

**Statement of Commissioner Christine S. Wilson
Concurring in Part and Dissenting in Part**

Regarding the Report to Congress on Privacy and Security

October 1, 2021

Today, the Commission makes public a report to Congress on Privacy and Security (the “Privacy Report”). The Privacy Report provides an overview of the FTC’s privacy and data security authority, highlights recent enforcement actions and policy initiatives related to privacy and data security, and discusses priority areas for the Commission in this sector.

I support robust deployment of the FTC’s existing authority in the privacy and data security arena. Moreover, I repeatedly have urged Congress to expand the FTC’s toolkit by passing comprehensive privacy and data security legislation.¹ To the extent the Privacy Report announces this Commission’s intention to engage in sound, vigorous privacy and data security enforcement within our jurisdictional boundaries, I concur.

That said, the FTC must respect both the mandates that Congress bestowed on the agency and the statutory divide between its competition and consumer protection authorities. The FTC’s antitrust and consumer protection authorities are based upon distinct statutory provisions enacted at different times and for different reasons.² Cases may present both competition and privacy issues; some cases may involve competition among firms on the basis of privacy or data security policies to attract customers, which we might properly view as aspects of non-price competition.

¹ Oral Statement of Commissioner Christine S. Wilson, FTC, Before the U.S. House Committee on Energy and Commerce Subcommittee on Consumer Protection and Commerce (July 28, 2021), https://www.ftc.gov/system/files/documents/public_statements/1592954/2021-07-28_commr_wilson_house_ec_opening_statement_final.pdf; Christine Wilson, Op-Ed, *Coronavirus Demands a Privacy Law*, WALL ST. J., May 13 2020, available at <https://www.wsj.com/articles/congress-needs-to-pass-a-coronavirus-privacy-law-11589410686>; Oral Statement of Commissioner Christine S. Wilson, FTC, Before the U.S. Senate Committee on Commerce, Science, and Transportation (April 20, 2021), https://www.ftc.gov/system/files/documents/public_statements/1589180/opening_statement_final_for_postingrevd.pdf; Christine Wilson, Privacy in the Time of Covid-19, TRUTH ON THE MARKET (Apr. 15, 2020), <https://truthonthemarket.com/author/christinewilsonicle/>; Christine S. Wilson, A Defining Moment for Privacy: The Time is Ripe for Federal Privacy Legislation, Remarks at the Future of Privacy Forum, Feb. 6, 2020, https://www.ftc.gov/system/files/documents/public_statements/1566337/commissioner_wilson_privacy_forum_speech_02-06-2020.pdf; Oral Statement of Commissioner Christine S. Wilson Before the U.S. House Committee on Energy and Commerce Subcommittee on Consumer Protection and Commerce (May 8, 2019), https://www.ftc.gov/system/files/documents/public_statements/1519254/commissioner_wilson_may_2019_ec_opening.pdf; Oral Statement of Commissioner Christine S. Wilson, FTC, Before the U.S. Senate Committee on Commerce, Science, and Transportation Subcommittee on Consumer Protection, Product Safety, Insurance, and Data Security (Nov. 27, 2018), https://www.ftc.gov/system/files/documents/public_statements/1423979/commissioner_wilson_nov_2018_testimony.pdf.

² The Federal Trade Commission Act of 1914 granted the FTC authority to police unfair methods of competition. 15 U.S.C. §45. Congress passed the Wheeler-Lea Act in 1938, adding to the agency’s toolkit the ability to challenge unfair and deceptive acts and practices (UDAP). 15 U.S.C. §45(a)(1). For an excellent discussion of this legislative history and its modern-day implications, see Maureen K. Ohlhausen & Alexander P. Okuliar, *Competition, Consumer Protection, and The Right [Approach] to Privacy*, 80 ANTITRUST L.J. 121, 138-150 (2015).

But as we pursue investigations, we must respect the differing grants of statutory authority that guide our mission.

Accordingly, I respectfully dissent from those areas of the Privacy Report that could be construed as exceeding the agency's statutory authorities or conflating privacy and competition theories of harm.