

**PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION**

**Hearing on**

**OVERSIGHT OF THE FEDERAL TRADE COMMISSION**

**Before the**

**COMMITTEE ON THE JUDICIARY**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**WASHINGTON, D.C.**

**July 13, 2023**

## **I. INTRODUCTION**

Chairman Jordan, Ranking Member Nadler, and members of the Committee, the Federal Trade Commission (“FTC” or “Commission”) is pleased to appear before you today to discuss the FTC’s work to protect Americans from unfair methods of competition and unfair or deceptive acts or practices.<sup>1</sup>

The FTC is an independent agency that comprises three bureaus: the Bureau of Competition (“BC”); the Bureau of Consumer Protection (“BCP”); and the Bureau of Economics, which supports both BC and BCP. To strengthen the FTC’s ability to keep pace with technological challenges in the digital marketplace, the FTC also recently announced the creation of an Office of Technology, which is supporting the agency’s law enforcement and policy work.

This testimony provides an overview of the FTC’s competition work, highlighting some of the agency’s major recent activities and initiatives, as well as major challenges. It also provides a discussion of the Commission’s efforts to protect consumers from unfair or deceptive practices and the FTC’s international efforts to advance both missions. Finally, the testimony discusses resource constraints and limitations on the Commission’s authorities, which are ripe for Congress to address.

## **II. COMPETITION MISSION**

The FTC enforces the competition laws in many crucial sectors of our economy. Our competition mission is driven by the tenet that vigorous antitrust enforcement is critical to the growth and dynamism of our economy, as well as to our shared prosperity and liberty. Recent decades, however, have vividly illustrated how Americans lose out when markets become more

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<sup>1</sup> This written statement presents the views of the Federal Trade Commission. The oral statements and responses to questions reflect the views of individual Commissioners, and do not necessarily reflect the views of the Commission or any other Commissioner.

consolidated and less competitive. Prices rise, wages fall, innovation suffers, and our markets become more fragile and less resilient. In light of these troubling realities, the FTC has been reassessing how we can enforce the antitrust laws to maximize our efficacy. Although this process is ongoing, as detailed below, we are proud of the significant accomplishments we have already made on this front.

### **A. Utilizing the FTC’s Full Set of Competition Tools**

When Congress created the FTC, it gave the agency a wide range of authorities to combat unfair methods of competition. To ensure the Commission is faithfully discharging its statutory obligations, the FTC has renewed its commitment to use its entire suite of authorities to maximize the agency’s impact and faithfully execute the agency’s mission.

Notably, the Commission issued a policy statement outlining the scope of Section 5 of the FTC Act, an authority Congress provided to the FTC to combat unfair conduct that lies outside the boundaries of the Sherman Act.<sup>2</sup> Reactivating the Commission’s competition rulemaking authority under Section 6(g) of the FTC Act is also central to this effort. In January, the Commission proposed a rule that would ban employers from imposing noncompete restrictions on workers in all but a limited set of circumstances.<sup>3</sup> The Commission took extensive steps to inform the public about the proposed rule to ensure that all viewpoints were heard during the public comment period and is now considering the input collected on the record before determining how to proceed.<sup>4</sup>

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<sup>2</sup> FTC, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of The Federal Trade Commission Act (2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P221202Section5PolicyStatement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf).

<sup>3</sup> See Press Release, Fed. Trade Comm’n, FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition (Jan. 5, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-proposes-rule-ban-noncompete-clauses-which-hurt-workers-harm-competition>.

<sup>4</sup> On February 16, 2023, the FTC hosted a public forum to provide an opportunity for people to directly share their experiences with noncompetes. FTC, FTC Forum Examining Proposed Rule to Ban Noncompete Clauses (Feb. 16, 2023), <https://www.ftc.gov/news-events/events/2023/02/ftc-forum-examining-proposed-rule-ban-noncompete-clauses>.

## B. Prioritizing Vigorous Merger Enforcement to Combat Industry Consolidation

Together, the FTC and the Department of Justice Antitrust Division (“DOJ”) represent the American people’s front-line defense against unlawful industry consolidation, and stopping illegal mergers is central to that mission. Consistent with that, over the past 18 months, the FTC has moved to challenge major transactions in critical sectors of the economy, including semiconductors, defense, energy, healthcare, mortgage technology, digital markets, and pharmaceuticals.<sup>5</sup> This includes filing suit to block nine mergers outright,<sup>6</sup> as well as scrutinizing thirteen other anticompetitive mergers that parties have abandoned after the agency indicated competition concerns but before it filed a complaint.<sup>7</sup>

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<sup>5</sup> Fed. Trade Comm’n & Dep’t of Justice, Hart-Scott-Rodino Annual Rep., Fiscal Year 2022 (2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/p110014fy2021hsrannualreport.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/p110014fy2021hsrannualreport.pdf).

<sup>6</sup> Press Release, Fed. Trade Comm’n, FTC Sues to Block Biopharmaceutical Giant Amgen from Acquisition That Would Entrench Monopoly Drugs Used to Treat Two Serious Illnesses (May 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-sues-block-biopharmaceutical-giant-amgen-acquisition-would-entrench-monopoly-drugs-used-treat>; Press Release, Fed. Trade Comm’n, FTC Acts to Block Deal Combining the Two Top Mortgage Loan Technology Providers (Mar. 9, 2023) <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-acts-block-deal-combining-two-top-mortgage-loan-technology-providers>; Press Release, Fed. Trade Comm’n, FTC Seeks to Block Microsoft Corp.’s Acquisition of Activision Blizzard, Inc. (Dec. 8, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/12/ftc-seeks-block-microsoft-corps-acquisition-activision-blizzard-inc>; Press Release, Fed. Trade Comm’n, FTC Seeks to Block Virtual Reality Giant Meta’s Acquisition of Popular App Creator Within (July 27, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-seeks-block-virtual-reality-giant-metas-acquisition-popular-app-creator-within>; Press Release, Fed. Trade Comm’n, FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System (June 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-utah-healthcare-rivals-hca-healthcare-steward-health-care-system>; Press Release, Fed. Trade Comm’n, FTC Sues to Block Merger Between New Jersey Healthcare Rivals RWJBarnabas Health and Saint Peter’s Healthcare System (June 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-new-jersey-healthcare-rivals-rwjbarnabas-health-saint-peters>; Press Release, Fed. Trade Comm’n, FTC and Rhode Island Attorney General Step in to Block Merger of Rhode Island’s Two Largest Healthcare Providers (Feb. 17, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-rhode-island-attorney-general-step-block-merger-rhode-islands-two-largest-healthcare-providers>; Press Release, Fed. Trade Comm’n, FTC Sues to Block Lockheed Martin Corporation’s Vertical Acquisition of Aerojet Rocketdyne Holdings Inc. (Feb. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/01/ftc-sues-block-lockheed-martin-corporations-44-billion-vertical-acquisition-aerojet-rocketdyne>; Press Release, Fed. Trade Comm’n, FTC Sues to Block \$40 Billion Semiconductor Chip Merger (Dec. 2, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/12/ftc-sues-block-40-billion-semiconductor-chip-merger>.

<sup>7</sup> See, e.g., Press Release, Fed. Trade Comm’n, Statement Regarding the Termination of Boston Scientific Corp.’s Attempted Acquisition of M.I. Tech Co., Ltd., (May 24, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/statement-regarding-termination-boston-scientific-corporations-attempted-acquisition-mi-tech>.

The Commission is particularly concerned about mergers that may cause significant economywide harm. For instance, in May the Commission challenged a \$13.1 billion merger between the two leading providers of mortgage technology, Intercontinental Exchange, Inc. and Black Knight.<sup>8</sup> The FTC's complaint alleges that the merger would eliminate competition between the merging parties for certain key mortgage processing platforms and tools used by lenders to secure the best interest rates for customers, leading to higher prices for lenders and homebuyers.<sup>9</sup>

The FTC is also taking steps to better capture the full set of ways in which mergers can harm competition. Central to this effort is placing greater weight on assessing both non-horizontal and forward-looking competitive harm. For example, in December 2021, the FTC sued to stop U.S. chip supplier Nvidia's proposed \$40 billion acquisition of U.K. chip design provider Arm.<sup>10</sup> More than two months into its litigation with the FTC, Nvidia abandoned its acquisition of Arm—representing the first abandonment of a litigated vertical merger in many years.<sup>11</sup> This effort also includes the Commission's February 2022 lawsuit to block Lockheed's proposed acquisition of Aerojet, a \$4.4 billion defense merger that would have eliminated the country's only remaining independent supplier of key missile propulsion inputs and given Lockheed the ability to cut off its competitors' access to these critical components.<sup>12</sup>

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<sup>8</sup> Press Release, Fed. Trade Comm'n, FTC Acts to Block Deal Combining the Two Top Mortgage Loan Technology Providers (Mar. 9, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-acts-block-deal-combining-two-top-mortgage-loan-technology-providers>.

<sup>9</sup> *Id.*

<sup>10</sup> See FTC Sues to Block \$40 Billion Semiconductor Chip Merger, *supra* note 6.

<sup>11</sup> In addition to Nvidia/Arm, the FTC has a pending challenge to Microsoft's proposed \$69 billion acquisition of independent videogame company Activision Blizzard. See FTC Seeks to Block Microsoft Corp.'s Acquisition of Activision Blizzard, Inc., *supra* note 6. In particular, the FTC's December 2022 complaint highlights how Microsoft could use its control over Activision Blizzard's valuable content to undermine competition for videogame consoles as well as fast growing game subscription services and cloud-gaming. See *id.*

<sup>12</sup> Press Release, Fed. Trade Comm'n, Statement Regarding Termination of Lockheed Martin Corporation's Attempted Acquisition of Aerojet Rocketdyne Holdings Inc. (Feb. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/02/statement-regarding-termination-lockheed-martin-corporations-attempted-acquisition-aerojet>.

The Commission also remains committed to stopping harmful mergers between direct competitors, especially in markets for healthcare services. Those mergers threaten patients with higher cost and lower quality care<sup>13</sup> and healthcare workers with lower wages and poorer working conditions.<sup>14</sup> In February 2022, the two largest healthcare systems in Rhode Island, Lifespan Corp. and Care New England Health System, called off their merger after the FTC, in conjunction with the Rhode Island Attorney General, sought to block the merger.<sup>15</sup> And on the same day in June 2022, the Commission voted to block two proposed hospital mergers: HCA’s acquisition of Steward Health Care System<sup>16</sup> and RWJBarnabas’s acquisition of Saint Peter’s Healthcare System.<sup>17</sup> The FTC will continue to identify and challenge hospital mergers that threaten access to critical healthcare services.

