

consolidated and less competitive. Prices rise, wages fall, innovation suffers, and our markets become more fragile and less resilient. In light of these troubling realities, the FTC has been reassessing how we can enforce the antitrust laws to maximize our efficacy. Although this process is ongoing, as detailed below, we are proud of the significant accomplishments we have already made on this front.

A. Utilizing the FTC’s Full Set of Competition Tools

When Congress created the FTC, it gave the agency a wide range of authorities to combat unfair methods of competition. To ensure the Commission is faithfully discharging its statutory obligations, the FTC has renewed its commitment to use its entire suite of authorities to maximize the agency’s impact and faithfully execute the agency’s mission.

Notably, the Commission issued a policy statement outlining the scope of Section 5 of the FTC Act, an authority Congress provided to the FTC to combat unfair conduct that lies outside the boundaries of the Sherman Act.² Reactivating the Commission’s competition rulemaking authority under Section 6(g) of the FTC Act is also central to this effort. In January, the Commission proposed a rule that would ban employers from imposing noncompete restrictions on workers in all but a limited set of circumstances.³ The Commission took extensive steps to inform the public about the proposed rule to ensure that all viewpoints were heard during the public comment period and is now considering the input collected on the record before determining how to proceed.⁴

² FTC, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of The Federal Trade Commission Act (2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf.

³ See Press Release, Fed. Trade Comm’n, FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition (Jan. 5, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-proposes-rule-ban-noncompete-clauses-which-hurt-workers-harm-competition>.

⁴ On February 16, 2023, the FTC hosted a public forum to provide an opportunity for people to directly share their experiences with noncompetes. FTC, FTC Forum Examining Proposed Rule to Ban Noncompete Clauses (Feb. 16, 2023), <https://www.ftc.gov/news-events/events/2023/02/ftc-forum-examining-proposed-rule-ban-noncompete-clauses>.

The Commission is particularly concerned about mergers that may cause significant economywide harm. For instance, in May the Commission challenged a \$13.1 billion merger between the two leading providers of mortgage technology, Intercontinental Exchange, Inc. and Black Knight.⁸ The FTC’s complaint alleges that the merger would eliminate competition between the merging parties for certain key mortgage processing platforms and tools used by lenders to secure the best interest rates for customers, leading to higher prices for lenders and homebuyers.⁹

The FTC is also taking steps to better capture the full set of ways in which mergers can harm competition. Central to this effort is placing greater weight on assessing both non-horizontal and forward-looking competitive harm. For example, in December 2021, the FTC sued to stop U.S. chip supplier Nvidia’s proposed \$40 billion acquisition of U.K. chip design provider Arm.¹⁰ More than two months into its litigation with the FTC, Nvidia abandoned its acquisition of Arm—representing the first abandonment of a litigated vertical merger in many years.¹¹ This effort also includes the Commission’s February 2022 lawsuit to block Lockheed’s proposed acquisition of Aerojet, a \$4.4 billion defense merger that would have eliminated the country’s only remaining independent supplier of key missile propulsion inputs and given Lockheed the ability to cut off its competitors’ access to these critical components.¹²

⁸ Press Release, Fed. Trade Comm’n, FTC Acts to Block Deal Combining the Two Top Mortgage Loan Technology Providers (Mar. 9, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-acts-block-deal-combining-two-top-mortgage-loan-technology-providers>.

⁹ *Id.*

¹⁰ See FTC Sues to Block \$40 Billion Semiconductor Chip Merger, *supra* note 6.

