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Oversight of the Federal Trade Commission

Committee on Commerce, Science, and Transportation
Subcommittee on Consumer Protection, Product
Safety, Insurance, and Data Security
United States Senate

Statement of Commissioner Rebecca Kelly Slaughter¹
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Chairman Moran, Ranking Member Blumenthal, and members of the Subcommittee, thank you for inviting us here today. I am Rebecca Kelly Slaughter, and I have the privilege to serve as part of this newly constituted Commission that began its work six months ago.

During that time, I've immersed myself in getting to know the talented staff of the agency and understanding the opportunities and challenges they see on the ground as the Commission fulfills its dual missions of protecting consumers and promoting competition.

In today's increasingly data-driven and concentrated economy, consumers demand and deserve vigorous enforcement by the FTC. That is precisely what Chairman Simons has pledged, and I join him in his commitment.

We should and we will enforce the law against wrongdoers to the fullest extent that our authority and resources allow, and we should continue to engage in critical self-examination to identify ways we can do more within those parameters. However, I want to use my time today to highlight how additional resources and authority would enable the Commission to better protect consumers and promote competition.

Resources

Let me first address resources. I'll begin with an example: in 2012, the FTC sued a payday lender, known as AMG, that buried consumers with illegal fees. The FTC aggressively litigated this matter and ultimately secured a hard-fought \$1.3 billion court order against the

¹ The views expressed in these remarks and responses to questions are my own and do not necessarily reflect the views of the Federal Trade Commission or any other Commissioner.

defendants in 2016.² Two months ago, in late September, the FTC returned over **\$500 million** to AMG-related victims.³

The outcome in AMG is instructive in two ways: first, demonstrates that the FTC provides meaningful results for consumers that far exceed the resources we receive. On that one day in September, we returned to consumers more than our entire appropriated budget for FY 2018, which is about \$300 million. In fact, during all of FY 2018, Commission actions resulted in over **\$1.6 billion** being returned to consumers, more than 5 times our annual budget. Put another way, the FTC provides an extremely good return on investment for the American taxpayer.

The AMG resolution demonstrates a second plain but paramount point: good outcomes for consumers can take time and money, especially where the target of the investigation is a large, well-financed corporation. There is simply no substitute for careful, thorough investigation and, where appropriate, aggressive litigation.

I agree with Commissioner Chopra's comments about the value of litigation, and I want to be clear about what it means from a resource perspective. Litigation requires teams of dedicated and talented staff and complementary resources. Cases such as AMG demonstrate that the talent and the dedication are here. But imagine how much more we could be doing with additional resources.

The challenges that consumers face in the marketplace today are growing in number and complexity; to address them the FTC must initiate more investigations and litigate more cases. These cases have become more complex both legally and technologically, and they involve defendants with deep pockets and armies of attorneys.

Our resources have not kept pace with economic or technological developments. As one key metric, consider that we had about 50% more full-time-equivalent employees in the beginning of the Reagan Administration than we do today.⁴ It is critical that the FTC have sufficient resources to support its work, particularly as demands for enforcement in so many complex areas continue to grow.

Authority

In addition to sufficient resources, sufficient authority is critical for the FTC to meet the demands of the 21st century marketplace. Expanding our authority to seek monetary penalties for violations of the law, providing the FTC with better rulemaking authority, and eliminating

² Press Release, FTC, *U.S. Court Finds in FTC's Favor and Imposes Record \$1.3 Billion Judgment Against Defendants Behind AMG Payday Lending Scheme*, (Oct. 4, 2016), <https://www.ftc.gov/news-events/press-releases/2016/10/us-court-finds-ftcs-favor-imposes-record-13-billion-judgment>.

³ Press Release, FTC, *FTC Returns Over \$505 Million To Victims Of Payday Loan Scheme*, (Sept. 27, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/refunds/amg-services-refunds>.

⁴ See generally FTC, *FTC Appropriation and Full-Time Equivalent (FTE) History*, available at <https://www.ftc.gov/about-ftc/bureaus-offices/office-executive-director/financial-management-office/ftc-appropriation>.

jurisdictional exemptions each would go a long way to help the FTC better meet today's challenges as well as tomorrow's.⁵

The limitations on our authority are particularly constraining when it comes to protecting consumer data. No matter how big the breach or how egregious the conduct, the FTC has no authority to seek financial penalties for *most* types of abuse or misuse of consumer data.⁶

The FTC also lacks the authority to engage in notice-and-comment rulemaking in the areas of consumer privacy and data security that would lay out clear protections for consumers and transparent rules for business. Finally, the common-carrier and non-profit exemptions put some of the largest hosts of consumer data beyond our reach.

I strongly support Chairman Simons's call for Congress to consider enacting federal privacy legislation that would address these limitations. I believe we need a law that requires companies to take consumer privacy seriously; gives the FTC authority to impose significant penalties for failing to do so; and invests the necessary resources for the FTC to carry out Congress's directive effectively.

I look forward to continuing this important dialogue with you and to taking your questions.

⁵ In addition to these statutory limitations, the FTC has also been hampered by recent court decisions that limit our ability to protect consumers. For example, the Eleventh Circuit in *LabMD v. FTC*, 894 F.3d 1221, 1237 (11th Cir. 2018). And two different district courts have recently challenged our ability to seek injunctive relief to prohibit unlawful behavior—including outright fraud—from recurring. *See FTC v. Hornbeam Special Situations, LLC*, No. 17-cv-3094, Order, ECF No. 219 (N.D. Ga. Oct. 15, 2018) (unreported); *FTC v. Shire ViroPharma, Inc.*, No. 17-cv-131, 2018 WL 1401329, at *6 (D. Del. Mar. 20, 2018). While we are hopeful that we will be vindicated on appeal in those last two cases, it is important for Congress to be aware of these decisions so that statutory fixes can be considered, if necessary.

⁶ The FTC does have authority to assess financial penalties for violations of sector-specific statutes and rules that protect certain health, credit, financial, and children's information. *See* 16 C.F.R. pt. 318 (Health Breach Notification Rule); 15 U.S.C. §§ 1681–1681x (Fair Credit Reporting Act); 16 C.F.R. pts. 313–314 (Gramm-Leach-Bliley Privacy and Safeguards Rules), implementing 15 U.S.C. §§ 6801–6809; 16 C.F.R. pt. 312 (Children's Online Privacy Protection Rule), implementing 15 U.S.C. §§ 6501–6506.