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<sup>13</sup> See, e.g., Zack Cooper et al., *The Price Ain’t Right? Hospital Prices and Health Spending on the Privately Insured*, 134 Q.J. ECON. 51 (2019); Nancy Beaulieu et al., *Changes in Quality of Care after Hospital Mergers and Acquisitions*, 382 NEW ENG. J. MED. 51 (2020). For surveys of the research literature, see, e.g., Martin Gaynor & Robert Town, *The Impact of Hospital Consolidation*, THE SYNTHESIS PROJECT, ROBERT WOOD JOHNSON FOUNDATION (June 2012), [http://www.rwjf.org/content/dam/farm/reports/issue\\_briefs/2012/rwjf73261](http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2012/rwjf73261); Martin Gaynor, Kate Ho & Robert Town, *The Industrial Organization of Health-Care Markets*, 53 J. ECON. LITERATURE 235 (2015).

<sup>14</sup> See, e.g., Elena Prager & Matt Schmitt, *Employer Consolidation and Wages: Evidence from Hospitals*, 111 AM. ECON. REV. 397 (2021); Daniel Arnold & Christopher Whaley, *Who Pays for Health Care Costs? The Effects of Health Care Prices on Wages* (RAND Health Care Working Paper, 2021), <https://www.ehealthecon.org/pdfs/Whaley.pdf>. See also Press Release, Fed. Trade Comm’n, FTC Policy Paper Warns About Pitfalls of COPA Agreements for Patient Care and Healthcare Workers (Aug. 15, 2022), <http://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-policy-paper-warns-about-pitfalls-copa-agreements-patient-care-healthcare-workers>. Recently, two hospital systems abandoned their proposed merger after the FTC raised concerns with the New York State Department of Health, voicing opposition to the granting of a COPA that would immunize the deal from antitrust scrutiny. See Press Release, Fed. Trade Comm’n, Statement of Elizabeth Wilkins, Director of the FTC’s Office of Policy Planning, on the Decision of SUNY Upstate Medical University and Crouse Health System, Inc., to Drop Their Proposed Merger (Feb. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/statement-elizabeth-wilkins-director-ftcs-office-policy-planning-decision-suny-upstate-medical>.

<sup>15</sup> Press Release, Fed. Trade Comm’n, Statement Regarding Termination of Attempted Merger of Rhode Island’s Two Largest Healthcare Providers (Mar. 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/statement-regarding-termination-attempted-merger-rhode-islands-two-largest-healthcare-providers>.

<sup>16</sup> Press Release, Fed. Trade Comm’n, FTC Sues to Block Merger Between Utah Healthcare Rivals HCA Healthcare and Steward Health Care System (June 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-utah-healthcare-rivals-hca-healthcare-steward-health-care-system>.

<sup>17</sup> Press Release, Fed. Trade Comm’n, FTC Sues to Block Merger Between New Jersey Healthcare Rivals RWJBarnabas Health and Saint Peter’s Healthcare System (June 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-new-jersey-healthcare-rivals-rwjbarnabas-health-saint-peters>.

The Commission also acts to ensure that companies are incentivized to innovate and to make their pharmaceutical products available at affordable prices. In May 2023, the Commission filed a federal court action to block Amgen’s \$27.8 billion acquisition of Horizon Therapeutics, alleging that the deal would allow Amgen to leverage its portfolio of blockbuster drugs to entrench the monopoly positions of Horizon medications used to treat thyroid eye disease and chronic refractory gout. According to the Commission, Amgen has a history of leveraging its broad portfolio of drugs to gain advantages over potential rivals, for example through cross-market bundling, which involves conditioning rebates on blockbuster drugs in exchange for receiving preferred placement for Amgen’s other medications. The complaint alleges that these bundling strategies make it harder for smaller rivals to compete against Amgen, with its full line of products.<sup>18</sup> The Attorneys General from six states have joined the FTC in this federal court litigation.

### **C. Bringing Clarity and Efficiency to Merger Review**

For the past year, the Commission has been working with the DOJ to examine how the agencies can more readily detect potentially problematic deals. Pursuant to the Hart-Scott-Rodino (“HSR”) Act of 1976, the federal antitrust agencies issue rules to ensure that we receive the information we need to be able to identify anticompetitive mergers and investigate them fully to determine whether to seek to block any that are likely to cause harm.<sup>19</sup> After conducting a top-to-bottom review of the information that market participants currently submit in premerger notification filings, the Commission has initiated a rulemaking to propose the collection of

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<sup>18</sup> In June, the FTC and DOJ released a summary of a two-day workshop that explored new approaches to enforcement of the antitrust laws in the pharmaceutical industry. Some of the approaches mentioned include applying heightened scrutiny to certain combinations that may increase the risk of anticompetitive bundling or cross-market leverage. Press Release, Fed. Trade Comm’n, FTC, DOJ Issue Summary on Joint Pharmaceutical Merger Analysis Workshop (June 1, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-doj-issue-summary-joint-pharmaceutical-merger-analysis-workshop>.

<sup>19</sup> 15 U.S.C. §18a.

additional information that the agencies need to more effectively and efficiently identify transactions that warrant deeper investigation.<sup>20</sup> These proposed changes represent the first significant re-examination of the HSR premerger notification program since the rules were first adopted in 1978. Since the adoption of the premerger notification program rules in 1978, transactions have become more complex, with the rise of new investment vehicles and changes in corporate strategy. Moreover, there have been increasing concerns that antitrust review has not sufficiently addressed the impact of mergers between firms that do not directly compete, or the effects of corporate consolidation on American workers and growth via acquisition in the technology and digital platform economies. The proposed changes would require filers to disclose additional information so that the agencies have a more complete picture about the proposed transaction's competitive impact, which would improve the efficiency of premerger review and ensure that the agencies can protect all stakeholders—including consumers, workers, and small businesses—from the harmful effects of mergers. The proposed changes are necessary so that the agencies can harness their limited resources to focus on those deals that are most likely to unlawfully lessen competition or tend to create a monopoly. Many of the updates in the proposal reflect data already collected by antitrust authorities around the world. For example, competition enforcers in other jurisdictions already require firms to provide narrative responses with information about business lines, the transaction's structure and rationale, business overlaps, and vertical and other relationships. Accordingly, much of what would be required in the updated HSR form should be familiar to market participants and their counsel.

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<sup>20</sup> Press Release, Fed. Trade Comm'n, FTC and DOJ Propose Changes to HSR Form for More Effective, Efficient Merger Review (June 27, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-doj-propose-changes-hsr-form-more-effective-efficient-merger-review>.



The proposed rule would also implement provisions of the Merger Filing Fee Modernization Act of 2022, which require companies to disclose information in their HSR filing about subsidies received from certain foreign governments and entities. Public comments on the proposed rulemaking are due August 28, 2023.

#### **D. Targeting Anticompetitive Conduct for Maximum Impact**

Despite a heavy merger workload, the FTC continues to maintain and develop a robust program to identify and stop anticompetitive conduct.

The FTC continues to scrutinize digital markets, recognizing that distinct features of digital technologies have ushered in new market dynamics and business strategies that require us to update our enforcement approach. Dominant digital platforms have captured control over key arteries of commerce and communications in ways that can undermine competition. The FTC's investigations in digital markets recognize the critical role of data, network externalities, moat building strategies, and other key factors to ensure that our enforcement is reflecting commercial realities.

Notably, the FTC continues to prosecute its complaint against Facebook (now Meta) in a lawsuit that, in addition to other forms of relief, seeks the divestment of Instagram and WhatsApp.<sup>21</sup> The FTC's amended complaint highlights the competitive importance of data and notes that privacy degradation can constitute an antitrust harm—a fact that the court also acknowledged when it denied Facebook's motion to dismiss the FTC's case.<sup>22</sup>

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<sup>21</sup> Press Release, Fed. Trade Comm'n, *FTC Alleges Facebook Resorted to Illegal Buy-or-Bury Scheme to Crush Competition After String of Failed Attempts to Innovate* (Aug. 19, 2021), <https://www.ftc.gov/newsevents/news/press-releases/2021/08/ftc-alleges-facebook-resorted-illegal-buy-or-bury-scheme-crush-competitionafter-string-failed>.

<sup>22</sup> See *FTC v. Facebook, Inc.*, 581 F. Supp. 3d 34 (D.D.C. 2022).

The FTC's litigation against Surescripts, an e-prescription giant, also remains ongoing.<sup>23</sup> The FTC alleges that Surescripts intentionally kept e-prescription customers from using additional platforms (a practice known as multi-homing) through its use of anticompetitive exclusivity agreements, threats, and other exclusionary tactics. That conduct resulted in the exclusion of all meaningful competition in prescription routing and eligibility, leading to higher prices, reduced innovation, lower output, and no customer choice.

Additionally, the FTC recently finalized a consent order in May 2023 settling charges that Mastercard used illegal business tactics to force merchants to route debit card payments through its payment network.<sup>24</sup> Under the order, Mastercard will have to start providing competing networks with customer account information that these networks need to process debit payments. This reverses a tactic Mastercard allegedly had been using to prevent merchants from using competing networks to process certain ecommerce debit payments.

The FTC continues to prioritize and investigate allegations that employer conduct is harming workers. Between January and March 2023, the agency filed four separate enforcement actions under Section 5 resulting in three companies and two individuals dropping noncompete restrictions that they imposed on thousands of workers that barred them from seeking or accepting work with another employer or operating a competing business after they left the company.<sup>25</sup>

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<sup>23</sup> Complaint, *FTC v. Surescripts, Inc.*, No. 1:19-cv-01080 (D.D.C., Apr. 24, 2019), [https://www.ftc.gov/system/files/documents/cases/surescripts\\_redacted\\_complaint\\_4-24-19.pdf](https://www.ftc.gov/system/files/documents/cases/surescripts_redacted_complaint_4-24-19.pdf).

<sup>24</sup> Press Release, Fed. Trade Comm'n, FTC Approves Final Order Requiring Mastercard to Stop Blocking the Use of Competing Debit Payment Networks (May 30, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-approves-final-order-requiring-mastercard-stop-blocking-use-competing-debit-payment-networks>.