¹¹ In addition to Nvidia/Arm, the FTC has a pending challenge to Microsoft’s proposed \$69 billion acquisition of independent videogame company Activision Blizzard. See FTC Seeks to Block Microsoft Corp.’s Acquisition of Activision Blizzard, Inc., *supra* note 6. In particular, the FTC’s December 2022 complaint highlights how Microsoft could use its control over Activision Blizzard’s valuable content to undermine competition for videogame consoles as well as fast growing game subscription services and cloud-gaming. See *id.*

¹² Press Release, Fed. Trade Comm’n, Statement Regarding Termination of Lockheed Martin Corporation’s Attempted Acquisition of Aerojet Rocketdyne Holdings Inc. (Feb. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/02/statement-regarding-termination-lockheed-martin-corporations-attempted-acquisition-aerojet>.

of biometric information technologies. In May, the Commission issued a policy statement concerning the use of biometric information technologies.⁸⁶ The policy statement warns that false or unsubstantiated claims about the accuracy or efficacy of biometric information technologies or about the collection and use of biometric information may violate the FTC Act. The policy statement also warns that a business’s use of biometric information or biometric information technology could be unfair in violation of the FTC Act if the business fails to, among other things, assess foreseeable risks to consumers before collecting biometric information and promptly address those risks. In addition, in June, the Commission brought an action against the genetic testing firm 1Health.io,⁸⁷ alleging that the company left sensitive genetic and health data unsecured, deceived consumers about their ability to delete their data, and unlawfully changed its privacy policy by retroactively expanding the types of third parties with which it may share consumers’ data.

2. Protecting Children and Teens

Online services can pose unique risks to children and teens, and the FTC is taking an expansive look at how to protect minors from digital harms, both through the Children’s Online Privacy Protection Act Rule (“COPPA”), which protects children under 13, as well as through Section 5 of the FTC Act. For example, we brought a law enforcement action against Epic Games, Inc. (“Epic”)—creator of the popular video game “Fortnite”—alleging that Epic violated COPPA⁸⁸ and engaged in an unfair practice by employing default settings that connected

⁸⁶ Policy Statement of the Federal Trade Commission on Biometric Information and Section 5 of the Federal Trade Commission Act (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/p225402biometricpolicystatement.pdf.

⁸⁷ Press Release, Fed. Trade Comm’n, FTC Says Genetic Testing Company 1Health Failed to Protect Privacy and Security of DNA Data and Unfairly Changed its Privacy Policy (June 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-says-genetic-testing-company-1health-failed-protect-privacy-security-dna-data-unfairly-changed>.

⁸⁸ Press Release, Fed. Trade Comm’n, Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars Over FTC Allegations of Privacy Violations and Unwanted Charges (Dec. 19, 2022),

children and teens via voice and text chat to strangers, exposing them to psychological harm.⁸⁹ This action ultimately resulted in a federal court order securing strong and novel relief for consumers—requiring Epic to adopt strong default privacy settings for children and teens, implement a privacy program subject to outside assessments, and pay a \$275 million civil penalty, the largest ever under COPPA.

The Commission also is committed to preventing data abuses around educational technology services and last year issued a policy statement making clear that we would use our full set of authorities to hold firms accountable. Last year, we brought an enforcement action against online learning platform Chegg, Inc., for allegedly failing to properly protect sensitive employee and user data, leading to several data breaches that exposed the personal data of millions of customers. Now under FTC order, Chegg is required to implement strong data security measures, including documenting and following a data collection and retention schedule, providing multifactor authentication or an equivalent authentication method to its customers and employees, and providing customers with access and deletion rights for the information that Chegg collects about them.⁹⁰

The Commission also announced three significant actions under COPPA in recent months. First, we brought an enforcement action against Amazon, alleging that the company

<https://www.ftc.gov/news-events/news/press-releases/2022/12/fortnite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>.

⁸⁹ The FTC is considering steps to deepen this work, including retaining psychologists and youth development experts to allow the agency to analyze conduct, assess harms and remedies, and pursue studies with an interdisciplinary approach, including conduct affecting children. FTC, Federal Trade Comm’n Annual Performance Report for Fiscal Year 2021 and Annual Performance Plan for Fiscal Years 2022 to 2023 [hereinafter “FTC FY22-23 Annual Performance Report”] at 79, https://www.ftc.gov/system/files/ftc_gov/pdf/21apr_22-23app.pdf; FTC, Federal Trade Comm’n Strategic Plan for Fiscal Years 2022-2026 [hereinafter “FTC FY22-26 Strategic Plan”] at 24, https://www.ftc.gov/system/files/ftc_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf.

