

**PREPARED STATEMENT OF THE
FEDERAL TRADE COMMISSION**

**“FEDERAL TRADE COMMISSION: PROTECTING CONSUMERS AND FOSTERING
COMPETITION IN THE 21ST CENTURY”**

**Before the
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
UNITED STATES HOUSE OF REPRESENTATIVES**

WASHINGTON, D.C.

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I. INTRODUCTION

Chairman Quigley, Ranking Member Graves, and members of the Subcommittee, I am Joseph Simons, Chairman of the Federal Trade Commission (“FTC” or “Commission”), and I am pleased to appear before you today to testify about the Commission’s FY 2020 appropriations request and its work to protect consumers and promote competition.¹

The FTC is an independent agency with three main bureaus: the Bureau of Consumer Protection (“BCP”); the Bureau of Competition (“BC”); and the Bureau of Economics (“BE”), which supports both BCP and BC. The FTC is the only federal agency with a broad mission to both protect consumers and maintain competition in most sectors of the economy. Its jurisdiction includes privacy and data security, consumer fraud, mergers and acquisitions, and anticompetitive tactics by pharmaceutical and other companies. We enforce the law across a range of sectors, including health care, high technology, and emerging industries. The FTC has a long history of bipartisanship and cooperation, and we work hard to maintain it.

The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act² and enforces a wide variety of other laws, ranging from the Clayton Act to the Fair Credit Reporting Act. In total, the Commission has enforcement or other responsibilities under more than 75 laws.³ The Commission pursues a vigorous and effective law enforcement program, and the impact of its work is significant. Its competition enforcement program is critically important to maintaining competitive markets across the country: vigorous competition results in lower prices, higher quality goods and services, and innovative and beneficial new products and services.

¹ This written statement presents the views of the Federal Trade Commission. My oral statement and responses to questions are my own and do not necessarily reflect the views of the Commission or any other Commissioner.

² 15 U.S.C. § 41, *et seq.*

³ See <https://www.ftc.gov/enforcement/statutes>.

The FTC also investigates and prosecutes those engaging in unfair or deceptive acts or practices, and seeks to do so without impeding lawful business activity. The agency has a varied toolkit to advance its mission. For example, the Commission collects consumer complaints from the public and maintains one of the most extensive consumer protection complaint databases, Consumer Sentinel. The FTC and other federal, state, and local law enforcement agencies use these complaints in their law enforcement and policy efforts. The FTC also has rulemaking authority. In addition to the FTC's Magnuson-Moss rulemaking authority, Congress has given the agency discrete rulemaking authority under the Administrative Procedure Act ("APA") over specific topics. The agency regularly analyzes its rules, including seeking public feedback, to ensure their continued efficacy. The FTC also educates consumers and businesses to encourage informed consumer choices, compliance with the law, and public understanding of the competitive process.

To complement these enforcement and public education efforts, the FTC pursues a consumer protection and competition policy and research agenda to improve agency decision-making, and engages in advocacy and education initiatives. Last fall, the Commission began its *Hearings on Competition and Consumer Protection in the 21st Century*.⁴ This extensive series of public hearings explored whether broad-based changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to competition and consumer protection law, enforcement priorities, and policy. These hearings underscore the unique role that the FTC plays in the development of sound competition and consumer protection policy. We asked for public comment on a substantial set of questions and topics, and we are now taking into account the

⁴ See generally <https://www.ftc.gov/policy/hearings-competition-consumer-protection>.

submitted comments and public testimony as well as the FTC's experience, judicial decisions, and academic writings as we create our output. This output will include, among other things, a guidance document on the application of the antitrust laws to technology platform conduct; a guidance document on vertical mergers; a review of the economic literature on "common ownership" or horizontal shareholding; and guidance on how the consumer welfare prescription has been interpreted by the courts and whether it is sufficient to prevent anticompetitive mergers and prohibit anticompetitive conduct.

This testimony provides a brief overview of the FTC's budget and resources. It discusses the FTC's work to protect U.S. consumers and competition, including highlights of some of the agency's major recent activities and initiatives. It also reviews the Commission's international efforts to protect consumers and promote competition.

II. BUDGET AND RESOURCES

In FY 2019, the FTC's enacted budget is \$309.7 million and 1,140 FTEs. For FY 2020, the FTC is requesting \$312.3 million and 1,140 FTEs. The FTC's budget request assumes that total offsetting collections from Hart-Scott-Rodino ("HSR") filing fees and Do Not Call fees will provide the FTC with \$151 million in FY 2020. As a result, in order to meet the requested \$312.3 million amount in FY 2020, an estimated \$161.3 million in direct appropriations would be required.

The agency continues to use its resources effectively and efficiently on behalf of American consumers. When possible, the agency collects money to return to harmed consumers. The agency estimates how much money it has saved consumers through law enforcement in comparison to the FTC's costs. In recent years, the agency saved consumers on average \$38.90 for every \$1 of resources devoted to the consumer protection program;

\$50.16 for every \$1 of resources devoted to the merger program; and \$40.12 for every \$1 of resources devoted to the nonmerger antitrust enforcement program. As noted below, we also return money to U.S. taxpayers through civil penalties.

The FTC greatly appreciates the additional \$40 million in funding your Subcommittee's FY2020 appropriations bill, H.R. 3351, would provide for the Commission next year. While this would be a significant increase to the agency's budget, the agency would need to use a significant portion of the additional funding just for mandatory compensation increases, such as the cost of any pay raise in FY 2020, and inflationary costs to the agency's non-compensation budget. The additional money could be used to support new hiring, though it is challenging to allocate such funds without confidence that similar funding will continue.

As the FTC explained in its FY2019 Congressional Budget Justification ("CBJ"), expert witness contracts are an increasing need in light of the growing number of complex investigations and litigation in both competition and consumer protection matters. As a result, we face significantly higher costs to obtain the kinds of outside experts that we need to support our cases. For example, in competition cases, we require experts to opine on complex issues including: proper product and geographic market definitions; anticompetitive effects resulting from a merger or anticompetitive conduct; efficacy of economic models used to evaluate various antitrust issues; and potential efficiencies associated with any merger or challenged business practice. Consumer protection cases often require experts to opine on scientific, data security and privacy, and advertising issues. Experts also assist with calculating appropriate monetary relief. It is critical that the FTC have sufficient resources to support expert work in litigation, particularly in cases against large, well-financed

defendants.

In addition to the growing need for experts, the agency also explained in its CBJ that it requires additional resources to modernize our IT infrastructure. In support of the IT modernization program, the FTC requests funding to update the Commission's portfolio of direct mission applications, as outlined in the agency's Information Resources Management ("IRM") Strategic Plan.⁵ These applications support operations that are necessary for the successful execution of the FTC's mission, such as the HSR Premerger Filing Program and the collection and management of consumer redress funds.

Notably, many of the agency's processes still involve manual paperwork and employee intervention to complete an activity. For example, the current HSR premerger filing process requires a significant amount of time-consuming manual input from the public, FTC employees, and other federal agencies. The HSR premerger filing process starts when a merging party submits a hard copy of the HSR form, called an HSR filing, to the FTC and Department of Justice ("DOJ"). The entire filing, including attachments, often runs to hundreds of pages. After receiving the HSR filing, FTC staff must manually enter the information provided in the filing into the premerger software. After all this information is inputted manually, the software tracks the status of the filing through the review process. A modernized version of the premerger software would allow filers to submit premerger filings online and streamline internal workflow to track the transaction through the entire merger review process. This would significantly decrease the burden on filers by allowing them to submit filings online and would eliminate the manual steps taken by the FTC and DOJ. Projects such as the digitalization of the HSR premerger filing would also directly support FTC's compliance with the recently enacted 21st

⁵ FTC Information Resource Management (IRM) Strategic Plan for FY2019-2022. The IRM provides strategic direction for the use of IT resources that support the agency's evolving mission and business needs.

Century IDEA Act.

