

PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION

Before the

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEE ON FINANCIAL SERVICES AND

GENERAL GOVERNMENT

UNITED STATES SENATE

Washington, D.C. MAY 17, 2018

I. INTRODUCTION

Chairman Lankford, Ranking Member Coons, and members of the Subcommittee, I am Joe Simons, Chairman of the Federal Trade Commission (“FTC” or “Commission”), and I am pleased to appear before you today to testify about the Commission’s FY2019 appropriations request and its work to protect consumers and promote competition.¹

The FTC is a highly productive and effective independent agency comprised of three bureaus: the Bureau of Consumer Protection (“BCP”), the Bureau of Competition (“BC”), and the Bureau of Economics, which supports both BCP and BC. It is the only federal agency with a broad mission to both protect consumers and maintain competition in most sectors of the economy. Its jurisdiction ranges from privacy and data security, to mergers and acquisitions, to anticompetitive tactics by pharmaceutical companies, to high-technology and emerging industries. This is an historic time at the Commission; four new Commissioners joined the agency in the past two weeks, including myself. We look forward to continuing to work cooperatively in a bipartisan manner.

The FTC is primarily a civil law enforcement agency that investigates and prosecutes those engaging in unfair or deceptive acts or practices or unfair methods of competition, and seeks to do so without impeding legitimate business activity.² The FTC also educates consumers and businesses to encourage informed choices.

work, the FTC seeks to promote an honest and competitive marketplace and works with foreign counterparts to harmonize competition and consumer protection laws across the globe.

The Commission pursues a vigorous and effective law enforcement program, and the impact of its work is significant. The Commission has an experienced and talented staff executing this work, but it needs the resources to support their efforts. This testimony provides a description of the agency's current budget, its budget request for FY 2019, and the basis for the increase in its request. This testimony also provides

1. Imposter Scams

Reports about imposter scams have been on the rise over the past few years, and many of these scams target seniors.⁷ Fraudsters falsely claiming to be government agents (including the IRS and even the FTC), family members, or well-known tech companies contact consumers and pressure them to send money, often via cash-like payment methods.

For example, during the past year, the FTC joined federal, state, and international law enforcement partners in announcing “Operation Tech Trap,” a nationwide and international crackdown on tech support scams that trick consumers into believing their computers are infected with viruses and malware, and then charge them hundreds of dollars for unnecessary repairs.⁸ The FTC brought actions to shut down these deceptive operations and also developed consumer education materials to help consumers avoid falling victim to tech support scams in the first place.⁹

2. Emerging Frauds

The FTC strives to stay ahead of scammers who are always on the lookout for new ways to market old schemes. For example, there has been an increase in deceptive money-making frauds involving cryptocurrencies – digital assets that use cryptography to secure or verify transactions. The Commission has worked to educate consumers about cryptocurrencies and hold fraudsters accountable. In March, the FTC halted the operations of Bitcoin Funding Team, which allegedly

⁷ FTC Fiscal Year 2019 Congressional Budget Justification, available at <https://www.ftc.gov/reports/fy-2019-congressional-budget-justification>.

⁸ Press Release, *FTC and Federal, State and International Partners Announce Major Crackdown on Tech Support Scams* (May 12, 2017), available at <https://www.ftc.gov/news-events/press-releases/2017/05/ftc-federal-state-international-partners-announce-major-crackdown>. “Operation Tech Trap” is just one example of a law enforcement “sweep” – coordinated, simultaneous law enforcement actions with partners – that the FTC uses to leverage resources to maximize effects. Another example of a recent sweep is “Game of Loans,” the first coordinated federal/state law enforcement initiative targeting deceptive student loan debt relief scams. Press Release, *FTC, State Law Enforcement Partners Announce Nationwide Crackdown on Student Loan Debt Relief Scams* (Oct. 13, 2017), available at <https://www.ftc.gov/news-events/press-releases/2017/10/ftc-state-law-enforcement-partners-announce-nationwide-crackdown>.

