

PREPARED STATEMENT OF THE  
FEDERAL TRADE COMMISSION:  
OVERSIGHT OF THE FEDERAL TRADE COMMISSION

Before the  
COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON CONSUMER PROTECTION AND COMMERCE  
UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, DC

MAY 8, 2019

## I. INTRODUCTION

Chairman Schakowsky, Ranking Member McMorris Rodgers, and members of the Subcommittee, the Federal Trade Commission (“FTC” or “Commission”) is pleased to appear before you today to discuss the FTC’s work to protect consumers and promote competition.<sup>1</sup>

The FTC is an independent agency with three main bureaus: the Bureau of Consumer Protection (“BCP”); the Bureau of Competition (“BC”); and the Bureau of Economics (“BE”), which supports both BCP and BC. The FTC is the only federal agency with a broad mission to both protect consumers and maintain competition in most sectors of the economy. Our jurisdiction includes privacy and data security, consumer fraud, mergers and acquisitions, and anticompetitive tactics by pharmaceutical and other companies. We enforce the law across a range of sectors, including health care, high technology, and emerging industries. The FTC has a long history of bipartisanship and cooperation, and we work hard to maintain it.

The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act,<sup>2</sup> and enforces a wide variety of other laws, ranging from the Clayton Act to the Fair Credit Reporting Act. In total, the Commission has enforcement or other responsibilities under more than 75 laws.<sup>3</sup> The Commission pursues a vigorous and effective law enforcement program, and the impact of its work is significant. I

The FTC also investigates and prosecutes those engaging in unfair or deceptive acts or practices, and seeks to do so without impeding lawful business activity. The agency has a varied toolkit to advance its mission. For example, the Commission collects consumer complaints from the public and maintains one of the most extensive consumer protection complaint databases, Consumer Sentinel. The FTC and other federal, state, and local law enforcement agencies use these complaints in their law enforcement and policy efforts. The FTC also has rulemaking authority. In addition to the FTC's Magnuson-Moss rulemaking authority, Congress has given the agency discrete rulemaking authority under the Administrative Procedure Act ("APA") over specific topics. The agency regularly analyzes its rules, including seeking public feedback, to ensure their continued efficacy. The FTC also educates consumers and businesses to encourage informed consumer choices, compliance with the law, and public understanding of the competitive process.

To complement these enforcement and public education efforts, the FTC pursues a consumer protection and competition policy and research agenda to improve agency decision-making, and engages in advocacy and education initiatives. Last fall, the Commission began its Hearings on Competition and Consumer Protection in the 21<sup>st</sup> Century.<sup>4</sup> This extensive series of public hearings is exploring whether broad-based changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to competition and consumer protection law, enforcement priorities, and policy. To date, we have heard from more than 350 panelists and received more than 850 public comments. The formal hearings will conclude shortly, and we will be accepting public comments through at least the end

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<sup>4</sup> FTC, Hearings on Competition and Consumer Protection in the 21<sup>st</sup> Century, <https://www.ftc.gov/policy/hearings-competition-consumer-protection>, see also FTC Press Release, FTC Announces Hearings On Competition and Consumer Protection in the 21<sup>st</sup> Century (June 20, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-announces-hearings-competition-consumer-protection-21st>





carriers from the Commission's authority, even when the practices of these market participants have serious implications for consumer privacy and data security. To better equip the Commission to meet its statutory mission to protect consumers, we urge Congress to enact privacy and data security legislation, enforceable by the FTC, which grants the agency civil penalty authority, targeted APA rulemaking authority, and jurisdiction over nonprofits and common carriers.<sup>12</sup>

While the Commission believes new authority could be very beneficial for American consumers, we also will continue to use every tool currently at our disposal to address consumer harm. For example, the Commission protects children's privacy online by enforcing the Children's Online Privacy Protection Act (COPPA). We recently alleged that Unixiz, doing business as iDressup.com, violated the COPPA Rule by failing to obtain parental consent prior to collecting personal information from children, as well as failing to protect children's personal information.<sup>13</sup> The FTC's complaint also alleged that the company stored and transmitted users' personal information in plain text, failed to implement an intrusion detection and prevention system, and failed to monitor for potential security incidents. As a result, a hacker accessed the personal information of approximately 2.1 million users, including 245,000 users under the age of 13. And in March, the FTC announced a settlement with the operators of the popular video social networking app Musical.ly, now known as Tik Tok, for COPPA violations.<sup>14</sup> The FTC alleged that the company collected children's personal information online without first obtaining parental

