

**PREPARED STATEMENT OF THE
FEDERAL TRADE COMMISSION
“OVERSIGHT OF THE FEDERAL TRADE COMMISSION”**

**Before the
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON DIGITAL COMMERCE AND
CONSUMER PROTECTION
UNITED STATES HOUSE OF REPRESENTATIVES**

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I. INTRODUCTION

Chairman Latta, Ranking Member Schakowsky, and members of the Subcommittee, I am Joe Simons, Chairman of the Federal Trade Commission (“FTC” or “Commission”), and I am pleased to appear before you today with my fellow Commissioners to discuss the FTC’s work to protect consumers and promote competition.¹

The FTC is an independent agency that comprises three bureaus: the Bureau of Consumer Protection (“BCP”); the Bureau of Competition (“BC”); and the Bureau of Economics, which supports both BCP and BC. It is the only federal agency with a broad mission to both protect consumers and maintain competition in most sectors of the economy. Its jurisdiction ranges from privacy and data security, to mergers and acquisitions, to anticompetitive tactics by pharmaceutical companies, to high-technology and emerging industries. The FTC has a long history of bipartisanship and cooperation, and we look forward to continuing this tradition.

The FTC investigates and prosecutes those engaging in unfair or deceptive acts or practices or unfair methods of competition, and seeks to do so without impeding legitimate business activity. The Commission collects consumer complaints from the public and maintains one of the most extensive consumer protection complaint databases, Consumer Sentinel. The FTC, as well as other local, state, and federal law enforcement agencies, use these complaints in its law enforcement and policy efforts. In addition to its 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 these rules, including seeking public feedback, to ensure their continued efficacy. The FTC also educates consumers and businesses to

¹ This written statement presents the views of the Federal Trade Commission. Our 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.

encourage informed consumer choices, compliance with the law, and public understanding of the competitive process. Through its research, advocacy, education, and policy work, the FTC seeks to promote an honest and competitive marketplace and works with foreign counterparts to harmonize competition and consumer protection laws across the globe.

The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act, 15 U.S.C. § 41 et seq., 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 administrative responsibilities under more than 70 laws.² The Commission pursues a vigorous and effective law enforcement program, and the impact of its work is significant. In addition to its consumer protection work, 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. Given the dynamic changes taking place today in many different industries, the FTC is taking a serious look at the rigor and direction of its merger enforcement program.

When possible, the FTC collects money to return to harmed consumers. During FY 2017, the Commission returned over \$543 million in redress to consumers and deposited \$94 million into the U.S. Treasury, reflecting collections in both consumer protection and competition matters. In addition, in FY 2017, FTC orders in the *Volkswagen*,³ *Amazon*,⁴ and *Net Spend*⁵ matters required defendants to self-administer consumer refund programs worth more than \$11.5 billion.

² See <https://www.ftc.gov/enforcement/statutes>.

³ *FTC v. Volkswagen Group of America, Inc.*, No. 3:15-md-02672-CRB (N.D. Cal. May 17, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/162-3006/volkswagen-group-america-inc>.

⁴ *FTC v. Amazon.com, Inc.*, No. 2:14-cv-01038 (W.D. Wash. Apr. 4, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/122-3238/amazoncom-inc>.

⁵ *FTC v. NetSpend Corporation*, No. 1:16-cv-04203-AT (N.D. Ga. Apr. 10, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/netspend-corporation>.

To complement its enforcement 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. Most recently, the Commission has announced its *Hearings on Competition and Consumer Protection in the 21st Century*, which begin this fall.⁶ These multi-day, multi-part public hearings will explore 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.

This testimony provides a short overview of 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 discusses the Commission's international efforts to protect consumers and promote competition.

II. CONSUMER PROTECTION MISSION

As the nation's primary consumer protection agency, the FTC has a broad mandate to protect consumers from unfair, deceptive, or fraudulent practices in the marketplace. It does this by, among other things, pursuing law enforcement actions to stop unlawful practices, and educating consumers and businesses about their rights and responsibilities, respectively. The FTC's enforcement and education efforts include working closely with federal, state, international, and private sector partners on joint initiatives. The Commission's structure, research capacity, and committed staff enable it to meet its mandate of protecting consumers and competition in an ever-changing marketplace. Among other issues, the FTC works to protect privacy and data security,

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>.

helps ensure that advertising claims to consumers are truthful and not misleading, addresses fraud across most sectors of the economy, and combats illegal robocalls.

A. Protecting Consumer Privacy and Data Security

Year after year, privacy and data security top the list of consumer protection priorities at the Federal Trade Commission. These concerns are critical to consumers and businesses alike. Press reports about privacy concerns and data breaches are increasingly common—such as the reports about Facebook and Equifax, just to name two companies, both of which the FTC is currently investigating.⁷ Some consumers are concerned when their data are used in ways they do not expect or understand. Hackers and others seek to exploit vulnerabilities, obtain unauthorized access to consumers' sensitive information, and potentially misuse it in ways that can cause serious harms to consumers as well as businesses. All of this taken together may undermine trust in the marketplace.