III. CONSUMER PROTECTION MISSION

As the nation’s primary consumer protection agency, the FTC has a broad mandate to protect consumers from unfair and deceptive practices in the marketplace, including fraud. We do this by, among other things, pursuing law enforcement actions to stop and deter unlawful practices, and educating consumers and businesses about their rights and responsibilities. The FTC’s enforcement and education efforts include working closely with federal, state, international, and private sector partners on joint initiatives. Among other issues, the FTC works to protect privacy and data security, helps ensure that advertising claims to consumers are truthful and not misleading, addresses fraud across most sectors of the economy, and combats illegal robocalls.

The FTC’s law enforcement orders prohibit defendants from engaging in further illegal activity, impose other compliance obligations, and in some cases, ban defendants from engaging in certain businesses altogether. Where appropriate, the FTC collects money to return to harmed consumers. During FY 2018, Commission actions resulted in over \$1.6 billion being returned to consumers. Through the third quarter of FY 2019, Commission actions resulted in over \$789 million being returned to consumers. Specifically, the Commission returned more than \$459.6 million in redress to consumers, and the FTC defendants paid an additional \$317.3 million through self-administered consumer refund programs required by prior FTC settlements.⁶ The FTC also collected civil penalties worth more than \$10.8 million and forwarded an additional \$1.7 million to the U.S. Treasury through the third quarter of FY 2019—and we negotiated a

⁶ See, e.g., *FTC v. Volkswagen Group of America, Inc.*, No. 3:16-cv-1534 (N.D. Cal. May 17, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/162-3006/volkswagen-group-america-inc>; *FTC et al. v. Green Tree Servicing LLC.*, No.15-cv-02064 (D. Minn. April 4, 2015), <https://www.ftc.gov/enforcement/cases-proceedings/112-3008/green-tree-servicing-llc>; *FTC v. AdoreMe, Inc.*, No. 17-cv-9083 (S.D.N.Y. Nov. 30, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/162-3153/adoreme-inc>.

record-breaking \$5 billion penalty with Facebook. More recently, the Commission and New York Attorney General negotiated a \$170 million penalty against Google and YouTube.

A. Protecting Consumer Privacy and Data Security

Since the enactment of the Fair Credit Reporting Act (“FCRA”)⁷ in 1970, the FTC has served as the chief federal agency charged with protecting consumer privacy. With the development of the Internet as a commercial medium in the 1990s, the FTC expanded its focus on privacy to reflect the growing collection, use, and sharing of consumer data in the commercial marketplace.

The Commission’s primary source of legal authority in the privacy and data security space is Section 5 of the FTC Act, which prohibits deceptive or unfair commercial practices.⁸ Under Section 5 and other authorities granted by Congress, the FTC has aggressively pursued privacy and data security cases in myriad areas, including children’s privacy, financial privacy, health privacy, and the Internet of Things.⁹ To date, the Commission has brought about 70 cases alleging that companies failed to implement reasonable data security safeguards, and about 75 general privacy cases.¹⁰

Section 5, however, is not without its limitations. For example, Section 5 does not allow the Commission to seek civil penalties for the first offense. It also excludes non-profits and common carriers from the Commission’s authority, even when the acts or practices of these market participants have serious implications for consumer privacy and data security. To better

⁷ 15 U.S.C. §§ 1681-1681x. Among other things, the FCRA prohibits the unauthorized disclosure of sensitive data used for credit, employment, and other decisions

⁸ 15 U.S.C. § 45. The Commission also enforces sector-specific statutes containing privacy and data security provisions, such as the Gramm-Leach-Bliley Act (“GLB Act”), Pub. L. No. 106-102, 113 Stat. 1338 (1999) (codified as amended in scattered sections of 12 and 15 U.S.C.), and the Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. §§ 6501-6506.

⁹ See, e.g., FTC Press Release, *FTC Releases 2018 Privacy and Data Security Update*, <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-releases-2018-privacy-data-security-update>.

¹⁰ *Id.* Note that case numbers include cases announced after the release of the 2018 Privacy and Data Security Update.

equip the Commission to meet its statutory mission to protect consumers, we urge Congress to enact privacy and data security legislation, enforceable by the FTC, which grants the agency civil penalty authority, authority to issue targeted rules under the Administrative Procedure Act, and jurisdiction over non-profits and common carriers.¹¹

While the Commission believes new authority could be very beneficial for American consumers, we also will continue to use every tool currently at our disposal to address consumer harm. Most notably, in July, the Commission announced a settlement with Facebook, Inc. resolving a six-count complaint that the company violated a 2012 FTC administrative order by deceiving users about their ability to control the privacy of their personal information, among other things, and also violated the FTC Act.¹² In addition to a \$5 billion penalty for violating the order, the settlement placed additional restrictions and obligations on Facebook's business operations as they relate to privacy.¹³

Another area where the Commission has been active is in protecting children's privacy. The Commission enforces the Children's Online Privacy Protection Act ("COPPA"). This month, the Commission announced a settlement against Google LLC and its subsidiary YouTube, LLC. The settlement resolves charges by the FTC and the New York Attorney General that the YouTube video sharing service illegally collected persistent identifiers that

¹¹ Commissioner Noah Joshua Phillips supports congressional efforts to consider consumer data privacy legislation. He believes legislation should be based on harms that Congress agrees warrant a remedy, and that tools like penalties and rulemaking should be calibrated carefully to address those harms. Commissioner Phillips believes Congress should also give appropriate consideration to the trade-offs involved in new regulation, and, with regard to rulemaking, reserve to itself fundamental value judgments appropriately made by the legislature. Finally, Commissioner Phillips believes data security legislation is a critical step Congress should also take to protect consumer privacy.

¹² FTC Press Release, *FTC Imposes \$5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook* (July 24, 2019), <https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions>.

¹³ Relatedly, the Commission also filed a complaint against Cambridge Analytica, and settlements with a Cambridge Analytica executive and an app developer, relating to the collection, sharing, and/or use of data obtained from Facebook users. See FTC Press Release, *FTC Sues Cambridge Analytica, Settles with Former CEO and App Developer* (July 24, 2019), <https://www.ftc.gov/news-events/press-releases/2019/07/ftc-sues-cambridge-analytica-settles-former-ceo-app-developer>.

are used to track users across the Internet from children without their parents' consent, in violation of COPPA.¹⁴ The defendants agreed to injunctive relief and a \$170 million monetary judgment. And in March, the FTC announced a settlement with the operators of the popular video social networking app Musical.ly, now known as TikTok, for COPPA violations.¹⁵ The FTC alleged that the company collected children's personal information online without first obtaining parental consent. The defendants agreed to pay a \$5.7 million civil penalty.¹⁶

In July, the Commission announced its largest monetary settlement ever in a data security case. Credit reporting agency Equifax Inc. agreed to pay at least \$575 million, and potentially up to \$700 million, as part of a global settlement together with the Consumer Financial Protection Bureau ("CFPB") and 50 U.S. states and territories.¹⁷ The complaint alleged that the company's failure to take reasonable steps to secure its network led to a data breach in 2017 that affected approximately 147 million people, exposing millions of names and dates of birth, Social Security numbers, physical addresses, and other personal information that could lead to identity theft and fraud. In addition to monetary relief, the order requires the company, among other things, to implement a comprehensive information security program and to obtain third-party assessments of that program every two years.

Finally, the Commission continues to bring privacy cases under its Section 5 authority. Last month, the Commission alleged that email management company Unrollme, Inc. falsely

¹⁴ FTC Press Release, *Google and YouTube Will Pay Record \$170 Million for Alleged Violations of Children's Privacy Law* (Sept. 4, 2019), <https://www.ftc.gov/news-events/press-releases/2019/09/google-youtube-will-pay-record-170-million-alleged-violations>.

¹⁵ *U.S. v. Musical.ly, et al.*, No. 2:19-cv-1439 (C.D. Cal. Mar. 27, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3004/musically-inc>.

¹⁶ See also *U.S. v. Unixiz, Inc. d/b/a i-Dressup.com et al.*, No. 5:19-cv-02222 (N.D. Cal. Apr. 24, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3002/unixiz-inc-doing-business-i-dressupcom> (consent order) (alleging that the defendants violated the COPPA Rule by failing to obtain parental consent prior to collecting personal information from children, as well as failing to protect children's personal information).