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<sup>12</sup> Commissioner Phillips supports congressional efforts to consider consumer data privacy legislation. He believes legislation should be based on harms that Congress agrees warrant a remedy, and that tools like penalties and rulemaking should be calibrated carefully to address those harms. Commissioner Phillips believes Congress should also give appropriate consideration to the tradeoffs involved in new regulation, and, with regard to rulemaking, reserve to itself fundamental value judgments appropriately made by the legislature. Finally, Commissioner Phillips believes data security legislation is a critical step Congress should take to protect consumer privacy.

<sup>13</sup> U.S. v. Unixiz, Inc. d/b/a iDressup.com et al No. 5:19cv-02222 (N.D. Cal. Apr. 24, 2019),

<https://www.ftc.gov/enforcement/cases-proceedings/172002/unixiz-inc-doing-business-i-dressup-com>

<sup>14</sup> U.S. v. Musical.ly, et al No. 2:19-cv-1439 (C.D. Ca. Mar. 27, 2019) <https://www.ftc.gov/enforcement/cases-proceedings/172004/musically-inc>.

consent. Because COPPA allows the Commission to seek civil penalties for its violations, the defendants agreed to pay a \$5.7 million dollar civil penalty, the largest ever obtained by the Commission in a COPPA case.

Further examples of data security enforcement include the Commission's settlement with Uber Technologies over the company's alleged failure to reasonably secure sensitive consumer data stored in the cloud.<sup>15</sup> As a result, an intruder allegedly accessed personal information about Uber customers and drivers, including more than 25 million names and email addresses, 22 million names and mobile phone numbers, and 600,000 names and driver's license numbers. Uber suffered a second, larger breach of drivers' and riders' data in October 2016, and failed to disclose that breach to consumers or the FTC for more than a year, despite being the subject of an ongoing FTC investigation of its data security practices during that time. Among other things, the final order prohibits Uber from misrepresenting how it monitors internal access to consumers' personal information and the extent to which it protects personal information, with the threat of strong civil penalties if it fails to comply.<sup>16</sup> And in May 2018, the Commission resolved allegations that PayPal's Venmo peer-to-peer payment service misled consumers about their ability to control the privacy of Venmo transactions and the extent to which their financial accounts were protected by "bank grade security systems."<sup>17</sup>

Just this past month, the Commission settled with an online rewards website, Clixsense.com for its alleged failure to take appropriate steps to secure consumers' data. The FTC alleged that

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<sup>15</sup> See FTC Press Release, Federal Trade Commission Gives Final Approval to Settlement with Uber (Oct. 26, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/federal-trade-commission-gives-final-approval-settlement-uber>

<sup>16</sup> As discussed above, because the FTC does not have civil penalty authority under Section 5, it could not require Uber to pay a civil penalty in the first instance.

<sup>17</sup> PayPal, Inc. No. C4651 (May 24, 2018) <https://www.ftc.gov/enforcement/cases-proceedings/162-102/paypal-inc-matter>

<sup>18</sup> James V. Grago, Jr. also d/b/a ClixSense, Matter No. 1723003 (Apr. 24, 2019) (proposed consent order), <https://www.ftc.gov/enforcement/cases-proceedings/1723003/james-v-gragojr-doing-business-clixsensecom>

the company's inadequate security, including its storage of personal information in plain text and its failure to perform vulnerability and penetration testing, allowed hackers to gain access to the company's network through a browser extension downloaded by the company. These failures resulted in hackers gaining access to personal information regarding 6.6 million consumers, over 500,000 of whom were U.S. consumers.

In addition to its enforcement efforts in the privacy and data security areas, the Commission seeks to improve agency decision-making through its policy initiatives. Last fall, for example, the Commission held four days of panels that specifically addressed consumer privacy and data security.<sup>19</sup> The Commission also announced its fourth PrivacyCon, which will take place on June 27, an annual event that explores evolving privacy and data security research.<sup>20</sup>

The Commission also is empowered to conduct industry studies related to privacy and data security under Section 6(b) of the FTC Act. In March, we issued 6(b) orders to several internet service providers to evaluate their privacy practices.<sup>21</sup> As we have in the past, we will use the information we learn from this study to better inform our policy and enforcement work.

