

Federal Trade Commission Report on Retail Competition

This report responds to House Appropriations Committee Report 119-236 accompanying the Financial Services and General Government Appropriations Bill, 2026, directing the Federal Trade Commission (FTC) to submit a report regarding the “key factors inhibiting competition in the food, pharmacy, and retail sectors, and any statutory gaps limiting the FTC's ability to adequately promote competition and respond to potential monopolistic behavior.”¹

Throughout its history, the FTC has worked to fulfill its mission to foster and protect competition across the American economy, including in important retail sectors that directly impact the welfare of consumers and opportunities for American businesses, large and small. The Commission agrees with the Committee that increased competition can lead to lower prices for consumers and a more level playing field for all businesses. Competitive markets are also critical to driving higher output, increased innovation, higher quality products and services, increased efficiency, higher wages, and a more prosperous, dynamic economy.

The key factors threatening competition in the food, pharmacy, and general retail sectors are the same factors that can endanger competition in other industries across the economy. These can include: excessive market concentration that leads to undue increases in market power; excessive vertical integration that creates the ability and incentive for firms to implement exclusionary input or customer foreclosure strategies; the use of exclusionary practices, such as tying, bundling, or exclusive dealing, to enhance or maintain monopoly power; coordinated conduct that distorts competition between market participants; the abuse of government process or technological innovation to enhance or maintain market power; and the use of discriminatory pricing practices that distort competition. It is also important to note that competition in retail markets is inevitably impacted by conduct occurring in upstream markets, such as distribution, production, or research and development markets; accordingly, enforcers concerned with protecting competition at the retail market level must often consider competitive dynamics in upstream markets, which can materially impact retail competition, retail businesses, and consumers.

Congress has empowered the FTC to address competition issues under a number of statutes, including the Federal Trade Commission Act, the Sherman Antitrust Act, the Clayton Antitrust Act, and the Robinson-Patman Act. Below, we describe the Commission’s activities in the food, pharmacy, and other retail industries, and suggest how Congress could take action to promote competition in these sectors by clarifying the scope of the FTC’s authority to seek relief for unlawful conduct under Section 13(b) of the FTC Act.

Food Sector

Millions of Americans rely on competitive food markets to feed their families. Competition in the food supply chain is essential to ensuring that U.S. customers at retail have access to food that is reasonably priced, abundant, nutritious, and safe. Under this Administration

¹ House Rept. 119-236 – Financial Services and General Government Appropriations Bill, 2026, at 56 (Sept. 5, 2025) (to accompany H.R. 5166), 119th Cong., <https://www.congress.gov/committee-report/119th-congress/house-report/236/1>.

and the President’s Executive Order on Addressing Security Risks From Price Fixing and Anti-Competitive Behavior in the Food Supply Chain,² the Commission is continuing its longstanding efforts to preserve competition in food and related sectors, including in food retail markets. Pursuant to the Executive Order, the Commission has formed a Food Supply Security Task Force to coordinate investigations and enforcement in food-related industries.

The food supply chain is characterized by high levels of market concentration at multiple levels, including food retail. Within food retail specifically, concentration has increased significantly over the last three decades.³ This includes a long-term trend of an increasing share of food sales by the largest U.S. retailers. For example, the share of food sales by the top four retailers rose every year since 2012.⁴ Consistent with the Committee’s observation that limited food industry competition can impact rural areas in particular,⁵ there is evidence that food retail market concentration in rural counties is significantly higher than in metropolitan counties, which further corroborates observations that rural residents have fewer food shopping options than those in more densely populated communities.⁶

When unlawful mergers or acquisitions that further consolidate food retail markets threaten food retail competition, the FTC will not hesitate to take action to protect consumers. For example, the FTC went to federal court and obtained a preliminary injunction, blocking The Kroger Company’s \$24 billion acquisition of Albertsons Companies, Inc., which would have been the largest supermarket merger in American history.⁷ This enforcement action prevented a merger that would have eliminated head-to-head competition between the two supermarket chains and protected millions of Americans across the country from paying higher prices for essential groceries.