⁹⁰ Press Release, Fed. Trade Comm’n, FTC Brings Action Against Ed Tech Provider Chegg for Careless Security that Exposed Personal Data of Millions of Customers (Oct. 31, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-brings-action-against-ed-tech-provider-chegg-careless-security-exposed-personal-data-millions>.

violated COPPA and deceived parents and users of the Alexa voice assistant service by preventing parents from using their deletion rights, keeping sensitive voice and geolocation data for years, and using it for its own purposes, while putting data at risk of harm from unnecessary access.⁹¹ This action made clear that indefinitely retaining data to feed algorithms violates COPPA's ban on indefinite retention of children's data. The Commission and the DOJ negotiated a strong proposed federal court order that requires Amazon to pay a \$25 million civil penalty, delete inactive child accounts and certain voice recordings and geolocation information, and prohibits the company from using such data to train its algorithms.⁹² Second, the Commission charged Microsoft⁹³ with violating COPPA in connection with its Xbox account registration. To resolve the charges, Microsoft agreed to an order requiring it to pay a \$20 million civil penalty and make a number of changes to better protect the privacy of child Xbox users. And the Commission brought a COPPA enforcement action against education technology provider Edmodo for allegedly collecting personal data from children without obtaining their parents' consent, using that data for advertising, and unlawfully outsourcing its COPPA compliance responsibilities to schools. Under the order, Edmodo is, among other things,

⁹¹ Press Release, Fed. Trade Comm'n, FTC and DOJ Charge Amazon with Violating Children's Privacy Law by Keeping Kids' Alexa Voice Recordings Forever and Undermining Parents' Deletion Requests (May 31, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings-forever>.

⁹² Press Release, Fed. Trade Comm'n, FTC and DOJ Charge Amazon with Violating Children's Privacy Law by Keeping Kids' Alexa Voice Recordings Forever and Undermining Parents' Deletion Requests (May 31, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings-forever>.

⁹³ See Press Release, FTC, *FTC Will Require Microsoft to Pay \$20 Million over Charges it Illegally Collected Personal Information from Children Without Their Parent's Consent* (June 5, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-will-require-microsoft-pay-20-million-over-charges-it-illegally-collected-personal-information>.

prohibited from requiring students to hand over more personal data than is necessary in order to participate in an online educational activity, which is a first for an FTC order.⁹⁴

3. Strengthening Data Security

The best way for firms to protect consumers' data is to not collect it in the first place. Accordingly, several recent Commission data security orders mandate restrictions on what data firms can collect and retain. For example, our recent order against the online alcohol marketplace Drizly, LLC requires the company to minimize the data it collects and keeps from consumers.⁹⁵ Likewise, the settlement with online merchandise platform CafePress requires the company to implement policies to minimize the data it collects, stores, and retains. The CafePress settlement order also requires the company to use secure multi-factor authentication methods.⁹⁶

The Commission also recently took action against home security camera company Ring, alleging that it compromised its customers' privacy by allowing any employee or contractor to access consumers' private videos and failed to implement basic privacy and security protections, enabling hackers to take control of consumers' accounts, cameras, and videos.⁹⁷ We obtained a federal court order against Ring that requires it to pay \$5.8 million, which will be used for consumer refunds, to implement a privacy and data security program, and to delete certain

⁹⁴ Press Release, Fed. Trade Comm'n, FTC Says Ed Tech Provider Edmodo Unlawfully Used Children's Personal Information for Advertising and Outsourced Compliance to School Districts (May 22, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ed-tech-provider-edmodo-unlawfully-used-childrens-personal-information-advertising>.

