STATEMENT OF
COMMISSIONER ROHIT CHOPRA

In the Matter of Liberty Chevrolet, Inc. d/b/a Bronx Honda
Commission File No. 1623238
May 27, 2020

Summary

- Given the difficulty of uncovering direct evidence of discriminatory intent, disparate impact analysis is critical for detecting potentially unlawful discrimination.
- With the proliferation of machine learning and predictive analytics, the FTC should make use of its unfairness authority to tackle discriminatory algorithms and practices in the economy.
- A decade ago, Congress gave the FTC additional tools in the auto market. Given growing concerns and abuses, we should use this authority.

Access to reliable transportation is a vehicle for higher wages and greater opportunities. For millions of Americans, this means taking out a loan to buy a car. Federal law forbids auto dealers from discriminating based on race when making or arranging loans.[1]

For the first time, the FTC is charging an auto dealer with illegal racial discrimination. As detailed in the complaint, Bronx Honda and its general manager, Carlo Fittanto, ordered employees to charge African-American and Hispanic families higher interest rates than their white counterparts, as well as employing a host of other tactics to cheat car buyers.

Disparate Impact and Unfair Discrimination

Most auto buyers finance their purchase, and auto dealers make much of their money in opaque ways. One of these ways is called a "dealer markup." A dealer markup is an undisclosed kickback that dealers earn for convincing prospective car buyers to agree to a higher interest rate than they actually qualify for with a lender. These kickback arrangements are kept secret from car buyers, who end up paying far more for financing.

In addition to evidence gathered regarding Fittanto's racist staff directives, the Commission's loan data analysis also confirmed that these pricing practices resulted in a disparate impact on

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[1] The Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq*., prohibits creditors from discriminating against borrowers due to their race, sex, age, national origin, marital status, or because they receive public assistance.

African-American and Hispanic borrowers, who paid significantly more in fees and finance charges than similarly situated white borrowers.[2]

It is rare to uncover direct evidence of racist intent. That's why disparate impact analysis is a critical tool to uncover hidden forms of discrimination, not only in this context but throughout the economy. Companies are collecting an ever-growing universe of personal data, and through sophisticated machine learning tools and other forms of predictive technology, this data can produce proxies for race and other protected classes.[3] Often this discrimination is invisible to its victims, making it especially important that regulators work proactively to root it out.[4]

Congress has enacted laws to ban discrimination in contexts like housing, employment, and credit, but many practices are not only discriminatory, but are also unfair. Here, for example, the alleged conduct is illegal under the Equal Credit Opportunity Act, but it also violates the FTC Act's prohibition on unfair practices.[5] Using disparate impact analysis and other tools, the Commission can use its unfairness authority to attack harmful discrimination in other sectors of the economy.[6]

Unused FTC Rulemaking

The FTC should also stop ignoring Congress when it comes to auto market abuses. Ten years ago, Congress authorized the FTC to write rules to protect car buyers and honest auto dealers.[7] In the years since, outstanding auto loans have surged to well over $1 trillion. In addition to

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[2] In her concurring statement, Commissioner Slaughter details how dealer markups consistently result in minority borrowers paying more than their similarly situated white counterparts. *See* Statement of Commissioner Rebecca Kelly Slaughter In the Matter of Liberty Chevrolet, Inc. d/b/a Bronx Honda, Comm'n File No. 1623238, (May 27, 2020). I share these concerns and continue to believe that case-by-case enforcement is not sufficient to root out discrimination and other unlawful practices.

[3] For example, the Department of Housing and Urban Development ("HUD") recently charged Facebook with facilitating housing discrimination against renters in protected classes, allowing landlords to exclude, for example, "women in the workforce," "Puerto Rico Islanders," or people interested in "accessibility." *HUD v. Facebook*, Charge of Discrimination, FHEO No. 01-18-0323-8 (Mar. 28, 2019), https://www.hud.gov/sites/dfiles/Main/documents/HUD_v_Facebook.pdf.

