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**OPENING STATEMENT OF
ACTING CHAIRWOMAN REBECCA KELLY SLAUGHTER**

*Before the United States House Committee on Energy and Commerce
Subcommittee on Consumer Protection and Commerce*

The Urgent Need To Fix Section 13(B) Of The FTC Act

April 27, 2021

Chair Schakowsky, Ranking Member Bilirakis, and Members of the Subcommittee, thank you for inviting me here today. Late last week, the United States Supreme Court ruled in *AMG Capital Management v. FTC*¹ that the Commission cannot go to federal court to return money to those from whom it was illegally taken. The federal court path now foreclosed had been used for forty years to make your injured constituents whole. This path was utilized and supported on a bipartisan basis throughout Republican and Democratic administrations, and upheld by eight different circuit courts of appeals. Having it cut off is a devastating outcome for consumers and honest businesses. As reflected in the joint written testimony submitted for this hearing, there is unanimous, bipartisan support at the Commission for a fix to 13(b).

Just days before the AMG decision came down, Mr. Cardenas introduced clear and straightforward legislation that would affirm Congress's intent that the FTC be able to go to federal court to stop bad conduct, disgorge ill-gotten gains, and provide restitution. I cannot emphasize enough the importance of quick Congressional action on this legislation. I will focus my remarks today on the consequences for the public and the markets absent the swift passage of this bill.

The Loss of Federal Court Monetary Relief for Consumers

The Supreme Court's ruling eliminates the Commission's primary and best tool to seek monetary remedies when a company violates the FTC Act. This tool, referred to by its statutory provision as Section 13(b), enabled the FTC to provide billions of dollars of relief—\$11.2 billion in the last five years alone—in a broad range of cases including telemarketing fraud,

¹ *AMG Capital Mgmt., LLC v. FTC*, No. 19-508, 593 U.S. ___, slip op. (Apr. 22, 2021), https://www.supremecourt.gov/opinions/20pdf/19-508_16gn.pdf. AMG was an appeal by defendants from a 2018 Ninth Circuit ruling in which the court re-affirmed its precedent interpreting Section 13(b) to allow the FTC to obtain monetary relief, a judgment that the Supreme Court reversed. See *FTC v. AMG Capital Mgmt., LLC*, 910 F.3d 417 (9th Cir. 2018).

anticompetitive pharmaceutical practices, data security and privacy, scams that target seniors and veterans, and most recently, COVID-related scams.

Let me give you just a few examples of cases in which we were able to provide refunds to consumers solely through our now defunct 13(b) authority:

- Amazon Flex: Just in January, Amazon agreed to return \$61.7 million in tips to flex drivers from whom that compensation was illegally withheld.²
- University of Phoenix: We returned \$49 million to over 146,000 consumers nationwide, including \$1.3 million to Illinois consumers and \$3 million to Florida consumers, to resolve allegations of deceptive claims regarding job placement.³
- Herbalife: We returned \$198 million to over 260,000 consumers nationwide, including \$26 million to Texas consumers and \$49 million to California consumers, to resolve allegations that the MLM engaged in unfair compensation practices.⁴
- Volkswagen: \$9.5 billion returned to consumers nationwide to resolve the company's deceptive marketing of 550,000 "Clean Diesel" VWs and Audis.⁵

Right now, the Commission has 24 active federal court cases that rely exclusively on 13(b) for a monetary remedy, representing \$2.4 billion that should be returned to injured consumers. On the consumer protection side, these matters include cases addressing false or unsubstantiated COVID-19 cures,⁶ a pyramid scheme,⁷ and a scam that used fake apartment listings to trick people into buying credit monitoring services with recurring charges.⁸ On the competition side, affected cases include the Martin Shkreli matter,⁹ in which defendants raised the price of a life-saving drug from \$17.50 to \$750, and the sham patent litigation case *AbbVie*,

² See Press Release, Fed. Trade Comm'n, Amazon To Pay \$61.7 Million to Settle FTC Charges It Withheld Some Customer Tips from Amazon Flex Drivers (Feb. 2, 2021), <https://www.ftc.gov/news-events/press-releases/2021/02/amazon-pay-617-million-settle-ftc-charges-it-withheld-some>

³ See Fed. Trade Comm'n, *University of Phoenix Settlement Payments* (Mar. 2021), <https://www.ftc.gov/enforcement/cases-proceedings/refunds/university-phoenix-settlement-payments>; see also https://public.tableau.com/profile/federal.trade.commission#!/vizhome/Refunds_15797958402020/RefundsbyCase.