⁹⁵ Press Release, Fed. Trade Comm'n, FTC Takes Action Against Drizly and its CEO James Cory Rellas for Security Failures that Exposed Data of 2.5 Million Consumers (Oct. 24, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-takes-action-against-drizly-its-ceo-james-cory-rellas-security-failures-exposed-data-25-million>. The Drizly settlement also names the CEO, and thus imposes separate obligations on him which will follow him beyond Drizly, underscoring the need for C-Suite attention to data security obligations.

⁹⁶ Press Release, Fed. Trade Comm'n, FTC Takes Action Against CafePress for Data Breach Cover Up (Mar. 15, 2022), www.ftc.gov/news-events/news/press-releases/2022/03/ftc-takes-action-against-cafepress-data-breach-cover.

⁹⁷ Press Release, Fed. Trade Comm'n, FTC Says Ring Employees Illegally Surveilled Customers, Failed to Stop Hackers from Taking Control of Users' Cameras (May 31, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ring-employees-illegally-surveilled-customers-failed-stop-hackers-taking-control-users>.

C. Ensuring Fairness for Workers, Entrepreneurs, and Small Businesses

As American workers and small businesses attempt to recover from the effects of the pandemic, the Commission is taking a comprehensive approach—through enforcement, rulemaking, and advocacy—to ensuring that they are not held back by unfair or deceptive practices.

1. Ensuring Domestic Manufacturers Can Compete Fairly

As many firms look to onshore production and as many consumers look to buy “Made in America” goods, the FTC is taking comprehensive action to protect the integrity of the label and ensure a level playing field for domestic manufacturers. In 2021, the Commission finalized a rule that prohibits the misuse of the “Made in America” label, and the Commission is already taking action to enforce this rule. For example, in 2022, the Commission charged a manufacturer of lithium-ion batteries with falsely labeling its products as “Made in America.”⁹⁸ Months later, the Commission charged a seller of falsely advertised personal protective equipment.⁹⁹ And, most recently, the Commission sued a motocross and ATV parts maker alleging that it falsely labeled its products as “Made in USA.”¹⁰⁰

Marketers making false “Made in USA” claims covered by other laws and rules that the FTC enforces also can expect consequences. For example, in the past year we charged companies with making false claims for imported textile products such as apparel and bedding.¹⁰¹

⁹⁸ See *United States v. Lithionics Battery, LLC*, No. 8:22-cv-00868 (M.D. Fla. 2022) (imposing a civil penalty of treble profits on sales of deceptively marketed battery products).

⁹⁹ See *United States v. Axis LED Group, LLC*, No. 3:22-cv-01389 (N.D. Ohio 2022) (imposing a civil penalty and suspended redress judgment based on sales of falsely labeled PPE and LED products).

¹⁰⁰ Press Release, Fed. Trade Comm’n, FTC Finalizes Order Against Motocross and ATV Parts Maker Cycra for False Made in USA Claims (June 2, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-finalizes-order-against-motocross-atv-parts-maker-cycra-false-made-usa-claims>.

¹⁰¹ See *In re Lions Not Sheep Products, LLC*, Docket No. C-4772 (July 28, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/C4772%20Decision%20and%20Order.pdf (imported apparel products relabeled as “Made in USA”); *In re Electrowarmth Products, LLC*, Docket No. C-4779 (Oct. 25, 2022) (imported bedding products entering the USA pre-labeled as “Made in USA”), https://www.ftc.gov/system/files/ftc_gov/pdf/222-3096-Electrowarmth-Decision-and-Order.pdf.

We also recently sued a manufacturer of glass baking products for continuing to advertise its products as “Made in USA” during a shift to overseas production at the height of the pandemic.¹⁰² The FTC continues to carefully monitor the market for false “Made in America” claims and will use all available tools to ensure scammers who cheat consumers, honest businesses, and American workers face heavy consequences for their lawbreaking.