These incidents are not a new phenomenon. In fact, we have been hearing about data breaches for well over a decade. Every year, news articles reignite the debate about both privacy and data security, and the best ways to ensure them. The FTC has long used its broad authority under Section 5 of the FTC Act to address consumer harms arising from new technologies and business practices and has thus challenged certain deceptive and unfair privacy and security practices.⁸ The FTC's privacy and data security program—which includes enforcement, as well as consumer and business education—has been highly lauded.

⁷ See, e.g., Statement by the Acting Director of FTC's Bureau of Consumer Protection Regarding Reported Concerns about Facebook Privacy Practices (Mar. 26, 2018), <https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection>.

⁸ 15 U.S.C. § 45(a). The FTC also enforces sector-specific statutes that protect certain health, credit, financial, and children's information. See 16 C.F.R. Part 318 (Health Breach Notification Rule); 15 U.S.C. §§ 1681-1681x (Fair Credit Reporting Act); 16 C.F.R. Parts 313-314 (Gramm-Leach-Bliley Privacy and Safeguards Rules), implementing 15 U.S.C. §§ 6801-6809; 16 C.F.R. Part 312 (Children's Online Privacy Protection Rule), implementing 15 U.S.C. §§ 6501-6506.

Privacy and data security will continue to be an enforcement priority at the Commission, and it will use every tool at its disposal to redress consumer harm. Many of the FTC's investigations and cases involve complex facts and well-financed defendants, often requiring outside experts, which can be costly. It is critical that the FTC have sufficient resources to support its investigative and litigation needs, including expert work, particularly as demands for enforcement in this area continue to grow.

To date, the Commission has brought more than 60 cases alleging that companies failed to implement reasonable safeguards, as well as more than 50 general privacy cases.⁹ The FTC has aggressively pursued privacy and data security cases in myriad areas, including financial privacy, children's privacy, health privacy, and the Internet of Things.¹⁰

For example, the Commission recently announced an expanded settlement with ride-sharing platform company Uber Technologies related to allegations that the company failed to reasonably secure sensitive consumer data stored in the cloud.¹¹ As a result, an intruder allegedly accessed personal information about Uber customers and drivers, including more than 25 million names and email addresses, 22 million names and mobile phone numbers, and 600,000 names and driver's license numbers. The Commission also recently approved a settlement with PayPal, Inc. to resolve allegations that its Venmo peer-to-peer payment service misled consumers about their ability to

⁹ See generally FTC Report, *Privacy & Data Security Update: 2017* (Jan. 2018), <https://www.ftc.gov/reports/privacy-data-security-update-2017-overview-commissions-enforcement-policy-initiatives>.

¹⁰ *Id.*

¹¹ *Uber Technologies, Inc.*, Matter No. 1523054 (Apr. 11, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/152-3054/uber-technologies-inc>. Following the announcement of last year's original proposed settlement, the Commission learned that Uber had failed to disclose a significant breach of consumer data that occurred in 2016, in the midst of the FTC's investigation that led to the August 2017 settlement announcement. Due to Uber's misconduct related to the 2016 breach, Uber will be subject to additional requirements. Among other things, the revised settlement could subject Uber to civil penalties if it fails to notify the FTC of certain future incidents involving unauthorized access of consumer information.

control the privacy of their Venmo transactions and the extent to which their financial accounts were protected by “bank grade security systems.”¹²

The Commission takes seriously its commitment to protect children’s privacy. In the Commission’s first children’s privacy case involving Internet-connected toys, the FTC announced a settlement—including a \$650,000 civil penalty— with electronic toy manufacturer VTech Electronics for violations of the Children’s Online Privacy Protection Rule.¹³ The FTC alleged that the company collected children’s personal information online without first obtaining parental consent, and failed to take reasonable steps to secure the data it collected.¹⁴

Section 5, however, cannot address *all* privacy and data security concerns in the marketplace. For example, Section 5 does not provide for civil penalties, reducing the Commission’s deterrent capability. The Commission also lacks authority over non-profits and over common carrier activity, even though these acts or practices often have serious implications for consumer privacy and data security. Finally, the FTC lacks broad APA rulemaking authority for privacy and data security generally.¹⁵ The Commission continues to reiterate its longstanding bipartisan call for comprehensive data security legislation.

The Commission must continue to prioritize, examine, and address privacy and data security with a fresh perspective. One way in which the agency plans to inform its work is through the recently announced *Hearings on Competition and Consumer Protection in the 21st Century*,

¹² *PayPal, Inc.*, No. C-4651 (May 24, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3102/paypal-inc-matter>.

¹³ *U.S. v. VTech Electronics Ltd. et al.*, No. 1:18-cv-00114 (N.D. Ill. Jan. 8, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3032/vtech-electronics-limited>.

¹⁴ In addition to law enforcement, the FTC also undertakes policy initiatives, such as its recent workshop co-hosted with the Department of Education on educational technology and student privacy. *See Student Privacy and Ed Tech* (Dec. 1, 2017), <https://www.ftc.gov/news-events/events-calendar/2017/12/student-privacy-ed-tech>.

