



Office of Commissioner
Rohit Chopra

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Federal Trade Commission
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Opening Statement of Commissioner Rohit Chopra

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Subcommittee on Consumer Protection, Product Safety, Insurance, and Data Security**

Hearing on Oversight of the Federal Trade Commission

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Chairman Moran, Ranking Member Blumenthal, and Members of the Subcommittee, thank you for holding this hearing.

The FTC has a clear mission: to make sure markets are fair and competitive – not corrupted by conflicts of interest, distortions, and lies. The primary way we seek to accomplish this is through our law enforcement program.

Today, I want to talk about some of the most important questions that the FTC must routinely answer when enforcing the law. Given all of the misconduct in the market, which companies are the best targets? And after an investigation, when should we push for a settlement and when should we go to trial?

In my view, no matter how big or powerful they might be, we must hold companies accountable for widespread failures, especially when lawbreaking is fueled by Wall Street incentives. And we must always be willing to take them to court.

Forty-five years ago, Congress gave the FTC the authority to sue companies and individuals in federal court using Section 13(b) of the FTC Act. The FTC can go to court to seek restitution for victims, take back ill-gotten gains, permanently halt harmful practices, and seek other structural changes to business practices.

Like almost every other federal enforcement agency with the power to take companies to court, the FTC resolves most of its actions through settlements.

Without question, settlements are important. No agency can litigate everything. But no agency should ever appear to strong-arm small defendants into financial ruin, while letting big companies off the hook with a slap on the wrist.

In the aftermath of the financial crisis, we saw how big companies saw settlements as nothing more than the cost of doing business. After all, corporate boards will almost never agree to a settlement that threatens their profit model. While big penalties made for good headlines, I question whether they truly deterred lawbreaking. Too many individual executives evaded accountability and even got rewarded with a bonus for their skillful dealings with the government. Unsurprisingly, even after big settlements, we saw how agencies continued to fight fire after fire with companies like Wells Fargo, where abuse was widespread.

In trials, we get to find out the whole story, told from both sides, by the actual individuals who called the shots, and we see due process in action. And when the government prevails, the law can provide for recoupment of certain costs.

The FTC has shown that it is willing to go to trial.

Too often, pharmaceutical companies go to great lengths to protect monopolies created by their government-granted patents. Take the example of AbbVie, the pharmaceutical giant famous for continuing to raise prices and creating billions of dollars in health care costs with its blockbuster drug Humira, despite its original patent expiring. In 2014, the FTC sued AbbVie for filing sham patent infringement lawsuits that stopped generic drugmakers from challenging another top-selling product, Androgel.

A few months ago, a court ruled that AbbVie did indeed use sham lawsuits to illegally maintain its monopoly. The court ordered the company to pay up \$448 million for its wrongdoing that harmed patients, the public, and its competitors. After the ruling, pharmacies allegedly harmed by AbbVie's practices were able to file their own actions. Certain aspects of this matter remain on appeal.

In another matter, after years of litigation and a trial, a court ordered Dish Network to pay \$280 million for its Do-Not-Call violations. And in a few weeks, the FTC will begin its trial against semiconductor giant Qualcomm for its alleged anticompetitive tactics in the chip market.

Filing a lawsuit and taking a powerful corporation to trial is tough. In my past agency experience, I've seen how going up against a company with legions of lawyers and lobbyists and PR professionals can be daunting for an agency with finite resources.

But Congress cannot expect any agency, including the FTC, to meet its mission unless it is unambiguous to the market that we have the resources and the resolve to go to court, no matter how big or connected a company may be.

It will be critical for Congress to continue to support our 13(b) authority and to ensure that every law enforcement agency exercises its prosecutorial discretion in ways that create real accountability for those that break the law.

Thank you, and I look forward to your questions.