2. Combatting Unfair or Deceptive Practices Affecting Gig Workers

The Commission is making clear that regardless of whether gig workers are treated as employees or independent contractors under labor laws, they are fully protected by the FTC’s prohibition on unfair or deceptive practices. Last year, the Commission issued a policy statement highlighting how traditional principles of consumer protection and competition apply in the gig economy,¹⁰³ and the Commission continues to investigate potential law violations and bring enforcement actions to ensure fairness for these workers. Earlier this year, for example, the Commission issued an order requiring HomeAdvisor to pay up to \$7.2 million to contractors who may have been harmed by deceptive claims about the quality and source of the leads the company sells.¹⁰⁴

3. Allowing Consumers to Repair their Products and Giving Independent Repairers a Chance to Compete

In May 2021, the Commission submitted a report to Congress entitled *Nixing the Fix: An FTC Report to Congress on Repair Restrictions*.¹⁰⁵ In the report, the Commission found “scant

¹⁰² *In re Instant Brands LLC*, Docket No. C-4788 (Mar. 1, 2023) (imported glass measuring cups advertised as “Made in USA”).

¹⁰³ See FTC, Policy Statement on Enforcement Related to Gig Work (Sept. 15, 2022), <https://www.ftc.gov/legal-library/browse/policy-statement-enforcement-related-gig-work>.

¹⁰⁴ See Press Release, Fed. Trade Comm’n, FTC Approves Final Order Against HomeAdvisor, Inc. for Deceptively Marketing Its Leads for Home Improvement Projects (Apr. 21, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-approves-final-order-against-homeadvisor-inc-deceptively-marketing-its-leads-home-improvement>.

¹⁰⁵ FTC, *Nixing the Fix: An FTC Report to Congress on Repair Restrictions* (May 2021), https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf.

evidence” to support manufacturers’ justifications for repair restrictions.¹⁰⁶ The Commission followed this report with three major actions against companies for allegedly imposing unlawful repair restrictions on consumers.¹⁰⁷ The Commission also is exploring other avenues to strengthen consumers’ right to repair, including by supporting state efforts¹⁰⁸ and seeking comment on whether manufacturers should be required to provide consumers with repair instructions.¹⁰⁹

4. Protecting Franchisees from Unfair or Deceptive Practices

The agency continues to take an integrated approach to franchise issues, undertaking both enforcement and policy initiatives. Last year, for example, we partnered with the DOJ to file a suit against fast-food chain BurgerIM, alleging that the chain made false promises and withheld information required by the Franchise Rule to persuade more than 1,500 consumers, some of them veterans, to purchase franchises.¹¹⁰ Earlier this year, the agency issued a Request for Information (“RFI”) related to franchise agreements and franchisor business practices.¹¹¹ The RFI seeks information about the means by which franchisors may exert control over franchisees and their workers. Earlier this year we also launched a consumer education blog series entitled Franchise Fundamentals, in which we highlight for prospective franchisees factors they should

¹⁰⁶ *Id.* at 6.

¹⁰⁷ Press Release, Fed. Trade Comm’n, FTC Approves Final Orders in Right-to-Repair Cases Against Harley-Davidson, MWE Investments, and Weber (Oct. 27, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-approves-final-orders-right-repair-cases-against-harley-davidson-mwe-investments-weber>.

¹⁰⁸ Press Release, Fed. Trade Comm’n, FTC Testifies Before California State Senate on Right to Repair (Apr. 11, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-testifies-california-state-senate-right-repair>.

¹⁰⁹ 87 Fed. Reg. 64,399 (Oct. 25, 2022).

¹¹⁰ Press Release, Fed. Trade Comm’n, FTC Sues Burger Franchise Company That Targets Veterans and Others with False Promises and Misleading Documents (Feb. 8, 2023), <https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-sues-burger-franchise-company-targets-veterans-others-false-promises-misleading-documents>.