More recently, in a different food retail channel, the FTC took action to require the nation’s largest provider of micromarket kiosks, 365 Retail Markets LLC, to divest a competing micromarket business as a condition to completing its acquisition of Cantaloupe, Inc.⁸ Micromarket kiosks are small unattended convenience stores often found in offices and breakrooms that allow millions of workers to buy affordable, fresh food during the workday. By

² Exec. Order No. 14364 (Dec. 6, 2025), 90 Fed. Reg. 57,349 (Dec. 10, 2025), <https://www.federalregister.gov/documents/2025/12/10/2025-22537/addressing-security-risks-from-price-fixing-and-anti-competitive-behavior-in-the-food-supply-chain>.

³ See Eliana Zeballos, Xiao Dong, & Ergys Islamaj. A Disaggregated View of Market Concentration in the Food Retail Industry, ERR-314, U.S. Dep’t of Agriculture, Econ. Research Serv. (Jan. 5, 2023), <https://www.ers.usda.gov/publications/105557>.

⁴ U.S. Dep’t of Agriculture, Econ. Research Serv., Retailing & Wholesaling – Retail Trends (Updated Jan. 23, 2025), <https://www.ers.usda.gov/topics/food-markets-prices/retailing-wholesaling/retail-trends>.

⁵ House Rept. 119-236 – Financial Services and General Government Appropriations Bill, 2026, at 56 (Sept. 5, 2025) (to accompany H.R. 5166), 119th Cong., <https://www.congress.gov/committee-report/119th-congress/house-report/236/1>.

⁶ Eliana Zeballos, Xiao Dong, & Ergys Islamaj. A Disaggregated View of Market Concentration in the Food Retail Industry, at 11, ERR-314, U.S. Dep’t of Agriculture, Econ. Research Serv. (Jan. 5, 2023), <https://www.ers.usda.gov/publications/105557>.

⁷ *FTC v. Kroger Co.*, No. 3:24-CV-00347-AN, 2024 WL 5053016 (D. Or. Dec. 10, 2024).

⁸ FTC Press Release, FTC Takes Action to Protect Consumers from Anticompetitive Effects of Micromarket Kiosks Deal (May 1, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/05/ftc-takes-action-protect-consumers-anticompetitive-effects-micromarket-kiosks-deal>.

taking action, the Commission helped to ensure that consumers who depend on these kiosks do not face higher food prices.

The Commission has also been examining the potential implications of the algorithmic pricing technologies that are increasingly part of the American retail consumer experience,⁹ including potentially in the food retail industry. There are concerns that these technologies can be used to present different prices to different people for the same products, and the FTC is aware of reports that some companies may have experimented with such pricing tools in the food retail industry.¹⁰ The FTC will remain vigilant in assessing whether the use of AI-driven pricing tools may distort competition in food retail or other markets.

As noted previously, pricing and competitive conditions in retail markets can be impacted by business conduct in upstream markets. The FTC is pursuing investigation and enforcement actions involving potential unfair methods of competition across other segments of the food supply chain, which may impact prices, output, and product quality for retail grocery customers. In particular, the FTC is engaged in several antitrust matters involving critical inputs used by farmers.

For example, the FTC, along with five states, recently secured a settlement with farm equipment manufacturer Deere & Company (Deere), ensuring that farmers can enjoy the right to repair their own John Deere tractors and farm equipment without having to pay an authorized John Deere dealer to do it for them.¹¹ According to the FTC's complaint, Deere unlawfully acquired and maintained monopoly power in markets for repair services for Deere farm equipment by making its software repair tools available to only its authorized dealers, which forced farmers to rely on authorized dealers for many necessary repairs and led to service delays and higher costs for farmers.¹²

The FTC and several states are also currently in litigation against major pesticide manufacturers Syngenta Crop Protection and Corteva, Inc. for allegedly paying distributors to block competitors from selling their cheaper generic pesticide products to farmers.¹³ In addition, the FTC has commenced a major, industry-wide investigation into the rise of fertilizer prices in the United States.¹⁴

⁹ See, e.g., FTC Press Release, FTC Issues Orders to Eight Companies Seeking Information on Surveillance Pricing (July 23, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-issues-orders-eight-companies-seeking-information-surveillance-pricing>.

¹⁰ See, e.g., Jody Godoy, Instacart ends AI-driven price experiments after criticism, REUTERS (Dec. 22, 2025), <https://www.reuters.com/business/instacart-ends-ai-driven-price-experiments-after-criticism-2025-12-22/>.

¹¹ FTC Press Release, FTC, States Secure Settlement with Deere & Company, Advancing Farmers' Right to Repair (July 8, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/07/ftc-states-secure-settlement-deere-company-advancing-farmers-right-repair>.