¹⁷ See FTC Press Release, *Equifax to Pay \$575 Million as Part of Settlement with FTC, CFPB, and States Related to 2017 Data Breach* (July 22, 2019), <https://www.ftc.gov/news-events/press-releases/2019/07/equifax-pay-575-million-part-settlement-ftc-cfpb-states-related>.

told consumers it would not touch their personal emails, when in fact it was sharing the users' email receipts with its parent company. The settlement requires, among other things, that the company delete personal information that it collected while the alleged deception was ongoing.¹⁸

In addition to its enforcement efforts in the privacy and data security areas, the Commission seeks to improve agency decision-making through its policy initiatives. Next month, for example, the Commission is hosting a workshop on the future of COPPA, in connection with a regulatory review examining the effectiveness of the amendments the agency made to the COPPA Rule in 2013 and whether regulatory changes are needed in light of advancements in technology or other developments.¹⁹ In June, the Commission also held its fourth PrivacyCon, an annual event that explores evolving privacy and data security research.²⁰ And this spring, the Commission held a series of panels that specifically addressed consumer privacy and data security as part of its *Hearings on Competition and Consumer Protection in the 21st Century*.²¹

The Commission is also empowered to conduct industry studies under Section 6(b) of the FTC Act, including those related to privacy and data security.²² In March and August, we

¹⁸ See FTC Press Release, *Operator of Email Management Service Settles FTC Allegations that it Deceived Consumers About How it Accesses and Uses Emails*, (Aug. 8, 2019), <https://www.ftc.gov/news-events/press-releases/2019/08/operator-email-management-service-settles-ftc-allegations-it>.

¹⁹ See FTC Press Release, *FTC Seeks Comments on Children's Online Privacy Protection Act Rule; FTC to host workshop on COPPA in October as part of initiative* (July 25, 2019), <https://www.ftc.gov/news-events/press-releases/2019/07/ftc-seeks-comments-childrens-online-privacy-protection-act-rule>.

²⁰ See FTC Press Release, *FTC Announces PrivacyCon 2019 and Calls for Presentations* (Oct. 24, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/ftc-announces-privacycon-2019-calls-presentations>; see also PrivacyCon 2019 event page, <https://www.ftc.gov/news-events/events-calendar/privacycon-2019>.

²¹ See FTC Press Release, *FTC Announces Sessions on Consumer Privacy and Data Security as Part of Its Hearings on Competition and Consumer Protection in the 21st Century* (Oct. 26, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/ftc-announces-sessions-consumer-privacy-data-security-part-its>.

²² 15 U.S.C. § 46(b).

issued orders to several internet service providers to evaluate their privacy practices.²³ As we have in the past, we will use the information we learn from this study better to inform our policy and enforcement work.

The Commission continues to work closely with our law enforcement partners in the European Union (“EU”) and its member states to ensure the success of the EU-U.S. Privacy Shield framework. Under the EU’s General Data Protection Regulation (“GDPR”), companies are required to meet certain data protection requirements in order to transfer consumer data from the EU to other jurisdictions. Privacy Shield is a voluntary mechanism that companies can use to comply with the GDPR when transferring data from Europe to the United States and is enforced by the FTC with respect to those participants under its jurisdiction. It facilitates billions of dollars in transatlantic data flows.²⁴

This month, for example, the Commission announced settlements with five companies that we alleged had falsely claimed Privacy Shield certification, following the announcement of a similar case earlier this year.²⁵ Also this month, I, along with the Secretary of Commerce and our European counterparts, participated in the third annual review of the Privacy Shield

²³ See FTC Press Release, *FTC Seeks to Examine the Privacy Practices of Broadband Providers* (Mar. 26, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-seeks-examine-privacy-practices-broadband-providers>. See also FTC Press Release, *FTC Revises List of Companies Subject to Broadband Privacy Study* (Aug. 29, 2019), <https://www.ftc.gov/news-events/press-releases/2019/08/ftc-revises-list-companies-subject-broadband-privacy-study>.

²⁴ See www.privacyshield.gov and www.ftc.gov/tips-advice/business-center/privacy-and-security/privacy-shield. Companies can also join a Swiss-U.S. Privacy Shield for transfers from Switzerland.

²⁵ See FTC Press Release, *Five Companies Settle FTC Allegations that they Falsely Claimed Participation in the EU-U.S. Privacy Shield* (Sept. 3, 2019), <https://www.ftc.gov/news-events/press-releases/2019/09/five-companies-settle-ftc-allegations-they-falsely-claimed>. See also FTC Press Release, *FTC Takes Action against Companies Falsely Claiming Compliance with the EU-U.S. Privacy Shield, Other International Privacy Agreements* (June 14, 2019), <https://www.ftc.gov/news-events/press-releases/2019/06/ftc-takes-action-against-companies-falsely-claiming-compliance-eu>.

framework.²⁶ Our Privacy Shield approach is built on four pillars: referrals from the Department of Commerce; priority consideration of referrals from the European Union; checking for Privacy Shield violations as part of every privacy investigation; and proactive monitoring of Privacy Shield participants.

Finally, many of the FTC's privacy and data security investigations and cases involve complex facts and technologies and well-financed defendants, which requires retaining costly outside experts. It is critical that the FTC has sufficient resources to support its investigative and litigation needs, including expert work, particularly as demands for enforcement in this area continue to grow.

B. Protecting Consumers from Fraud

Fighting fraud is a major focus of the FTC's law enforcement efforts. The Commission's anti-fraud program tracks down and stops some of the most egregious scams that prey on U.S. consumers—often, the most vulnerable consumers who can least afford to lose money. In 2018, imposter scams became the top consumer fraud complaint, in part due to the rise in reports about government imposter scams.²⁷ In fact, in just the first six months of 2019, the FTC received nearly 327,000 reports about imposter scams, of which more than 215,000 were about government imposters. Fraudsters falsely claiming to be government agents (including from the Social Security Administration, Internal Revenue Service, and even the FTC), family members, or well-known tech companies contact consumers. These fraudsters pressure them to send money, often via cash-like payment methods, such as gift cards or money transfers, or trick them into providing personal information.

²⁶ See Prepared Remarks of Chairman Joseph Simons, *Privacy Shield Annual Review* (Sept. 12, 2019), <https://www.ftc.gov/public-statements/2019/09/prepared-remarks-chairman-joseph-simons-privacy-shield-annual-review>.

²⁷ FTC Press Release, *Imposter Scams Top Complaints Made to FTC in 2018* (Feb. 28, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/imposter-scams-top-complaints-made-ftc-2018>.

In response to the rise in imposter complaints, the FTC has filed multiple cases against defendants who deceptively pose as the government or well-known tech companies. For example, the FTC brought two actions against defendants for falsely claiming affiliations with the federal government. The Commission charged Sunkey Publishing with using copycat military recruitment websites to trick consumers seeking military careers into providing their personal information; according to the complaint, Sunkey then sold the information to post-secondary schools as part of its lead generation business.²⁸ The Commission's action against American Immigration Center stopped an alleged scheme using deceptive websites and advertising that falsely implied an affiliation with the U.S. Citizenship and Immigration Services to dupe legal residents trying to renew their green cards or apply for naturalization.²⁹

The Commission also helps older Americans protect themselves from fraud. In March 2019, the FTC joined federal, state, and international law enforcement partners in announcing an international crackdown on elder fraud schemes with a particular focus on technical support scams. Technical support scams dupe consumers into believing their computers are infected with viruses and malware, and then charge them hundreds of dollars for unnecessary repairs. As part of that initiative, the FTC filed suit against technical support operator Elite IT Partners,³⁰

²⁸ FTC Press Release, *FTC Takes Action against the Operators of Copycat Military Websites* (Sept. 6, 2018), <https://www.ftc.gov/news-events/press-releases/2018/09/ftc-takes-action-against-operators-copycat-military-websites>. The Commission has also taken action against companies that used deceptively-generated sales leads from Sunkey and others to market their schools. FTC Press Release, *Operator of Colorado Technical University and American InterContinental University Will Pay \$30 Million to Settle FTC Charges it Used Deceptive Lead Generators to Market its Schools* (Aug. 27, 2019), <https://www.ftc.gov/news-events/press-releases/2019/08/operator-colorado-technical-university-american-intercontinental>.