¹¹¹ Press Release, Fed. Trade Comm’n, Solicitation for Public Comments on Provisions of Franchise Agreements and Franchisor Business Practices (Mar. 10, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-seeks-public-comment-franchisors-exerting-control-over-franchisees-workers>.

consider when deciding whether to purchase a franchise.¹¹² Finally, we are coordinating closely with DOJ and the National Labor Relations Board, and in December 2021 we filed an amicus brief in a class action suit by 7-Eleven franchisees in which we successfully argued that the FTC’s Franchise Rule does not address whether franchisees are employees under Massachusetts law.

5. Shining a Light on Small Business Credit Reports

Credit reports can be make-or-break for small businesses. To better understand this opaque market, the FTC recently voted to issue orders under Section 6(b) of the FTC Act to five business credit reporting agencies, requiring that they provide information about: (1) how they collect and report data on small businesses; (2) how they market their business credit reporting products; and (3) whether and how they address factual errors in the reports.¹¹³ The 6(b) study will shine a needed light on an industry that has not been reported on extensively but can be critical to the survival of a smaller firm. It will also advance the agency’s broader effort to ensure a fair shot in the marketplace for small businesses and entrepreneurs. The 6(b) study follows the FTC’s April 2022 complaint against and order with Dun & Bradstreet (“D&B”) in which the FTC alleged, among other things, that D&B reported incorrect information about small businesses then failed to provide a clear, consistent, and reliable way for those businesses to get

¹¹² Franchise Fundamentals: Debunking Five Myths About Buying a Franchise, <https://www.ftc.gov/business-guidance/blog/2023/04/franchise-fundamentals-debunking-five-myths-about-buying-franchise>; Franchise Fundamentals: Researching Franchise Opportunities, <https://www.ftc.gov/business-guidance/blog/2023/05/franchise-fundamentals-researching-franchise-opportunities>; Franchise Fundamentals: Taking a deep dive into the Franchise Disclosure Documents, <https://www.ftc.gov/business-guidance/blog/2023/05/franchise-fundamentals-taking-deep-dive-franchise-disclosure-document>.

¹¹³ In March 2023, the FTC issued 6(b) orders to D&B, Experian Information Solutions, Equifax, Ansonia Credit Data, and Creditsafe USA. See Press Release, Fed. Trade Comm’n, FTC Launches Inquiry into Small Business Credit Reports (Mar. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-launches-inquiry-small-business-credit-reports>.

corrections.¹¹⁴ D&B is now subject to an order that bars it from misrepresenting certain types of credit improvement products and mandates better processes for businesses to correct errors.

IV. RESOURCE CONSTRAINTS AND LEGAL CHALLENGES

Despite the many successes highlighted above, we also want to highlight significant headwinds the Commission faces. First, as our work illustrates, Congress has charged the FTC with policing unlawful conduct across a broad swath of the U.S. economy. Although we are at the front lines of many of the most pressing economic issues Americans face today, the number of full-time employees we plan to have at the end of FY2023 will be about 80% of the number we had at the beginning of 1980, while the nation's GDP has increased six-fold.¹¹⁵ Demands on the Commission continue to grow as we review corporate mergers,¹¹⁶ conduct more complex and expensive litigation, receive consumer complaints,¹¹⁷ try to stay abreast of transformative technological and market changes, and respond to burgeoning requests for research and

¹¹⁴ Decision and Order, *In re Dun & Bradstreet*, Docket No. C-4761, https://www.ftc.gov/system/files/ftc_gov/pdf/172%203196%20Dunn%20and%20Bradstreet%20combined%20package%20unsigned_0.pdf.

¹¹⁵ For example, as of March 2022, the UK's Information Commissioner's Office, the principal privacy enforcement agency in the UK, had 944 permanent staff. See Information Commissioner's Office, Information Commissioner's Annual Report and Financial Statements 2021-22 (July 2022) at 107, <https://ico.org.uk/media/about-the-ico/documents/4021039/ico-annual-report-2021-22.pdf>. Ireland's Data Protection Commission, responsible for enforcing the European privacy regulation, had 196 employees as of December 2022. See Data Protection Commission, Annual Report 2022 at 53, https://www.dataprotection.ie/sites/default/files/uploads/2023-03/DPC%20AR%20English_web.pdf. By contrast, the Federal Trade Commission's Division of Privacy and Identity Protection currently has just 48 employees. Although it is true that FTC employees in other units, including the regional offices, the Division of Enforcement, and the Division of Marketing Practices, contribute to the Commission's security and privacy efforts, the total number of FTC employees working on these issues is dwarfed by our European counterparts.