result of the 125 cases resolved thus far, the Commission has collected over \$121 million in equitable monetary relief and civil penalties.¹⁵ Recently, the FTC and its law enforcement partners achieved an historic win in a long-running fight against unwanted calls when a federal district court in Illinois issued an order imposing a \$280 million penalty against Dish Network – the largest penalty ever issued in a Do Not Call case.¹⁶

Part of the huge uptick in illegal calls, including robocalls, is attributable to relatively recent technological developments that facilitate telemarketing without requiring a significant capital investment in specialized hardware and labor.¹⁷ Today, robocallers benefit from automated dialing technology, inexpensive international and long distance calling rates, and the ability to move internationally and employ cheap labor. The result: law-breaking telemarketers can place robocalls for a fraction of one cent per minute. Moreover, technological changes have also affected the marketplace by enabling telemarketers to conceal their identities when they place calls.

Recognizing that law enforcement, while critical, is not enough to solve the problem of illegal calls, the FTC has taken steps to spur the marketplac12 (p)2 (x)12 (a dw -34.77 -2.3 Td [(t)-2 (e)4 (c)4 (h

and availability of technological solutions in this area, particularly call-blocking and call-filtering products.

In addition, the FTC regularly works with its state, federal, and international partners to combat illegal robocalls. For example, this spring the FTC and Federal Communications Commission co-hosted a Joint Policy Forum on Illegal Robocalls to discuss the regulatory and enforcement challenges posed by illegal robocalls, as well as a public technology expo featuring new technologies, devices, and applications to minimize or eliminate the number of illegal robocalls consumers receive.¹⁹

B. Protecting Consumer Privacy and Data Security

The FTC has unparalleled experience in consumer privacy enforcement. The Commission has used its core enforcement authority – Section 5 of the FTC Act – to take action against companies engaged in unfair or deceptive practices involving the privacy and security of consumers’ information.²⁰ The FTC also enforces sector-specific statutes that protect certain health,²¹ credit,²² financial,²³ and children’s information.²⁴

telecommunications providers and is available as an app on iPhones. *See* Press Release, *FTC Announces Robocall Challenge Winners* (Apr. 2, 2013), available at <https://www.ftc.gov/news-events/press-releases/2013/04/ftc-announces-robocall-challenge-winners>; *see also* Press Release, *FTC Awards \$25,000 Top Cash Prize for Contest-Winning Mobile App That Blocks Illegal Robocalls* (Aug. 17, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/08/ftc-awards-25000-top-cash-prize-contest-winning-mobile-app-blocks>; Press Release, *FTC Announces Winners of “Zapping Rachel” Robocall Contest* (Aug. 28, 2014), available at <https://www.ftc.gov/news-events/press-releases/2014/08/ftc-announces-winners-zapping-rachel-robocall-contest>; Press Release, *FTC Announces Robocall Challenge Winners* (Apr. 2, 2013), available at <https://www.ftc.gov/news-events/press-releases/2013/04/ftc-announces-robocall-challenge-winners>.

¹⁹ *See* Press Release, *FTC and FCC to Host Joint Policy Forum on Illegal Robocalls* (Mar. 22, 2018), available at www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-host-joint-policy-forum-illegal-robocalls; Press Release, *FTC and FCC Seek Exhibitors for an Expo Featuring Technologies to Block Illegal Robocalls* (Mar. 7, 2018) available at www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-seek-exhibitors-expo-featuring-technologies-block-illegal.

²⁰ 15 U.S.C. § 45(a).

²¹ 16 C.F.R. Part 318.

²² 15 U.S.C. §§ 1681-1681x.

²³ 16 C.F.R. Part 314, implementing 15 U.S.C. § 6801(b).

²⁴ 15 U.S.C. §§ 6501-6506; *see also* 16 C.F.R. Part 312.

Some of the FTC's privacy enforcement priorities include financial privacy, children's privacy, health privacy, the Internet of Things, and data security. Ongoing work includes investigations of Facebook's privacy practices²⁵ and the Equifax data breach. These kinds of large and complex investigations underscore the need for resources. In January, the Commission issued its annual report summarizing its privacy and data security work in 2017.²⁶ Below are a few highlights of the Commission's recent work.

