

Separate Statement of Commissioner Maureen K. Ohlhausen
Big Data: A Tool for Inclusion or Exclusion?
January 6, 2016

I support today’s report on big data as a useful contribution to the ongoing policy discussion about the effect of big data analysis on low-income, disadvantaged, and vulnerable consumers. One part of the report summarizes the concerns of several privacy advocates and academics over the potential inaccuracies of big data analytics. I write separately to emphasize the importance of evaluating these opinions in the context of market and competitive forces that affect all companies using big data analytics.

The report details the use of big data as it affects low-income, disadvantaged, or vulnerable consumers. Importantly, the report describes some of the many ways companies are already using big data to benefit such consumers—and others. The report also recognizes big data’s massive potential benefits. In addition, the report sketches the legal landscape implicated by big data and offers questions that companies may find useful as they apply big data techniques to solve their business challenges.

The report also describes certain concerns about big data tools raised by some consumer advocates and researchers. Specifically, some fear that big data analysis will produce inaccurate or incomplete results, and that actions based on such flawed analysis will harm low-income, disadvantaged, or vulnerable consumers.¹ For example, some worry that companies may use inaccurate big data analysis to deny opportunities to otherwise eligible low-income or disadvantaged consumers, or to fail to advertise high-quality lending products to eligible low-income customers.²

Concerns about the effects of inaccurate data are certainly legitimate, but policymakers must evaluate such concerns in the larger context of the market and economic forces companies face. Businesses have strong incentives to seek accurate information about consumers, whatever the tool. Indeed, businesses use big data specifically to increase accuracy. Our competition expertise tells us that if one company draws incorrect conclusions and misses opportunities, competitors with better analysis will strive to fill the gap.³ Therefore, to the extent that companies today misunderstand members of low-income, disadvantaged, or vulnerable populations, big data analytics combined with a competitive market may well *resolve* these

¹ FED. TRADE COMM’N, *BIG DATA: A TOOL FOR INCLUSION OR EXCLUSION? UNDERSTANDING THE ISSUES* 8–11, 25–27 (2016). The report also references other concerns that big data analysis will be *too* accurate: companies will understand their consumers too well and misuse that data to the consumer’s detriment. Market forces also constrain many such potential harms, but other such harms could actually undermine market forces. For example, the report describes concerns that unscrupulous businesses will use big data techniques to develop “sucker lists” of consumers particularly vulnerable to scams and misleading offers. The report does a good job laying out the existing legal framework that applies to such harmful uses.

² *Id.* at 9–11.

³ A real world example of the competitive advantages of novel but accurate application of data analytics was famously chronicled in the book (and movie) *Moneyball*. See MICHAEL LEWIS, *MONEYBALL: THE ART OF WINNING AN UNFAIR GAME* (2004). Oakland’s strategy succeeded precisely because it “liberated” baseball players from “unthinking prejudice rooted in baseball’s traditions . . . allowing them to demonstrate their true worth.” *Id.* at iiv. Each baseball franchise continually faces marketplace pressures to improve player quality predictions. Similarly, companies using big data analytics face competitive forces that punish inaccuracy and reward accuracy.

misunderstandings rather than *perpetuate* them.⁴ In particular, a company's failure to communicate premium offers to eligible consumers presents a prime business opportunity for a competitor with a better algorithm.⁵

To understand the benefits and risks of tools like big data analytics, we must also consider the powerful forces of economics and free-market competition. If we give undue credence to hypothetical harms, we risk distracting ourselves from genuine harms and discouraging the development of the very tools that promise new benefits to low income, disadvantaged, and vulnerable individuals.

Today's report enriches the conversation about big data. My hope is that future participants in this conversation will test hypothetical harms with economic reasoning and empirical evidence.⁶

⁴ Indeed, there is strong theoretical and empirical economic evidence that low income and other disadvantaged households stand to gain more than the wealthy from many applications of big data analytics. See JAMES C. COOPER, SEPARATION, POOLING, AND PREDICTIVE PRIVACY HARMS FROM BIG DATA: CONFUSING BENEFITS FOR COSTS 38–49 (2015), <http://ssrn.com/abstract=2655794> (describing theoretical and empirical studies on the effects of big data in credit markets, price discrimination, and labor markets for low income individuals). One simple example: lenders do not need big data analytics to identify creditworthy high-income persons, as nearly all have credit files and most are lower-risk. However, lower-income groups contain both high- and low-risk borrowers. Big data analysis can help bring credit to the lower-risk low income borrowers with thin or no credit files. See *id.* at 38–39.

⁵ Transcript of Big Data: A Tool for Inclusion or Exclusion?, in Washington, D.C. (Sept. 15, 2014), at 231–32 (Daniel Castro and Michael Spaeda in conversation), https://www.ftc.gov/system/files/documents/public_events/313371/bigdata-transcript-9_15_14.pdf (highlighting the business opportunities in improved accuracy of credit scoring for low-income individuals). Indeed, our workshop on lead generation showed that lenders and other businesses are highly motivated to reach potential customers and spend a lot of money and effort to do so. See generally *Follow the Lead: An FTC Workshop on Lead Generation*, FED. TRADE COMM'N (Oct. 30, 2015), <https://www.ftc.gov/news-events/events-calendar/2015/10/follow-lead-ftc-workshop-lead-generation>.

⁶ For example, Cooper describes a useful framework to help identify under which conditions the presumption should be for or against big data uses. See COOPER, *supra* note 4, at 33–38.