The Commission continues to work closely with our law enforcement partners in the European Union ("EU") and its member states to ensure the success of the EU Privacy Shield framework. Under the EU's General Data Protection Regulation ("GDPR"), companies are required to meet certain data protection requirements in order to transfer consumer data from the EU to other jurisdictions. Privacy Shield—a voluntary mechanism that companies can use to comply with the

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<sup>19</sup> See FTC Press Release, FTC Announces Sessions on Consumer Privacy and Data Security as Part of Its Hearings on Competition and Consumer Protection in the 21st Century (Oct. 26, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/ftc-announces-sessions-consumer-privacy-data-security-part-its>.

<sup>20</sup> See FTC Press Release, FTC Announces PrivacyCon 2019 and Calls for Presentations (Oct. 24, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/ftc-announces-privacycon2019-calls-presentations>

<sup>21</sup> 15 U.S.C. § 46(b).

<sup>22</sup> See FTC Press Release, FTC Seeks to Examine the Privacy Practices of Broadband Providers (Mar. 26, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-seeks-examine-privacy-practices-broadband-providers>



GDPR when transferring data from Europe to the United States which facilitates billions of dollars in transatlantic data flows is enforced by the FTC with respect to those participants under its jurisdiction.<sup>23</sup>

Last fall, for example, the Commission announced settlements with four companies that we alleged had falsely claimed Privacy Shield certification.<sup>24</sup> And in September 2018, Chairman Simons along with the Secretary of Commerce and our European counterparts, participated in the second annual review of the Privacy Shield framework, culminating in a European Commission recommendation for continued FTC enforcement in the Privacy Shield.<sup>25</sup> Our Privacy Shield approach is built on four pillars: referrals from the Department of Commerce; priority consideration of referrals from the European Union; checking for Privacy Shield violations as part of every privacy investigation; and proactive monitoring of Privacy Shield participants.

Finally, many of the FTC's privacy and data security investigations and cases involve complex facts and technologies and well-financed defendants, often requiring outside experts, which can be costly. It is critical that the FTC have sufficient resources to support its investigative