Financial privacy has long been an area of particular emphasis for the FTC. For example, the FTC alleged that online tax preparation service TaxSlayer violated the Gramm-Leach-Bliley Act's Safeguards Rule by, among other things, failing to implement adequate risk-based authentication measures and failing to require consumers to choose strong passwords.²⁷ The FTC alleged that malicious hackers were able to gain full access to nearly 9,000 TaxSlayer accounts between October 2015 and December 2015 and use that information to engage in tax identity theft, which allowed them to obtain tax refunds by filing fraudulent tax returns.

The Commission also takes seriously its commitment to protect children's privacy, which continues to be a focus of the FTC's enforcement efforts. In the Commission's first children's privacy case involving Internet-connected toys, the FTC announced a settlement with electronic toy manufacturer VTech Electronics for violations of the Children's Online Privacy Protection Rule, including a civil penalty of \$650,000.²⁸ The FTC alleged that the company collected children's

²⁵ Statement by the Acting Director of FTC's Bureau of Consumer Protection Regarding Reported Concerns about Facebook Privacy Practices (Mar. 26, 2018), available at <https://www.ftc.gov/news->

personal information online without first obtaining parental consent, and failed to take reasonable steps to secure the data it collected.²⁹

The FTC has also continued to focus on privacy and data security involving the Internet of Things. For example, last year Vizio, one of the world's largest manufacturers and sellers of Internet-connected smart televisions, agreed to pay \$2.2 million to settle charges that it installed software on its televisions to collect the viewing data of 11 million consumers without the consumers' knowledge or consent.³⁰ Additionally, the FTC co-

When consumers with serious health concerns fall victim to unsupported health claims, they may put their health at risk by avoiding proven therapies and treatments. Through consumer education, including the FTC’s advisories, the agency urges consumers to check with a medical professional before starting any treatment or product to treat serious medical conditions.⁴¹

D. Consumer Education and Outreach

Public outreach and education is another critical element of the FTC’s efforts to fulfill its consumer protection mission. The Commission’s education and outreach programs reach tens of millions of people each year through our website, the media, and partner organizations that disseminate consumer information on the agency’s behalf. The FTC delivers actionable, practical, plain language materials on dozens of issues, and updates its consumer education whenever it has new information to share. The FTC disseminates these tips through articles, blog posts, social media, infographics, videos, audio, and campaigns such as “Pass It On”—an innovative means of arming older consumers with information about scams that they can “pass on” to their friends and family.⁴²

IV. COMPETITION MISSION

The Commission seeks to promote competition through vigorous law enforcement, a robust policy and research agenda, and international cooperation and coordination.

A. Enforcement

The FTC enforces U.S. antitrust law in many sectors that directly affect consumers and their pocketbooks, such as health care, consumer products and services, technology, manufacturing, and

<https://www.ftc.gov/enforcement/cases-proceedings/162-3134/cellmark-biopharma-derek-e-vest>.

⁴¹ FTC Consumer Blog, *Treatments and Cures*, at <https://www.consumer.ftc.gov/topics/treatments-cures>.

⁴² See Pass It On, www.consumer.ftc.gov/features/feature-0030-pass-it-on#identity-theft.

energy. The Commission shares federal antitrust enforcement responsibilities with the Antitrust Division of the U.S. Department of Justice.

One of the agencies' principal responsibilities is to prevent mergers that may substantially lessen competition. Under U.S. law, parties to certain large mergers and acquisitions must file premerger notification and wait for government review. Over the past five fiscal years, premerger filings under the Hart-Scott-Rodino Act have increased more than 50 percent; in the most recent fiscal year, the antitrust agencies received over 2000 HSR filings for the first time since 2007.⁴³ The vast majority of reported transactions do not raise competitive concerns, and the agencies clear those transactions expeditiously. However, when the evidence gives the Commission reason to believe that a proposed merger would likely be anticompetitive, the Commission has intervened. Since the beginning of fiscal ye4 (a)4 (l)-.nnie o vhnng ogea fproposvertyili inter, wne0 (v) h (he)4 2 (i)-2 (od7 (e

litigated.⁴⁶ In addition, Walgreens substantially restructured its proposed acquisition of Rite Aid after the Commission raised concerns about the original transaction during an extensive review.

