



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Prepared Remarks of Chairman Joseph J. Simons¹
Hearing on “Oversight of the Federal Trade Commission: Strengthening
Protections for American’s Privacy and Data Security”
Committee on Energy and Commerce
Subcommittee on Consumer Protection and Commerce
May 8, 2019

Chairman Schakowsky, Ranking Member McMorris Rodgers, and members of the Subcommittee, my name is Joseph J. Simons, and I am the Chairman of the Federal Trade Commission. It is an honor to appear before you today, especially with my fellow Commissioners.

The FTC is a highly effective independent agency with a broad mission: to protect consumers and maintain competition in most sectors of the economy. On the competition side, examples of our vigorous enforcement program include cases like Impax² and AbbVie³ where we successfully attacked anticompetitive conduct by pharmaceutical companies, achieving a \$448 million judgment in the latter case. We also recently filed an important case against Surescripts, a health IT company with a monopoly over e-prescribing.⁴ The Bureau of

¹ These remarks reflect my own views. They do not necessarily reflect the views of the Commission or any other individual Commissioner.

² FTC Press Release, *FTC Concludes that Impax Entered into Illegal Pay-for-Delay Agreement* (Mar. 29, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-concludes-impax-entered-illegal-pay-delay-agreement>.

³ *FTC v. AbbVie Inc.*, 329 F. Supp. 3d 98 (E.D. Pa. 2018); Statement of FTC Chairman Joe Simons Regarding Federal Court Ruling in *FTC v. AbbVie* (June 29, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/statement-ftc-chairman-joe-simons-regarding-federal-court-ruling>.

⁴ 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>.

Competition has launched our Technology Task Force, which is dedicated to enforcement with respect to high tech platforms.⁵ And on the research and policy front, our extensive public *Hearings on Competition and Consumer Protection in the 21st Century* have involved more than 350 panelists and more than 850 public comments.⁶

On the consumer protection side, we are very active as well—with matters ranging from student debt relief scams to various types of false advertising cases, and many others. But today I would like to focus on our data security and privacy program. The FTC has been the primary federal agency charged with protecting consumer privacy since 1970, with the passage of the Fair Credit Reporting Act.⁷ From the growth of the internet, to the mobile device explosion, to the arrival of the Internet of Things and artificial intelligence, we have continuously expanded our focus on privacy to reflect how consumer data fuels these changes in the marketplace.

Our primary legal authority in this space is Section 5 of the FTC Act, which prohibits deceptive or unfair commercial practices.⁸ But Section 5 is an imperfect tool. For example, Section 5 does not allow the Commission to seek civil penalties for first-time privacy violations. It does not allow us to reach non-profits and common carriers, even when their practices have serious implications for consumer privacy and data security. These limitations have a critical effect on our ability to protect consumers, which is why we urge Congress to enact privacy and

⁵ 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>.

⁶ FTC, *Hearings on Competition and Consumer Protection in the 21st Century*, <https://www.ftc.gov/policy/hearings-competition-consumer-protection>; see also FTC Press Release, *FTC Announces Hearings On Competition and Consumer Protection in the 21st Century* (June 20, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-announces-hearings-competition-consumer-protection-21st>.

⁷ 15 U.S.C. § 1681. 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.

data security legislation, enforceable by the FTC, which grants the agency civil penalty authority, targeted APA rulemaking authority, and jurisdiction over non-profits and common carriers.

Irrespective of any new legislation, we will continue to use every tool currently at our disposal to address consumer harm, including authorities Congress has given us like the Children’s Online Privacy Protection Act and the Safeguards Rule. We have aggressively pursued privacy and data security cases, to date bringing more than 65 data security cases as well as more than 60 general privacy cases.⁹ For example, we recently brought cases against two companies whose allegedly lax security practices resulted in the breach of 8 million consumers’ data.¹⁰ And in March, the FTC announced a record \$5.7 million civil penalty as part of its settlement with video social networking app Musical.ly for collecting children’s personal information online without first obtaining parental consent.¹¹

To complement our enforcement efforts, we also engage in policy initiatives in the privacy and data security areas. In addition to the hearings I mentioned—which included four days of panels that specifically addressed consumer privacy and data security¹²—we recently issued 6(b) orders to several internet service providers to evaluate their privacy practices.¹³ We will use the information we learn from this study to better inform our policy and enforcement work.

⁹ See, e.g., FTC, PRIVACY & DATA SECURITY UPDATE: 2017 (Jan. 2018), <https://www.ftc.gov/reports/privacy-data-security-update-2017-overview-commissions-enforcement-policy-initiatives>.

¹⁰ *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>; *James V. Grago, Jr. also d/b/a ClixSense.com*, Matter No. 1723003 (Apr. 24, 2019) (proposed consent order), <https://www.ftc.gov/enforcement/cases-proceedings/172-3003/james-v-grago-jr-doing-business-clixsensecom>.

¹¹ *U.S. v. Musical.ly, et al.*, No. 2:19-cv-1439 (C.D. Ca. Mar. 27, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3004/musically-inc>.

¹² 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>.

¹³ 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>.

Finally, many of our privacy and data security investigations and cases involve complex facts and technologies and well-financed defendants. And as we told you in response to Chairmen Pallone and Schakowsky's resource letter, it is critical that the FTC have sufficient resources to support its investigative and litigation needs, particularly as demands for enforcement in this area continue to grow.

We are committed to using every resource 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 I am happy to answer your questions.