¹² *Id.*

¹³ FTC Press Release, FTC and State Partners Sue Pesticide Giants Syngenta and Corteva for Using Illegal Pay-to-Block Scheme to Inflate Prices for Farmers (Sept. 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-state-partners-sue-pesticide-giants-syngenta-corteva-using-illegal-pay-block-scheme-inflate>.

¹⁴ Prepared Remarks of Chairman Andrew N. Ferguson, Fed. Trade Comm'n, Tex. Corn Producers Assn. Field Hearing, at 5 (May 28, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/Ferguson-Texas-Corn-Producers-Association-Remarks.pdf.

Pharmacy Sector

Protecting and fostering competition in prescription drug markets has long been a top priority for the FTC, including retail pharmacy competition. The prescription drug supply chain is complex, pricing remains opaque, and recent years have seen increasing consolidation and vertical integration. As many Americans struggle to pay for essential medicines, anticompetitive conduct and industry consolidation threatens to distort the economic landscape, raising prescription drug prices and undermining retail pharmacy competition.

Vertical integration by powerful pharmacy benefit managers (PBMs) into retail pharmacy, health insurance, clinic services, and other parts of the drug supply chain¹⁵ has raised serious concerns regarding the accessibility and list price of prescription drugs, as well as the potential for vertically integrated PBMs to undermine the ability for independent retail pharmacies to compete.

In 2022, the FTC commenced an inquiry under Section 6(b) of the FTC Act, issuing orders to the six largest PBMs to study the role and impact of the PBMs on the nation's drug markets.¹⁶ The Commission issued interim staff reports in July 2024¹⁷ and January 2025,¹⁸ and the inquiry is ongoing. FTC staff found that the market for PBM services is highly concentrated with the top three PBMs processing nearly 80 percent of the prescriptions dispensed by U.S. pharmacies in 2023, while the top six PBMs processed more than 90 percent.¹⁹ Such levels of concentration give vertically integrated PBMs considerable power over the supply of drug products to retail pharmacies. Staff's interim findings also detailed some of the competitive challenges facing independent retail pharmacies, noting that approximately ten percent of rural independent pharmacies closed between 2013 and 2022.²⁰ Staff observed that vertically integrated PBMs often wield enormous leverage over unaffiliated, independent pharmacies, and

¹⁵ See Adam J. Fein, Mapping the Vertical Integration of Insurers, PBMs, GPOs, Specialty Pharmacies, and Healthcare Services: DCI's 2026 Update, Drug Channels Institute (Apr. 14, 2026), <https://www.drugchannels.net/2026/04/mapping-vertical-integration-of.html>.

¹⁶ FTC Press Release, FTC Launches Inquiry Into Prescription Drug Middlemen Industry (Jun. 7, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-launches-inquiry-prescription-drug-middlemen-industry>.

¹⁷ FTC Press Release, FTC Releases Interim Staff Report on Prescription Drug Middlemen (July 7, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-releases-interim-staff-report-prescription-drug-middlemen>.

¹⁸ FTC Press Release, FTC Releases Second Interim Staff Report on Prescription Drug Middlemen (Jan. 14, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-releases-second-interim-staff-report-prescription-drug-middlemen>.

¹⁹ Fed. Trade Comm'n, Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies, July 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/pharmacy-benefit-managers-staffreport.pdf.

²⁰ Fed. Trade Comm'n, Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies, at 1, July 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/pharmacy-benefit-managers-staff-report.pdf.

commenters to the study stated they often have little choice but to contract with such PBMs, even if they compete with retail pharmacies affiliated with the same PBM.²¹

Two specific competitive concerns associated with vertically integrated PBMs are potential prescription steering and potential reimbursement rate strategies to disadvantage unaffiliated pharmacies. The prescription steering concern relates to PBM practices that may nudge patients to fill highly profitable prescriptions at a PBM-affiliated pharmacy, rather than an independent pharmacy. FTC staff's interim report found that a "larger share of commercial prescriptions for the most profitable specialty generic drugs were dispensed by the Big 3 PBMs' affiliated pharmacies compared with unaffiliated pharmacies."²² The reimbursement rate concern relates to the potential for vertically integrated PBMs to use their market power to set drug reimbursement rates at levels that are untenably low for independent pharmacies, but sustainable for PBM-affiliated pharmacies.²³ Due to the opacity and complexity of reimbursement data, FTC staff found that the extent to which PBMs may have employed such reimbursement strategies is not clear.²⁴