²⁹ FTC Press Release, *American Immigration Center Settles with FTC on Government Imposter Allegations* (Oct. 16, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/american-immigration-center-settles-ftc-government-imposter>. The court entered the Stipulated Order for Permanent Injunction and Monetary Judgment against the defendants on December 7, 2018.³⁰ FTC Press Release, *FTC Halts Tech Support Scam as Part of Major Initiative Focused on Older Adults Hit Hardest by These Scams* (Mar. 7, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-halts-tech-support-scam-part-major-initiative-focused-older>.

³⁰ FTC Press Release, *FTC Halts Tech Support Scam as Part of Major Initiative Focused on Older Adults Hit Hardest by These Scams* (Mar. 7, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-halts-tech-support-scam-part-major-initiative-focused-older>.

developed new consumer education materials to help consumers avoid falling victim to these scams,³¹ and released new complaint data that illustrates the disproportionate effect these scams have on older adults.³²

The Commission targets other frauds against older consumers as well. In a November 2018 action against Simple Health Plans, LLC, the Commission alleged that defendants collected more than \$100 million by falsely advertising sham health insurance plans, including by claiming an affiliation with the AARP. At the FTC's request, a federal court froze defendants' assets and halted their marketing efforts; the court also recently authorized a notice to Simple Health customers stating that defendants' products are "not comprehensive health insurance."³³ The Commission also continues to litigate against defendants in Sanctuary Belize, a massive land sale scam that allegedly bilked over \$100 million, largely from retirees.³⁴

Many of the Commission's law enforcement actions address scams that target consumers who can least afford to lose money. For example, in its recent case against Educare Centre Services, the Commission halted a credit interest reduction scheme run by Canadian nationals that allegedly preyed on U.S. consumers struggling with credit card

³¹ See How to Spot, Avoid and Report Tech Support Scams, <https://www.consumer.ftc.gov/articles/how-spot-avoid-and-report-tech-support-scams>.

³² See FTC Consumer Protection Data Spotlight, *Older Adults Hardest Hit by Tech Support Scams* (Mar. 7, 2019), <https://www.ftc.gov/news-events/blogs/data-spotlight/2019/03/older-adults-hardest-hit-tech-support-scams>.

³³ FTC Press Release, *Consumers Still Paying for Sham Insurance Products Sold by Simple Health to be Notified About the Fraud and Provided an Opportunity to Enroll in Comprehensive Health Insurance Plans During a Special Enrollment Period* (July 1, 2019), <https://www.ftc.gov/news-events/press-releases/2019/07/consumers-still-paying-sham-insurance-products-sold-simple-health>.

³⁴ The court recently issued a preliminary injunction opinion finding that the Commission is likely to prove recidivist Andris Pukke personally directed an international scheme with false promises of deluxe amenities and timelines for completing a coastal development in remote southern Belize. *In re Sanctuary Belize Litigation*, 2019 WL 3714392 (D. Md. Aug. 2, 2019).

debt.³⁵ In May 2019, the ringleader of a California-based student debt relief scheme agreed to settle the FTC’s charges that he bilked \$11 million from consumers who were trying to reduce their student loan monthly payments or get loan forgiveness.³⁶ In July 2019, the Commission charged another entity, Mission Hills Federal, with taking more than \$23 million from thousands of consumers with student loan debt by falsely claiming that it would service and pay down their student loans.³⁷

The FTC continues to target business opportunity scams that prey on people seeking extra household income, and has filed numerous actions against defendants who promise consumers a legitimate opportunity to earn money if consumers will pay for defendants’ “coaching” services. In reality, the “coaching” services provide no value to consumers and are typically nothing more than a handful of training videos and documents with generic information. In June 2019, the FTC sued the operators of “8 Figure Dream Lifestyle” and “Online Entrepreneur Academy,” alleging that the defendants falsely claimed—at times using illegal robocalls—that consumers could make ten thousand dollars or more in 60 to 90 days using defendants’ programs.³⁸ In Digital Altitude, the Commission recently shuttered an operation that allegedly defrauded consumers out of

³⁵ FTC Press Release, *FTC and Ohio Stop Rogue Payment Processor and a Credit Card Interest-Reduction Telemarketing Scheme that Allegedly Worked Together to Scam Consumers* (July 29, 2019), <https://www.ftc.gov/news-events/press-releases/2019/07/ftc-ohio-stop-rogue-payment-processor-credit-card-interest>.

³⁶ FTC Press Release, *Ringleader of Student Loan Debt Relief Scheme Liable for \$11 Million in Settlement of FTC Charges* (May 30, 2019), <https://www.ftc.gov/news-events/press-releases/2019/05/ringleader-student-loan-debt-relief-scheme-liable-11-million>.

³⁷ FTC Press Release, *FTC Stops Student Loan Debt Relief Scheme, Charges Operators with Misleading Consumers* (July 11, 2019), <https://www.ftc.gov/news-events/press-releases/2019/07/ftc-stops-student-loan-debt-relief-scheme-charges-operators>. This is one of many recent Commission actions to crack down on student loan debt relief scams. See, e.g., FTC Press Release, *Ringleader of Student Loan Debt Relief Scheme Liable for \$11 Million in Settlement of FTC Charges* (May 30, 2019), <https://www.ftc.gov/news-events/press-releases/2019/05/ringleader-student-loan-debt-relief-scheme-liable-11-million>.

³⁸ FTC Press Release, *FTC, Law Enforcement Partners Announce New Crackdown on Illegal Robocalls* (June 25, 2019), <https://www.ftc.gov/news-events/press-releases/2019/06/ftc-law-enforcement-partners-announce-new-crackdown-illegal>.

millions of dollars—some paying more than \$50,000—by promising individualized coaching on how to run an online business.³⁹

The FTC strives to stay ahead of scammers by analyzing complaints received in our Sentinel complaint database to help raise public awareness about fraud. In October 2018, the FTC launched its *Consumer Protection Data Spotlight* series to alert law enforcers, industry, and the public about growing threats and important patterns identified in Sentinel data. The *Spotlight* explores data over time, showing how scammers change tactics and catch consumers off guard.⁴⁰ In addition, the FTC is making Sentinel data more accessible to state and local governments, the media, academics, and the public-at-large by publishing interactive dashboards that enable people to see what kind of fraud is affecting their state or large metropolitan area.⁴¹ Most recently, the FTC issued a *Spotlight* on government imposter scams to identify common tricks and tactics these con-artists use,⁴² and also published an interactive infographic to show the volume of complaints and dollar losses reaped by imposters posing as the Social Security Administration, the Internal Revenue Service, and other agencies.⁴³

C. Truthfulness in National Advertising

Ensuring that advertising is truthful and not misleading has long been one of the FTC's core missions. Truthful advertising allows consumers to make well-informed decisions about

³⁹ FTC Press Release, *FTC Obtains Court Order Halting Business Coaching Scheme* (Feb. 8, 2018), <https://www.ftc.gov/news-events/press-releases/2018/02/ftc-obtains-court-order-halting-business-coaching-scheme>.

⁴⁰ The first *Spotlight* identified a sharp rise in gift cards—particularly iTunes and Google Play cards—as a payment method for scams. See FTC Consumer Protection Data Spotlight, *Scammers Increasingly Demand Payment by Gift Card* (Oct. 2018), <https://www.ftc.gov/news-events/blogs/data-spotlight/2018/10/scammers-increasingly-demand-payment-gift-card>.

⁴¹ See generally FTC, *FTC Consumer Sentinel Network* (Apr. 8, 2019), <https://public.tableau.com/profile/federal.trade.commission>.

⁴² See FTC Consumer Protection Data Spotlight, *Government Imposter Scams Top the List of Reported Frauds* (July 1, 2019), <https://www.ftc.gov/news-events/blogs/data-spotlight/2019/07/government-imposter-scams-top-list-reported-frauds>.