¹⁵ The Commission has been granted APA rulemaking authority for discrete topics such as children’s privacy, financial data security, and certain provisions of credit reporting.

which will begin this fall.¹⁶ The Commission’s remedial authority with respect to privacy and data security will be a key topic in these hearings, and the comments and discussions on these issues will be one source to inform the FTC’s enforcement and policy priorities.

Recently, the European Union put into effect its General Data Protection Regulation (“GDPR”). GDPR, like the EU’s data protection directive before it, imposes certain restrictions on the ability of companies to transfer consumer data from the EU to other jurisdictions. The EU-U.S. Privacy Shield Framework is a voluntary mechanism companies can use to promise certain protections for data transferred from Europe to the United States—and the FTC enforces those promises by Privacy Shield participants under its jurisdiction.¹⁷ The Commission is committed to the success of the EU-U.S. Privacy Shield Framework, a critical tool for protecting privacy and enabling cross-border data flows. The FTC has actively enforced Privacy Shield, and will continue to do so when Privacy Shield participants fail to meet their legal obligations. The Commission also will continue to work with other agencies in the U.S. government and with its partners in Europe to ensure businesses and consumers can continue to benefit from Privacy Shield.

B. Truthfulness in National Advertising

Ensuring that advertising is truthful and not misleading has always been one of the FTC’s core missions because it allows consumers to make the best use of their resources and promotes competition by companies on a level playing field. Below are a few recent examples of the Commission’s work in this area.

This past year, the agency has continued to bring cases challenging false and unsubstantiated health claims, including those targeting older consumers, consumers affected by the

¹⁶ See *supra* note 6.

¹⁷ 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.

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.¹⁸ The Commission also has sued companies that allegedly claimed, without scientific evidence, that using their products could alleviate the symptoms of opioid withdrawal and increase the likelihood of overcoming opioid dependency.¹⁹ Finally, the Commission recently barred a marketer from making deceptive claims about its products' ability to mitigate the side effects of cancer treatments.²⁰

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.²¹

The FTC has also challenged false claims in the financial area. For example, the Commission recently filed a complaint against Lending Club, an online lender, alleging that its marketing was deceptive because it claimed its loans had "no hidden fees," when in fact consumers later learned they were charged hundreds, and even thousands, of dollars in origination fees.²²

¹⁸ See, e.g., *FTC and State of Maine v. Health Research Laboratories, Inc.*, No. 2:17-cv-00467 (D. Maine Nov. 30, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/152-3021/health-research-laboratories-llc>; *Telomerase Activation Sciences, Inc. and Noel Thomas Patton*, No. C-4644 (Apr. 19, 2018),

<https://www.ftc.gov/enforcement/cases-proceedings/142-3103/telomerase-activation-sciences-inc-noel-thomas-patton-matter>.

¹⁹ *FTC v. Catlin Enterprises, 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 recently issued letters to companies that appeared to be making questionable claims in order to sell addiction or withdrawal remedies. See *FTC and U.S. FDA Opioid Warning Letters* (Jan. 24, 2018), <https://www.ftc.gov/ftc-fda-opioid-warning-letters>.

²⁰ *FTC v. CellMark Biopharma and Derek E. Vest*, 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>.

²¹ FTC Consumer Blog, *Treatments and Cures*, <https://www.consumer.ftc.gov/topics/treatments-cures>.

²² *FTC v. Lending Club Corp.*, No. 3:18-cv-02454 (N.D. Cal. Apr. 25, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3088/federal-trade-commission-v-lendingclub-corporation>.

C. Protecting Consumers From Fraud

Fighting fraud is a major focus of the FTC’s law enforcement efforts. The Commission’s anti-fraud program attempts to track down and stop some of the most egregious scams that prey on U.S. consumers—often, the most vulnerable consumers who can least afford to lose money. For example, reports about imposter scams have been on the rise over the past few years, and many of these scams target older Americans.²³ Fraudsters falsely claiming to be government agents (including the IRS and even the FTC), family members, or well-known tech companies contact consumers and pressure them to send money, often via cash-like payment methods. Fraudsters also target small businesses, sometimes cold-calling businesses to “collect” on invoices they do not owe.

During the past year, the FTC joined federal, state, and international law enforcement partners in announcing “Operation Tech Trap,” a nationwide and international crackdown on tech support scams that trick consumers into believing their computers are infected with viruses and malware, and then charge them hundreds of dollars for unnecessary repairs.²⁴ The FTC brought actions to shut down these deceptive operations and also developed consumer education materials to help consumers avoid falling victim to tech support scams in the first place.²⁵ Just last month, the FTC announced Operation Main Street, an initiative to stop small business scams. The FTC, jointly with the offices of eight state Attorneys General, the New York Division of the U.S. Postal

²³ FTC Fiscal Year 2019 Congressional Budget Justification, <https://www.ftc.gov/reports/fy-2019-congressional-budget-justification>.