<sup>25</sup> See Press Release, Fed. Trade Comm'n, FTC Approves Final Order Requiring Anchor Glass Container Corp. to Drop Noncompete Restrictions That It Imposed on Workers (June 2, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-approves-final-order-requiring-anchor-glass-container-corp-drop-noncompete-restrictions-it>; Press Release, Fed. Trade Comm'n, FTC Cracks Down on Companies That Impose

The Commission is also committed to preventing anticompetitive conduct that harms American farmers. In September 2022, the Commission and a bipartisan coalition of ten state Attorneys General charged the two largest pesticides manufacturers, Syngenta and Corteva, with maintaining their monopoly positions by paying distributors to block competitors from selling their cheaper generic products to farmers.<sup>26</sup> The complaint alleges that Syngenta Crop Protection and Corteva, Inc. rely on pay-to-block schemes in which distributors get paid only if they limit their dealings with competing manufacturers. The legal issue in this case is whether the antitrust laws bar firms from extending their patent monopolies through programs that require distributors *not* to buy cheaper generic products.<sup>27</sup> But for farmers the question is more practical: Do the antitrust laws protect them from abusive monopoly practices that threaten their livelihood by denying them access to cheaper versions of products they have to buy? This case is pending in federal court in North Carolina.<sup>28</sup>

#### **E. FTC Research and Policy Development Related to Healthcare Competition**

Through Section 6(b) of the FTC Act, Congress gave the agency broad investigative powers to conduct market-wide inquiries that allow us to keep pace with new business practices and market trends. A primary focus of Commission research and policy has been healthcare markets. For example, last June, the Commission authorized a 6(b) study of the contracting

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Harmful Noncompete Restrictions on Thousands of Workers (Jan. 4, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-cracks-down-companies-impose-harmful-noncompete-restrictions-thousands-workers>.

<sup>26</sup> Press Release, Fed. Trade Comm'n, FTC and State Partners Sue Pesticide Giants Syngenta and Corteva for Using Illegal Pay-to-Block Scheme to Inflate Prices for Farmers (Sept. 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-state-partners-sue-pesticide-giants-syngenta-corteva-using-illegal-pay-block-scheme-inflate>.

<sup>27</sup> The FTC has a long history of suing pharmaceutical companies for illegal pay-for-delay agreements that extend their patent monopolies and delay generic entry. *See FTC v. Actavis, Inc.*, 570 U.S. 136 (2013).

<sup>28</sup> *See FTC v. Syngenta & Corteva*, No. 22-cv-828 (M.D.N.C.).

practices of pharmacy benefits managers (“PBMs”).<sup>29</sup> In May and June 2023, the FTC expanded that ongoing inquiry to issue additional compulsory orders to three group purchasing organizations (“GPOs”) that negotiate drug rebates on behalf of other PBMs.<sup>30</sup> The Commission issued these orders after seeking and receiving public input from a wide variety of stakeholders.<sup>31</sup> This comprehensive study will shine a light on the opaque operations of these large pharmacy middlemen who can dictate the pricing and access to life-saving drugs for so many Americans.

## **F. Broader Research Agenda and Policy Development**

In addition to healthcare markets, the Commission continues to make long-term investments to maximize the impact of our research and policy work in other areas. To tackle the pressing issues of today and tomorrow, we are broadening our institutional skillsets to ensure we are fully grasping market realities, especially as the economy becomes increasingly digitized. As mentioned above, the Commission launched its new Office of Technology to strengthen the FTC’s ability to keep pace with technological challenges in the digital marketplace.<sup>32</sup> Just one

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<sup>29</sup> Press Release, Fed. Trade Comm’n, FTC Launches Inquiry Into Prescription Drug Middlemen Industry (June 7, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-launches-inquiry-prescription-drug-middlemen-industry>. Consistent with the competition concerns that prompted the PBM study, the Commission issued a “Policy Statement on Rebates and Fees in Exchange for Excluding Lower Cost Products,” putting the drug industry on notice that paying rebates and fees to exclude competition from formularies violates the antitrust laws. Press Release, Fed. Trade Comm’n, FTC to Ramp Up Enforcement Against Any Illegal Rebate Schemes, Bribes to Prescription Drug Middlemen that Block Cheaper Drugs (June 16, 2022), <http://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-ramp-up-enforcement-against-illegal-rebate-schemes>.

<sup>30</sup> Press Release, Fed. Trade Comm’n, FTC Deepens Inquiry into Prescription Drug Middlemen (May 17, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-deepens-inquiry-prescription-drug-middlemen>; Press Release, Fed. Trade Comm’n, FTC Further Expands Inquiry Into Prescription Drug Middlemen Industry Practices (June 8, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-further-expands-inquiry-prescription-drug-middlemen-industry-practices>.

<sup>31</sup> Press Release, Fed. Trade Comm’n, FTC Requests Public Comments on the Impact of Pharmacy Benefit Managers’ Practices, (Feb. 24, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-requests-public-comments-impact-pharmacy-benefit-managers-practices>.

<sup>32</sup> Press Release, Fed. Trade Comm’n, FTC Launches New Office of Technology to Bolster Agency’s Work (Feb. 17, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-launches-new-office-technology-bolster-agencys-work>.

month later, the Commission announced an RFI on cloud computing.<sup>33</sup> The Commission is gathering information to better understand key features of cloud computing; the potential for outages from large cloud providers to have widespread impact on large parts of the economy that rely on them; security risks; and issues related to market power and business practices affecting competition.

In November 2021, in response to reported bottlenecks, shortages, and rising consumer prices, the Commission used its 6(b) authority to order nine large retailers, wholesalers, and consumer goods suppliers to provide detailed information needed to better grasp both the factors that have contributed to supply chain disruptions and how they may have contributed to bottlenecks, shortages, anticompetitive practices, or rising consumer prices.<sup>34</sup>

In addition to these inquiries, the Commission has several others underway. The FTC opened one inquiry in December 2020 and asked nine social media and video streaming companies to provide data on how they collect, use, and present personal information, their advertising and user engagement practices, and how their practices affect children and teens.<sup>35</sup> Another inquiry began in January 2021 and is part of a broader initiative by the Bureau of Economics to revamp its merger retrospective program. There, the FTC issued orders to six health insurance companies to provide information that will allow the agency to study the effects

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<sup>33</sup> Press Release, Fed. Trade Comm'n, An Inquiry into Cloud Computing Business Practices: The Federal Trade Commission is seeking public comments (Mar. 22, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-seeks-comment-business-practices-cloud-computing-providers-could-impact-competition-data>.

<sup>34</sup> Press Release, Fed. Trade Comm'n, FTC Launches Inquiry into Supply Chain Disruptions (Nov. 29, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/11/ftc-launches-inquiry-supply-chain-disruptions>.

<sup>35</sup> Press Release, Fed. Trade Comm'n, FTC Issues Orders to Nine Social Media and Video Streaming Services Seeking Data About How They Collect, Use, and Present Information (Dec. 14, 2020), <https://www.ftc.gov/news-events/news/press-releases/2020/12/ftc-issues-orders-nine-social-media-video-streaming-services-seeking-data-about-how-they-collect-use>.

of physician group and healthcare facility consolidation that occurred from 2015 through 2020.<sup>36</sup> Then, in March 2023, the Commission requested public comment on franchise agreements and franchisor business practices, including how franchisors may exert control over franchisees and their workers.<sup>37</sup> This request followed public input suggesting that certain practices in franchising may disfavor franchisees. Each of these inquiries help guide FTC enforcement efforts as well as fulfill its unique mission as an expert agency that studies market trends and recommends solutions for policymakers.<sup>38</sup>

The FTC is also drawing on this research to issue policy papers to inform policymakers about how pending legislation may affect competition. In August 2022, the FTC issued a policy paper and fact sheet highlighting the pitfalls of using Certificates of Public Advantage (“COPAs”), which purport to shield hospital mergers from antitrust laws in favor of state oversight. The paper details research showing that these COPAs are often detrimental for patient costs, patient care, and healthcare worker wages.<sup>39</sup>

Finally, as part of the FTC’s competition policy work, the agency is reinvigorating its filing of friend-of-the-court briefs. For example, on June 20, the FTC filed an amicus brief in the

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<sup>36</sup> Press Release, Fed. Trade Comm’n, FTC to Study the Impact of Physician Group and Healthcare Facility Mergers (Jan. 14, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/01/ftc-study-impact-physician-group-healthcare-facility-mergers>.

<sup>37</sup> Press Release, Fed. Trade Comm’n, FTC Seeks Public Comment on Franchisors Exerting Control Over Franchisees and Workers (Mar. 10, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-seeks-public-comment-franchisors-exerting-control-over-franchisees-workers>.

<sup>38</sup> Press Release, Fed. Trade Comm’n, The Federal Trade Commission’s First Report on E-Cigarette Sales and Advertising Reveals Disturbing Trends Affecting the Health of Young Americans (Mar. 17, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/federal-trade-commissions-first-report-e-cigarette-sales-advertising-reveals-disturbing-trends>; Press Release, Fed. Trade Comm’n, FTC Staff Report Finds Many Internet Service Providers Collect Troves of Personal Data, Users Have Few Options to Restrict Use (Oct. 21, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-staff-report-finds-many-internet-service-providers-collect-troves-personal-data-users-have-few>; Press Release, Fed. Trade Comm’n, New FTC Staff Report Outlines Impact of Fraud on Communities of Color (Oct. 15, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/new-ftc-staff-report-outlines-impact-fraud-communities-color>.

<sup>39</sup> Press Release, Fed. Trade Comm’n, FTC Policy Paper Warns About Pitfalls of COPA Agreements for Patient Care and Healthcare Workers (Aug. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-policy-paper-warns-about-pitfalls-copa-agreements-patient-care-healthcare-workers>.

Second Circuit clarifying the legal standards that apply in certain antitrust cases involving the pharmaceutical sector.<sup>40</sup> The case relates to alleged efforts by branded drug makers to delay competition from generic drugs by compensating the generic drug makers them through payments masked as contemporaneous business deals. The FTC also filed an amicus brief in March relating to potential harms to competition and consumers posed by a brand name drug's exclusion of generic competition.<sup>41</sup> Last week, the Commission filed an amicus brief in federal district court to address antitrust principles that apply to exclusive dealing and bundling conduct, tracking similar arguments the Commission has made in its own cases.<sup>42</sup>

### **III. CONSUMER PROTECTION MISSION**

As the nation's primary consumer protection agency, the FTC has a broad mandate to protect the public from unfair or deceptive practices throughout the economy. The FTC works to protect privacy and data security; fight fraud, junk fees, and related harms affecting consumers; combat fraud related to opioid recovery; combat abuse of artificial intelligence; and ensure that domestic manufacturers, independent repairers, and other small businesses have a chance to compete fairly, among other issues.

#### **A. Protecting Every Community from Fraud and Deceptive Business Practices**

The FTC is undertaking comprehensive enforcement action to root out fraud and deceptive business practices, including those that target historically underserved communities.

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<sup>40</sup> Press Release, Fed. Trade Comm'n, FTC Files Amicus Brief in Bystolic Antitrust Litigation Supporting Competition in the Hypertension Drug Market (June 20, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-files-amicus-brief-bystolic-antitrust-litigation-supporting-competition-hypertension-drug-market>.

<sup>41</sup> Brief for the FTC as Amicus Curiae, *Sage Chemical, Inc. v. Supernus Pharmaceuticals, Inc.*, No. 1:22d-cv-1302-CJB (D. Del.), <https://www.ftc.gov/legal-library/browse/amicus-briefs/sage-chemical-inc-et-al-v-supernus-pharmaceuticals-inc-et-al>.