⁴³ See *Explore Government Imposter Scams*, <https://public.tableau.com/profile/federal.trade.commission#!/vizhome/GovernmentImposter/Infographic>.

how to best use their resources and promotes the efficient functioning of market forces by encouraging the dissemination of accurate information.

The agency continues to bring cases challenging false and unsubstantiated health claims, including those targeting older consumers, consumers affected by the opioid crisis, and consumers with serious medical conditions. The Commission has brought cases challenging products that claim to improve memory and ward off cognitive decline, relieve joint pain and arthritis symptoms, and even reverse aging.⁴⁴ We have challenged bogus claims that treatments could cure, treat, or mitigate various serious diseases and ailments, including those affecting children and older consumers.⁴⁵ We have brought law enforcement actions against advertisers and ad agencies that allegedly used native advertising—commercial advertising masquerading as editorial content—to deceptively sell health products such as mosquito repellants during the Zika virus outbreak and cognitive improvement supplements.⁴⁶ The Commission also has sued companies that claimed, allegedly without scientific evidence, that using their products could alleviate the symptoms of opioid withdrawal and increase the likelihood of overcoming opioid dependency.⁴⁷ The Commission obtained an order barring a marketer from making deceptive

⁴⁴ See, e.g., *Telomerase Activation Sci., Inc. et al.*, No. C-4644 (Apr. 19, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/142-3103/telomerase-activation-sciences-inc-noel-thomas-patton-matter>; *FTC v. Health Research Labs., Inc.*, No. 2:17-cv-00467 (D. Me. Nov. 30, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/152-3021/health-research-laboratories-llc>.

⁴⁵ See, e.g., *FTC v. Regenerative Med. Grp., Inc.*, No. 8:18-cv-01838 (C.D. Cal. filed Oct. 12, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/172-3062/regenerative-medical-group-inc>; *A&O Enters., Inc.*, No. C-4670 (Feb. 21, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3016/ao-enterprises-doing-business-iv-bars-aaron-k-roberts-matter>.

⁴⁶ See, e.g., *FTC v. Glob. Cmty. Innovations LLC*, No. 5:19-CV-00788 (N.D. Ohio Apr. 10, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/162-3135/global-community-innovations-llc-et-al-geniuix>; *Creaxion Corp.*, No. C-4668 (Feb. 8, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3066/creaxion-corp>; *Inside Publ'ns, LLC*, No. C-4669 (Feb. 8, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3067/inside-publications-llc>.

⁴⁷ *FTC v. Catlin Enters., Inc.*, No. 1:17-cv-403 (W.D. Tex. May 17, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/1623204/catlin-enterprises-inc>. In addition, in conjunction with the FDA, the FTC issued letters to companies that appeared to be making questionable claims in order to sell addiction or withdrawal remedies. See FTC Press Release, *FTC, FDA Warn Companies about Marketing and Selling Opioid Cessation Products* (Jan. 24,

claims about its products' ability to mitigate the side effects of cancer treatments.⁴⁸ And we have issued joint warning letters with the Food and Drug Administration to marketers who claim their dietary supplements and cannabidiol ("CBD") products treat or prevent serious diseases, including Alzheimer's disease and cancer.⁴⁹

When consumers with serious health concerns fall victim to unsupported health claims, they may put their health at risk by avoiding proven therapies and treatments. Through consumer education, including the FTC's advisories, the agency urges consumers to check with a medical professional before starting any treatment or product to treat serious medical conditions.⁵⁰

The Commission also has exercised its relatively new authority under the Consumer Review Fairness Act of 2016 ("CRFA").⁵¹ We recently gave final approval to consent agreements with five companies to settle allegations that they violated the CRFA by including restrictions on consumers' ability to provide negative reviews in consumer form contracts.⁵² Our orders in these matters require the companies to stop using these types of provisions, refrain from enforcing them in existing contracts, and notify customers that the provisions in prior contracts are void. The Commission also has continued to invoke this new authority to challenge non-

2018), <https://www.ftc.gov/news-events/press-releases/2018/01/ftc-fda-warn-companies-about-marketing-selling-opioid-cessation>.

⁴⁸ *FTC v. CellMark Biopharma*, No. 2:18-cv-00014-JES-CM (M.D. Fla. Jan. 12, 2018),

<https://www.ftc.gov/enforcement/cases-proceedings/162-3134/cellmark-biopharma-derek-e-vest>.

⁴⁹ See FTC Press Release, *FTC Joins FDA in Sending Warning Letters to Companies Advertising and Selling Products Containing Cannabidiol (CBD) Claiming to Treat Alzheimer's, Cancer, and Other Diseases* (Apr. 2, 2019), <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-joins-fda-sending-warning-letters-companies-advertising>; FTC Press Release, *FTC and FDA Send Warning Letters to Companies Selling Dietary Supplements Claiming to Treat Alzheimer's Disease and Remediate or Cure Other Serious Illnesses Such as Parkinson's, Heart Disease, and Cancer* (Feb. 11, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/ftc-fda-send-warning-letters-companies-selling-dietary>.

⁵⁰ FTC Consumer Blog, *Treatments and Cures*, <https://www.consumer.ftc.gov/topics/treatments-cures>.

⁵¹ 15 U.S.C. § 45b.

⁵² FTC Press Release, *FTC Approves Final Consent Orders with Five Companies that Allegedly Violated the Consumer Review Fairness Act* (Aug. 16, 2019), <https://www.ftc.gov/news-events/press-releases/2019/08/ftc-approves-final-consent-orders-five-companies-allegedly>.

disparagement provisions used to facilitate fraudulent business operations.⁵³

In addition to our law enforcement actions and consumer education efforts, the Commission routinely hosts public workshops, where relevant stakeholders discuss emerging issues in the national advertising landscape. This past June, we held *That's the Ticket*, a workshop examining consumer protection issues in the online ticket sales market.⁵⁴ The workshop convened stakeholders to discuss issues including the Better Online Tickets Sales Act and ticket availability, the adequacy of ticket price and fee disclosures, and advertising practices by some websites that may mislead consumers as to the seller's identity or the nature of the tickets offered for sale. In August, we hosted another workshop, *Inside the Game*, which explored consumer issues surrounding loot boxes in the video game industry.⁵⁵ The workshop brought together a variety of stakeholders to discuss concerns with the marketing and use of loot boxes and other in-game purchases, and the potential behavioral impact of these virtual items on consumers, especially children.

D. Illegal Robocalls

Illegal robocalls also remain a significant consumer protection problem and one of consumers' top complaints to the FTC. These calls disturb consumers' privacy, waste their time, and frequently use fraud and deception to pitch goods and services, leading to significant economic harm. Through the first ten months of FY 2019, the FTC has received more than 4.4 million complaints about unwanted calls, including 3.1 million complaints about robocalls. The

⁵³ FTC Press Release, *FTC Stops Operators of Fake Credit Repair Scheme* (June 21, 2019), <https://www.ftc.gov/news-events/press-releases/2019/06/ftc-stops-operators-fake-credit-repair-scheme>.

⁵⁴ See FTC Workshop, *That's the Ticket: Online Event Tickets Workshop* (June 11, 2019), <https://www.ftc.gov/news-events/events-calendar/2019/03/online-event-tickets-workshop>.

⁵⁵ See FTC Workshop, *Inside the Game: Unlocking the Consumer Issues Surrounding Loot Boxes* (Aug. 7, 2019), <https://www.ftc.gov/news-events/events-calendar/inside-game-unlocking-consumer-issues-surrounding-loot-boxes>.