¹¹⁶ As reflected in the annual report on the Hart-Scott-Rodino premerger program, the agencies reviewed an overwhelming number of HSR-reportable transactions in FY 2021 and issued more "Second Requests" for additional information from the merging parties than the year before, signaling a significant increase in the merger workload. See Press Release, Fed. Trade Comm'n, FTC, DOJ Issue Fiscal Year 2021 Hart Scott Rodino Premerger Notification Report (Feb. 10, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-doj-issue-fiscal-year-2021-hart-scott-rodino-premerger-notification-report>. While the number of HSR filings have fallen since the FY2021 peak, they remain high, with filings for over 3200 transactions in FY2022. (Monthly HSR numbers are posted on the FTC website at <https://www.ftc.gov/enforcement/premerger-notification-program>).

¹¹⁷ See, e.g., Press Release, Fed. Trade Comm'n, New FTC Data Show Consumers Reported Losing Nearly \$8.8 Billion to Scams in 2022, <https://www.ftc.gov/news-events/news/press-releases/2023/02/new-ftc-data-show-consumers-reported-losing-nearly-88-billion-scams-2022>.

investigation of various economic sectors. While we constantly strive to enforce the law to the best of our capabilities, there is no doubt that—despite the much-needed increased appropriations Congress has provided in recent years—we continue to lack sufficient funding. We seek to work with Congress to ensure that the Commission has the resources and tools it needs to vigorously protect the American people.

Second, the FTC faces several significant legal challenges to statutory authorities that have been important tools in executing our mission. The Supreme Court issued its decision in *AMG Capital Management v. FTC* in April 2021, upending decades of lower court rulings that had held that Section 13(b) of the FTC Act enabled the FTC to pursue equitable monetary relief in federal court. Practically, *AMG* ended the FTC’s ability to seek monetary relief for consumers in competition matters, most concretely in cases involving anticompetitive conduct by drug companies. In some consumer protection cases, Section 19 of the Federal Trade Commission Act allows the Commission to seek refunds for consumers in federal court either for certain rule violations or in some cases after an administrative proceeding. While this avenue has always been more limited than Section 13(b), it may now face further constraints in light of various legal challenges to the administrative process. Simply put, some companies that profited by deceiving consumers are now able to keep that money.¹¹⁸ That makes restoring our ability to use Section 13(b) to provide redress to consumers for law violations all the more important.

¹¹⁸ See, e.g., Press Release, Fed. Trade Comm’n, FTC Order to Bar Zycal Bioceticals from Deceptive Health Marketing (Feb. 6, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-order-bar-zycal-bioceticals-deceptive-health-marketing> (“Unfortunately, the Supreme Court decision in *AMG Capital Management* prevented us from obtaining refunds for consumers in this case. The Commission has urged Congress to enact legislation to restore the agency’s ability to obtain critical relief for consumers through federal court actions.”); Press Release, Fed. Trade Comm’n, Federal Court Rules in Favor of FTC, Halting Illegal Tactics Used to Promote Smoking Cessation, Weight-Loss, and Sexual-Performance Aids (Mar. 25, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/federal-court-rules-favor-ftc-halting-illegal-tactics-used-promote-smoking-cessation-weight-loss> (“[D]espite the fact that the FTC presented evidence that consumers lost \$18.2 million to the defendants’ deceptive marketing, the court declined to order any compensation because of [the] Supreme Court’s ruling in the case of *AMG v. FTC*, which undercuts the agency’s authority to obtain such consumer redress”).