²⁴ FTC Press Release, *FTC and Federal, State and International Partners Announce Major Crackdown on Tech Support Scams* (May 12, 2017), <https://www.ftc.gov/news-events/press-releases/2017/05/ftc-federal-state-international-partners-announce-major-crackdown>. “Operation Tech Trap” is just one example of a law enforcement “sweep”—coordinated, simultaneous law enforcement actions with partners—that the FTC uses to leverage resources to maximize effects. Another example of a recent sweep is “Game of Loans,” the first coordinated federal-state law enforcement initiative targeting deceptive student loan debt relief scams. Press Release, *FTC, State Law Enforcement Partners Announce Nationwide Crackdown on Student Loan Debt Relief Scams* (Oct. 13, 2017), <https://www.ftc.gov/news-events/press-releases/2017/10/ftc-state-law-enforcement-partners-announce-nationwide-crackdown>.

²⁵ FTC Guidance, *Tech Support Scams* (July 2017), <https://www.consumer.ftc.gov/articles/0346-tech-support-scams#How>.

Inspection Service, two U.S. Attorneys' Offices, and the Better Business Bureau, announced a total of 24 actions targeting fraud aimed at small businesses, as well as new education materials to help small businesses identify and avoid potential scams.²⁶

The FTC also strives to stay ahead of scammers, who are always on the lookout for new ways to market old schemes. For example, there has been an increase in deceptive moneymaking frauds involving cryptocurrencies—digital assets that use cryptography to secure or verify transactions. The Commission has worked to educate consumers about cryptocurrencies and hold fraudsters accountable. In March, the FTC halted the operations of Bitcoin Funding Team, which allegedly falsely promised that participants could earn large returns by enrolling in moneymaking schemes and paying with cryptocurrency.²⁷ And in June, the FTC hosted a workshop to explore how scammers are exploiting public interest in cryptocurrencies like bitcoin and Litecoin, and discussed ways to empower and protect consumers against this growing threat of exploitation.²⁸

D. Illegal Robocalls

Illegal robocalls also remain a significant consumer protection problem and consumers' top complaint to the FTC. They repeatedly disturb consumers' privacy, and frequently use fraud and deception to pitch goods and services, leading to significant economic harm. In FY 2017, the FTC received more than 4.5 million robocall complaints.²⁹ The FTC has used many methods to fight

²⁶ FTC Press Release, *FTC, BBB, and Law Enforcement Partners Announce Results of Operation Main Street: Stopping Small Business Scams Law Enforcement and Education Initiative* (June 18, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-bbb-law-enforcement-partners-announce-results-operation-main>.

²⁷ *FTC v. Thomas Dluca, et al. (Bitcoin Funding Team)*, No. 0:18-cv-60379-KMM (S.D.N.Y. Mar. 16, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/172-3107/federal-trade-commission-v-thomas-dluca-et-al-bitcoin-funding>.

²⁸ FTC Workshop, *Decrypting Cryptocurrency Scams* (June 25, 2018), <https://www.ftc.gov/news-events/events-calendar/2018/06/decrypting-cryptocurrency-scams>.

²⁹ Total unwanted-call complaints for FY 2017, including both robocall complaints and complaints about live calls from consumers whose phone numbers are registered on the Do Not Call Registry, exceeded 7 million. See *Do Not Call Registry Data Book 2017: Complaint Figures for FY 2017*, <https://www.ftc.gov/reports/national-do-not-call-registry-data-book-fiscal-year-2017>.

these illegal calls.³⁰ Technological advances, however, have allowed bad actors to place millions or even billions of calls, often from abroad, at very low cost, and in ways that are difficult to trace. This continues to infuriate consumers and challenge enforcers.

Part of the huge uptick in illegal calls, including robocalls, is attributable to relatively recent technological developments that facilitate telemarketing without requiring a significant capital investment in specialized hardware and labor.³¹ Today, robocallers benefit from automated dialing technology, inexpensive international and long distance calling rates, and the ability to move internationally and employ cheap labor. The result: law-breaking telemarketers can place robocalls for a fraction of one cent per minute. Moreover, technological changes have also affected the marketplace by enabling telemarketers to conceal their identities and “spoof” caller IDs when they place calls.³²

Recognizing that law enforcement, while critical, is not enough to solve the problem of illegal calls, the FTC has taken some steps to spur the marketplace to develop technological

³⁰ See FTC Robocall Initiatives, <https://www.consumer.ftc.gov/features/feature-0025-robocalls>. Since establishing the Do Not Call Registry in 2003, the Commission has fought vigorously to protect consumers’ privacy from unwanted calls. Indeed, since the Commission began enforcing the Do Not Call provisions of the Telemarketing Sales Rule (“TSR”) in 2004, the Commission has brought 136 enforcement actions seeking civil penalties, restitution for victims of telemarketing scams, and disgorgement of ill-gotten gains against 444 corporations and 358 individuals. As a result of the 125 cases resolved thus far, 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>. Recently, the FTC and its law enforcement partners achieved an historic win in a long-running fight against unwanted calls when a federal district court in Illinois issued an order imposing a \$280 million penalty against Dish Network—the largest penalty ever issued in a Do Not Call case. *U.S. et al. v. Dish Network, L.L.C.*, No. 309-cv-03073-JES-CHE (C.D. Ill. Aug. 10, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/052-3167/dish-network-llc-united-states-america-federal-trade>.