FTC has used all the tools at its disposal to fight these illegal calls, including 147 enforcement actions against 490 corporations and 393 individuals to date.⁵⁶

The FTC's most recent law enforcement crackdown, "Operation Call It Quits," included 94 total actions by the FTC and 25 federal, state, and local agencies.⁵⁷ Collectively, the defendants in these cases were responsible for making more than a billion illegal robocalls to consumers nationwide. Other FTC cases reflect the FTC's robocall enforcement efforts. In *First Choice Horizon*, the FTC shut down a maze of interrelated operations that allegedly used illegal robocalls to contact financially distressed consumers with offers of bogus credit card interest rate reduction services.⁵⁸ In the Commission's case against Derek Bartoli, Bartoli agreed to a complete ban on telemarketing. Bartoli had been a robodialer for numerous telemarketing operations, dialing more than 57 million calls to numbers on the Do Not Call Registry in just six months in 2017.⁵⁹ In *Media Mix 365*, the FTC obtained \$264,000 in civil penalties from a solar panel lead generator and its owners who called millions of numbers on the National Do Not Call Registry and called consumers with the intent of annoying, abusing, or harassing them.⁶⁰

Despite the FTC's vigorous law enforcement program, technological advances continue to permit bad actors to place millions or even billions of calls, often from abroad, at very low

⁵⁶ See FTC Robocall Initiatives, <https://www.consumer.ftc.gov/features/feature-0025-robocalls>. In its enforcement actions, the Commission has collected over \$121 million in equitable monetary relief and civil penalties. See Enforcement of the Do Not Call Registry, <https://www.ftc.gov/news-events/media-resources/do-not-call-registry/enforcement>.

⁵⁷ See FTC Press Release, *FTC, Law Enforcement Partners Announce New Crackdown on Illegal Robocalls* (June 25, 2019), <https://www.ftc.gov/news-events/press-releases/2019/06/ftc-law-enforcement-partners-announce-new-crackdown-illegal>.

⁵⁸ *FTC v. First Choice Horizon LLC et al.*, No. 6:19-cv-1028 (M.D. Fla. June 3, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3161-x190029/first-choice-horizon-llc>.

⁵⁹ *U.S. v. Derek Jason Bartoli*, No. 6:19-cv-01160 (M.D. Fla. filed June 21, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/182-3105/derek-jason-bartoli>.

⁶⁰ *U.S. v. Media Mix 365 et al.*, No. 8:19-cv-01243 (C.D. Cal. filed June 21, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/182-3070/media-mix-365-llc>. The Commission's case against fraudulent business opportunity 8 Figure Dream Lifestyle, described above, was also part of Operation Call it Quits. See *FTC v. 8 Figure Dream Lifestyle LLC, et al.*, No. 8:19-cv-01165-AG-KES (C.D. Cal. filed June 12, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/182-3117/8-figure-dream-lifestyle-llc>.

cost, and in ways that are difficult to trace. This phenomenon infuriates consumers and challenges enforcers. Recognizing that law enforcement, while critical, is not enough to solve the problem of illegal calls, the FTC has taken steps to spur the marketplace to develop technological solutions. For instance, from 2013 to 2015, the FTC led four public challenges to incentivize innovators to help tackle the unlawful robocalls that plague consumers.⁶¹ The FTC's challenges contributed to a shift in the development and availability of technological solutions in this area, particularly call-blocking and call-filtering products. Consumers can access information about potential solutions available to them on the FTC's website.⁶² The telecommunications industry has also developed a new framework, SHAKEN/STIR, which is designed to limit illegitimate number spoofing and reduce illegal robocalls.

The FTC continues to engage with industry stakeholders and supports the industry initiative to authenticate caller ID numbers. The FTC also regularly works with its state, federal, and international partners to combat illegal robocalls.⁶³

⁶¹ The first challenge, in 2013, called upon the public to develop a consumer-facing solution to block illegal robocalls. One of the winners, "NomoRobo," was on the market within 6 months after being selected by the FTC. NomoRobo, which reports blocking over 600 million calls to date, is being offered directly to consumers by a number of telecommunications providers and is available as an app on iPhones. See Press Release, *FTC Announces Robocall Challenge Winners* (Apr. 2, 2013), <https://www.ftc.gov/news-events/press-releases/2013/04/ftc-announces-robocall-challenge-winners>; see also Press Release, *FTC Awards \$25,000 Top Cash Prize for Contest-Winning Mobile App That Blocks Illegal Robocalls* (Aug. 17, 2015), <https://www.ftc.gov/news-events/press-releases/2015/08/ftc-awards-25000-top-cash-prize-contest-winning-mobile-app-blocks>; Press Release, *FTC Announces Winners of "Zapping Rachel" Robocall Contest* (Aug. 28, 2014), <https://www.ftc.gov/news-events/press-releases/2014/08/ftc-announces-winners-zapping-rachel-robocall-contest>.

⁶² See <https://www.consumer.ftc.gov/features/how-stop-unwanted-calls>.

⁶³ See, e.g., FTC Press Release, *FTC and FCC to Host Joint Policy Forum on Illegal Robocalls* (Mar. 22, 2018), www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-host-joint-policy-forum-illegal-robocalls; FTC Press Release, *FTC and FCC Seek Exhibitors for an Expo Featuring Technologies to Block Illegal Robocalls* (Mar. 7, 2018), www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-announce-exhibitors-expo-featuring-technologies-block-illegal; Memorandum of Understanding Among Public Authorities of the Unsolicited Communications Enforcement Network Pertaining to Unlawful Telecommunications and SPAM (May 2016), <https://www.ftc.gov/policy/cooperation-agreements/international-unlawful-telecommunications-spam-enforcement-cooperation>; FTC Press Release, *FTC Signs Memorandum of Understanding With Canadian Agency To Strengthen Cooperation on Do Not Call, Spam Enforcement* (Mar. 24, 2016), <https://www.ftc.gov/news-events/press-releases/2016/03/ftc-signs-memorandum-understanding-canadian-agency-strengthen>.

For many years, the Commission has recommended eliminating the common carrier exemption to our jurisdiction. The exemption is outdated and no longer makes sense in today's marketplace where the lines between telecommunications and other services are increasingly blurred. It impedes the FTC's work tackling illegal robocalls and more broadly circumscribes other enforcement initiatives. For example, a carrier that places, or assists and facilitates, illegal telemarketing might argue that its common carrier activities are beyond the Commission's reach because of the common carrier exemption. Likewise, the exemption may frustrate the Commission's ability to obtain complete relief for consumers when there are multiple parties, some of whom engage in common carrier activity. It also may pose difficulties when a company engages in deceptive or unfair practices involving a mix of common carrier and non-common carrier activities. Finally, litigation has been complicated by entities that attempt to use their purported status as common carriers to shield themselves from FTC enforcement.⁶⁴

E. Consumer and Business Education and Outreach

Public outreach and education is another critical element of the FTC's efforts to fulfill its consumer protection mission. The Commission's education and outreach programs reach tens of millions of people each year through the FTC's website, the media, and partner organizations that disseminate consumer information on the agency's behalf. The FTC delivers actionable, practical, plain-language guidance on dozens of issues, and updates its consumer education materials whenever it has new information to share.

For example, we helped consumers take advantage of new protections provided through the enactment of the Economic Growth, Regulatory Relief, and Consumer Protection

⁶⁴ See, e.g., Answer and Affirmative Defenses of Defendant Pacific Telecom Communications Group at 9, 17-20, Dkt. 19, *FTC et al. v. Caribbean Cruise Line et al.*, No. 0:15-cv-60423 (S.D. Fla. June 2, 2015), <https://www.ftc.gov/enforcement/cases-proceedings/122-3196-x150028/caribbean-cruise-line-inc>.

Act,⁶⁵ which allows consumers nationwide to freeze their credit and place year-long fraud alerts for free.⁶⁶ Through the Free Electronic Monitoring for Active Duty Military Rule, the Act also provides that the nationwide credit reporting agencies must provide free electronic credit monitoring services to active duty servicemembers serving away from their usual duty station, and to National Guard members.⁶⁷ To make sure consumers are aware of their new rights, the Commission updated its website, [IdentityTheft.gov](https://www.ftc.gov/identity-theft); revised its identity theft publications; and provided blogs, webinars, and podcasts in collaboration with a wide range of partners. For military audiences, the Commission also issued blogs on [MilitaryConsumer.gov](https://www.ftc.gov/military-consumer) and updated its identity theft publication for military personnel and families.

