Ranking Member Pat Toomey (R-Pa.)
Opening Statement
Full Committee Hearing
March 8, 2022

Thank you Mr. Chairman.

Before turning to today's topic, I hope this Committee will hold a hearing soon on sanctioning Russia for its horrific invasion of Ukraine. To throttle Putin's ability to wage war in Europe, the U.S. must bring Russia's economy to its knees. This means direct sanctions on Russia's oil and gas sector.

Ending U.S. purchases is just a start. We also need to put an end to the rest of the world funding Putin's war machine. That means secondary sanctions on Russia's banks. Secondary sanctions would force the world to choose between doing business with Russia or the United States. This is an important issue that is, in fact, within the jurisdiction of this Committee.

Now turning to today's topic, this hearing is about mandatory arbitration agreements. These are contracts where financial institutions and consumers agree to use arbitration instead of litigation to resolve disputes. They're commonly used for products like checking accounts and credit cards.

Arbitration is a fair, cost-effective process for resolving disputes outside of court, which generally leads to better outcomes for consumers than litigation. But arbitration agreements in consumer financial services have come under attack in recent years.

In 2017, the CFPB issued a rule that would've banned these agreements for consumer financial products. However, Congress overturned this rule under the Congressional Review Act. Since then, Democrats have introduced bills that would undo Congress' sensible decision.

These misguided efforts would harm consumers, undermine the freedom of contract, and give away millions to trial lawyers. If these efforts are successful, aggrieved consumers would receive less money, less quickly.

Protecting consumers doesn't require the government to stop adults from entering into agreements and undermine their freedom of contract. Nor

does it require the government to micromanage the terms of contracts. That's not protection, that's paternalism. It treats adults as incapable of making their own decisions without interference from the government.

Consumers who don't want to sign mandatory arbitration agreements have other options. According to data collected by the CFPB in 2015, 84 percent of credit card issuers and 92 percent of banks offering checking accounts do not use mandatory arbitration agreements in their contracts for those products. Therefore, any consumer in America who prefers to settle a dispute in litigation rather than arbitration has many opportunities to select a financial product that allows for that.

Of course, in reality, most consumers don't make decisions based on whether their contract has an arbitration agreement. They don't need to.

As multiple studies have shown, consumers generally do better in arbitration than in court. According to one recent study, consumers prevail on the merits 14 percent more often in arbitration than in court.

CFPB data showed that the majority of consumers who go to arbitration have higher rates of securing settlements or awards compared to consumers who sue as individual claimants in federal court. Moreover, the average recovery per consumer from class-action settlements was $32, while a consumer who prevailed in arbitration was awarded an average of $5,389.

What's more, arbitration is more efficient and cost-effective at resolving disputes than litigation. For example, consumers don't need to pay expensive fees to lawyers to represent them in arbitration.

In fact, consumers who represented themselves won on the merits in arbitration more often than those who hired lawyers to represent them. And, disputes are resolved much more quickly in arbitration than in court.

By contrast, lawsuits can be very costly, especially class-action lawsuits. That's why restricting arbitration agreements would likely drive up the costs of financial services, which increases prices for consumers who are already being harmed by forty-year high inflation. It could also deprive consumers of the ability to access arbitration.

For instance, according to the Independent Community Bankers Association, it would not be economical for community banks to subsidize arbitration for customers if they're forced to carry the high costs from increased class-action lawsuits.

Trial lawyers sometimes claim that class-action litigation is necessary to punish or deter wrongdoing. Ultimately, the most powerful incentive for financial institutions to take good care of their customers is that if they don't someone else will—the market for consumer financial products is extremely competitive. And when they don't, financial services providers are already subject to stringent scrutiny by regulators, with the potential of incurring massive financial penalties.

In the end, it's not consumers who benefit from banning arbitration agreements, but trial lawyers. As I mentioned, each consumers' average recovery was just $32 in class-action settlements.

By contrast, trial lawyers averaged more than $1 million in attorneys' fees per settlement. That's not consumer protection—it's lawyer protection. And liberal advocacy groups get a windfall too.

Some class action settlements require payment to a nonprofit instead of consumers—even though the nonprofit was in no way harmed and probably has never even been a customer of the financial institution. In fact, two of the witnesses advocating against arbitration agreements today are from groups that actively solicit these awards—hardly disinterested advocates.

Restricting arbitration would be little more than a government-sponsored bonanza for trial lawyers and certain liberal advocacy groups, at the expense of consumers seeking a fast and fair resolution of their disputes.

Arbitration leads to better consumer outcomes and lower costs. Nothing about arbitration agreements merits the government stepping in to restrict freedom of contract and micromanage consumer decisions.