<sup>42</sup> Brief for the FTC as Amicus Curiae, *Applied Med. Resources Corp. v. Medtronic, Inc.*, No.8:23-cv-00268 CJC (C.D. Cal.), <https://www.ftc.gov/legal-library/browse/amicus-briefs/applied-medical-resources-corp-v-medtronic-inc>.

## 1. Reducing the Scourge of Unwanted Calls

The Commission uses every tool at its disposal to combat unwanted calls.<sup>43</sup> The FTC has filed 162 enforcement actions against 546 companies and 438 individuals alleged to be responsible for placing billions of unwanted telemarketing calls to consumers. We have also collected over \$393 million in civil penalties and equitable monetary relief from these violators. In cases where perpetrators ran telemarketing scams, the FTC has obtained court orders shutting down these businesses and freezing their remaining assets so that those funds could be returned to consumers.<sup>44</sup> In the past few months, the Department of Justice has filed two lawsuits against VoIP providers on the FTC's behalf. These VoIP providers facilitated an extraordinary number of illegal calls. In February, DOJ filed a lawsuit against Stratics Networks, which, according to the complaint, offered ringless voicemail services that delivered prerecorded messages directly to consumers' voicemail boxes.<sup>45</sup> The complaint alleges that just one of the Stratics customers sent 23 million of these messages to consumers. In May, DOJ filed a lawsuit against Xcast Labs.<sup>46</sup> According to the complaint, Xcast transmitted more than 2 billion calls to numbers on the Do Not Call Registry.

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<sup>43</sup> FTC, Do Not Call Registry Data Book 2022: Complaint Figures for FY 2022 (2022), [www.ftc.gov/system/files/ftc\\_gov/pdf/DNC-Data-Book-2022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/DNC-Data-Book-2022.pdf).

<sup>44</sup> Temporary Restraining Order, *FTC v. Green Equitable Sols.*, No. 2:22-cv-06499-FLA (C.D. Cal. Sept. 14, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2022.09.14%20Order%20granting%20TRO.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2022.09.14%20Order%20granting%20TRO.pdf) (freezing the defendants' assets and shutting down their deceptive practices). This action is being taken in conjunction with the state of California and involves allegations that the defendants illegally called consumers on the Do Not Call Registry, pitching mortgage relief services and falsely claiming to be affiliated with government COVID-19 relief programs. See Press Release, Fed. Trade Comm'n, Federal Trade Commission, California Take Action To Shut Down Mortgage Relief Operation That Preyed on Struggling Homeowners (Sept. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/federal-trade-commission-california-take-action-shut-down-mortgage-relief-operation-preyed>.

<sup>45</sup> Complaint, *United States v. Stratics Networks, Inc.*, No. 3:23-cv-313 (S.D. Cal. Feb. 16, 2023). [https://www.ftc.gov/system/files/ftc\\_gov/pdf/001-complaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/001-complaint.pdf).

<sup>46</sup> Complaint, *United States v. Xcast Labs, Inc.*, No. 2:23-cv-3646 (C.D. Cal. May 13, 2023). [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2223097-xcast-labs-inc-complaint-for-permanent-injunction.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2223097-xcast-labs-inc-complaint-for-permanent-injunction.pdf).



The FTC is also disrupting foreign-based scammers that bring illegal robocalls into the United States. In April, the FTC announced Project Point of No Entry (“PoNE”), an initiative targeting “point of entry” or “gateway” Voice over Internet Protocol (“VoIP”) service providers.<sup>47</sup> In collaboration with the Federal Communications Commission, the Industry Traceback Group, and state Attorneys General, the FTC identifies point of entry VoIP service providers that are routing or transmitting illegal robocall traffic. The FTC then demands that they stop, warns that their conduct may violate the Telemarketing Sales Rule (“TSR”), and monitors recalcitrant providers, including by conducting law enforcement investigations and filing lawsuits when appropriate.

## **2. Fighting Opioid Recovery Fraud**

The FTC has used the authority Congress gave us in the Opioid Addiction Recovery Fraud Prevention Act (“OARFPA”) to stop companies from exploiting Americans struggling with substance use disorders. In our first OARFPA case, we obtained a \$3.8 million civil penalty judgment against R360 based on allegedly deceptive claims to consumers seeking substance abuse treatment.<sup>48</sup> Earlier this year, we announced an OARFPA action against AWAREmed alleging false efficacy claims and obtained a \$100,000 civil penalty.<sup>49</sup>

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<sup>47</sup> Press Release, Fed Trade Comm’n, FTC Ramps Up Fight to Close the Door on Illegal Robocalls Originating from Overseas Scammers and Imposters (Apr. 11, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-ramps-fight-close-door-illegal-robocalls-originating-overseas-scammers-imposters>.

<sup>48</sup> See Press Release, Fed. Trade Comm’n, FTC Hits R360 and its Owner With \$3.8 Million Civil Penalty Judgment for Preying on People Seeking Treatment for Addiction (May 17, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-hits-r360-its-owner-38-million-civil-penalty-judgment-preying-people-seeking-treatment-addiction>.

<sup>49</sup> Press Release, Fed. Trade Comm’n, FTC Sues Medical Clinic and Its Owner for False or Unsubstantiated Claims Its Treatment Center Could Cure Addiction and Other Diseases (Mar. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-sues-medical-clinic-its-owner-false-or-unsubstantiated-claims-its-treatment-could-cure-addiction>.

### 3. Combatting Fraud Targeting Older Adults

Protecting older consumers continues to be one of the FTC’s top priorities, which the agency pursues through aggressive law enforcement actions, innovative education and outreach campaigns, extensive research, regulatory initiatives, and collaboration with partners and stakeholders. The FTC has brought a number of actions against companies targeting older adults with allegedly deceptive practices, including around timeshares,<sup>50</sup> sham health plans,<sup>51</sup> and foot pain.<sup>52</sup> In June, the Commission announced a settlement with Publishers Clearing House (PCH) in a case alleging that PCH used “dark patterns” to manipulate consumers—particularly older consumers—into thinking that they needed to make a purchase to enter a sweepstakes or that purchasing would help them win. The Commission also alleged that PCH surprised the same consumers with substantial shipping and handling fees after they were obligated to pay for an order and it was too late to stop a shipment.<sup>53</sup> In addition, as with its work on unwanted calls, the FTC is going after companies that allegedly assist and facilitate scams (like the grandparent and lottery or sweepstakes scams) at scale.<sup>54</sup> The agency’s education and outreach work complements this vigorous enforcement.

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<sup>50</sup> Complaint, *United States v. Consumer Law Prot., LLC*, No. 4:22-cv-01243 (E.D. Mo. Nov. 21, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2123065SquareOneComplaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2123065SquareOneComplaint.pdf).

<sup>51</sup> Press Release, Fed. Trade Comm’n, FTC Action Against Benefytt Results in \$100 Million in Refunds for Consumers Tricked into Sham Health Plans and Charged Exorbitant Junk Fees (Aug. 8, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-action-against-benefytt-results-100-millionrefunds-consumers-tricked-sham-health-plans-charged>.

<sup>52</sup> Complaint, *FTC v. Gravity Defyer Medical Technology Corp.*, No. 1:22-cv-01464 (D.D.C. May 25, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/1923114GravityDefyerComplaintrev.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/1923114GravityDefyerComplaintrev.pdf).

<sup>53</sup> Press Release, Fed. Trade Comm’n, FTC Takes Action Against Publishers Clearing House for Misleading Consumers About Sweepstakes Entries (June 27, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-takes-action-against-publishers-clearing-house-misleading-consumers-about-sweepstakes-entries>.

<sup>54</sup> Complaint, *FTC v. Walmart, Inc.*, No: 1:22-cv-03372 (N.D. Ill. June 28, 2022), <https://www.ftc.gov/legal-library/browse/cases-proceedings/182-3012-walmart-ftc-v>.

During 2022, the FTC updated its most popular<sup>55</sup> education campaign, *Pass It On*<sup>56</sup> (*Pásalo*<sup>57</sup> in Spanish) and promoted it through a series of webinars presented in English and Spanish to thousands of people, including representatives from aging services providers, congressional offices, and the Senior Medicare Patrol program, among others.

Collaborating with stakeholders is another key component of the FTC’s strategies to combat fraud against older adults. In 2022, the FTC established an Advisory Group under the Stop Senior Scams Act that includes representatives from government, industry, and consumer advocacy groups.<sup>58</sup> The Advisory Group has launched new initiatives to expand consumer education, improve industry training, identify new technology or other means of detecting and stopping fraud, and develop research on consumer and employee engagement. The FTC also keeps track of new trends impacting older adults through its Senior Fraud Advisory Office, which the FTC created pursuant to the Seniors Fraud Prevention Act of 2022 to advise the Commission on strategies to protect older adults.<sup>59</sup> The Commission’s annual report to Congress describes in detail our work for older adults.<sup>60</sup>

#### **4. Protecting Servicemembers and Veterans**

Combatting fraud aimed at servicemembers remains a top priority. In July 2022, in its first case enforcing the Military Lending Act,<sup>61</sup> the FTC and a group of 18 states took action against Harris Jewelry, a national jewelry retailer, to stop the company from targeting military

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<sup>55</sup> Since its original launch in 2014, nearly 18 million Pass It On materials have been distributed nationwide in English and Spanish.

<sup>56</sup> See <http://www.ftc.gov/PassItOn>.

<sup>57</sup> See <http://www.ftc.gov/Pasalo>.

<sup>58</sup> See Fraud and Scam Reduction Act, Section 101, Division Q of the Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, <https://www.congress.gov/117/plaws/publ103/PLAW-117publ103.pdf> (Subtitle A of the Act is referred to as the “Stop Senior Scams Act.”).

<sup>59</sup> *Id.* (Subtitle B of the Act is referred to as the “Seniors Fraud Prevention Act of 2022.”).

<sup>60</sup> FTC, Protecting Older Consumers 2021-2022 (2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P144400OlderConsumersReportFY22.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P144400OlderConsumersReportFY22.pdf).

<sup>61</sup> 10 U.S.C. § 987.

families with illegal financing and sales practices, ultimately requiring the company to pay \$10.9 million in refunds and engage in other affirmative assistance to its victims.<sup>62</sup> The Commission’s efforts to protect military and veteran communities include a vigorous, long-standing educational campaign and close coordination with servicemember and veteran agencies.<sup>63</sup> This collaborative outreach is the cornerstone of the annual Military Consumer Month,<sup>64</sup> which the FTC created and manages with its partners, including AARP’s Veterans & Military Families Initiative.<sup>65</sup> The agency also participates in an ongoing working group led by the Department of Veterans Affairs (“VA”) to alert veterans about current scams.

