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Office of the Director
Bureau of Consumer Protection

Remarks of Bureau of Consumer Protection Director Samuel Levine

As Prepared for Delivery¹

BEUC: The European Consumer Organisation

The history of the FTC in the early 1980s was in many ways a microcosm of what was happening in the United States more broadly, as Ronald Reagan and a new breed of economic thinkers took power in Washington. These champions of neoclassical economics ushered in a fundamental shift in how we view markets and government's role in them.

I see that shift most crisply articulated in the FTC's 1980 Policy Statement on Unfairness,² which articulates when the agency will use its authority to challenge harmful business practices as "unfair." Here's a key line from that statement:

Normally we expect the marketplace to be self-correcting, and we rely on consumer choice – the ability of individual consumers to make their own private purchasing decisions without regulatory intervention – to govern the market. We anticipate that consumers will survey the available alternatives, choose those that are most desirable, and avoid those that are inadequate or unsatisfactory.³

The statement goes on to acknowledge that certain sales techniques can inhibit consumer choice, and therefore be challenged as unfair.⁴ But the core assumptions in this statement are noteworthy: first, that marketplaces can essentially self-regulate and, second, that consumers themselves are in the best position to avoid harm by evaluating products.

There is no doubt that there is truth here. Competitive, well-functioning markets generate massive benefits for consumers, as well as for workers and honest businesses. But four decades on, I think it is time to reexamine whether these are assumptions we can rely on.

For example, it seems self-evident that our experience since 1980 has exposed the folly that markets do not require meaningful oversight. Deregulation in the U.S. in the 1980s contributed to a Savings and Loan crisis and then a recession,⁵ just as the failure of federal banking regulators to crack down on predatory mortgage lending contributed in the early 2000s to the deepest recession since the Great Depression.⁶

I suppose it can be argued that these disasters in fact proved the statement right – markets corrected themselves. But these corrections caused devastation for countless families, and massive taxpayer bailouts were required in both instances. In my view, it makes no sense for the government – charged with protecting the public – to sit on the sidelines, allowing consumer harms to accrue, in the belief – or the hope – that the market will eventually correct itself.

Stated more simply: If these crises were what was meant by markets being “self-correcting,” I think we can do better.

⁵ See generally, Richard Barton, *Upending the* (h(ght)-2.h(ght)-2.tte*4 (n-2.)6.9 (h(ght)2.)6.9 (h(ght)026 or)3 ()JTJ -0.004 Tc 0.0

I'll spend the rest of my remarks focusing on the second assumption embedded in the 1980 Policy Statement – that consumers can largely protect themselves by carefully evaluating different products and services. No doubt, there are areas where this may be true. But in today's digital economy, it is simply illogical to put the onus on individualsto appreciate the implications of this enormously complex ecosystem, an ecosystem powered by massive data collection and often arcane technology.⁷

discrimination against protected classes,⁹ exploitation of children,¹⁰ and a chilling effect on our ability to exercise our civil liberties.¹¹ And as the Transatlantic Consumer Dialogue recently noted, not everyone is affected equally – communities of color, people with disabilities, and other historically underserved groups are particularly threatened.¹²

There are also enormous costs to our society in general, including to critical infrastructure, our political and religious liberties, and our social cohesion.

In the United States, the traditional approach to combatting these harms has been notice and choice – providing consumers with notice of what information is being collected, and a

It should be clear by now that this approach is inadequate. Even if notices were perfectly understandable (a rare feat¹³), they may – and often do – simply inform consumers that the company collects anything and everything it can, and can do with it whatever it wants. And the entity giving notice oftentimes is only one of dozens or even hundreds of companies that are collecting, aggregating, and monetizing data behind the scenes.¹⁴

To be clear, notice is indispensable: we fully expect companies to be transparent about how they are collecting consumers' information. But a privacy regime that relies on notice alone places too much burden on consumers, who don't have the time or expertise to review lengthy privacy notices for every app, service, or device,¹⁵ or to digest that complex information¹⁶ – especially when companies routinely change these notices at will.

Choice is simi

consumers supposed to evaluate and navigate these opaque processes, as the 1980 Policy Statement would presume? The answer, of course, is they cannot. As the EU considers the important fairness considerations underlying the AI Act,²⁶ I know that this is top of mind for many of you. And it is top of mind for the FTC under Chair Khan, as shown by our recent work not only on this report, but also in enforcement actions like Kurbo²⁷ and Everalbum²⁸ which prevented companies from using ill-gotten data to feed their algorithms.

Fake Reviews

Another persistent problem that challenges the assumptions of the 1980s is deceptive online reviews. Deceptive and fake reviews deeply distort online commerce. They can confuse and deceive consumers and can cheat honest businesses who don't rely on fake reviews, but are forced to compete with those who do. And these ill effects can be amplified on ecommerce platforms whose algorithms promote products that are nominally well-reviewed.

This plague of fake reviews is another rebuke to the assumptions embedded in the Policy Statement. First, it is clear that online marketplaces are not up to the task of governing themselves. Indeed, while platforms claim they are doing everything they can to root out this problem, fake reviews continue to proliferate, and I believe this scourge is fueled by the incentives platforms create through their algorithms and business models. And second, it is self-

²⁶ Proposal for a Regulation of the European Parliament and of the Council, Laying Down Harmonised Rules on

evident that consumers cannot “survey the available alternatives” and “choose those that are most desirable” when the marketplace is shot through with misinformation.

To address these distortions, the FTC is working to increase deterrence not only against fake reviews but also deceptive testimonials and review suppression. Last year, deploying a new strategy, we issued more than 700 Penalty Offense Notices warning firms that they could face significant penalties for engaging in deceptive review practices.²⁹ And when companies engage in such practices, we take aggressive action. Last year we secured a \$4.2 million judgment against Fashion Nova for engaging in alleged review suppression.³⁰ This year, we obtained penalties and redress totaling \$3.5 million against a seller of contact lenses that posted reviews by compensated reviewers masquerading as independent users.³¹ And just last month, we joined with six states to sue the rental platform Roomster, which we charged with polluting its site with fake reviews.³² As we work to confront this scourge, we are learning from our partners overseas who are at the forefront of this work.³³

Dark Patterns

²⁹ Press Release, FTC Puts Hundreds of Companies on Notice about Fake Reviews and Other Misleading Endorsements, FTC, Oct. 13, 2021, <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-puts->

been.

addressing many of the topics I've discussed, and I know it's just one of many ways we are working together to confront emerging threats to consumers. I look forward to continuing this critical conversation in the months and years to come. Thank you.

2022, https://www.ftc.gov/system/files/ftc_gov/pdf/Joint%20FTC-EC%20Statement%20informal%20dialogue%20consumer%20protection%20issues.pdf.