³¹ FTC Workshop, *Robocalls: All the Rage* (Oct. 18, 2012), <https://www.ftc.gov/news-events/events-calendar/2012/10/robocalls-all-rage-ftc-summit>. A transcript of the workshop is available at https://www.ftc.gov/sites/default/files/documents/public_events/robocalls-all-rage-ftc-summit/robocallsummittranscript.pdf.

³² Recently, the FTC filed a complaint against two related operations and their principals who allegedly facilitated billions of illegal robocalls to consumers nationwide. The complaint charged that these operations provided the computer-based dialing platform and “spoofed” caller IDs for robocallers to pitch everything from auto warranties to home security systems and supposed debt-relief services. *FTC v. James Christiano et al.*, No. 8:18-cv-00936 (C.D. Cal. June 5, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3124/james-christiano-et-al-netdotsolutions-inc>.

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.³³ The FTC's challenges contributed to a shift at the time 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.³⁴

In addition, the FTC regularly works with its state, federal, and international partners to combat illegal robocalls. For example, this spring the FTC and Federal Communications Commission co-hosted a Joint Policy Forum on Illegal Robocalls to discuss the regulatory and enforcement challenges posed by illegal robocalls, as well as a public expo featuring new technologies, devices, and applications to minimize or eliminate the number of illegal robocalls consumers receive.³⁵

Also, for many years, the Commission has testified in favor of eliminating the common carrier exemption. 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 is

³³ The first challenge, in 2013, called upon the public to develop a consumer-facing solution to blocks 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 FTC 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 FTC 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>; FTC 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>.

³⁴ See <https://www.consumer.ftc.gov/features/how-stop-unwanted-calls>.

³⁵ 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-seek-exhibitors-expo-featuring-technologies-block-illegal.

beyond the Commission's reach because of the common carriage exemption. Likewise, the exemption may frustrate the Commission's ability to obtain complete relief for consumers when there are multiple parties, some of whom are common carriers and some that are not. 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 use their purported status as common carriers as a defense to FTC litigation.³⁶

E. Consumer 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 its website, the media, and partner organizations that disseminate consumer information on the agency's behalf. The FTC delivers actionable, practical, plain-language materials on dozens of issues, and updates its consumer education whenever it has new information to share. The FTC disseminates these tips through articles, blog posts, social media, infographics, videos, audio, and campaigns such as its "Pass It On" effort to arm older consumers with information about scams that they can "pass on" to their friends and family.³⁷

III. COMPETITION MISSION

In addition to the work of BCP described above, the FTC enforces U.S. antitrust law in many sectors that directly affect consumers and their pocketbooks, such as health care, consumer products and services, technology, manufacturing, and energy. The Commission shares federal

³⁶ 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>.

³⁷ See FTC Consumer Information, *Pass It On*, <http://www.consumer.ftc.gov/features/feature-0030-pass-it-on>.

antitrust enforcement responsibilities with the Antitrust Division of the U.S. Department of Justice (“DOJ”).

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 and wait for government review. Over the past five fiscal years, premerger filings under the Hart-Scott-Rodino (“HSR”) Act have increased more than 50 percent; in the most recent fiscal year, the antitrust agencies received over 2,000 HSR filings for the first time since 2007.³⁸ While the vast majority of reported transactions do not raise competitive concerns and the agencies clear those transactions expeditiously, when the evidence gives the Commission reason to believe that a proposed merger likely would be anticompetitive, the Commission does not hesitate to intervene. Since the beginning of FY 2016, the Commission has challenged 53 mergers after the evidence showed that they would likely be anticompetitive. Although many of these cases were resolved through divestiture settlements, in the last year alone, the Commission voted to initiate litigation to block seven mergers, each of which has required a significant commitment of resources to prosecute. Three of those challenges ended successfully when the parties abandoned the transactions after the Commission initiated litigation.³⁹ The four other merger cases are still being litigated.⁴⁰ In addition, Walgreens substantially restructured its proposed acquisition of Rite Aid after the Commission raised concerns about the original transaction during an extensive review.⁴¹

³⁸ In FY 2017, the agencies received notice of 2,052 transactions, compared with 1,326 in FY 2013 and 2,201 in FY 2007. 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>.

³⁹ *FTC v. DraftKings, Inc.*, No. 17-cv-01195 (D.D.C. Jun. 19, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/161-0174/draftkings-fanduel-ftc-state-california-district-columbia-v>; FTC Press Release, *FTC Challenges Proposed Acquisition of Conagra’s Wesson Cooking Oil Brand by Crisco owner, J.M. Smucker Co.*, (Mar. 5, 2018), <https://www.ftc.gov/news-events/press-releases/2018/03/ftc-challenges-proposed-acquisition-conagras-wesson-cooking-oil>; *In re CDK Global & Auto/Mate*, Dkt. 9382 (Mar. 20, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0156/cdk-global-automate-matter>.

