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ONE HUNDRED SEVENTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE

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May 17, 2021

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Garland:

We request that the Department of Justice (DOJ) provide information concerning H.R. 2668, the “Consumer Protection and Recovery Act,” now pending before the Committee on Energy and Commerce. As you know, the recent Supreme Court decision in *AMG Capital Management, LLC et al. v. FTC* (Apr. 22, 2021) raises significant questions regarding the authority of the Federal Trade Commission (FTC). Because DOJ shares responsibilities with the FTC in several areas, we believe your input on H.R. 2668 is necessary before the Committee votes on this bill.

During a Subcommittee on Consumer Protection and Commerce legislative hearing on April 27, 2021, we endorsed the spirit of H.R. 2668 – the FTC should be able to seek monetary damages, in addition to equitable remedies, in cases of “dishonest or fraudulent conduct.” However, we are concerned that H.R. 2668 goes much further and does not include necessary safeguards that ensure due process. We therefore ask that you provide the following information by June 1, 2021:

1. Please provide an official statement of the DOJ’s views on H.R. 2668. To the extent that the DOJ’s views differ in any respect with those of FTC Acting Chair Slaughter, who testified as the sole government witness during the April 27 hearing, please explain those differences.

2. Does the DOJ have any suggested changes to the legislation? If so, please provide those changes and an explanation for them.

3. Does the DOJ interpret the new enforcement authorities provided in H.R. 2668 to apply in antitrust cases (specifically, the Sherman Antitrust Act, 15 U.S.C. 1, and related laws)?

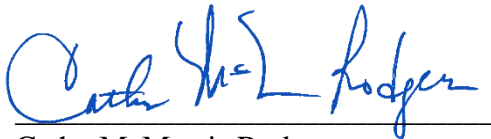
4. Section 2(b) of H.R. 2668 would create a new subsection (e) of section 13 of the FTC Act, which would make the bill's provisions retroactive by a period of ten years. Are there any constitutional or other concerns with such retroactivity?

5. Would H.R. 2668 permit the FTC to revisit antitrust settlements or approvals over the last decade? Would H.R. 2668 permit the FTC to revisit decisions made in this context by the DOJ?

6. Please provide copies of all written communications between the DOJ and the FTC concerning H.R. 2668 or any drafts of the legislation since March 11, 2021.

Thank you for your prompt attention to this matter. Please contact Tim Kurth (202.225.3641) of my committee staff if you have any questions about this request.

Sincerely,



Cathy McMorris Rodgers
Republican Leader



Gus Bilirakis
Republican Leader
Subcommittee on Consumer Protection
and Commerce

cc: The Honorable Frank Pallone, Jr.
The Honorable Jan Schakowsky
The Honorable Rebecca Kelly Slaughter
The Honorable Noah Joshua Phillips
The Honorable Christine S. Wilson
The Honorable Rohit Chopra