 (3d Cir. 2020). This decision was reached before *AMG* but was based on a similarly narrow reading of Section 13(b).

House has already acted on Congressman Cárdenas's bill to rearm the Commission against these growing threats.

Second, Americans have been subjected to a massive increase in fraud over the last year, with the number of complaints up more than 20 percent. While the FTC has focused on shutting down COVID-related schemes, from bogus treatments to government imposters, fraud has continued to surge.

One key reason is that fraud today is supercharged by digital platforms where this conduct is tolerated and even promoted by some of the world's largest companies. Business models singularly focused on scale and engagement coupled with microtargeting have allowed these platforms to become finely tuned instruments for bad actors, who often target the most vulnerable. Although digital platforms profit off the tools that are being weaponized against Americans, these companies often claim special immunity under the law.

The Commission will continue to aggressively pursue those that exploit this crisis to target American families. But ultimately, systematically rooting out fraudulent schemes will require focusing on the warped incentives and legal privileges that allow major firms to profit from predation.

Third, even as the agency tackles the proliferation of unfair or deceptive practices, the current merger boom threatens to make them worse. Significant market consolidation deprives consumers, workers, and independent businesses of choice, further enabling dominant firms to engage in unfair practices. As the wave of privacy abuses in recent years has shown, market dominance often allows companies to renege on commitments, evade the law, and repeatedly violate Commission orders.

We are seeing rapid consolidation across industries. Through the first three quarters of this fiscal year, antitrust agencies have processed over 2,400 merger filings—a level of activity that is already the highest in two decades. Although the FTC is working to review many of these deals, the sheer volume of transactions is significantly straining Commission resources. I am deeply concerned that the current merger boom will further exacerbate deep asymmetries of power across our economy, further enabling abuses.

This Subcommittee is considering several bills that would boost the Commission's ability to confront these challenges.

Both the FTC Autonomy Act and the 21st Century FTC Act would help the Commission seek civil penalties against lawbreakers. This would mark an important change, guaranteeing the public greater protections.

Bills that would end special protections for select industries would also strengthen our law enforcement. For example, the Online Consumer Protection Act would clarify that platforms cannot claim special privileges when facing an FTC enforcement action.

Meanwhile, the Protecting Consumers in Commerce Act and Removing Nonprofit Exemption Act would allow the FTC to challenge abuses by common carriers and nonprofit entities.

Finally, several bills focus efforts on communities that are often particular targets of predation, including older Americans, servicemembers, and consumers targeted on the basis of race, religion, disability, and other protected characteristics. These bills are a critical reminder of the importance of the FTC's work in ensuring that our government works for all Americans.

I look forward to working with the Subcommittee to meet the challenges we face, and I welcome the opportunity to answer any questions.