With respect to enforcement, the FTC brought a lawsuit against the three largest PBMs and several of their affiliates for their pricing and rebating practices and has reached landmark settlements with two of them, Express Scripts, Inc. and its affiliated entities (ESI) and Caremark Rx LLC and Zinc Health Services LLC (collectively, Caremark). Among other benefits, the settlements should ensure that community pharmacies are better positioned to engage in fair competition against PBM-affiliated pharmacies. ESI and Caremark will be required to offer retail community pharmacies a fairer, more transparent pricing model based on actual drug acquisition cost, plus fees for dispensing and other services.²⁵ The Caremark settlement also prohibits Caremark from unfairly interfering with the ability of pharmacies in its networks to work with

²¹ *Id.* at 48; *see also*, Centers for Medicare & Medicaid Services Letter to Plans and Pharmacy Benefit Managers (Dec. 14, 2023), available at <https://www.cms.gov/newsroom/fact-sheets/cms-letter-plans-pharmacy-benefit-managers> ("[W]e know that the increasing level of vertical integration that is occurring among plans, PBMs, and their own pharmacies has the potential to result in anticompetitive behavior and place independent pharmacies at a disadvantage. We urge plans and PBMs to engage in sustainable and fair practices with all pharmacies – not just pharmacies owned by PBMs – and we are closely monitoring plan compliance with CMS network adequacy standards and other requirements.") (emphasis in original).

²² Fed. Trade Comm'n, Specialty Generic Drugs: A Growing Profit Center for Vertically Integrated Pharmacy Benefit Managers, at 2, Jan. 2025, https://www.ftc.gov/system/files/ftc_gov/pdf/PBM-6b-Second-Interim-Staff-Report.pdf.

²³ Fed. Trade Comm'n, Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies, at 53-55, July 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/pharmacy-benefit-managers-staffreport.pdf.

²⁴ *See* Fed. Trade Comm'n, Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies, at 55-65, July 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/pharmacy-benefit-managers-staffreport.pdf; Office of the Inspector General, Dep't of Health and Human Services, Impacts of Vertical Integration in Medicare Part D on Sponsors' Drug Costs, Pharmacy Reimbursement, and Enrollee Cost Sharing, OEI-BL-24-00240, at 12, May 2026, <https://oig.hhs.gov/documents/evaluation/11667/OEI-BL-24-00240.pdf>.

²⁵ FTC Press Release, FTC Secures Landmark Settlement with Express Scripts to Lower Drug Costs for American Patients (Feb. 4, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/02/ftc-secures-landmark-settlement-express-scripts-lower-drug-costs-american-patients>; FTC Press Release, FTC Secures Major Settlement with Caremark, Resolving Antitrust Case Against Second Drug Middleman (July 14, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/07/ftc-secures-major-settlement-caremark-resolving-antitrust-case-against-second-drug-middleman>.

pharmacy hub service providers.²⁶ Both settlements also include provisions that will drive down patients' out-of-pocket drug costs. The FTC's lawsuit against the third defendant PBM, OptumRx, Inc., and its affiliates has been withdrawn from adjudication for the purpose of considering a proposed consent agreement.²⁷

In addition, in light of this Administration's focus on healthcare and the FTC's longstanding commitment to protecting healthcare competition, the FTC Chairman formed a Healthcare Task Force, harnessing expertise throughout the agency to help lead the agency's competition and consumer protection enforcement initiatives across the entire healthcare sector and to identify priority areas for advocacy and enforcement.²⁸

Other Retail Sectors

The retail sector is broad and diverse. Yet retail concentration has been increasing over time with the rise in large retailers and ecommerce.²⁹ In addition to enforcement activity relating to the food and pharmacy retail markets discussed above, the FTC has been active in protecting competition in other types of retail markets. Below are several examples.