The Commission also works to provide companies with resources on a variety of issues that affect businesses. For example, the FTC's "Cybersecurity for Small Business" campaign, a joint effort with the National Institute of Standards and Technology, the Small Business Administration, and the Department of Homeland Security, includes a dozen need-to-know topics as well as fact sheets, videos, and other materials that are available in English and in Spanish.⁶⁸ The Commission has also worked to alert small business owners to scams that target them. Organizations like the Better Business Bureau and the Utilities United Against Scams have helped the Commission disseminate the messages in the publication *Scams and Your*

⁶⁵ Pub. L. No. 115-174.

⁶⁶ See FTC Press Release, *Starting Today, New Federal Law Allows Consumers to Place Free Credit Freezes and Yearlong Fraud Alerts* (Sept. 21, 2018), <https://www.ftc.gov/news-events/press-releases/2018/09/starting-today-new-law-allows-consumers-place-free-credit-freezes>.

⁶⁷ See FTC Press Release, *FTC Announces Final Rule Implementing Law Providing Free Credit Monitoring for Active Duty Military Consumers* (June 24, 2019) <https://www.ftc.gov/news-events/press-releases/2019/06/ftc-announces-final-rule-implementing-law-providing-free-credit>.

⁶⁸ See *Cybersecurity for Small Business*, <https://www.ftc.gov/tips-advice/business-center/small-businesses/cybersecurity> and <https://www.ftc.gov/es/tips-advice/business-center/small-businesses/cybersecurity/espanol>.

Small Business, which is available in English and in Spanish.⁶⁹

Importantly, the Commission gets its message out by working with key partners. One example is an ongoing partnership with AARP to reach older adults, an important audience for the FTC. Over the past year alone, the Commission's work with AARP has included a variety of events, including several nationwide webinars and tele-town halls, a series of fraud prevention videos aimed at Asian American Pacific Islander older adults,⁷⁰ an Oklahoma City Community and Ethnic Media briefing co-hosted with AARP Oklahoma, and nine events with AARP in Washington, Oregon, California, and West Virginia.

IV. COMPETITION MISSION

The FTC enforces U.S. antitrust law in many sectors that directly affect consumers and their wallets, such as health care, consumer products and services, technology, manufacturing, and energy. The Commission shares federal antitrust enforcement responsibilities with the DOJ Antitrust Division.

One of the agencies' principal responsibilities is to prevent mergers that may substantially lessen competition. Under U.S. law, parties to certain mergers and acquisitions must file premerger notification with the FTC and DOJ and observe the statutorily prescribed waiting period before consummating their transactions. Premerger filings under the HSR Act have generally increased steadily since FY 2013. Last year, for the second year in a row, we received just over 2,000 HSR filings.⁷¹

⁶⁹ See *Scams and Your Small Business*, <https://www.ftc.gov/tips-advice/business-center/guidance/scams-your-small-business-guide-business> and <https://www.ftc.gov/es/consejos/para-empresarios/las-estafas-y-su-pequeno-negocio-una-guia-para-los-negocios>.

⁷⁰ See FTC videos on Medicare scams (<https://www.youtube.com/watch?v=51I-szr0JEY>), IRS scams (<https://www.youtube.com/watch?v=o7U1k7bumDA>), and robocalls (<https://www.youtube.com/watch?v=8rDKxLUhbUE>).

⁷¹ The agencies received 2,111 HSR filings in FY 2018, a slight increase from FY 2017, where we received 2,052. Apart from the last two years, the last time annual HSR notification filings exceeded 2,000 was back in FY 2007.

Most reported transactions do not raise significant competitive concerns, and the agencies clear those non-problematic transactions expeditiously. But when the evidence suggests that a proposed merger likely would be anticompetitive, the Commission does not hesitate to intervene.

For example, earlier this month, the Commission issued an administrative complaint charging that Fidelity National Financial's proposed \$1.2 billion acquisition of Stewart Information Services would violate the antitrust laws by significantly reducing competition for title insurance underwriting in large commercial transactions and for title information services.⁷² The parties subsequently abandoned the deal as a result. And last month, the Commission filed a motion for a preliminary injunction to block Evonik Industries AG's proposed \$625 million acquisition of PeroxyChem Holding Company. The FTC alleged that the merger of the chemical companies would substantially reduce competition in several local markets for hydrogen peroxide, a chemical used for a variety of industrial purposes, including bleaching pulp, de-inking recycled paper, and sterilizing food and beverage packaging.⁷³

In June, the FTC won an appeal in the Eighth Circuit, successfully defending the agency's victory in blocking an anticompetitive merger among healthcare providers.⁷⁴ This case represents the agency's fifth straight appellate victory involving health care provider consolidations, further solidifying the agency's analytical approach to these transactions in the

The number of HSR filings in FY 2018 was approximately 3% higher than average number of annual filings from FY 1999 through FY 2017. For historical information about HSR filings and U.S. merger enforcement, see the joint FTC/DOJ Hart-Scott-Rodino annual reports, <https://www.ftc.gov/policy/reports/policy-reports/annual-competition-reports>.

⁷² FTC Press Release, *FTC Challenges Proposed \$1.2 Billion Merger of Title Insurance Providers Fidelity National Financial, Inc. and Stewart Information Services Corporation* (Sep. 6, 2019), <https://www.ftc.gov/news-events/press-releases/2019/09/ftc-challenges-proposed-12-billion-merger-title-insurance>.

⁷³ FTC Press Release, *FTC Challenges Proposed Merger of Two Hydrogen Peroxide Producers* (Aug. 2, 2019), <https://www.ftc.gov/news-events/press-releases/2019/08/ftc-challenges-proposed-merger-two-hydrogen-peroxide-producers>.

⁷⁴ *FTC v. Sanford Health*, 926 F.3d 959 (8th Cir. 2019).

caselaw.⁷⁵ That same month, the Commission also resolved competition issues associated with UnitedHealth Group’s purchase of DaVita, Inc. by requiring a substantial divestiture of certain DaVita assets in the Las Vegas area.⁷⁶ The complaint alleged that the original transaction would have reduced competition and created a near monopoly in the market for managed care provider organization (“MCPO”) services sold to Medicare Advantage insurers in the Las Vegas area, ultimately increasing healthcare costs. In addition, the required divestitures mitigated potential harms due to the vertical integration of UnitedHealth Group’s UnitedHealthcare, the area’s leading Medicare Advantage insurer, with a larger combined MCPO service provider.

This May, an administrative law judge upheld the Commission’s complaint against the consummated merger of two manufacturers of prosthetic knees controlled by microprocessors.⁷⁷ These products provide amputees, including U.S. veterans, with mobility. The administrative complaint alleged the transaction eliminated substantial competition between the parties, formerly the two leading suppliers of these medical devices.

The Commission also maintains a robust program to identify and stop anticompetitive conduct. In July, Reckitt Benckiser agreed to pay \$50 million to settle agency charges that it engaged in a deceptive scheme to thwart low-cost generic competition to its branded drug Suboxone. Suboxone is used to help patients recovering from opioid addiction. The complaint alleges that the defendants made misrepresentations to the FDA for the purpose of delaying generic approval, while launching a fraudulent “product hopping” scheme to shift existing

⁷⁵ See *FTC v. Penn State Hershey Medical Center*, 838 F.3d 327 (3d Cir. 2016); *FTC v. Advocate Health Care Network*, 841 F.3d 460 (7th Cir. 2016); *St. Alphonsus Med. Ctr.-Nampa Inc. v. St. Luke’s Health Sys.*, 778 F.3d 775 (9th Cir. 2015); *ProMedica Health System, Inc. v. FTC*, 749 F.3d 559 (6th Cir. 2014).

⁷⁶ FTC Press Release, *FTC Imposes Conditions on UnitedHealth Group’s Proposed Acquisition of DaVita Medical Group* (June 19, 2019), <https://www.ftc.gov/news-events/press-releases/2019/06/ftc-imposes-conditions-unitedhealth-groups-proposed-acquisition>.