## 5. Combatting Fraud Targeting Speakers of Other Languages

The FTC has taken action to address deceptive practices that target consumers who speak languages other than English. For example, in June, the FTC sued Ganadores Online and its owners for allegedly scamming Spanish-speaking consumers out of millions of dollars in a real estate and online commerce coaching scheme.<sup>66</sup> According to the FTC’s complaint, the Ganadores scheme has targeted Spanish-speaking consumers using false or unfounded promises that its “infallible system” can help consumers replace their day jobs, and give their families financial independence. Litigation is ongoing. The FTC has also brought actions in the past year against companies whose practices allegedly: deceived Spanish-speakers about home

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<sup>62</sup> Press Release, Fed. Trade Comm’n, FTC and 18 States Sue to Stop Harris Jewelry from Cheating Military Families with Illegal Financing and Sales Tactics (July 20, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-18-states-sue-stop-harris-jewelry-cheating-military-families-illegal-financing-sales-tactics>; *see also infra* note 75 (discussing action against BurgerIM for deceiving veterans).

<sup>63</sup> *See, e.g.*, [militaryconsumer.gov](https://militaryconsumer.gov) (launched by FTC and operated in cooperation with Department of Defense Office of Financial Readiness (DoD FinRed) and the Consumer Financial Protection Bureau’s Office of Servicemember Affairs (CFPB OSA)).

<sup>64</sup> *See* Carol A. Kando-Pineda, Military Consumer Month 2022, FTC (June 27, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/06/military-consumer-month-2022>.

<sup>65</sup> *See* AARP, Veterans and Military Families, <https://www.aarp.org/volunteer/causes/veterans-military-families/>.

<sup>66</sup> Press Release, Fed. Trade Comm’n, FTC Acts to Stop Real Estate and Online Commerce Coaching Scheme ‘Ganadores’ Targeting Spanish-Speaking Consumers With Brazen Money-Making Pitches (June 13, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-acts-stop-real-estate-online-commerce-coaching-scheme-ganadores-targeting-spanish-speaking>.

improvement financing<sup>67</sup>; and used deceptive sales pitches in Spanish, Vietnamese, and Amharic to trap small business owners with surprise exit fees and zombie charges.<sup>68</sup> As part of the Commission's efforts to provide relevant information to all Americans, the FTC continues to translate all its consumer education materials into Spanish and recently expanded its reach to speakers of other languages with the launch of [ftc.gov/languages](https://www.ftc.gov/languages).

## 6. Preventing Financial Exploitation

The FTC brought ten federal court actions in recent years against companies that targeted financially insecure consumers and made false credit repair, mortgage, or other debt relief promises,<sup>69</sup> as well as one action against a debt relief payment processor.<sup>70</sup> For example, last September, the FTC and the California Department of Financial Protection and Innovation filed a law enforcement action against several corporate and individual defendants doing business as

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<sup>67</sup> Press Release, Fed. Trade Comm'n, FTC, California Act to Stop Ygrene Energy Fund from Deceiving Consumers About PACE Financing, Placing Liens on Homes Without Consumers' Consent (Oct. 28, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-california-act-stop-ygrene-energy-fund-deceiving-consumers-about-pace-financing-placing-liens>.

<sup>68</sup> Press Release, Fed. Trade Comm'n, FTC Takes Action to Stop Payment Processor First American from Trapping Small Businesses with Surprise Exit Fees and Zombie Charges (July 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-takes-action-stop-payment-processor-first-american-trapping-small-businesses-surprise-exit-fees>.

<sup>69</sup> Complaint, *FTC v. SL Finance LLC*, No. 8:23-cv-0698 (C.D. Cal. 2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/01-Complaint-FTC-v-SL-Finance-LLC.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/01-Complaint-FTC-v-SL-Finance-LLC.pdf); Complaint, *FTC v. BCO Consulting Services, Inc.*, No. 8:23-cv-0699 (C.D. Cal. 2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/FTC-v-BCO-Consulting-Services-Inc-et-al-23-cv-0699-Complaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/FTC-v-BCO-Consulting-Services-Inc-et-al-23-cv-0699-Complaint.pdf); Complaint, *FTC v. ACRO Servs. LLC*, No. 3:22-cv-00895 (M.D. Tenn. 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Complaint-Unsealed.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Complaint-Unsealed.pdf); Complaint, *FTC v. Fin. Educ. Servs. Inc.*, 2:22-cv-11120-BAF-APP (E.D. Mich. 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/DE%201%20-%20Complaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/DE%201%20-%20Complaint.pdf); Complaint, *FTC v. Green Equitable Sols.*, No. 2:22-cv-06499-FLA (C.D. Cal. 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Home%20Matters%20-%20Complaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Home%20Matters%20-%20Complaint.pdf); Complaint, *FTC v. SLAC, Inc.*, No. 5:20-cv-00470 (C.D. Cal. 2020), [https://www.ftc.gov/system/files/documents/cases/doc\\_1\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/doc_1_complaint.pdf); Complaint, *FTC v. Am. Fin. Support Servs., Inc.*, No. 8:19-cv-02109-JWH (C.D. Cal. 2019), [https://www.ftc.gov/system/files/documents/cases/192\\_3040\\_arete\\_financial\\_group\\_complaint\\_for\\_permanent\\_injunction\\_and\\_other\\_equitable\\_relief\\_11-12-19.pdf](https://www.ftc.gov/system/files/documents/cases/192_3040_arete_financial_group_complaint_for_permanent_injunction_and_other_equitable_relief_11-12-19.pdf); Complaint, *FTC v. Manhattan Beach Venture LLC*, No. 2:19-cv-7849 (C.D. Cal. 2019), [https://www.ftc.gov/system/files/documents/cases/172\\_3041\\_mbv\\_complaint\\_0.pdf](https://www.ftc.gov/system/files/documents/cases/172_3041_mbv_complaint_0.pdf); Complaint, *FTC v. Student Advocates Team, LLC*, No. 8:19-cv-01728-JVS (C.D. Cal. 2019), [https://www.ftc.gov/system/files/documents/cases/172\\_3036\\_pag\\_complaint\\_1.pdf](https://www.ftc.gov/system/files/documents/cases/172_3036_pag_complaint_1.pdf); Complaint, *FTC v. Elegant Sols., Inc.*, No. 8:19-cv-01333-JVS (C.D. Cal. 2019), [https://www.ftc.gov/system/files/documents/cases/192\\_3105\\_elegant\\_solutions\\_-\\_first\\_amended\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/192_3105_elegant_solutions_-_first_amended_complaint.pdf).

<sup>70</sup> Complaint, *FTC v. Automatic Funds Transfer Servs., Inc.*, No. 1:21-cv-02932 (D.D.C. 2021), [https://www.ftc.gov/system/files/documents/cases/complaint\\_7.pdf](https://www.ftc.gov/system/files/documents/cases/complaint_7.pdf).

Home Matters USA, among other names, for allegedly operating sham mortgage relief services that misled consumers and cost them millions.<sup>71</sup> The federal district court granted a temporary restraining order including an asset freeze against the defendants, and litigation is ongoing. In May, Response Marketing Group, LLC and its principals agreed to a court order that requires them to pay \$15 million and permanently bans them from selling money-making opportunities to settle charges by the FTC and the State of Utah that they used false promises to sell consumers a series of expensive real estate investment training programs. In addition, two of the primary real estate celebrities who promoted the training agreed to orders that require them to pay \$1.7 million. The Commission also is working closely with the Department of Education to prevent fraud around recent changes to the student loan program<sup>72</sup> and to ensure relief for those affected by deceptive practices by for-profit colleges.<sup>73</sup> In April, the FTC filed lawsuits against a pair of student loan debt relief scams and their principals, alleging that the defendants used false promises of student loan forgiveness to bilk consumers of nearly \$12 million since 2019.<sup>74</sup> The

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<sup>71</sup> Press Release, Fed. Trade Comm'n, Federal Trade Commission, California Take Action To Shut Down Mortgage Relief Operation that Preyed on Struggling Homeowners (Sept. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/federal-trade-commission-california-take-action-shut-down-mortgage-relief-operation-preyed>.

<sup>72</sup> See K. Michelle Grajales, *Student Loan Scammers Are Circling. Keep Them at Bay*, FTC (Oct. 3, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/10/student-loan-scammers-are-circling-keep-them-bay>; Terri Miller, *Got Student Loans? Spot Scams Related to the Sweet Lawsuit*, FTC (Sept. 16, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/09/got-student-loans-spot-scams-related-sweet-lawsuit>; Terri Miller, *Limited Waiver for Student Loan Forgiveness Ends October 31*, FTC (July 21, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/07/limited-waiver-student-loan-forgiveness-ends-october-31-0>.

<sup>73</sup> See Press Release, Fed. Trade Comm'n, FTC Enforcement Action Leads U.S. Dept. of Education to Forgive \$71.7 Million in Loans for Students Deceived by DeVry University (Feb. 16, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-enforcement-action-leads-us-dept-education-forgive-717-million-loans-students-deceived-devry>; Press Release, Fed. Trade Comm'n, Federal Trade Commission Takes Action Against For-Profit Medical School for Using Deceptive Marketing to Lure Students (Apr. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/04/federal-trade-commission-takes-action-against-profit-medical-school-using-deceptive-marketing-lure>.

<sup>74</sup> See Press Release, FTC Stops Student Loan Debt Relief Schemes that it Says Bilked Students Out of Millions (May 8, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-stops-student-loan-debt-relief-schemes-it-says-bilked-students-out-millions>.

federal district court entered preliminary injunctions against the defendants, including asset freezes and appointment of a receiver, and litigation is ongoing.

## **7. Combatting Junk Fees and Unwanted Charges**

Junk fees are unavoidable charges for products with little or no value that are imposed on consumers with no notice. Consumers can get hit with junk fees at any stage of the purchase process, and companies may use digital dark patterns and other tricks to hide or mask them. These fees undercut honest businesses by making it harder to compete on price and cause harm to consumers who are often surprised and frustrated by unexpected charges. The FTC has initiated two new rulemakings to address this problematic conduct. Last year the FTC published a notice of proposed rulemaking to ban certain junk fees and bait-and-switch advertising tactics that can plague consumers throughout the car-buying experience. The proposal also would require dealers to make key disclosures to consumers, including providing a true “offering price” for a vehicle that would be the full price a consumer would pay, excluding only taxes and government fees.<sup>75</sup> Separately, we are exploring a rulemaking to crack down on deceptive or unfair junk fees across multiple industries. We are reviewing thousands of comments we received from the public on the types of junk fees they’ve experienced and the harm caused by such fees.<sup>76</sup>

The Commission also has proposed to amend the Negative Option Rule to better address deceptive or unfair practices around negative marketing, including perpetual subscriptions,

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<sup>75</sup> Press Release, Fed. Trade Comm’n, FTC Proposes Rule to Ban Junk Fees, Bait-and-Switch Tactics Plaguing Car Buyers (June 23, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-proposes-rule-ban-junk-fees-bait-switch-tactics-plaguing-car-buyers>.