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(7)(CC), (b) (7)(CD), (b) (7)(CE), (b) (7)(CF), (b) (7)(CG), (b) (7)(CH), (b) (7)(CI), (b) (7)(CJ), (b) (7)(CK), (b) (7)(CL), (b) (7)(CM), (b) (7)(CN), (b) (7)(CO), (b) (7)(CP), (b) (7)(CQ), (b) (7)(CR), (b) (7)(CS), (b) (7)(CT), (b) (7)(CU), (b) (7)(CV), (b) (7)(CW), (b) (7)(CX), (b) (7)(CY), (b) (7)(CZ), (b) (7)(DA), (b) (7)(DB), (b) (7)(DC), (b) (7)(DD), (b) (7)(DE), (b) (7)(DF), (b) (7)(DG), (b) (7)(DH), (b) (7)(DI), (b) (7)(DJ), (b) (7)(DK), (b) (7)(DL), (b) (7)(DM), (b) (7)(DN), (b) (7)(DO), (b) (7)(DP), (b) (7)(DQ), (b) (7)(DR), (b) (7)(DS), (b) (7)(DT), (b) (7)(DU), (b) (7)(DV), (b) (7)(DW), (b) (7)(DX), (b) (7)(DY), (b) (7)(DZ), (b) (7)(EA), (b) (7)(EB), (b) (7)(EC), (b) (7)(ED), (b) (7)(EE), (b) (7)(EF), (b) (7)(EG), (b) (7)(EH), (b) (7)(EI), (b) (7)(EJ), (b) (7)(EK), (b) (7)(EL), (b) (7)(EM), (b) (7)(EN), (b) (7)(EO), (b) (7)(EP), (b) (7)(EQ), (b) (7)(ER), (b) (7)(ES), (b) (7)(ET), (b) (7)(EU), (b) (7)(EV), (b) (7)(EW), (b) (7)(EX), (b) (7)(EY), (b) (7)(EZ), (b) (7)(FA), (b) 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(7)(QX), (b) (7)(QY), (b) (7)(QZ), (b) (7)(RA), (b) (7)(RB), (b) (7)(RC), (b) (7)(RD), (b) (7)(RE), (b) (7)(RF), (b) (7)(RG), (b) (7)(RH), (b) (7)(RI), (b) (7)(RJ), (b) (7)(RK), (b) (7)(RL), (b) (7)(RM), (b) (7)(RN), (b) (7)(RO), (b) (7)(RP), (b) (7)(RQ), (b) (7)(RR), (b) (7)(RS), (b) (7)(RT), (b) (7)(RU), (b) (7)(RV), (b) (7)(RW), (b) (7)(RX), (b) (7)(RY), (b) (7)(RZ), (b) (7)(SA), (b) (7)(SB), (b) (7)(SC), (b) (7)(SD), (b) (7)(SE), (b) (7)(SF), (b) (7)(SG), (b) (7)(SH), (b) (7)(SI), (b) (7)(SJ), (b) (7)(SK), (b) (7)(SL), (b) (7)(SM), (b) (7)(SN), (b) (7)(SO), (b) (7)(SP), (b) (7)(SQ), (b) (7)(SR), (b) (7)(SS), (b) (7)(ST), (b) (7)(SU), (b) (7)(SV), (b) (7)(SW), (b) (7)(SX), (b) (7)(SY), (b) (7)(SZ), (b) (7)(TA), (b) (7)(TB), (b) (7)(TC), (b) (7)(TD), (b) (7)(TE), (b) (7)(TF), (b) (7)(TG), (b) (7)(TH), (b) (7)(TI), (b) (7)(TJ), (b) (7)(TK), (b) (7)(TL), (b) (7)(TM), (b) (7)(TN), (b) (7)(TO), (b) (7)(TP), (b) (7)(TQ), (b) (7)(TR), (b) (7)(TS), (b) (7)(TT), (b) (7)(TU), (b) (7)(TV), (b) (7)(TW), (b) (7)(TX), (b) (7)(TY), (b) (7)(TZ), (b) (7)(UA), (b) (7)(UB), (b) (7)(UC), (b) (7)(UD), (b) (7)(UE), (b) (7)(UF), (b) (7)(UG), (b) (7)(UH), (b) (7)(UI), (b) (7)(UJ), (b) (7)(UK), (b) (7)(UL), (b) (7)(UM), (b) (7)(UN), (b) (7)(UO), (b) (7)(UP), (b) (7)(UQ), (b) (7)(UR), (b) (7)(US), (b) (7)(UT), (b) (7)(UU), (b) (7)(UV), (b) (7)(UW), (b) (7)(UX), (b) (7)(UY), (b) (7)(UZ), (b) (7)(VA), (b) (7)(VB), (b) (7)(VC), (b) (7)(VD), (b) (7)(VE), (b) (7)(VF), (b) (7)(VG), (b) (7)(VH), (b) (7)(VI), (b) (7)(VJ), (b) (7)(VK), (b) (7)(VL), (b) (7)(VM), (b) (7)(VN), (b) (7)(VO), (b) (7)(VP), (b) (7)(VQ), (b) (7)(VR), (b) (7)(VS), (b) (7)(VT), (b) (7)(VU), (b) (7)(VV), (b) (7)(VW), (b) (7)(VX), (b) (7)(VY), (b) (7)(VZ), (b) (7)(WA), (b) (7)(WB), (b) (7)(WC), (b) (7)(WD), (b) (7)(WE), (b) (7)(WF), (b) (7)(WG), (b) (7)(WH), (b) (7)(WI), (b) (7)(WJ), (b) (7)(WK), (b) (7)(WL), (b) (7)(WM), (b) (7)(WN), (b) (7)(WO), (b) (7)(WP), (b) (7)(WQ), (b) (7)(WR), (b) (7)(WS), (b) (7)(WT), (b) (7)(WU), (b) (7)(WV), (b) (7)(WW), (b) (7)(WX), (b) (7)(WY), (b) (7)(WZ), (b) (7)(XA), (b) (7)(XB), (b) (7)(XC), (b) (7)(XD), (b) (7)(XE), (b) (7)(XF), (b) (7)(XG), (b) (7)(XH), (b) (7)(XI), (b) (7)(XJ), (b) (7)(XK), (b) (7)(XL), (b) (7)(XM), (b) (7)(XN), (b) (7)(XO), (b) (7)(XP), (b) (7)(XQ), (b) (7)(XR), (b) (7)(XS), (b) (7)(XT), (b) (7)(XU), (b) (7)(XV), (b) (7)(XW), (b) (7)(XZ), (b) (7)(YA), (b) (7)(YB), (b) (7)(YC), (b) (7)(YD), (b) (7)(YE), (b) (7)(YF), (b) (7)(YG), (b) (7)(YH), (b) (7)(YI), (b) (7)(YJ), (b) (7)(YK), (b) (7)(YL), (b) (7)(YM), (b) (7)(YN), (b) (7)(YO), (b) (7)(YP), (b) (7)(YQ), (b) (7)(YR), (b) (7)(YS), (b) (7)(YT), (b) (7)(YU), (b) (7)(YV), (b) (7)(YW), (b) (7)(YZ), (b) (7)(ZA), (b) (7)(ZB), (b) (7)(ZC), (b) (7)(ZD), (b) (7)(ZE), (b) (7)(ZF), (b) (7)(ZG), (b) (7)(ZH), (b) (7)(ZI), (b) (7)(ZJ), (b) (7)(ZK), (b) (7)(ZL), (b) (7)(ZM), (b) (7)(ZN), (b) (7)(ZO), (b) (7)(ZP), (b) (7)(ZQ), (b) (7)(ZR), (b) (7)(ZS), (b) (7)(ZT), (b) (7)(ZU), (b) (7)(ZV), (b) (7)(ZW), (b) (7)(ZX), (b) (7)(ZY), (b) (7)(ZZ)