⁷⁷ *In re Otto Bock HealthCare North America, Inc.*, Dkt. 9378, Op. of the A.L.J. (May 7, 2019), https://www.ftc.gov/system/files/documents/cases/docket_9378_initial_decision_public_5-7-19.pdf. This matter is currently on appeal before the Commission.

patients to a new version of the drug still protected by patents.⁷⁸

In April, the Commission filed a complaint against the health information company Surescripts, alleging that it employed illegal vertical and horizontal restraints to maintain its monopolies over two electronic prescribing, or “e-prescribing,” markets (routing and eligibility).⁷⁹ In March, the Commission unanimously held that Impax Laboratories and Endo Pharmaceuticals had entered into a reverse payment arrangement that delayed generic entry of Opana ER, an extended release opioid used for pain relief.⁸⁰ And earlier this year, in the administrative litigation of the *I-800 Contacts* matter, the Commission ruled that agreements among competitors to limit the scope of their internet advertising were unlawful.⁸¹

The Commission also continues to focus its attention on technology markets. In an effort to more closely monitor developments in the technology sector, the FTC’s Bureau of Competition created the Technology Task Force, which is dedicated to monitoring competition in U.S. technology markets.⁸² The Task Force includes attorneys from the Bureau of Competition with expertise in complex product and service markets and ecosystems, including markets for online advertising, social networking, mobile operating systems and apps, and

⁷⁸ FTC Press Release, *Reckitt Benckiser Group plc to Pay \$50 Million to Consumers, Settling Charges that the Company Illegally Maintained a Monopoly over the Opioid Addiction Treatment Suboxone* (July 11, 2019), <https://www.ftc.gov/news-events/press-releases/2019/07/reckitt-benckiser-group-plc-pay-50-million-consumers-settling-ftc>.

⁷⁹ FTC Press Release, *FTC Charges Surescripts with Illegal Monopolization of E-Prescription Markets* (Apr. 24, 2019), <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-charges-surescripts-illegal-monopolization-e-prescription>.

⁸⁰ FTC Press Release, *FTC Concludes that Impax Entered Into Illegal Pay-for-Delay Agreement* (March 25, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-concludes-impax-entered-illegal-pay-delay-agreement>. Endo previously settled these allegations with the agency. FTC Press Release, *Endo Pharmaceuticals Inc. Agrees to Abandon Anticompetitive Pay-for-Delay Agreements to Settle FTC Charges; FTC Refiles Suits Against Generic Defendants* (Jan. 23, 2017), <https://www.ftc.gov/news-events/press-releases/2017/01/endo-pharmaceuticals-inc-agrees-abandon-anticompetitive-pay-delay>.

⁸¹ *In re I-800 Contacts, Inc.*, Dkt. No. 9372 (Nov. 14, 2018), https://www.ftc.gov/system/files/documents/cases/docket_no_9372_opinion_of_the_commission_redacted_public_version.pdf. Commissioner Phillips dissented, and Commissioner Christine Wilson did not participate. This matter is currently on appeal to the U.S. Court of Appeals for the Second Circuit.

⁸² FTC Press Release, *FTC’s Bureau of Competition Launches Task Force to Monitor Technology Markets* (Feb. 26, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/ftcs-bureau-competition-launches-task-force-monitor-technology>.

platforms. The Task Force will examine industry practices, conduct law enforcement investigations, and coordinate and consult with staff throughout the FTC on technology-related matters, including reviews of consummated technology mergers. As we have already confirmed months ago, we are pursuing an antitrust investigation of Facebook.

In addition to competition enforcement, the FTC promotes competition principles in advocacy comments to state lawmakers and regulators, as well as to its sister federal agencies,⁸³ and in *amicus* briefs filed in federal courts considering important areas of antitrust law.⁸⁴ The Commission benefits from critical self-examination and examining prior merger enforcement decisions to assess their impact on competition and consumers, and we intend to expand this effort going forward. Similarly, through the series of hearings described above, the Commission is devoting significant resources to refresh and, if warranted, renew its thinking on a wide range of cutting-edge competition issues.⁸⁵ Also, as described above, the Commission's thinking on various competition issues—as informed by the hearings—will result in guidance documents for businesses and practitioners.

V. INTERNATIONAL COOPERATION

The FTC also engages in significant international work to support its domestic enforcement programs. During the last fiscal year, the FTC cooperated in 43 investigations, cases, and enforcement projects with foreign consumer, privacy, and criminal enforcement agencies. To sustain this level of cooperation, the agency often works through global enforcement networks, such as the International Consumer Protection and Enforcement Network, the Global Privacy Enforcement Network, the Unsolicited Communications

⁸³ See generally <https://www.ftc.gov/policy/advocacy>.

⁸⁴ Amicus briefs are posted at <https://www.ftc.gov/policy/advocacy/amicus-briefs>.

⁸⁵ See Prepared Remarks of Chairman Simons Announcing the Competition and Consumer Protections Hearings (June 13, 2018), https://www.ftc.gov/system/files/documents/public_statements/1385308/prepared_remarks_of_joe_simons_announcing_the_hearings_6-20-18_0.pdf.

Enforcement Network, and the International Mass Marketing Fraud Working Group. The FTC also works directly with foreign counterparts on enforcement issues.

International enforcement cooperation also is critical for the FTC's competition program. With the expansion of global trade and the operation of many companies across national borders, the FTC and DOJ increasingly engage with foreign antitrust agencies to ensure close collaboration on cross-border cases and convergence toward sound competition policies and procedures.⁸⁶ The FTC effectively coordinates reviews of multijurisdictional mergers and continues to work with its international counterparts to achieve consistent outcomes in cases of possible anticompetitive conduct. The U.S. antitrust agencies facilitate dialogue and promote convergence through multiple channels, including through strong bilateral relations with foreign competition agencies and projects and initiatives of multilateral competition organizations, including the OECD and the International Competition Network. The FTC also works with other agencies within the U.S. government to advance consistent competition enforcement policies, practices, and procedures in other parts of the world.⁸⁷

Similarly, the FTC works closely with other countries and through multilateral organizations on privacy and data security issues and engages in enhanced enforcement cooperation with important partners using its powers under the U.S. SAFE WEB Act.⁸⁸ The SAFE WEB Act is key to much of the agency's international work, especially on consumer

⁸⁶ In competition matters, the FTC also collaborates with state Attorneys General to maximize results and use of limited resources in enforcing the U.S. antitrust laws.

⁸⁷ For example, the Commission works through the U.S. government's interagency processes to ensure that competition-related issues that also implicate broader U.S. policy interests, such as the protection of intellectual property and non-discrimination, are addressed in a coordinated and effective manner.

⁸⁸ See, e.g., FTC Press Release, *FTC Signs Memorandum of Understanding with United Kingdom's Competition and Markets Authority to Strengthen Consumer Protection Enforcement Cooperation* (Mar. 25, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-signs-memorandum-understanding-united-kingdoms-competition>. The MOU streamlines sharing investigative information and complaint data, simplifies requests for investigative assistance, aids joint law enforcement investigations, and provides strong confidentiality and data safeguards.

protection and privacy matters. It allows the FTC to share evidence and provide investigative assistance to foreign authorities in cases involving spam, spyware, misleading health and safety claims, privacy violations and data security breaches, and telemarketing fraud. The FTC's foreign law enforcement partners similarly have assisted FTC enforcement actions. The Act sunsets in 2020 and the Commission strongly urges Congress to reauthorize this critical authority and eliminate the sunset provision.⁸⁹

The FTC also serves as a backstop enforcer for several cross-border data transfer mechanisms such as the EU-U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework, as well as the APEC Cross-Border Privacy Rules System, designed to protect privacy and data flows in the Asia-Pacific region. A company's failure to comply with the principles in these frameworks is enforceable under Section 5 of the FTC Act. Many U.S. companies use these mechanisms to carry out cross-border data flows consistent with strong privacy protections.

VI. CONCLUSION

The FTC remains committed to marshalling its resources efficiently in order to effectively protect consumers and promote competition, to anticipate and respond to changes in the marketplace, and to meet current and future challenges. We look forward to continuing to work with the Subcommittee and Congress, and we would be happy to answer your questions.

⁸⁹ Congress permanently granted the Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission similar enforcement powers decades ago, and provided the Consumer Product Safety Commission with permanent authority to share information with its foreign counterparts.