<sup>76</sup> Press Release, Fed. Trade Comm’n, Federal Trade Commission Explores Rule Cracking Down on Junk Fees (Oct. 20, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/federal-trade-commission-explores-rule-cracking-down-junk-fees>.

difficulty in cancellation, and failure to obtain consumers' express, affirmative consent.<sup>77</sup> The proposed rule amendment covers a broad scope of recurring subscriptions and similar arrangements in all media to ensure that sellers provide important information about these contracts up front, obtain consumers' express informed consent, and provide simple cancellation mechanisms to allow consumers to easily cancel unwanted subscriptions.

Attacking specific problems in this area, the Commission recently sued Amazon for its alleged use of dark patterns to trick consumers into signing up for automatically renewing Prime subscriptions and for knowingly making it difficult for Prime subscribers to cancel their memberships.<sup>78</sup> This matter remains in active litigation.

## **8. Expanding Consumer and Business Education**

The FTC's Every Community Initiative represents the agency's coordinated effort to ensure that the FTC is responsive to the needs of historically underserved communities. Through this initiative, the agency has provided historically underserved communities with practical, language-appropriate, and user-friendly educational resources and information to help them spot, avoid, and report scams.<sup>79</sup> The FTC continues to translate all its consumer education materials

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<sup>77</sup> Press Release, Fed. Trade Comm'n, Federal Trade Commission Proposes Rule Provision Making It Easier for Consumers to 'Click to Cancel' Recurring Subscriptions and Memberships (Mar. 23, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/federal-trade-commission-proposes-rule-provision-making-it-easier-consumers-click-cancel-recurring>.

<sup>78</sup> Press Release, Fed. Trade Comm'n, FTC Takes Action Against Amazon for Enrolling Consumers in Amazon Prime Without Consent and Sabotaging Their Attempts to Cancel (June 21, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-takes-action-against-amazon-enrolling-consumers-amazon-prime-without-consent-sabotaging-their>.

<sup>79</sup> See, e.g., FTC, *Consumer Issues Affecting American Indian and Alaska Native Communities* (2023), <https://www.ftc.gov/reports/consumer-issues-affecting-american-indian-alaska-native-communities> (describing expanded targeted education and outreach efforts with American Indian/Alaska Native (AI/AN) communities nationwide). Agency staff also employed listening sessions with sources trusted in AI/AN communities, built ongoing partnerships with tribal governments and organizations serving AI/AN populations, and created a website—as directed by Congress—to share information on the issues raised. See <https://consumer.ftc.gov/features/native-american-communities-spot-avoid-and-report-scams>.



into Spanish and recently expanded its reach to speakers of other languages.<sup>80</sup> All of these Every Community education and outreach efforts are supported by ethnic media telebriefings, in-person roundtables, and paid media campaigns that have led to millions of impressions through print, radio, and digital media.

## **B. Safeguarding Consumer Privacy and Strengthening Data Security, and Combatting Abuse of Artificial Intelligence**

The FTC is taking bold steps to safeguard consumer data and move away from the “notice and choice” privacy model. We are particularly focused on health data, children and teens, data security, and market-wide initiatives to strengthen privacy and data security.

### **1. Protecting Consumers’ Sensitive Health Data**

The FTC is taking action to address the privacy of health data where HIPAA does not apply, including data shared with direct-to-consumer health websites and apps that can reveal consumers’ medications, visits to providers, and health conditions.

First, the FTC is taking action to ensure that geolocation data that reveals health conditions and other sensitive information is not indiscriminately sold to the highest bidder. In the summer of 2022, FTC staff warned the marketplace that we were prepared to bring enforcement actions to halt the illegal use and sharing of consumers’ geolocation data.<sup>81</sup> Last August, we filed a complaint against Kochava, Inc., alleging that the data broker compiled massive amounts of users’ geolocation data and then sold it in a format that makes it easy to

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<sup>80</sup> See <https://consumer.ftc.gov/features/languages>. The 12 languages include: Amharic, Arabic, Chinese (Simplified and Traditional), French, Hmong, Korean, Russian, Somali, Spanish, Tagalog, Ukrainian, and Vietnamese.

<sup>81</sup> Kristin Cohen, *Location, Health, and Other Sensitive Information: FTC Committed to Fully Enforcing the Law Against Illegal Use and Sharing of Highly Sensitive Data*, FTC Business Blog (July 11, 2022), <https://www.ftc.gov/business-guidance/blog/2022/07/location-health-and-other-sensitive-information-ftc-committed-fully-enforcing-law-against-illegal>.

track users' visits to sensitive locations, such as doctors' offices, houses of worship, and temporary shelters for domestic violence survivors.<sup>82</sup> This matter remains in active litigation.

The FTC has also brought three groundbreaking actions barring consumer-facing health providers from sharing sensitive health data for advertising purposes. In *GoodRx*,<sup>83</sup> *BetterHelp*,<sup>84</sup> and *Premom*,<sup>85</sup> the Commission alleged that the companies disclosed their users' personal health information to advertising platforms such as Facebook and Google, without consent and in contravention of their privacy promises. The settlements in these actions included important provisions prohibiting the transfer of data to third parties for advertising purposes, as well as other strong injunctive provisions, including requirements for consent for certain information sharing, data retention limitations, and deletion requirements. The *GoodRx* and *Premom* settlements included civil penalties resulting from the Commission's first enforcement actions under the Health Breach Notification Rule. The *BetterHelp* order includes \$7.8 million in monetary relief that will go back to consumers as partial refunds, another first in a health privacy case.

The Commission has also taken steps to combat unfair or deceptive acts or practices related to the collection and use of consumers' biometric information and the marketing and use

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<sup>82</sup> Press Release, Fed. Trade Comm'n, FTC Sues Kochava for Selling Data that Tracks People at Reproductive Health Clinics, Places of Worship, and Other Sensitive Locations (Aug. 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-sues-kochava-selling-data-tracks-people-reproductive-health-clinics-places-worship-other>.

<sup>83</sup> Press Release, Fed. Trade Comm'n, FTC Enforcement Action to Bar GoodRx from Sharing Consumers' Sensitive Health Info for Advertising (Feb. 1, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-enforcement-action-bar-goodrx-sharing-consumers-sensitive-health-info-advertising>.

<sup>84</sup> Press Release, Fed. Trade Comm'n, FTC to Ban BetterHelp from Revealing Consumers' Data, Including Sensitive Mental Health Information, to Facebook and Others for Targeted Advertising (Mar. 2, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-ban-betterhelp-revealing-consumers-data-including-sensitive-mental-health-information-facebook>.

<sup>85</sup> Press Release, Fed. Trade Comm'n, Ovulation Tracking App Premom Will be Barred from Sharing Health Data for Advertising Under Proposed FTC Order (May 17, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ovulation-tracking-app-premom-will-be-barred-sharing-health-data-advertising-under-proposed-ftc>.

of biometric information technologies. In May, the Commission issued a policy statement concerning the use of biometric information technologies.<sup>86</sup> The policy statement warns that false or unsubstantiated claims about the accuracy or efficacy of biometric information technologies or about the collection and use of biometric information may violate the FTC Act. The policy statement also warns that a business’s use of biometric information or biometric information technology could be unfair in violation of the FTC Act if the business fails to, among other things, assess foreseeable risks to consumers before collecting biometric information and promptly address those risks. In addition, in June, the Commission brought an action against the genetic testing firm 1Health.io,<sup>87</sup> alleging that the company left sensitive genetic and health data unsecured, deceived consumers about their ability to delete their data, and unlawfully changed its privacy policy by retroactively expanding the types of third parties with which it may share consumers’ data.

## **2. Protecting Children and Teens**

Online services can pose unique risks to children and teens, and the FTC is taking an expansive look at how to protect minors from digital harms, both through the Children’s Online Privacy Protection Act Rule (“COPPA”), which protects children under 13, as well as through Section 5 of the FTC Act. For example, we brought a law enforcement action against Epic Games, Inc. (“Epic”)—creator of the popular video game “Fortnite”—alleging that Epic violated COPPA<sup>88</sup> and engaged in an unfair practice by employing default settings that connected

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<sup>86</sup> Policy Statement of the Federal Trade Commission on Biometric Information and Section 5 of the Federal Trade Commission Act (2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/p225402biometricpolicystatement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/p225402biometricpolicystatement.pdf).

<sup>87</sup> Press Release, Fed. Trade Comm’n, FTC Says Genetic Testing Company 1Health Failed to Protect Privacy and Security of DNA Data and Unfairly Changed its Privacy Policy (June 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-says-genetic-testing-company-1health-failed-protect-privacy-security-dna-data-unfairly-changed>.

<sup>88</sup> Press Release, Fed. Trade Comm’n, Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars Over FTC Allegations of Privacy Violations and Unwanted Charges (Dec. 19, 2022),

children and teens via voice and text chat to strangers, exposing them to psychological harm.<sup>89</sup> This action ultimately resulted in a federal court order securing strong and novel relief for consumers—requiring Epic to adopt strong default privacy settings for children and teens, implement a privacy program subject to outside assessments, and pay a \$275 million civil penalty, the largest ever under COPPA.

The Commission also is committed to preventing data abuses around educational technology services and last year issued a policy statement making clear that we would use our full set of authorities to hold firms accountable. Last year, we brought an enforcement action against online learning platform Chegg, Inc., for allegedly failing to properly protect sensitive employee and user data, leading to several data breaches that exposed the personal data of millions of customers. Now under FTC order, Chegg is required to implement strong data security measures, including documenting and following a data collection and retention schedule, providing multifactor authentication or an equivalent authentication method to its customers and employees, and providing customers with access and deletion rights for the information that Chegg collects about them.<sup>90</sup>

The Commission also announced three significant actions under COPPA in recent months. First, we brought an enforcement action against Amazon, alleging that the company

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<https://www.ftc.gov/news-events/news/press-releases/2022/12/fortnite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>.

<sup>89</sup> The FTC is considering steps to deepen this work, including retaining psychologists and youth development experts to allow the agency to analyze conduct, assess harms and remedies, and pursue studies with an interdisciplinary approach, including conduct affecting children. FTC, Federal Trade Comm’n Annual Performance Report for Fiscal Year 2021 and Annual Performance Plan for Fiscal Years 2022 to 2023 [hereinafter “FTC FY22-23 Annual Performance Report”] at 79, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/21apr\\_22-23app.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/21apr_22-23app.pdf); FTC, Federal Trade Comm’n Strategic Plan for Fiscal Years 2022-2026 [hereinafter “FTC FY22-26 Strategic Plan”] at 24, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf).

