

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Subcommittee on Antitrust, Competition Policy and Consumer Rights
Hearing on “Section 5 and ‘Unfair Methods of Competition’:
Protecting Competition or Increasing Uncertainty?”
April 5, 2016**

I share the views of many of my colleagues that our antitrust authorities should be assertive in their enforcement of the law. Vigorous enforcement of the antitrust laws helps to maintain an open, fair and competitive marketplace. That’s good not just for the American consumer, it’s good for the American economy.

At the same time, the laws should be clear enough so that companies can easily comply with them. Yet we’ve heard from many in the business community that they’re having difficulty understanding what could constitute a violation of the FTC Act’s Section 5 “unfair methods of competition.” Not knowing for sure what are the parameters of the law has a deep impact on the way a company does business. Companies need predictability and certainty to succeed. So it’s critical for the FTC to explain its authority and establish a clear standard to which companies can refer as they conduct their business activities.

In that regard, a few years back, I joined several of my colleagues, including Senator Lee and House Judiciary Committee Chairman Goodlatte, in a letter urging the Federal Trade Commission to issue guidelines on the Commission’s authority under Section 5 of the FTC Act. Our opinion was – and continues to be – that the antitrust laws and their enforcement should be “transparent, fair, predictable, and reasonably stable over time.” Guidance on Section 5 authority “will allow businesses to develop lawful competition policies and encourage critical innovation.”

So it was a positive step when the FTC released a statement last August providing general enforcement principles with respect to “unfair methods of competition” under Section 5. But it wasn’t enough – I understand that there is still a lot of uncertainty over what could constitute a violation of Section 5.

This hearing presents us with an opportunity to flesh out questions regarding the scope and application of Section 5 and what actually are “unfair methods of competition.”

I hope the FTC will clarify more, otherwise legislation may be needed. I appreciate the efforts of the Subcommittee Chairman Lee on this issue.