The FTC is in litigation against Southern Glazer's Wine and Spirits, LLC, the largest U.S. distributor of wine and spirits, and has alleged that the company violated the Robinson-Patman Act, harming small, independent retailers by depriving them of access to discounts and rebates, and impeding their ability to compete against large national and regional chains.³⁰ This loss of competition can ultimately harm consumers on choice and price. The FTC is currently in settlement discussions with the company, and the court has stayed the litigation to allow the parties time to negotiate a stipulated proposed final order that would resolve the action.³¹

To protect consumers facing higher prices at the pump, in June 2025, the Commission took action to preserve competition by requiring a divestiture of 35 gas stations arising out of Alimentation Couche-Tard Inc.'s \$1.57 billion acquisition of gas stations from Giant Eagle, Inc.³² The acquisition would have eliminated existing competition between the two entities in 35

²⁶ FTC Press Release, FTC Secures Major Settlement with Caremark, Resolving Antitrust Case Against Second Drug Middleman (July 14, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/07/ftc-secures-major-settlement-caremark-resolving-antitrust-case-against-second-drug-middleman>.

²⁷ See Order Withdrawing Matter From Adjudication Pursuant to Rule 3.25(C) With Respect to Optum Respondents, *In the Matter of Caremark Rx, LLC, Zinc Health Services LLC, et al.*, F.T.C. No. 9437 (Jun. 12, 2026).

²⁸ FTC Press Release, FTC Chairman Andrew N. Ferguson Launches Healthcare Task Force (Mar. 20, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/03/ftc-chairman-andrew-n-ferguson-launches-healthcare-task-force>.

²⁹ See, e.g., Dominic A. Smith & Sergio Ocampo, The Evolution of U.S. Retail Concentration, Center for Economic Studies, U.S. Census Bureau, Working Paper 22-07 (Mar. 2022), <https://www2.census.gov/ces/wp/2022/CES-WP-22-07.pdf> (examining trends in national and local market concentration).

³⁰ FTC Press Release, FTC Sues Southern Glazer's for Illegal Price Discrimination (Dec. 12, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/12/ftc-sues-southern-glazers-illegal-price-discrimination>; *FTC v. Southern Glazer's Wine and Spirits, LLC*, 8:24-cv-02684-FWS-ADS (C.D. Cal.).

³¹ See Order Re Joint Stipulation to Extend Stay of Litigation Pending Settlement, Dkt. No. 224, *FTC v. Southern Glazer's Wine and Spirits, LLC*, No. 8:24-cv-02684 (C.D. Cal. July 31, 2026).

³² FTC Press Release, FTC Takes Action to Prevent Anticompetitive Effects of Retail Gas Station Deal (June 26, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/06/ftc-takes-action-preventanticompetitive-effects-retail-gas-station-deal>.

local markets across Indiana, Ohio, and Pennsylvania. The Commission has long worked to preserve retail fuel competition in local markets across the country.

In the online retail sector, the Commission joined with 17 state attorneys general in a monopolization lawsuit against Amazon, alleging that the company has engaged in a course of exclusionary conduct to maintain its monopoly in the online superstore and the online marketplace services markets.³³ The complaint alleges that Amazon has stopped sellers from lowering prices, degraded quality for shoppers, overcharged sellers, stifled innovation, and prevented rivals from fairly competing. These alleged tactics include anti-discounting measures that deter online sellers from offering lower prices than Amazon, which keeps prices higher for products across the internet, as well as conditioning online vendors' ability to obtain "Prime" status for their products on vendors purchasing Amazon's costly fulfillment services. The case is scheduled for trial in 2027.

Statutory Gaps: Restoring FTC Authority to Return Money to Consumers Harmed by Violations and Clarifying FTC Authority to Prevent Reoccurrence of Illegal Conduct

As described above, the Commission, under this Administration, continues to use all of the legal tools at its disposal to foster and protect competition in retail markets, as well as upstream markets that impact the welfare of retail consumers. This includes appropriate enforcement action under the FTC Act, the Sherman Act, the Clayton Act, and the Robinson-Patman Act, as well as market studies under Section 6(b) of the FTC Act. However, in recent years, several judicial decisions interpreting Section 13(b) of the FTC Act³⁴ have weakened the FTC's ability to effectively protect consumers from competition and consumer protection violations in retail markets and beyond.

For decades, the FTC had relied upon Section 13(b) to obtain federal court orders requiring defendants who violated the law to pay refunds to harmed consumers or return the gains they earned by breaking the law. Indeed, the FTC had relied on Section 13(b) to obtain the overwhelming majority of consumer redress in FTC fraud cases for the last forty years.³⁵ In 2021, the Supreme Court, in *AMG Capital Management, LLC v. FTC*, held that Section 13(b) did not authorize courts to award equitable monetary relief in FTC enforcement actions for violations of Section 5 of the FTC Act.³⁶ Although the Commission believes that *AMG* was correctly decided, that decision removed a critical tool the Commission had long used to force wrongdoers to give up their unlawfully earned profits and provide refunds to consumers harmed by illegal conduct.