<sup>90</sup> Press Release, Fed. Trade Comm’n, FTC Brings Action Against Ed Tech Provider Chegg for Careless Security that Exposed Personal Data of Millions of Customers (Oct. 31, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-brings-action-against-ed-tech-provider-chegg-careless-security-exposed-personal-data-millions>.

violated COPPA and deceived parents and users of the Alexa voice assistant service by preventing parents from using their deletion rights, keeping sensitive voice and geolocation data for years, and using it for its own purposes, while putting data at risk of harm from unnecessary access.<sup>91</sup> This action made clear that indefinitely retaining data to feed algorithms violates COPPA's ban on indefinite retention of children's data. The Commission and the DOJ negotiated a strong proposed federal court order that requires Amazon to pay a \$25 million civil penalty, delete inactive child accounts and certain voice recordings and geolocation information, and prohibits the company from using such data to train its algorithms.<sup>92</sup> Second, the Commission charged Microsoft<sup>93</sup> with violating COPPA in connection with its Xbox account registration. To resolve the charges, Microsoft agreed to an order requiring it to pay a \$20 million civil penalty and make a number of changes to better protect the privacy of child Xbox users. And the Commission brought a COPPA enforcement action against education technology provider Edmodo for allegedly collecting personal data from children without obtaining their parents' consent, using that data for advertising, and unlawfully outsourcing its COPPA compliance responsibilities to schools. Under the order, Edmodo is, among other things,

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<sup>91</sup> Press Release, Fed. Trade Comm'n, FTC and DOJ Charge Amazon with Violating Children's Privacy Law by Keeping Kids' Alexa Voice Recordings Forever and Undermining Parents' Deletion Requests (May 31, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings-forever>.

<sup>92</sup> Press Release, Fed. Trade Comm'n, FTC and DOJ Charge Amazon with Violating Children's Privacy Law by Keeping Kids' Alexa Voice Recordings Forever and Undermining Parents' Deletion Requests (May 31, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings-forever>.

<sup>93</sup> See Press Release, FTC, *FTC Will Require Microsoft to Pay \$20 Million over Charges it Illegally Collected Personal Information from Children Without Their Parent's Consent* (June 5, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-will-require-microsoft-pay-20-million-over-charges-it-illegally-collected-personal-information>.

prohibited from requiring students to hand over more personal data than is necessary in order to participate in an online educational activity, which is a first for an FTC order.<sup>94</sup>

### 3. Strengthening Data Security

The best way for firms to protect consumers' data is to not collect it in the first place. Accordingly, several recent Commission data security orders mandate restrictions on what data firms can collect and retain. For example, our recent order against the online alcohol marketplace Drizly, LLC requires the company to minimize the data it collects and keeps from consumers.<sup>95</sup> Likewise, the settlement with online merchandise platform CafePress requires the company to implement policies to minimize the data it collects, stores, and retains. The CafePress settlement order also requires the company to use secure multi-factor authentication methods.<sup>96</sup>

The Commission also recently took action against home security camera company Ring, alleging that it compromised its customers' privacy by allowing any employee or contractor to access consumers' private videos and failed to implement basic privacy and security protections, enabling hackers to take control of consumers' accounts, cameras, and videos.<sup>97</sup> We obtained a federal court order against Ring that requires it to pay \$5.8 million, which will be used for consumer refunds, to implement a privacy and data security program, and to delete certain

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<sup>94</sup> Press Release, Fed. Trade Comm'n, FTC Says Ed Tech Provider Edmodo Unlawfully Used Children's Personal Information for Advertising and Outsourced Compliance to School Districts (May 22, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ed-tech-provider-edmodo-unlawfully-used-childrens-personal-information-advertising>.

<sup>95</sup> Press Release, Fed. Trade Comm'n, FTC Takes Action Against Drizly and its CEO James Cory Rellas for Security Failures that Exposed Data of 2.5 Million Consumers (Oct. 24, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-takes-action-against-drizly-its-ceo-james-cory-rellas-security-failures-exposed-data-25-million>. The Drizly settlement also names the CEO, and thus imposes separate obligations on him which will follow him beyond Drizly, underscoring the need for C-Suite attention to data security obligations.

<sup>96</sup> Press Release, Fed. Trade Comm'n, FTC Takes Action Against CafePress for Data Breach Cover Up (Mar. 15, 2022), [www.ftc.gov/news-events/news/press-releases/2022/03/ftc-takes-action-against-cafepress-data-breach-cover](https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-takes-action-against-cafepress-data-breach-cover).

<sup>97</sup> Press Release, Fed. Trade Comm'n, FTC Says Ring Employees Illegally Surveilled Customers, Failed to Stop Hackers from Taking Control of Users' Cameras (May 31, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ring-employees-illegally-surveilled-customers-failed-stop-hackers-taking-control-users>.

customer videos and data collected from an individual's face and any work products it derived from the videos.

#### **4. Combatting Abuse of Artificial Intelligence**

As companies race to deploy and monetize artificial intelligence, the Commission is taking a close look at how we can best achieve our dual mandate to promote fair competition and to protect Americans from unfair or deceptive practices. As these technologies evolve, we are committed to doing our part to uphold America's longstanding tradition of maintaining the open, fair, and competitive markets that have underpinned both breakthrough innovations and our nation's economic success—without tolerating business models or practices involving the mass exploitation of their users. Although these tools are novel, they are not exempt from existing rules, and the Commission will vigorously enforce the laws we are charged with administering, even in this new market.

Artificial intelligence promises to have a profound impact on many aspects of our society, with vast implications for how people live, work, and communicate. The benefits of AI, though, are accompanied by serious risks; AI misuse can violate consumers' privacy, automate discrimination and bias, and turbocharge imposter schemes and other types of scams. And the rapid development and deployment of AI risks further locking in the market dominance of large incumbent technology firms. The Commission will vigorously use the full range of our authorities to protect consumers from deceptive and unfair conduct and maintain open, fair, and competitive markets in this rapidly evolving technology. Through blog posts and other public pronouncements, the agency is providing timely analysis to market participants and the public. The Commission is poised to move aggressively against businesses that engage in deceptive or unfair acts involving AI and to help ensure that illegal practices do not undermine competition and innovative uses of AI.

## C. Ensuring Fairness for Workers, Entrepreneurs, and Small Businesses

As American workers and small businesses attempt to recover from the effects of the pandemic, the Commission is taking a comprehensive approach—through enforcement, rulemaking, and advocacy—to ensuring that they are not held back by unfair or deceptive practices.

### 1. Ensuring Domestic Manufacturers Can Compete Fairly

As many firms look to onshore production and as many consumers look to buy “Made in America” goods, the FTC is taking comprehensive action to protect the integrity of the label and ensure a level playing field for domestic manufacturers. In 2021, the Commission finalized a rule that prohibits the misuse of the “Made in America” label, and the Commission is already taking action to enforce this rule. For example, in 2022, the Commission charged a manufacturer of lithium-ion batteries with falsely labeling its products as “Made in America.”<sup>98</sup> Months later, the Commission charged a seller of falsely advertised personal protective equipment.<sup>99</sup> And, most recently, the Commission sued a motocross and ATV parts maker alleging that it falsely labeled its products as “Made in USA.”<sup>100</sup>

Marketers making false “Made in USA” claims covered by other laws and rules that the FTC enforces also can expect consequences. For example, in the past year we charged companies with making false claims for imported textile products such as apparel and bedding.<sup>101</sup>

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<sup>98</sup> See *United States v. Lithionics Battery, LLC*, No. 8:22-cv-00868 (M.D. Fla. 2022) (imposing a civil penalty of treble profits on sales of deceptively marketed battery products).

<sup>99</sup> See *United States v. Axis LED Group, LLC*, No. 3:22-cv-01389 (N.D. Ohio 2022) (imposing a civil penalty and suspended redress judgment based on sales of falsely labeled PPE and LED products).

<sup>100</sup> Press Release, Fed. Trade Comm’n, FTC Finalizes Order Against Motocross and ATV Parts Maker Cycra for False Made in USA Claims (June 2, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-finalizes-order-against-motocross-atv-parts-maker-cycra-false-made-usa-claims>.

<sup>101</sup> See *In re Lions Not Sheep Products, LLC*, Docket No. C-4772 (July 28, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/C4772%20Decision%20and%20Order.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/C4772%20Decision%20and%20Order.pdf) (imported apparel products relabeled as “Made in USA”); *In re Electrowarmth Products, LLC*, Docket No. C-4779 (Oct. 25, 2022) (imported bedding products entering the USA pre-labeled as “Made in USA”), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/222-3096-Electrowarmth-Decision-and-Order.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/222-3096-Electrowarmth-Decision-and-Order.pdf).



We also recently sued a manufacturer of glass baking products for continuing to advertise its products as “Made in USA” during a shift to overseas production at the height of the pandemic.<sup>102</sup> The FTC continues to carefully monitor the market for false “Made in America” claims and will use all available tools to ensure scammers who cheat consumers, honest businesses, and American workers face heavy consequences for their lawbreaking.

## **2. Combatting Unfair or Deceptive Practices Affecting Gig Workers**

The Commission is making clear that regardless of whether gig workers are treated as employees or independent contractors under labor laws, they are fully protected by the FTC’s prohibition on unfair or deceptive practices. Last year, the Commission issued a policy statement highlighting how traditional principles of consumer protection and competition apply in the gig economy,<sup>103</sup> and the Commission continues to investigate potential law violations and bring enforcement actions to ensure fairness for these workers. Earlier this year, for example, the Commission issued an order requiring HomeAdvisor to pay up to \$7.2 million to contractors who may have been harmed by deceptive claims about the quality and source of the leads the company sells.<sup>104</sup>

## **3. Allowing Consumers to Repair their Products and Giving Independent Repairers a Chance to Compete**

In May 2021, the Commission submitted a report to Congress entitled *Nixing the Fix: An FTC Report to Congress on Repair Restrictions*.<sup>105</sup> In the report, the Commission found “scant

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<sup>102</sup> *In re Instant Brands LLC*, Docket No. C-4788 (Mar. 1, 2023) (imported glass measuring cups advertised as “Made in USA”).

<sup>103</sup> See FTC, Policy Statement on Enforcement Related to Gig Work (Sept. 15, 2022), <https://www.ftc.gov/legal-library/browse/policy-statement-enforcement-related-gig-work>.

<sup>104</sup> See Press Release, Fed. Trade Comm’n, FTC Approves Final Order Against HomeAdvisor, Inc. for Deceptively Marketing Its Leads for Home Improvement Projects (Apr. 21, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-approves-final-order-against-homeadvisor-inc-deceptively-marketing-its-leads-home-improvement>.