such as abuse of government process through sham litigation or repetitive regulatory filings intended to slow the approval of competitive drugs.⁵² The Commission also obtained a stipulated injunction in which Mallinckrodt ARD Inc., agreed to pay \$100 million and divest assets to settle charges that it had illegally acquired the rights to develop a drug that threatened its monopoly in the U.S. market for a specialty drug used to treat a rare seizure disorder afflicting infants.⁵³

The Commission also follows closely activity in the high-technology sector. From smart appliances and smart cars to mobile devices and search platforms, the widespread use of technology and data is not only changing the way we live, but also the way firms operate. While many of these changes offer consumer benefits, they also raise complex and sometimes novel competition issues. Given the important role that technology companies play in the American economy, it is critical that the Commission – in furthering its mission of protecting consumers and fostering competition – understand their developing technologies and scrutinize their conduct to ensure that they abide by the same rules of competitive markets that apply to any company.

B. Policy and Research

To complement our enforcement efforts, the FTC pursues a robust competition policy and research agenda to improve agency decision-making, and engages in competition advocacy and education initiatives. The FTC promotes competition principles in advocacy comments to state lawmakers and regulators as well as our sister federal agencies. The FTC also organizes public workshops and issues reports on important topics, such as a recent workshop on prescription drug

⁵² *FTC v. Abbvie Inc.*, No. 14-cv-5151 (E.D. Pa. Sept. 8, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/121-0028/abbvie-inc-et-al>; *FTC v. Shire ViroPharma Inc.*, No. 17-cv-131(D. Del. Feb. 7, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/17-cv-131/shire-viropharma-inc>.

distribution practices,⁵⁴ several workshops concerning occupational licensing reform,⁵⁵ and an upcoming event on competition among residential real estate brokers.⁵⁶ Last year, the Commission concluded a comprehensive review of its merger remedies to evaluate the effectiveness of the Commission's orders issued between 2006 and 2012, and made public its findings.⁵⁷ Examining prior enforcement efforts to assess their impact on competition and consumers is critical to formulating an effective and efficient antitrust enforcement program, and the Commission will continue these self-assessment efforts in order to deploy our resources where they can do the most good.

C. International Engagement and Collaboration

With the expansion of global trade and the operation of many companies across national borders, the FTC and the Antitrust Division of the U.S. Department of Justice increasingly engage with foreign antitrust agencies to ensure close collaboration on cross-border cases and convergence toward sound competition policies and procedures.⁵⁸ The FTC effectively coordinates reviews of multijurisdictional mergers and continues to work with its international counterparts to achieve consistent outcomes in cases of possible unilateral anticompetitive conduct. The U.S. antitrust agencies facilitate dialogue and promote convergence through multiple channels, including through strong bilateral relations with foreign competition agencies, and an active role in multilateral

⁵⁴ FTC Workshop, *Understanding Competition in Prescription Drug Markets: Entry and Supply Chain Dynamics* (Nov. 8, 2017), available at <https://www.ftc.gov/news-events/events-calendar/2017/11/understanding-competition-prescription-drug-markets-entry-supply>.

⁵⁵ See, e.g., Press Release, *FTC Announces Second Economic Liberty Public Roundtable* (Sept. 11, 2017), available at <https://www.ftc.gov/news-events/press-releases/2017/09/ftc-announces-->

competition organization projects and initiatives. When appropriate, we also work with other agencies within the U.S. government to advance consistent competition enforcement policies, practices, and procedures in other parts of the world.⁵⁹

V. CONCLUSION

The FTC remains committed to maximizing its resources to enhance its effectiveness in protecting consumers and promoting competition, to anticipate and respond to changes in the marketplace, and to meet current and future challenges. We look forward to continuing to work with the Subcommittee and Congress, and we would be happy to answer your questions.

⁵⁹ For example, we work through the United States government's interagency processes to ensure that competition-related issues that also implicate broader U.S. policy interests, such as the protection of intellectual property and non-discrimination, are addressed in a coordinated and effective manner.