The amount of consumer refunds at issue is substantial. In April 2021, a week after the *AMG* decision, the Commission reported to the House Committee on Energy and Commerce that

³³ FTC Press Release, *FTC Sues Amazon for Illegally Maintaining Monopoly Power* (Sept. 26, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power>.

³⁴ 15 U.S.C. § 53(b).

³⁵ See Concurring Statement of Chairman Andrew N. Ferguson, Joined By Commissioner Mark R. Meador at 3, *Lindsay Automotive Grp.*, Matter No. X250021 (Apr. 2, 2026).

³⁶ *AMG Capital Management, LLC v. FTC*, 593 U.S. 67 (2021).

it had provided \$11.2 billion in refunds to consumers during the preceding five years.³⁷ During the last five fiscal years (2021-2025), however, the amount of consumer refunds decreased to \$1.8 billion.³⁸ Although the FTC still has some ability to seek court-ordered refunds in consumer protection matters under Section 19 of the FTC Act,³⁹ the FTC cannot obtain refunds in cases involving anticompetitive conduct. Prior to *AMG*, in appropriate circumstances, the FTC, relying on Section 13(b), sought and obtained consumer redress for consumers harmed by anticompetitive conduct in the pharmaceutical sector, which can unlawfully raise the price of prescription drugs sold through retail and other channels of distribution.⁴⁰

Other recent court decisions have also limited the FTC's ability under Section 13(b) to obtain federal court injunctions to address unlawful anticompetitive conduct. In *FTC v. Shire ViroPharma*, which involved alleged abuses of the Food & Drug Administration's citizens petition process to delay the entry of generic drug competition, the Third Circuit held that Section 13(b) authorizes FTC lawsuits seeking an injunction only when the alleged violation is either ongoing or impending at the time the suit is filed.⁴¹ More recently, in the FTC's monopolization case against Meta Platforms, a district court went further, finding that under Section 13(b) the FTC can seek to enjoin "only conduct that currently violates the law or imminently will" at the time of the court's ruling.⁴² These decisions hamper the Commission's ability to obtain injunctions to prevent defendants from resuming their unlawful activities, even when there is a reasonable likelihood that the defendants would resume their anticompetitive practices in the future.

³⁷ Prepared Statement of the FTC, The Urgent Need to Fix Section 13(b) of the FTC Act, Before the House Comm. on Energy and Commerce, Subcomm. on Consumer Protection and Commerce, at 2 (Apr. 27, 2021), https://www.ftc.gov/system/files/documents/public_statements/1589400/p180500house13btestimony04272021.pdf.

³⁸ See Tableau, *FTC Refunds to Consumers, Refunds by Date, Fiscal Year: 2021 to 2025*, https://public.tableau.com/app/profile/federal.trade.commission/viz/Refunds_15797958402020/RefundsbyCase (last accessed July 21, 2026).

³⁹ 15 U.S.C. § 57b.

⁴⁰ See FTC Press Release, *FTC Settlement of Cephalon Pay for Delay Case Ensures \$1.2 Billion in Ill-Gotten Gains Relinquished; Refunds Will Go To Purchasers Affected By Anticompetitive Tactics* (May 28, 2015), <https://www.ftc.gov/news-events/news/press-releases/2015/05/ftc-settlement-cephalon-pay-delay-case-ensures-12-billion-ill-gotten-gains-relinquished-refunds-will>; FTC Press Release, *Cardinal Health Agrees to Pay \$26.8 Million to Settle Charges It Monopolized 25 Markets for the Sale of Radiopharmaceuticals to Hospitals and Clinics* (Apr. 20, 2015), <https://www.ftc.gov/news-events/news/press-releases/2015/04/cardinal-health-agrees-pay-268-million-settle-charges-it-monopolized-25-markets-sale>; FTC Press Release, *FTC Reaches Record Financial Settlement To Settle Charges of Price-fixing in Generic Drug Market* (Nov. 29, 2000), <https://www.ftc.gov/news-events/news/press-releases/2000/11/ftc-reaches-record-financial-settlement-settle-charges-price-fixing-generic-drug-market> (obtaining a \$100 million from Mylan Laboratories, Inc. to refund injured consumers and state agencies). *But see* FTC Press Release, *Federal Trade Commission Withdraws Remaining Case against AbbVie after Supreme Court Decision Strips Consumers of Relief* (July 30, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/07/federal-trade-commission-withdraws-remaining-case-against-abbvie-after-supreme-court-decision-strips> (discussing the decision of the Third Circuit to reverse \$493.7 million in equitable relief granted by the district court to refund harmed consumers).

