

Separate Statement of Commissioner Noah Joshua Phillips
Federal Trade Commission v. Unrollme Inc.
Matter No. 1723139

August 8, 2019

I join my colleagues in supporting this settlement, but write separately to highlight the surrounding circumstances, which are relevant to the current privacy debate.

As the complaint alleges, Unroll.me offered a free service that helped consumers organize their email inboxes. It supported this free service by allowing its parent company to scan consumers' emails for purchase-related information, which the parent collected for the anonymized market research it sells. Until around September 2018, the complaint alleges that, in a number of instances, Unroll.me failed adequately to disclose these collection practices, which failure violated the law.

Unrelated to the allegations in the complaint, in late 2018, Google announced it would limit third-party apps (like Unroll.me) from using the information in Gmail accounts of consumers for purposes such as market research or advertising.¹ Promoted as means to enhance consumer privacy, that decision may also limit consumer choice and competition.

Many millions of consumers see value in Unroll.me's service, which helps them manage the barrage of daily emails crowding their inboxes. Unroll.me has since removed the allegedly deceptive statements and updated its disclosures – consumers may now be better aware of the privacy trade-offs, and continue to use the service. For these consumers, granting access for the collection of purchase data may be a choice worth making. Google's new privacy restrictions threaten to take that option away from consumers. That may be good for privacy, but not for consumer choice.

While Google will retain control of and access to the valuable purchase and other information about consumers contained in their Gmail accounts, other market actors – like Unroll.me and its parent, Rakuten Intelligence, a market research firm – may no longer have access. Google's restrictions thus potentially “imperil the business models of some popular email extensions”,² like Unroll.me. That may be good for privacy, but not for competition.

I am not suggesting that Google sought to limit consumer choice or competition, or that it is violating the law. Consumers are focusing increasingly on privacy, and firms like Google may be responding to that demand. But this situation highlights an important aspect of the privacy

¹ Ben Smith, *Project Strobe: Protecting your data, improving our third-party APIs, and sunseting consumer Google+*, GOOGLE SAFETY AND SECURITY (Oct. 8, 2018), <https://www.blog.google/technology/safety-security/project-strobe/>.

² Cat Zakrzewski, *A small privacy change for Google leads to big disruptions for start-ups*, WASHINGTON POST (Oct. 15, 2018), <https://www.washingtonpost.com/technology/2018/10/15/small-privacy-change-google-leads-big-disruptions-startups/>.

debate, *i.e.*, the impact that privacy-enhancing decisions may have on consumer choice and competition.

There is no right answer, and we as a society may very well choose limitations on consumer choice and competition to protect privacy. Privacy is important. Consumers and policymakers alike must recognize, however, that it comes with tradeoffs. And competition enforcers must be vigilant, recognizing the potential of privacy efforts negatively to impact competition.