[4] I oppose HUD's proposal to undermine the use of disparate impact analysis under the Fair Housing Act. *See* Comment of FTC Commissioner Rohit Chopra Before the Department of Housing and Urban Development Regarding the Proposed Rule to Amend HUD's Interpretation of the Fair Housing Act's Discriminatory Effects Standard, Docket No. FR-6111-P-02 (Oct. 16, 2019), https://www.ftc.gov/system/files/documents/public_statements/1549212/chopra_-_letter_to_hud_on_disparate_impact_proposed_rulemaking_10-16-2019.pdf.

[5] Defendants' alleged discriminatory practices caused minority borrowers substantial injury they could not avoid, without any countervailing benefits to consumers or competition. *See* 15 U.S.C. § 45(n).

[6] *See* FED. TRADE COMM'N, BIG DATA: A TOOL FOR EXCLUSION? UNDERSTANDING THE ISSUES – FTC REPORT at 23 (Jan. 2016), https://www.ftc.gov/system/files/documents/reports/big-data-tool-inclusion-or-exclusion-understanding-issues/160106big-data-rpt.pdf (noting that Section 5 of the FTC Act may apply to the sale of data used for a discriminatory purpose). For example, if a rideshare app's pricing algorithm systematically charges higher prices to women requesting rides at night, compared to similar ride requests for men, this could constitute a violation of the FTC Act's prohibition on unfair acts or practices.

[7] *See* 12 U.S.C. § 5519(d).

discriminatory practices, there is growing evidence of widespread fraud and deceit, including the same "liar loans" that fueled the last recession.[8]

Value of Loans Impacted by Auto Fraud or Misrepresentation
Annual Estimates
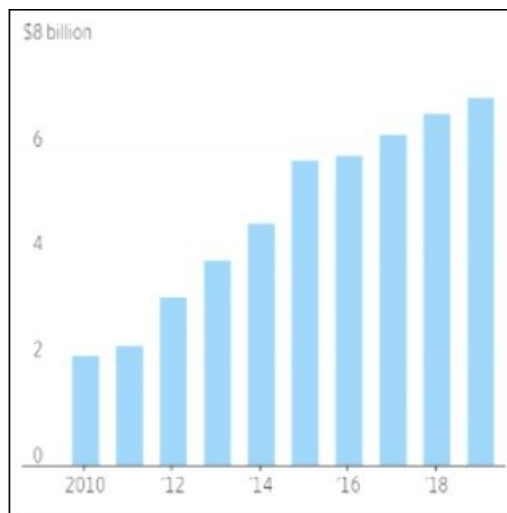
Source: Point Predictive, Wall Street Journal[9]

Congress also directed the FTC to work with other federal regulators on auto issues facing members of the military.[10] Given the many unscrupulous actors that target military families, the FTC's rulemaking authority is a particularly useful tool.[11] Nevertheless, the agency has not even solicited comment or otherwise initiated a rulemaking process to combat these harms.

I hope that today's action marks the beginning of more data-driven detection of discrimination and a systemic approach to protecting Americans from auto market abuses.

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[8] *See* Ben Eisen & AnnaMaria Andriotis, *An $809 Car Payment, a $660 Income: How Dealers Make the Math Work*, THE WALL STREET JOURNAL (Dec. 21, 2019), https://www.wsj.com/articles/an-809-car-payment-a-660-income-how-dealers-make-the-math-work-11576924201. In addition to loan document falsification and undisclosed and often discriminatory dealer markups, the Commission could also use the authority granted by Congress to address consumer protection concerns like fake recall notices, yo-yo financing schemes, deceptive advertising, GPS trackers and kill switches, and add-on products.

[9] *Id.*

[10] *See* 12 U.S.C. § 5519(e).

[11] *See generally* Statement for the Record of Rohit Chopra Before the United States Senate Committee on Armed Services Subcommittee on Personnel Hearing on Department of Defense Single Servicemember and Military Family Readiness Programs Submitted on Behalf of the National Military Family Association et al. (Feb. 14, 2017), https://www.nclc.org/images/pdf/special_projects/military/military-financial-readiness-statement.pdf.