⁴¹ *FTC v. Shire ViroPharma, Inc.*, 971 F.3d 147 (3d Cir. 2019); *accord FTC v. AbbVie Inc.*, 976 F.3d 327, 376 (3d Cir. 2020).

⁴² *FTC v. Meta Platforms, Inc.*, 811 F.Supp.3d 67, 88 (D.D.C. Dec. 2, 2025) ("[T]he FTC must prove that Meta has monopoly power now.") (emphasis in original). The Commission is appealing the Meta Platforms ruling. FTC Press Release, *FTC Appeals Ruling in Meta Monopolization Case* (Jan. 20, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/01/ftc-appeals-ruling-meta-monopolization-case>.

In sum, these judicial decisions have significantly limited the Commission's ability to obtain court orders prohibiting wrongdoers from violating the law again and requiring them to provide refunds to consumers harmed by illegal anticompetitive conduct and give up the unjust gains that they earned. These decisions thus undermine the FTC's ability to deter anticompetitive activity and protect consumers and competition in retail and related markets. Violators are in a position to argue that because they have discontinued their unlawful conduct, the FTC cannot bring an enforcement action against them in federal court for their prior illegal conduct and that the Commission is powerless to deprive them of the illicit fruits of their violations, to the detriment of harmed consumers and competitive markets.

Congress can address these issues by clarifying the FTC's authority under Section 13(b). Accordingly, the Commission respectfully urges Congress to enact legislation (1) authorizing courts to award equitable monetary relief for violations of laws enforced by the FTC; and (2) making clear that the courts can enter injunctions prohibiting violations of the law even if the violations are not ongoing at the time of the FTC's enforcement action.⁴³ Such action by Congress would enable the FTC to more effectively fulfill its mission to protect consumers and competition in retail and other markets across the country. The FTC and its staff would be pleased to provide any technical assistance that may be helpful to Congress in its consideration of such legislation.

The Commission looks forward to continuing to work with the Committee and Congress to protect retail competition and consumers.

⁴³ This and prior Commissions have made similar requests to address these issues in recent years. *See* Testimony of the FTC, Oversight of the Federal Trade Commission, Before the Senate Comm. on Commerce, Science, and Transportation, at 6 (Apr. 15, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/p994811-ftc-oversight-testimony-senate-commerce-committee-2026.pdf; FTC Rep. to Congress: The FTC's Efforts in the Greater Fight Against Ransomware and Cyber-Related Attacks – Update: 2025, at 34, Jan. 30, 2026, https://www.ftc.gov/system/files/ftc_gov/pdf/p035303ransomwarereport2025.pdf; FTC Press Release, FTC Asks Congress to Pass Legislation Reviving the Agency's Authority to return Money to Consumers Harmed by Law Violations and Keep Illegal Conduct from Reoccurring (Apr. 27, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/04/ftc-asks-congress-pass-legislation-reviving-agencys-authority-return-money-consumers-harmed-law>; Letter from FTC Chairman Joseph Simon, Comm'r Noah Phillips, Comm'r Rohit Chopra, Comm'r Rebecca Slaughter & Comm'r Christine Wilson to Rep. Frank Pallone, Rep. Greg Walden, Senator Roger Wicker & Senator Maria Cantwell (Oct. 22, 2020), *available at* <https://www.allaboutadvertisinglaw.com/wp-content/uploads/sites/21/2020/11/FTC-Letter-to-Energy-and-Commerce-Committee-Letters.pdf>; Prepared Statement of the FTC, Oversight of the Federal Trade Commission, Before the Senate Comm. on Commerce, Science, and Transportation, at 3-4 (Aug. 5, 2020), https://www.ftc.gov/system/files/documents/public_statements/1578963/p180101testimonyftcoversight20200805.pdf.