⁴⁰ *FTC v. Sanford Health*, No. 1:17-cv-00133 (W.D.N.D. Jun. 23, 2017), <https://www.ftc.gov/enforcement/cases->

One increasing challenge for the Commission in litigating competition cases is continuing to hire testifying economic experts. Qualified experts are a critically important component in all of the FTC's competition cases heading toward litigation. While the agency thus far has managed to find sufficient resources to fund the experts needed to support its cases, the FTC is reaching the point where it cannot meet these needs without compromising its ability to fulfill other aspects of the agency's mission. The Commission appreciates Congress's attention to its resource needs, including the need to hire outside experts.

The Commission also maintains a robust program to identify and stop anticompetitive conduct, and it currently has a number of cases in active litigation.⁴² For over twenty years and on a bipartisan basis, the Commission has prioritized ending anticompetitive reverse-payment patent settlements in which a brand-name drug firm pays its potential generic rival to delay entering the market with a lower cost generic product. Following the U.S. Supreme Court's 2013 decision in *FTC v. Actavis, Inc.*,⁴³ the Commission is in a much stronger position to protect consumers. Since that ruling, the FTC obtained a landmark \$1.2 billion settlement in its litigation involving the sleep disorder drug, Provigil,⁴⁴ and other manufacturers have agreed to abandon the practice.⁴⁵ In

[proceedings/171-0019/sanford-health-ftc-state-north-dakota-v](https://www.ftc.gov/enforcement/cases-proceedings/171-0019/sanford-health-ftc-state-north-dakota-v); *In re Tronox Ltd.*, Dkt. 9377 (Dec. 5, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/171-0085/tronoxcrystal-usa>; *In re Otto Bock HealthCare North America, Inc.*, Dkt. 9378 (Dec. 20, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/171-0231/otto-bock-healthcarefreedom-innovations>; *FTC v. Wilhelmsen*, No. 1:18-cv-00414 (D.D.C. Feb. 23, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0161/wilhelm-wilhelmsen-et-al-ftc-v>.

⁴¹ See Statement of Acting Chairman Maureen K. Ohlhausen in Walgreens Boots Alliance/Rite Aid (Sept. 19, 2017), <https://www.ftc.gov/public-statements/2017/09/statement-acting-chairman-maureen-k-ohlhausen-walgreens-boots-alliancerite>.

⁴² In addition to the cases involving pharmaceutical firms discussed *infra*, pending litigation alleging anticompetitive conduct includes *FTC v. Qualcomm, Inc.*, No. 17-cv-00220 (N.D. Cal. Jan. 17, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/141-0199/qualcomm-inc>; *In re 1-800 Contacts, Inc.*, Dkt. 9372 (Aug. 8, 2016), <https://www.ftc.gov/enforcement/cases-proceedings/141-0200/1-800-contacts-inc-matter>; *In re Louisiana Real Estate Appraisers Board*, Dkt. 9374 (May 31, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/161-0068/louisiana-real-estate-appraisers-board>; and *In re Benco Dental Supply et al.*, Dkt. 9379 (Feb. 12, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/151-0190/bencoscheinpatterson-matter>.

⁴³ *FTC v. Actavis, Inc.*, 570 U.S. 756 (2013).

⁴⁴ Press Release, *FTC Settlement of Cephalon Pay for Delay Case Ensures \$1.2 Billion in Ill-Gotten Gains*

addition, the Commission has challenged other anticompetitive conduct by drug manufacturers, such as abuse of government process through sham litigation or repetitive regulatory filings intended to slow the approval of competitive drugs.⁴⁶ For example, most recently a federal court ruled that AbbVie Inc. used sham litigation to illegally maintain its monopoly over the testosterone replacement drug Androgel, and ordered \$448 million in monetary relief to consumers who were overcharged for Androgel as a result of AbbVie's conduct.⁴⁷ The Commission also obtained a stipulated injunction in which Mallinckrodt ARD Inc. agreed to pay \$100 million and divest assets to settle charges that it had illegally acquired the rights to develop a drug that threatened its monopoly in the U.S. market for a specialty drug used to treat a rare seizure disorder afflicting infants.⁴⁸

The Commission also follows closely activity in the high-technology sector. From smart appliances and smart cars to mobile devices and search platforms, the widespread use of technology and data is not only changing the way we live, but also the way firms operate. While many of these changes offer consumer benefits, they also raise complex and sometimes novel competition issues. Given the important role that technology companies play in the American economy, it is critical that the Commission—in furthering its mission to protect consumers and promote competition—

Relinquished; Refunds Will Go To Purchasers Affected by Anticompetitive Tactics (May 28, 2015), <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-settlement-cephalon-pay-delay-case-ensures-12-billion-ill>.

