

## UNITED STATES OF AMERICA FEDERAL TRADECOMMISSION WASHINGTON, DC 20580

Statement of Chairman Joe Simons and Commissioners Noah Joshua Phillips and Christine S. Wilson In re Facebook, Inc. July 24, 2019

The Order announced today resolving the FTC's investigation of Facebook is an historic victory for American consumers. The recommendating penalty and unprecedented, sweeping

legislation, and the penalty the Commission has negotiated is  $2\theta v times\ greater$  than the largest GDPR fine to date. This nalty is also one of the largest civil penalties in Uhistory—alongsideonly cases involving enormous environmental damage and massive financial fraud.

compliance expertise, and will be appointed by a nominating committee comprised of independent directors. Privacy committee members are also protected from removal by the controlling shareholder under a revised corporate charteembers may not be removed for reasons relating to their goodalth actions as privacy committee members, absent an affirmative vote by twothirds of the voting shares (more than the votes Mark Zuckerberg controls). The privacy committee must discuss with Facebook management the company's privacy risks and the steps the company intends to take to monitor or mitigate such risks. The privacy committee must also discuss privacy risks with the independent that assessor, both with and without management present.

Second and third, Mark Zuckerberg and the Designated Compliance Officers (DCOs) independently must submit to the Commission quarterly certifications that the company is in compliance with the privacy program mandated by the Order, as weell as nual certification that the company is in overall compliance with the Order. Thus, the Order requires accountability at the individual level. False certifications would subject Mr. Zuckerberg and the DCOs to personal liability, including civil and criminal penalties.

litigation?" If the answer had been "no," it would have made sense to aggressively move forward in court. The answer, however, was "yes because the relief we have secured today is substantially greater than what we realistically might have obtained by litigating, likely for years, in court. Moreover, a settlement brings immediate changes to Facebook's flawed privacy and data security practices and requires immediate protections for Facebook loss best of our responsibility to be effective stewards of the protections for Facebook loss best of our would not have made sense to pursue protracted and expensive litigation likely to yield substantially weaker relief.

The \$5 billion penalty assessed against Facebook today is orders of magnitude greater than in any other privacy case, and also representationst double the greatest percentage of profits a court has ever awarded as a penalty in an FTC cathe. FITC had litigated this case, it is highly unlikely that any judge would have imposed a civil preceden remotely close to this one. Even assuming the FTC would have eventually prevailed on liability, the court would not automatically impose the maximum penalty permissible under Section 5(I) of the FTC Act. Rather, courts enjoy a great deal of discretion in assessing civil penalties under the FTC Act, and they often depart, dramatically and downwardly, from the theoretical maximum. For example, the highest civil penalty a court has awarded in a litigated FTC consumer protection case was in *Uniterstates v. Dish Network*, *LLC* for violations of the Telemarketing Sales Rule. After finding that Dish was culpable and had engaged in "years and years of careless and reckless conduct," the co0 (y)22 (c)67.04 5(r) (pa)4 0 ()-10 (y)20 (e)-6 (a)-6 (r)3 (s)-ocs 93 (s)-1rar

And that is just the money. The Order's innovativær-réaching conduct relief imposing affirmative obligations and corporate governance referencements well beyond the typical relief historically awarded by the courts in consumer protection cases involving legitimate companies. Even assuming the FTC wpotedvail in litigation, a court would not give the Commission carte blanche to reorganize Facebook's governance structures and business operations as we deem fit. Instead, the court would impose the relief would be limited to injunctive relief to remedy the specific proven violations and to prevent similar or related violations from occurring in the future. Thus, it is highly unlikely the Commission could have obtained this magnitude of injunctive relief if we had proceeded with litigation. For example, because we do not, and could not, allege and prove that Facebook's current Board structure is illegal or that changes in corporate governance are necessary to effectuate compliance with the Order and the FTC Act, it is unlikely that a court would mandate any corporate governance reforms.

Our colleagues ament that the Order does not do more or example, they would rather the Order impose more limitations on data collection and us the argument that "more is better" is certainly appealig, but it relies on a false dichotomy: a hypothetical "more" versus the extraordinary and certain relief the Commission has obtained. As a civil law enforcement agency (and not a regulator), we can only get what we can win in litigation

will be held accountable for certifying quarterlyunder threat of civil and criminal penalties that the company's privacy program is in compliance

yearlong investigation, which uncovered a substantial number of violations, leaves us comfortable that the extraordinary relief obtained in this case is more than adequate to remedy any asyet-unknown violation of the 2012 order. In addition, all potential Section 5 and 2012 orderviolations the Commission currently knows about an addressed in this Orderwe are not