consumers—often, the most vulnerable consumers who can least afford to lose.<sup>26</sup> In 2018, imposter scams became the top consumer fraud complaint, in part due to the rise in reports about government imposter scams.<sup>27</sup> Fraudsters falsely claiming to be government agents (including the Social Security Administration, IRS and even the

The Commission also helps older Americans protect themselves from fraud. Last month, the FTC joined federal, state, and international law enforcement partners in announcing a nationwide and international crackdown on elder fraud schemes with a particular focus on technical support scams. Technical support scams dupe consumers into believing their computers are infected with viruses and malware, and then charge them hundreds of dollars for unnecessary repairs. As part of that initiative, the FTC filed suit against technical support operator Elite IT Partners, developed new consumer education materials to help consumers avoid falling victim to these scams, released new complaint data that illustrates the disproportionate effect these scams have on older adults.<sup>31</sup>

Over the last year, the FTC has targeted business opportunity scams, filing numerous actions against defendants who promise consumers a legitimate opportunity to earn money if consumers will pay for defendants' "coaching" services. In reality, the "coaching" services provide no value to consumers and are typically nothing more than a handful of training videos and documents with generic information. In Digital Altitude, the Commission brought an action against defendants who allegedly defrauded consumers millions of dollars—some paying more than \$50,000—by promising of individualized coaching on how to run an online business.<sup>32</sup> The Commission also brought separate actions against defendants in FBA Stores with the

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<sup>29</sup> FTC Press Release, FTC Halts Tech Support Scam as Part of Major Initiative Focused on Older Adults Hit Hardest by These Scams (Mar. 7, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-halts-tech-support-scam-part-major-initiative-focused-older>.

