

Dissenting Statement of Commissioner Maureen K. Ohlhausen
In the Matter of Nomi Technologies, Inc.
Matter No. 1323251
August 28, 2015

On April 23, 2015, a divided Commission issued a complaint and accepted a proposed consent order with regard to the practices of Nomi Technologies, Inc., a startup company offering its retail merchant clients the ability to analyze aggregate data about consumer traffic in the merchants' stores.¹ The Commission subsequently published a description of the consent agreement package in the Federal Register, seeking public comment.² The comment window closed on May 25, 2015.³

The record now before the Commission confirms that the FTC should not have adopted this complaint and order because it undermines the Commission's own goals of increased consumer choice and transparency of privacy practices and because the order imposes a penalty far out of proportion to the nonexistent consumer harm.

The FTC has long called on companies to implement best practices "giving consumers greater control over the collection and use of their personal data through simplified choices and increased transparency."⁴ Consistent with such best practices, Nomi went beyond its legal duty by offering increased transparency and consumer choice through an easy and effective global opt-out. Granted, part of Nomi's privacy policy was inaccurate because the company promised, but failed to implement, an additional privacy choice for consumers. However, applying a de facto strict liability deception standard absent any evidence of consumer harm, the proposed complaint and order inappropriately punishes a company that acted consistently with the FTC's privacy goals by offering more transparency and choice than 11p()e1(l)3(s)J 0TJ 0.002 Tw 14.41 7d [d