⁴⁵ Joint Motion for Entry of Stipulated Order for Permanent Injunction, *FTC v. Allergan plc*, No. 17-cv-00312 (N.D. Cal. Jan. 23, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/141-0004/allergan-plc-watson-laboratories-inc-et-al>, and Stipulated Order for Permanent Injunction, *FTC v. Teikoku Pharma USA, Inc.*, No. 16-cv-01440 (E.D. Pa. Mar. 30, 2016), <https://www.ftc.gov/enforcement/cases-proceedings/141-0004/endo-pharmaceuticals-impax-labs>.

⁴⁶ *FTC v. Abbvie Inc.*, No. 14-cv-5151 (E.D. Pa. Sept. 8, 2014), <https://www.ftc.gov/enforcement/cases-proceedings/121-0028/abbvie-inc-et-al>; *FTC v. Shire ViroPharma Inc.*, No. 17-cv-131(D. Del. Feb. 7, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/121-0062/shire-viropharma>.

⁴⁷ 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>.

⁴⁸ Stipulated Order for Permanent Injunction and Equitable Monetary Relief, *FTC v. Mallinckrodt ARD Inc.*, No. 1:17-cv-00120 (D.D.C. Jan. 30, 2017), https://www.ftc.gov/system/files/documents/cases/stipulated_order_for_permanent_injunction_mallinckrodt.pdf.

understand the current and developing business models and scrutinize incumbents' conduct to ensure that they abide by the same rules of competitive markets that apply to any company.⁴⁹

In addition to competition enforcement, the FTC takes full advantage of its policy tools. The FTC promotes competition principles in advocacy comments to state lawmakers and regulators, as well as to its sister federal agencies,⁵⁰ and in *amicus* briefs filed in federal courts considering important areas of antitrust law.⁵¹ Last year, the Commission concluded a comprehensive review of its merger remedies to evaluate the effectiveness of the Commission's orders issued between 2006 and 2012, and made public its findings.⁵² Examining prior enforcement efforts to assess their impact on competition and consumers is critical to formulating an effective and efficient antitrust enforcement program, and the Commission will continue these self-assessment efforts in order to deploy its resources where they can do the most good. Similarly, through the upcoming series of hearings described above,⁵³ the Commission will devote significant resources to refresh and, if warranted, renew its thinking on a wide range of cutting-edge competition issues.⁵⁴

IV. INTERNATIONAL COOPERATION

In addition to its domestic programs, the FTC engages in significant international work. On the competition side, 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

⁴⁹ See, e.g., *DraftKings, Inc./FanDuel Limited*, Docket No. 9375 (July 14, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/161-0174/draft-kings-inc-fanduel-limited>.

⁵⁰ See generally <https://www.ftc.gov/policy/advocacy>.

⁵¹ Amicus briefs are posted at <https://www.ftc.gov/policy/advocacy/amicus-briefs>.

⁵² FTC Staff Report, *The FTC's Merger Remedies 2006-2012: A Report of the Bureaus of Competition and Economics* (2017), https://www.ftc.gov/system/files/documents/reports/ftcs-merger-remedies-2006-2012-report-bureaus-competition-economics/p143100_ftc_merger_remedies_2006-2012.pdf.

⁵³ See *supra* note 6.

⁵⁴ See Prepared Remarks of Chairman Simons Announcing the Competition and Consumer Protection Hearings (June 20, 2018), https://www.ftc.gov/system/files/documents/public_statements/1385308/prepared_remarks_of_joe_simons_announcing_the_hearings_6-20-18_0.pdf.

ensure close collaboration on cross-border cases and convergence toward sound competition policies and procedures.⁵⁵ The FTC effectively coordinates reviews of multijurisdictional mergers and continues to work with its international counterparts to achieve consistent outcomes in cases of possible unilateral 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 an active role in multilateral competition organization projects and initiatives. When appropriate, 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.⁵⁶

On the consumer protection side, enforcement cooperation is the top priority of the FTC's international consumer protection program. In a global, digital economy, the number of FTC investigations and cases with cross-border components—including foreign-based targets and defendants, witnesses, documentary evidence, and assets—continues to grow. During the last fiscal year, the FTC cooperated in 51 investigations, cases, and enforcement projects with foreign consumer, privacy, and criminal enforcement agencies. To sustain this level of productive 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 Enforcement Network, and the International Mass Marketing Fraud Working Group.

⁵⁵ In competition matters, the FTC also seeks to collaborate with the state Attorneys General to maximize results and use of limited resources in the enforcement of the U.S. antitrust laws.

⁵⁶ 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.

The FTC's key tool for cross-border enforcement is the U.S. SAFE WEB Act.⁵⁷ Passed in 2006, and renewed in 2012, this Act strengthens the FTC's ability to work on cases with an international dimension. Among other things, it has allowed 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. In many of these cases, the foreign agencies investigated conduct that directly harmed U.S. consumers, while in others, the FTC's action led to reciprocal assistance.

