



Office of Commissioner  
Rohit Chopra

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

## **Opening Statement of Commissioner Rohit Chopra**

### **Before the United States Senate Committee on Commerce, Science, and Transportation Hearing on Oversight of the Federal Trade Commission**

**August 5, 2020**

Chairman Wicker, Ranking Member Cantwell, and Members of the Committee, thank you for the opportunity to appear before you.

The Federal Trade Commission's responsibilities are wide and far-reaching, with many directly relating to the crisis we face. Health care and pharmaceuticals, disinformation and fake reviews, abuse and misuse of data, and so much more. But, there is one area in particular that the FTC can and should prioritize: protecting America's small businesses.

According to a survey by the Society of Human Resource Management, 52 percent of small businesses believe that they are likely to fail due to the effects of COVID-19. If this comes true, millions of businesses – and many more millions who work for them – could lose their livelihoods, devastating local economies in the process. The FTC has an important role to play to protect small businesses from abuse.

First, we must crack down on small business loan sharking. Many small businesses are struggling to access credit, including through the Paycheck Protection Program. This is giving an opening to bad actors that target restaurants, stores, and other local businesses with predatory loans. These lenders provide funds to businesses in exchange for future credit card receipts, but the terms often set the small businesses up to fail. In these contracts, small businesses must agree to "confessions of judgment," where borrowers automatically plead guilty if the lender sues them for payment. These clauses are illegal in consumer contracts, but are being unfairly weaponized against small businesses.

The FTC is the only federal agency with authority to crack down on these nonbank small business lending practices. We have taken some important actions, and we must systemically eliminate these illegal practices before it's too late.

Second, the FTC must safeguard operators of franchised businesses from abusive practices by franchisors. Franchised businesses encompass a broad swath of businesses across the economy, from auto repair to real estate to fitness centers to fast food and more. Operators of franchised

businesses employ Americans across the country, and they're also more likely to be minority-owned, compared to other small businesses.

However, there are signs that franchisors may be using the pandemic to impose new policies that are exacting more economic pain on franchise operators. For example, Subway and 7-Eleven franchisees are fighting back against attempts by franchisors to gain more control and implement practices that shift more cost and risk to local business owners.

The FTC administers the Franchise Rule and enforces laws that prohibit unfair business practices by franchisors. This responsibility is critical, given the threats faced by operators of franchised businesses today.

Finally, the FTC will need to police markets for anticompetitive mergers that scoop up scores of small businesses. One common acquisition strategy is called a "roll up." This is when a buyer, often a private equity fund, acquires a substantial number of small players in a market and combines them into a single large firm.

For example, many independent medical practitioners are seriously struggling, and many believe they will need to sell their practices to an investment fund or a hospital system, due to the dire economic straits they face. The slow extinction of independent physician practices, in particular, may have a serious impact on cost and quality of care.

Many of these deals are not subject to merger reporting, because they're relatively small. However, when buyers are acquiring sometimes dozens or even hundreds of these small businesses, this kills competition and can make it more difficult for new players to enter the market. The FTC will need to use its authority to halt anticompetitive acquisition sprees and monopolization schemes that stamp out competition and small players.

In closing, we face unusual and extraordinary times for our economy, and the FTC will need to sharpen its focus on the impact of the pandemic on small businesses. Thank you for again for the opportunity and I look forward to your questions.