<sup>30</sup> See How to Spot, Avoid and Report Tech Support Scams <https://www.consumer.ftc.gov/articles/how-to-spot-avoid-and-report-tech-support-scams>

<sup>31</sup> See FTC Consumer Protection Data Spotlight, Older Adults Hardest Hit by Tech Support Scams (Mar. 7, 2019), <https://www.ftc.gov/news-events/blogs/datapotlight/2019/03/older-adults-hardest-hit-tech-support-scams>

<sup>32</sup> FTC Press Release, FTC Obtains Court Order Halting Business Coaching Scheme (Feb. 6, 2018), <https://www.ftc.gov/news-events/press-releases/2018/02/ftc-obtains-court-order-halting-business-coaching-scheme>

<sup>33</sup> FTC Press Release, FTC Action Halts a Large Deceptive Business Opportunity Scheme (Mar. 23, 2018), <https://www.ftc.gov/news-events/press-releases/2018/03/ftc-action-halts-large-deceptive-business-opportunity-scheme>



state Attorneys General to shut down sham charity operations that were using consumers' generous donations for private benefits and spent very little of the donated funds on the charitable programs.<sup>38</sup>

The FTC strives to stay ahead of scammers by analyzing Sentinel complaints to help raise public awareness about fraud. In October 2018, the FTC launched its Consumer Protection Data Spotlight series to alert law enforcers, industry, and the public about growing threats and important patterns identified in Sentinel data. The Spotlight explores data over time, showing how scammers change tactics and catch consumers off guard.<sup>39</sup> In addition, the FTC is making Sentinel data more accessible to state and local governments, the media, academics, and the public by publishing interactive dashboards that enable people to see what kind of fraud is affecting their state or large metropolitan area.<sup>40</sup>

For example, the agency has continued to bring cases challenging false and unsubstantiated health claims, including those targeting older consumers, consumers affected by the opioid crisis, and consumers with serious medical conditions. The Commission has brought cases challenging

joint warning letters with the Food and Drug Administration to marketers who claim their dietary supplements and cannabidiol (CBD) products treat or prevent serious diseases, including Alzheimer's disease and cancer.<sup>46</sup>

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

The FTC's most recent law enforcement crackdown stopped four separate robocall operations.<sup>50</sup> For example, in *FTC v. Christiano*,<sup>51</sup> the FTC obtained a \$1.35 million civil penalty and a ban on providing an autodialer to anyone engaged in telemarketing against technology companies and their owner for knowingly providing the tools that unlawful telemarketers used to blast out billions of illegal robocalls.<sup>52</sup> In another case from the recent crackdown,<sup>53</sup> the FTC sued a recidivist robocaller and his partners for allegedly running a Google rankings scam that used robocalls to reach their victims and bombarded individuals who did not own businesses with the same robocalls.<sup>54</sup> In April, a court granted the FTC's motion for summary judgment, banning him and one of his co-defendants from all telemarketing and imposing a \$3.3 million judgment.

Despite the FTC's vigorous law enforcement program, technological advances continue to permit bad actors to place millions or even billions of calls, often from abroad, at very low cost, and in ways that are difficult to trace. This phenomenon continues to infuriate consumers and challenge enforcers. Recognizing that law enforcement, while critical, is not enough to solve the problem of illegal calls, the FTC has taken steps to spur the marketplace to develop technological solutions. For instance, from 2013 to 2015, the FTC led four public challenges to incentivize innovators to help tackle the unlawful robocalls that plague consumers.<sup>55</sup> The FTC's challenges contributed to a shift

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penalty against Dish Network, the largest penalty ever issued in a Do Not Call case. *U.S. et al. v. Dish Network, L.L.C.*, No. 309cv-03073-JESCHE (C.D. Ill. Aug 10, 2017) <https://www.ftc.gov/enforcement/cases-proceedings/052167/dishnetworkllc-united-states-america-federal-trade>

<sup>50</sup> See FTC Press Release, *FTC Crackdown Stops Operations Responsible for Billions of Illegal Robocalls* 26, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-crackdown-stops-operations-responsible-for-billions-of-illegal-robocalls>



in the development and availability of technological solutions in this area, particularly ~~by calling~~ and ~~call~~ filtering products. Consumers can access information about potential solutions available to them on the FTC's website.<sup>55</sup> The telecommunications industry has also developed ~~a new~~ framework, SHAKEN/STIR, which is designed to limit illegitimate number spoofing and reduce illegal robocalls.

The FTC continues to engage with industry stakeholders and supports the industry initiative to authenticate caller ID numbers.<sup>56</sup> The FTC also regularly works with its state, federal, and international partners to combat illegal robocalls.