<sup>105</sup> FTC, *Nixing the Fix: An FTC Report to Congress on Repair Restrictions* (May 2021), [https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing\\_the\\_fix\\_report\\_final\\_5521\\_630pm-508\\_002.pdf](https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf).

evidence” to support manufacturers’ justifications for repair restrictions.<sup>106</sup> The Commission followed this report with three major actions against companies for allegedly imposing unlawful repair restrictions on consumers.<sup>107</sup> The Commission also is exploring other avenues to strengthen consumers’ right to repair, including by supporting state efforts<sup>108</sup> and seeking comment on whether manufacturers should be required to provide consumers with repair instructions.<sup>109</sup>

#### **4. Protecting Franchisees from Unfair or Deceptive Practices**

The agency continues to take an integrated approach to franchise issues, undertaking both enforcement and policy initiatives. Last year, for example, we partnered with the DOJ to file a suit against fast-food chain BurgerIM, alleging that the chain made false promises and withheld information required by the Franchise Rule to persuade more than 1,500 consumers, some of them veterans, to purchase franchises.<sup>110</sup> Earlier this year, the agency issued a Request for Information (“RFI”) related to franchise agreements and franchisor business practices.<sup>111</sup> The RFI seeks information about the means by which franchisors may exert control over franchisees and their workers. Earlier this year we also launched a consumer education blog series entitled Franchise Fundamentals, in which we highlight for prospective franchisees factors they should

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<sup>106</sup> *Id.* at 6.

<sup>107</sup> Press Release, Fed. Trade Comm’n, FTC Approves Final Orders in Right-to-Repair Cases Against Harley-Davidson, MWE Investments, and Weber (Oct. 27, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-approves-final-orders-right-repair-cases-against-harley-davidson-mwe-investments-weber>.

<sup>108</sup> Press Release, Fed. Trade Comm’n, FTC Testifies Before California State Senate on Right to Repair (Apr. 11, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-testifies-california-state-senate-right-repair>.

<sup>109</sup> 87 Fed. Reg. 64,399 (Oct. 25, 2022).

<sup>110</sup> Press Release, Fed. Trade Comm’n, FTC Sues Burger Franchise Company That Targets Veterans and Others with False Promises and Misleading Documents (Feb. 8, 2023), <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-sues-burger-franchise-company-targets-veterans-others-false-promises-misleading-documents>.

<sup>111</sup> Press Release, Fed. Trade Comm’n, Solicitation for Public Comments on Provisions of Franchise Agreements and Franchisor Business Practices (Mar. 10, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-seeks-public-comment-franchisors-exerting-control-over-franchisees-workers>.

consider when deciding whether to purchase a franchise.<sup>112</sup> Finally, we are coordinating closely with DOJ and the National Labor Relations Board, and in December 2021 we filed an amicus brief in a class action suit by 7-Eleven franchisees in which we successfully argued that the FTC’s Franchise Rule does not address whether franchisees are employees under Massachusetts law.

## 5. Shining a Light on Small Business Credit Reports

Credit reports can be make-or-break for small businesses. To better understand this opaque market, the FTC recently voted to issue orders under Section 6(b) of the FTC Act to five business credit reporting agencies, requiring that they provide information about: (1) how they collect and report data on small businesses; (2) how they market their business credit reporting products; and (3) whether and how they address factual errors in the reports.<sup>113</sup> The 6(b) study will shine a needed light on an industry that has not been reported on extensively but can be critical to the survival of a smaller firm. It will also advance the agency’s broader effort to ensure a fair shot in the marketplace for small businesses and entrepreneurs. The 6(b) study follows the FTC’s April 2022 complaint against and order with Dun & Bradstreet (“D&B”) in which the FTC alleged, among other things, that D&B reported incorrect information about small businesses then failed to provide a clear, consistent, and reliable way for those businesses to get

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<sup>112</sup> Franchise Fundamentals: Debunking Five Myths About Buying a Franchise, <https://www.ftc.gov/business-guidance/blog/2023/04/franchise-fundamentals-debunking-five-myths-about-buying-franchise>; Franchise Fundamentals: Researching Franchise Opportunities, <https://www.ftc.gov/business-guidance/blog/2023/05/franchise-fundamentals-researching-franchise-opportunities>; Franchise Fundamentals: Taking a deep dive into the Franchise Disclosure Documents, <https://www.ftc.gov/business-guidance/blog/2023/05/franchise-fundamentals-taking-deep-dive-franchise-disclosure-document>.

<sup>113</sup> In March 2023, the FTC issued 6(b) orders to D&B, Experian Information Solutions, Equifax, Ansonia Credit Data, and Creditsafe USA. See Press Release, Fed. Trade Comm’n, FTC Launches Inquiry into Small Business Credit Reports (Mar. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-launches-inquiry-small-business-credit-reports>.

corrections.<sup>114</sup> D&B is now subject to an order that bars it from misrepresenting certain types of credit improvement products and mandates better processes for businesses to correct errors.

#### IV. RESOURCE CONSTRAINTS AND LEGAL CHALLENGES

Despite the many successes highlighted above, we also want to highlight significant headwinds the Commission faces. First, as our work illustrates, Congress has charged the FTC with policing unlawful conduct across a broad swath of the U.S. economy. Although we are at the front lines of many of the most pressing economic issues Americans face today, the number of full-time employees we plan to have at the end of FY2023 will be about 80% of the number we had at the beginning of 1980, while the nation's GDP has increased six-fold.<sup>115</sup> Demands on the Commission continue to grow as we review corporate mergers,<sup>116</sup> conduct more complex and expensive litigation, receive consumer complaints,<sup>117</sup> try to stay abreast of transformative technological and market changes, and respond to burgeoning requests for research and

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<sup>114</sup> Decision and Order, *In re Dun & Bradstreet*, Docket No. C-4761, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/172%203196%20Dunn%20and%20Bradstreet%20combined%20package%20unsigned\\_0.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/172%203196%20Dunn%20and%20Bradstreet%20combined%20package%20unsigned_0.pdf).

<sup>115</sup> For example, as of March 2022, the UK's Information Commissioner's Office, the principal privacy enforcement agency in the UK, had 944 permanent staff. See Information Commissioner's Office, Information Commissioner's Annual Report and Financial Statements 2021-22 (July 2022) at 107, <https://ico.org.uk/media/about-the-ico/documents/4021039/ico-annual-report-2021-22.pdf>. Ireland's Data Protection Commission, responsible for enforcing the European privacy regulation, had 196 employees as of December 2022. See Data Protection Commission, Annual Report 2022 at 53, [https://www.dataprotection.ie/sites/default/files/uploads/2023-03/DPC%20AR%20English\\_web.pdf](https://www.dataprotection.ie/sites/default/files/uploads/2023-03/DPC%20AR%20English_web.pdf). By contrast, the Federal Trade Commission's Division of Privacy and Identity Protection currently has just 48 employees. Although it is true that FTC employees in other units, including the regional offices, the Division of Enforcement, and the Division of Marketing Practices, contribute to the Commission's security and privacy efforts, the total number of FTC employees working on these issues is dwarfed by our European counterparts.

<sup>116</sup> As reflected in the annual report on the Hart-Scott-Rodino premerger program, the agencies reviewed an overwhelming number of HSR-reportable transactions in FY 2021 and issued more "Second Requests" for additional information from the merging parties than the year before, signaling a significant increase in the merger workload. See Press Release, Fed. Trade Comm'n, FTC, DOJ Issue Fiscal Year 2021 Hart Scott Rodino Premerger Notification Report (Feb. 10, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-doj-issue-fiscal-year-2021-hart-scott-rodino-premerger-notification-report>. While the number of HSR filings have fallen since the FY2021 peak, they remain high, with filings for over 3200 transactions in FY2022. (Monthly HSR numbers are posted on the FTC website at <https://www.ftc.gov/enforcement/premerger-notification-program>).

<sup>117</sup> See, e.g., Press Release, Fed. Trade Comm'n, New FTC Data Show Consumers Reported Losing Nearly \$8.8 Billion to Scams in 2022, <https://www.ftc.gov/news-events/news/press-releases/2023/02/new-ftc-data-show-consumers-reported-losing-nearly-88-billion-scams-2022>.

investigation of various economic sectors. While we constantly strive to enforce the law to the best of our capabilities, there is no doubt that—despite the much-needed increased appropriations Congress has provided in recent years—we continue to lack sufficient funding. We seek to work with Congress to ensure that the Commission has the resources and tools it needs to vigorously protect the American people.

Second, the FTC faces several significant legal challenges to statutory authorities that have been important tools in executing our mission. The Supreme Court issued its decision in *AMG Capital Management v. FTC* in April 2021, upending decades of lower court rulings that had held that Section 13(b) of the FTC Act enabled the FTC to pursue equitable monetary relief in federal court. Practically, *AMG* ended the FTC’s ability to seek monetary relief for consumers in competition matters, most concretely in cases involving anticompetitive conduct by drug companies. In some consumer protection cases, Section 19 of the Federal Trade Commission Act allows the Commission to seek refunds for consumers in federal court either for certain rule violations or in some cases after an administrative proceeding. While this avenue has always been more limited than Section 13(b), it may now face further constraints in light of various legal challenges to the administrative process. Simply put, some companies that profited by deceiving consumers are now able to keep that money.<sup>118</sup> That makes restoring our ability to use Section 13(b) to provide redress to consumers for law violations all the more important.

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<sup>118</sup> See, e.g., Press Release, Fed. Trade Comm’n, FTC Order to Bar Zycal Bioceticals from Deceptive Health Marketing (Feb. 6, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-order-bar-zycal-bioceticals-deceptive-health-marketing> (“Unfortunately, the Supreme Court decision in *AMG Capital Management* prevented us from obtaining refunds for consumers in this case. The Commission has urged Congress to enact legislation to restore the agency’s ability to obtain critical relief for consumers through federal court actions.”); Press Release, Fed. Trade Comm’n, Federal Court Rules in Favor of FTC, Halting Illegal Tactics Used to Promote Smoking Cessation, Weight-Loss, and Sexual-Performance Aids (Mar. 25, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/federal-court-rules-favor-ftc-halting-illegal-tactics-used-promote-smoking-cessation-weight-loss> (“[D]espite the fact that the FTC presented evidence that consumers lost \$18.2 million to the defendants’ deceptive marketing, the court declined to order any compensation because of [the] Supreme Court’s ruling in the case of *AMG v. FTC*, which undercuts the agency’s authority to obtain such consumer redress”).

## **V. CONCLUSION**

The FTC remains committed to marshalling its resources efficiently in order to effectively protect Americans from unfair or deceptive practices and unfair methods of competition. We look forward to continuing to work with you, and we would be happy to answer your questions.