⁴ See Fed. Trade Comm'n, *Herbalife Refunds* (May 2019), <https://www.ftc.gov/enforcement/cases-proceedings/refunds/herbalife-refunds>; see also https://public.tableau.com/profile/federal.trade.commission#!/vizhome/Refunds_15797958402020/RefundsbyCase.

⁵ See Press Release, Fed. Trade Comm'n, *In Final Court Summary, FTC Reports Volkswagen Repaid More Than \$9.5 Billion To Car Buyers Who Were Deceived by "Clean Diesel" Ad Campaign* (July 27, 2020), <https://www.ftc.gov/news-events/press-releases/2020/07/final-court-summary-ftc-reports-volkswagen-repaid-more-than-9-billion>.

⁶ See, e.g., Compl., *FTC v. Golden Sunrise Nutraceutical, Inc.*, Case No. 1:20-cv-00540-DAD-SKO (E.D. Cal.), available at https://www.ftc.gov/system/files/documents/cases/202_3146_golden_sunrise_-_complaint.pdf.

⁷ Compl. *FTC v. Nerium International, LLC*, Case No. 3:19-cv-19699 (D.N.J.), available at, https://www.ftc.gov/system/files/documents/cases/1623099_nerium_complaint_11-1-19.pdf.

⁸ *FTC v. Credit Bureau Center, LLC*, 937 F.3d 764 (7th Cir. 2019).

⁹ Am. Compl., *FTC et al. v. Vyera Pharmaceuticals et al.*, Case No. 1:20-cv-00706-DLC (S.D.N.Y.).

in which the district court awarded \$493 million in restitution to consumers harmed by inflated drug prices.¹⁰

The significant direct harm to consumers from Congressional inaction is obvious enough. But there are additional indirect harms to consumers and to law-abiding businesses. The loss of 13(b) will result in emboldened defendants with little incentive to agree to return money to consumers or to provisions requiring them to change their behavior in meaningful ways. This will mean more litigation, at higher costs for taxpayers, resulting in less protection for consumers and more profit for lawbreakers, all at the expense of honest businesses trying to compete against companies that engage in unfair, deceptive, and anticompetitive conduct.

Congress Must Act to Restore the Commission's Authority

The Supreme Court's opinion left the policy questions about the FTC's authority to provide more effective and efficient monetary relief up to Congress.¹¹ The policy goals that animated our 13(b) program are: 1) **incentivize companies to comply with the law** and 2) **return money to harmed consumers when they don't**. I respectfully request that Congress act quickly to provide clear authority to the Commission to achieve these goals.

Finally, a word about the FTC's other authorities: we will use them all—administrative proceedings, penalty offense authority, more rule-violation cases, more rulemaking, more civil penalty cases where we have specific statutory authority. But, without Congressional action, none of these options will come close to protecting consumers and incentivizing compliance as much as our lost 13(b) authority. I hope you will move swiftly to restore it.

I look forward to answering your questions.

¹⁰ *Fed. Trade Comm'n v. AbbVie Inc.*, 329 F. Supp. 3d 98 (E.D. Pa. 2018); *FTC v. AbbVie Inc.*, 976 F.3d 327 (3d Cir. 2020).

¹¹ See *AMG Capital Mgmt., LLC v. FTC*, No. 19-508, 593 U.S. ___, slip op. (Apr. 22, 2021), https://www.supremecourt.gov/opinions/20pdf/19-508_l6gn.pdf.