



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
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 record-breaking penalty and unprecedented, sweeping

legislation, and the penalty the Commission has negotiated is *20 times greater* than the largest GDPR fine to date. The penalty is also one of the largest civil penalties in EU history—alongside only cases involving enormous environmental damage and massive financial fraud.





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.<sup>2</sup> Moreover, a settlement brings immediate changes to Facebook’s flawed privacy and data security practices and requires immediate protections for Facebook users. In light of our responsibility to be effective stewards of the public resources entrusted to the Commission, it 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 represents almost double the greatest percentage of profits a court has ever awarded as a penalty in an FTC case. If the FTC had litigated this case, it is highly unlikely that any judge would have imposed a civil penalty even 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(l) 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 *United States 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

And that is just the money. The Order's innovative, reaching conduct relief imposing affirmative obligations and corporate governance reforms extends well beyond the typical relief historically awarded by the courts in consumer protection cases involving legitimate companies. Even assuming the FTC would prevail 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. Such 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 dissent that the Order does not do more. For example, they would rather the Order impose more limitations on data collection and use. The argument that "more is better" is certainly appealing, 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 quarterly under threat of civil and criminal penalties that the company's privacy program is in compliance

yearlong investigation<sup>1</sup>, 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 as-yet-unknown violation of the 2012 order. In addition, all potential Section 5 and 2012 order violations the Commission currently knows about are addressed in this Order. We are not