The Act also underpins the FTC's ability to participate in cross-border cooperation arrangements, including the EU-U.S. Privacy Shield Framework, which helps enable billions of transatlantic data flows.⁵⁸ Critically, the Act also expressly confirms the FTC's authority to challenge practices occurring in other countries that harm U.S. consumers, a common scenario in cases involving fraud, and confirms its authority to challenge U.S. business practices harming foreign consumers, such as Privacy Shield violations.

The U.S. SAFE WEB Act has been a remarkable success. The FTC has responded to more than 125 SAFE WEB information sharing requests from 30 foreign enforcement agencies. The FTC has issued more than 110 civil investigative demands in more than 50 investigations on behalf of foreign agencies, both civil and criminal. It has also used this authority to file suit in federal court to obtain judicial assistance for one of its closest law enforcement partners, the Canadian

⁵⁷ Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act (U.S. SAFE WEB Act), Pub. L. No. 109-455, 120 Stat. 3372, extended by Pub. L. No. 112-203, 126 Stat. 1484 (amending 15 U.S.C. §§ 41 et seq.).

⁵⁸ See generally <https://www.ftc.gov/tips-advice/business-center/privacy-and-security/privacy-shield>. The FTC's SAFE WEB powers enable stronger cooperation with European data protection authorities on investigations and enforcement against possible Privacy Shield violations, a point cited in the European Commission's Privacy Shield adequacy decision. See Commission Implementing Decision No. 2016/1250 (on the adequacy of the protection provided by the EU-U.S. Privacy Shield), 2016 O.J. L207/1 at ¶ 51, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2016:207:FULL&from=EN>.

Competition Bureau.⁵⁹ The FTC’s enforcement actions have similarly been assisted by its foreign law enforcement partners. In cases relying on the U.S. SAFE WEB Act, the FTC has collected millions of dollars in restitution for injured consumers, both foreign and domestic. For example, the FTC worked with DOJ, the Royal Canadian Mounted Police, and other Canadian agencies to obtain a Montreal court order returning nearly \$2 million to the U.S. victims of a mortgage assistance and debt relief scam.⁶⁰ The Act sunsets in 2020; the Commission requests that Congress reauthorize this important authority and eliminate the sunset provision.

A key focus of the FTC’s international privacy efforts is support for global interoperability of data privacy regimes. The FTC works with the U.S. Department of Commerce on three key cross-border data transfer programs for the commercial sector: the EU-U.S. Privacy Shield, the Swiss-U.S. Privacy Shield, and the Asia-Pacific Economic Cooperation (“APEC”) Cross-Border Privacy Rules (CPBR) System. As already explained, the Privacy Shield programs provide legal mechanisms for companies to transfer personal data from the EU and Switzerland to the United States with strong privacy protections. The APEC CBPR system is a voluntary, enforceable code of conduct protecting personal information transferred among the United States and other APEC economies. The FTC enforces companies’ privacy promises in these programs, bringing cases as violations of Section 5 of the FTC Act.⁶¹ The FTC also works closely with agencies developing and

⁵⁹ Competition Bureau Canada Press Release, *Bureau case against Rogers, Bell, Telus and the CWTA advances thanks to collaboration with US Federal Trade Commission* (Aug. 29, 2014), <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03805.html>.

⁶⁰ FTC Press Release, *FTC Returns \$1.87 Million to Consumers Harmed by Debt Relief Scam* (May 9, 2016), <https://www.ftc.gov/news-events/press-releases/2016/05/ftc-returns-187-million-consumers-harmed-debt-relief-scam>.

⁶¹ See, e.g., *ReadyTech Corp.*, Matter No. 1823100 (July 2, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/182-3100/readytech-corporation-matter>; *Md7, LLC*, No. C-4629 (Nov. 29, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/172-3172/md7-llc>; *Tru Communication, Inc.*, No. C-4628 (Nov. 29, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/172-3171/tru-communication-inc>; *Decusoft, LLC*, No. C-4630 (Nov. 29, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/172-3173/decusoft-llc>; *Sentinel Labs, Inc.*, No. C-4608 (Apr. 14, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/162-3250/sentinel-labs-inc>; *Vir2us, Inc.*, No. C-4609 (Apr. 14, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/162-3248/vir2us-inc>; *SpyChatter, Inc.*, No. C-4614 (Apr. 14, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/162->

implementing new privacy and data security laws in Latin America and Asia. And, the FTC convenes discussions on important and emerging privacy trends. For example, the agency recently hosted the 49th Asia Pacific Privacy Authorities forum in San Francisco, which addressed privacy issues such as artificial intelligence, data breach notifications, and cross-border data flows.⁶²

V. CONCLUSION

The FTC remains committed to maximizing its resources to enhance its effectiveness in protecting consumers and promoting 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.

[3251/spychatter-inc.](https://www.ftc.gov/news-events/press-releases/2018/06/ftc-hosts-semi-annual-forum-asia-pacific-privacy-authorities)

⁶² FTC Press Release, *FTC Hosts Semi-Annual Forum for Asia Pacific Privacy Authorities* (June 27, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-hosts-semi-annual-forum-asia-pacific-privacy-authorities>.