For many years, the Commission has recommended ~~ending~~ terminating the common carrier exemption. The exemption is outdated and no longer makes sense in today's marketplace where the lines between telecommunications and other services are increasingly blurred. It impedes the FTC's work tackling illegal robocalls and more broadly circumscribes other enforcement initiatives. For example, a carrier that places, or assists and facilitates, illegal telemarketing might argue that it is beyond the Commission's reach because of the common carrier exemption. Likewise, the exemption may frustrate the Commission's ability to obtain complete relief for consumers when

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telecommunications providers and is available as an app on iPhone. ~~Press Release, FTC Announces Robocall Challenge Winners~~ ~~Consumers~~

there are multiple parties, some of whom are common carriers. It also may pose difficulties when a company engages in deceptive or unfair practices involving ~~mix~~ of common carrier and non common carrier activities. Finally, litigation has been complicated by entities that attempt to use their purported status as common carriers to shield themselves from FTC enforcement.<sup>57</sup>

#### E. Consumer and Business Education and Outreach

Public outreach and education is another critical element of the FTC's efforts to fulfill its

The FTC also tailors

consummating their transactions. Premerger filings under the Hart-Scott-Rodino (“HSR”) Act have generally increased steadily since FY 2013. Last year, for the second year in a row, we received just over 2,000 HSR filings.<sup>65</sup>

Most reported transactions do not raise significant competitive concerns and the agencies clear those non-problematic transactions expeditiously. But the evidence suggests that a proposed merger likely would be anticompetitive, the Commission does not hesitate to intervene. In FY 2018, the Commission took enforcement actions against 22 different mergers, most of which were resolved through a consent decree. We challenged five mergers in federal courts, granted preliminary injunctions in two cases,<sup>66</sup> the parties abandoned their plans in the face of our court challenge in two cases,<sup>67</sup> and a ruling is currently pending in the fifth matter.<sup>68</sup>

One increasing challenge for the Commission in litigating competition cases is the continuing need to hire testifying economic experts. Qualified experts are critically important in competition cases heading to litigation. Although the agency thus far has managed to find sufficient resources to fund the experts needed to support its cases, the FTC appreciates Congress’s attention to its resource needs, including the need to hire outside experts.

Over the past year, the Commission has continued its diligent efforts to fight anti-competitive conduct in the pharmaceuticals and health care industries, where rising costs continue

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<sup>65</sup> The agencies received 2,111 HSR filings in FY 2018, a slight increase from FY 2017, where we received 2,052. Apart from the last two years, the last time annual HSR notification filings exceeded 2,000 was back in FY 2007. For historical information about HSR filings and U.S. merger enforcement, see the joint FTC-BDOJ Hart-Scott-Rodino annual reports, <https://www.ftc.gov/policy/reports/policy-reports/annual-competition-reports>

<sup>66</sup> See *FTC v. Tronox Ltd.*, 332 F. Supp. 3d 187 (D.C. 2018), (granting preliminary injunction); *FTC v. Wilh. Wilhelmsen Holding AS*, 41 F. Supp. 3d 27 (D.D.C. 2018), (granting preliminary injunction).

to burden American consumers. For over twenty years, the Commission has prioritized ending anticompetitive reverse payment agreements in which a branded drug firm pays its potential generic rival to delay entering the market with a lower cost generic product. Following the U.S. Supreme Court's 2013 decision in *FTC v. Actavis*,<sup>69</sup> the Commission is in a much stronger position to protect consumers. Since that ruling, the FTC obtained a landmark \$1.2 billion settlement in its litigation involving the sleep disorder drug, Provigil,<sup>70</sup> and other manufacturers including the remaining Actavis defendants,<sup>71</sup> have agreed to abandon the practice.

In administrative litigation, the Commission ruled in March of this year that Impax had engaged in an illegal reverse payment agreement designed to block consumers' access to a generic version of the branded drug, Opana.<sup>72</sup> In addition, the Commission has challenged other anticompetitive conduct by drug manufacturers. Last month, the Commission filed a complaint

against the Chicago Police Department for its use of facial recognition software to identify individuals in public spaces. In *Chicago Police Department v. Mosley*, 2024 WL 1691061 (7th Cir. 2024), the court held that the Department's use of facial recognition software violated the First Amendment.

Androgel, and ordered \$493.7 million in monetary relief to consumers who were overcharged for Androgel as a result of AbbVie's conduct.<sup>75</sup>

The Commission also maintains a robust program to identify and stop anticompetitive conduct. This year, in administrative litigation of the ~~800~~ Contacts

enforcement investigations, and

International enforcement cooperation also is critical for the FTC's competition program. With the expansion of global trade and the operation of many companies across national borders, the FTC and DOJ increasingly engage with foreign antitrust agencies to ensure close collaboration on crossborder cases and convergence toward sound competition policies and procedures.<sup>84</sup> The FTC effectively coordinates reviews of multijurisdictional mergers and continues to work with its international counterparts to achieve consistent outcomes in cases of possible 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 multilateral competition organization projects and initiatives. The FTC also works with other agencies within the U.S. government to advance consistent competition enforcement policies, practices, and procedures in other parts of the world.<sup>85</sup>

The U.S. SAFE WEB Act is key to much of the agency's international work, especially on consumer protection and privacy matters



harmed U.S. consumers and others, the FTC's actions led to reciprocal assistance. The Act also has bolstered the agency's authority to engage in enhanced enforcement cooperation with foreign counterparts, including through memoranda of understanding, international agreements, staff exchanges, and other mechanisms.

The U.S. SAFE WEB Act has been a remarkable success. The Act enabled the FTC to respond to more than 130 SAFE WEB information sharing requests from more than 30 foreign enforcement agencies. It allowed the FTC to issue more than 115 civil investigative demands in more than 50 investigations on behalf of foreign agencies, both civil and criminal. The Commission has also used this authority to file suit in federal court to obtain judicial assistance for one of its closest law enforcement partners, the Canadian Competition Bureau.<sup>87</sup>

The FTC's foreign law enforcement partners similarly have assisted FTC enforcement actions. For example, the FTC worked closely with U.K. and Canadian authorities to halt Next Gen Inc., a sweepstakes scam.<sup>88</sup> The FTC relied on key information sharing provisions of the U.S. SAFE WEB Act to facilitate cooperation with its U.K. partner, and last month, the defendants forfeited \$30 million in cash and assets to settle the FTC's charges in the privacy arena, the FTC used key provisions of the U.S. SAFE WEB Act to collaborate successfully with the Office of the Privacy Commissioner of Canada in its COPPA case against Tech,<sup>89</sup> the FTC's first case involving Internet-connected toys.<sup>90</sup> The FTC also 0Tj -011e.l.13.043

United States as the basis for challenging practices involving foreign defendants.<sup>90</sup>

The Act also underpins the FTC's ability to participate in cross-border cooperation arrangements. This includes data transfer mechanisms such as the EU Privacy Shield framework and the Swiss-U.S. Privacy Shield framework, as well as the APEC Cross-Border Privacy Rules System, designed to protect privacy and data flows in the Asia-Pacific region. Many U.S. companies use these mechanisms to carry out cross-border data flows consistent with strong privacy protections. The SAFE WEB Act also provides the FTC with key powers helping to carry out enhanced cooperation with important partners.<sup>91</sup>

The SAFE WEB Act's provision authorizing staff exchanges also yields tremendous benefits. Using the Act, the FTC established an International Fellows program that has enabled the agency to host over 120 officials of foreign competition, consumer protection, and data privacy agencies to work alongside FTC staff on enforcement matters, subject confidentiality protections, over the past dozen years. Foreign counterparts continue to seek exchanges with us, as the Fellows incorporate their learning from the FTC into the work of their home agencies, strengthening their capacity as well as cooperative relationships with those counterparts.

The Act sunsets in 2020. The Commission strongly urges Congress to reauthorize this critical authority and eliminate the sunset provision. Just as Congress permanently

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<sup>90</sup> See, e.g. FTC Press Release, Court Temporarily Halts International

Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission similar enforcement powers decades ago, and provided the Consumer Product Safety Commission with permanent authority to share information with its foreign counterparts, we ask Congress to repeal the Act's sunset provision and make the SAFE WEB Act's cooperation tools a permanent part of the FTC Act.

## VI. CONCLUSION

The FTC remains committed to marshalling its resources efficiently in order to effectively protect consumers and promote competition, to anticipate and respond to changes in the